

*Employment Law Protection
For Doctors In Working Relations With Hospitals*

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ABSTRACT

According to the existing legal relationship, there are three groups of doctors working in the hospital, namely doctors who have the status of permanent employees (PNS), doctors who are contract employees and visiting doctors (*attending doctors*). The shortage of doctors remains, in general, private hospitals hire civil servant doctors who work in government hospitals as visiting doctors. The purpose of the study: To know and analyze the regulation of the medical profession based on positive laws in force in Indonesia and To know and analyze labor law protection for doctors in employment relations with hospitals. The type of research used is normative juridical, the research approach used is a *statutory approach* (*statute approach*) and a conceptual approach (*conceptual approach*). Labor law protection for doctors in employment relations with hospitals is regulated in the employment agreement. Employment agreements are the entrance to labor law protection norms for doctors who are bound by an employment relationship with hospitals. The working relationship between doctors and hospitals is born from an employment agreement. The employment agreement stipulates the rights and obligations of each party who signs the employment agreement. Employment agreements between doctors and hospitals become an autonomous source of law in employment relations. The employment agreement will be a source of law to be considered in the event of an employment relationship dispute between doctors and hospitals, in addition to applicable labor law laws and regulations.

Keywords: Legal protection; employment of doctors; employment of hospitals.

ABSTRACT

According to the existing legal relationship, there are three groups of doctors working in hospitals, namely doctors with the status of permanent employees (PNS), doctors with contract status and visiting doctors (attending physician). There is a shortage of permanent doctors, in general private hospitals

employ civil servant doctors who work in government hospitals as visiting doctors. Research objectives: To find out and analyze the regulation of the medical profession based on the positive law in force in Indonesia and to find out and analyze the labor law protection for doctors in working relations with hospitals. The type of research used is formative juridical, the research approach used is a statute approach and a conceptual approach. Labor law protection for doctors in working relationships with hospitals is regulated in the work agreement. The work agreement is an entry point for the norms of labor law protection for doctors who are bound by a working relationship with a hospital. The working relationship between doctors and hospitals was born from a work agreement. The work agreement stipulates the rights and obligations of each party signing the work agreement. Work agreements between doctors and hospitals are an autonomous source of law in work relations. The work agreement will be a source of law to be considered in the event of a dispute over work relations between a doctor and a hospital, in addition to the applicable labor laws and regulations.

Keywords: *Legal protection; doctor employment; working relationship with the hospital.*

A. INTRODUCTION

1. Background

Until now, a doctor's License to Practice (SIP) is issued by the government. The Indonesian Medical Association (IDI) only provides recommendations related to SIP. These provisions are contained in Law Number 29 of 2004 concerning Medical Practice. In Law Number 29 of 2004, it is stated that the requirements in order to obtain a SIP are that doctors must have a Registration Certificate (STR), a place of practice, and recommendations from professional organizations. SIP is valid once every five years. A doctor, whether civil servant or not, can undergo a fairly wide choice of career paths. Doctors can take the military or police route, as lecturers (at public and private universities), as researchers, entrepreneurs (both in health-related fields directly and outside it), structural employees in hospitals or health services, and others.¹

The position of doctors in hospitals plays an important role, the position between the two is not limited to employers and employees, but in running it at the hospital doctors are not on the control test in order to indicate an employment

¹ Slamet Budiarto (Chairman of the Executive Board (PB) of the Indonesian Medical Association (IDI))Quoted from Kompas.com. <https://nasional.kompas.com/read/2022/04/01/15503701/idi-doctor's-practice-license-issued-government-not-idi> Retrieved October 14, 2022, 8:10 AM.

relationship, because doctors know professional freedom, then *the control test* The relationship between hospitals and doctors is not as rigid as the employer-labor relationship. Every official is an executor of public services and every employee (PNS) is an executor of public services. So every doctor with civil servant status is a public servant who serves the community in the health sector.²

Law Number 29 of 2004 which regulates Medical Practice is expected to provide protection and provide legal certainty as stated in article 50 letter (a) which states that doctors or dentists who practice medicine have the right to obtain legal protection as long as they carry out their duties in accordance with professional standards and standard operational procedures. An employment contract defines working conditions and therefore can greatly affect professional satisfaction and personal happiness in the future, a doctor needs to carefully read and fully understand every aspect of the employment agreement.

In terms of cooperation with partner doctors, the scope of cooperation can be allowed on a part-time basis in order to carry out medical services and / or other health services in accordance with the field of expertise or specialization. Doctor services as partners can be in the form of counseling, outpatient and medical actions with the help of health workers provided by themselves. The agreement between the manager of the health place and the partner doctor has a cooperative legal relationship and the doctor is not an employee. The principle of compliance required to doctors if they are partners is all provisions that apply at the clinic, including *Standard Operating Procedures*, disciplinary regulations, *medical staff by laws* and Medical Service Manuals at the Clinic.³

In the Manpower Law, Article 61 Paragraph 1 states that the party who terminates the employment relationship is required to pay compensation to the other party in the amount of workers' wages until the expiration of the term of the employment agreement. The contract agreement should clearly state whether the doctor is considered a full or part-time employee, whether the doctor will be required to perform administrative or teaching duties, and share in the after-hours call schedule. A doctor should ask about the length of the workweek (hours) and how many patients are expected to see per hour, per day, or per week. defines the employment relationship, such as who the physician reports to, who reports to the physician, and the physician's role, if any, in hiring support staff.⁴

The pattern of labor relations that exist on the part of doctors and hospitals is the relationship of medical labor and also the therapeutic relationship. With regard to the pattern of therapeutic relationships that take place between the hospital

² Eko Pujiyanto. *Fairness in Medical Care (Application of the Principle of Patient Autonomy: Legal Theory and Practice in Court)*. 2017. Bandung: Citra Aditya Bakti. p. 36.

³ *Partner Doctor Peer Observation* on October 14, 2022 (processed).

⁴ *Physician peer observation*, October 14, 2022 (processed).

and also the patient is that medical personnel, namely doctors are workers, take place when the hospital has medical personnel, namely doctors who are predicated as workers. In this context, the position of the hospital is as a party that is obliged to provide achievements, while the doctor has a function as a worker (sub-coordinator of the hospital) who has the task of carrying out the process of his obligations at the hospital.⁵

In the aspect of employment agreement in accordance with Article 5 of Law Number 13 of 2003 which regulates Manpower states that every worker has the same opportunity without discrimination to obtain work. In carrying out their obligations under the partnership agreement, doctors are supervised by the nomenclature of each Hospital. Partnership agreements are generally valid for two years or adjusted to the active period of the STR or SIP. Partner hospitals are obliged to respect the standards of the medical profession. The sanction of unilateral termination of the agreement by the hospital to the partner doctor adjusts the provisions of article 1266 of the Civil Code.⁶

The issue of severance pay and service period awards has been regulated in Law Number 13 of 2003 which regulates employment. In addition to severance pay, when there is a termination of employment, employers are required to pay award money with a minimum service period of 3 years. Separation Money is also one of the rights that may be received by employees when termination of employment (PHK) occurs. Currently, Split Money is still regulated in Law Number 11 of 2020 which regulates Job Creation and Government Regulation Number 35 of 2021 which regulates Certain Time Work Agreements, Outsourcing of Work Time and Rest Time, and Termination of Employment (PP 35/2021).

In the Omnibus Law on Job Creation, Article 59 of Law Number 13 of 2003 was deleted. The article regulates the limitations of the Certain Time Work Agreement (PKWT). Especially for PKWT based on the time period, PKWT can be made for a maximum of 5 years, and can be extended if the work carried out has not been completed and the PKWT period will end. The overall term of PKWT and its extension should not exceed 5 years.⁷ The practice or application of the legal relationship between doctors and nurses (Health Law term: health workers) with the management of a health service foundation varies greatly, depending on the needs and conditions and agreements between the parties. Some are based on work agreements (DHK), some are based on agreements (contracts) to perform services, and some are based on profit sharing, as well as other forms of legal relations. In

⁵ Nusye, K. I. Jayanti. *Legal Settlement in Medical Malpractice*. 2009. Yogyakarta: Pustaka Yustisia. h. 13.

⁶ Partner physician peer observation on October 14, 2022 (processed).

⁷ Article 8 paragraphs (1) and (2) of Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment ("PP 35/2021").

addition, there are also those who combine all three; some of these health workers are based on work agreements, and some are based on profit-sharing systems, some are health service contracts for a certain period of time (but not certain time work agreements or PKWT).⁸

According to the legal relationship established between hospitals and doctors, there are 3 (three) models of working relationships between doctors working in hospitals, namely (1) doctors who have the status of State Civil Apparatus (ASN), (2) doctors who are contract employees (PKWT) and (3) visiting doctors (*attending physician*).

The form of legal relationship between contract doctors and hospitals is regulated in a work agreement (PKWT), in which the work agreement regulates the rights and obligations of doctors and hospitals. Legal provisions governing legal protection for doctors may refer to the Medical Practice Act, Hospital Act, Health Act and Health Workers Act. Hospitals as places of health services can also provide legal protection for contract doctors (Law.44/2009, Ps.46 jo. Ps.1367/Civil Code).⁹

2. Problem Statement

Based on the background of the problems that have been raised, a problem formulation was prepared, namely: How is the protection of labor law for doctors in employment relations with hospitals?

3. Research Methods

The type of research used by the author in this study is normative juridical research because it is carried out by examining the rules associated with legislation related to the legal issues that the author is observing. Normative juridical research is legal research that uses secondary data where secondary data other than those sourced from employment agreements also come from the study of laws and regulations and literature research related to the research topic.

The approach used by the author in this study is a *statutory approach* (*statute approach*) and a *conceptual approach* (*conceptual approach*). The statutory approach and conceptual approach will examine various legal rules and collect information relevant to the subject matter and topics obtained through books, laws, theses, scientific papers, expert opinions, dissertations and various other sources.

⁸ Observation with fellow physicians on October 14, 2022 (processed).

⁹ Titia Rahmania. *Implementation of Work Agreement between Emergency Department (IGD) Contract Doctors and Raden Mattaher Jambi Hospital as a Form of Legal Protection for Doctors*. 2016. *Thesis*: Universitas Gadjah Mada.

B. DISCUSSION

1. Employment Relationship between Doctors and Hospitals in the Perspective of an Employment Agreement

Changes that occur in the pattern of the doctor's relationship with patients ultimately change the patient's perception of the medical services received. If initially the patient only resigned himself to whatever action the doctor takes, the attitude of resignation then turns critical and no longer permissive. The patient's lawsuit is also not only directed against the doctor, but also against the hospital. If a doctor and a hospital are punished to pay damages on a responsible basis, it means that the court considers the doctor and hospital equally liable for losses incurred, even though the hospital is not always declared jointly liable. Sometimes the hospital alone is declared liable for patient losses.¹⁰

The working relationship between doctors and hospitals is born from an employment agreement. The employment agreement stipulates the rights and obligations of each party who signs the employment agreement. Employment agreements between doctors and hospitals become an autonomous source of law in employment relations. Employment agreements are the entrance to labor law protection norms for doctors who are bound by an employment relationship with hospitals.

Employment contracts are a source of law in autonomous employment relations. An employment agreement is an agreement between workers and employers as employers that contains the terms of work, rights and obligations of the parties. Employment relations occur because of an employment agreement between workers and employers as employers. Article 1601 (a) BW states that what is meant by an employment agreement is an agreement between one party, which binds itself to obey the orders of the other party (Employer) to perform a certain job, within a certain period of time, by receiving the agreed wages.

Work agreement is an agreement made and agreed upon jointly between workers and employers as employers in which it is regulated regarding the conditions of work, rights and obligations that must be carried out by the parties, both workers and employers (Law.13/2003, Ps, 1, ak.14).

In the employment agreement, certain elements are required that will distinguish between the substance of the work agreement and the agreement in general. However, if there is doubt in distinguishing a relationship to perform work, whether it comes from an employment agreement, contracting work or an agreement for the provision of certain services / work, then in the provisions of

¹⁰ Zamroni, Muhammad., 2022. *Health Law: Liability of Doctors and Hospitals in the Practice of Medical Services*. Scopindo Media Library.

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Article 1601 BW a solution is given, namely by returning to the elements of the agreement.

From the provisions of article 1601 (c) BW, especially paragraph (1), comes the understanding of: *cumulation* and *absorption*. What is meant by *cumulation* is the application of provisions regarding employment agreements and provisions regarding other types of agreements. Meanwhile, what is meant by *absorption* is if in the event of a conflict over the use of provisions governing work agreements or other types of agreements, then the provisions regarding work agreements apply. With the holding of an employment agreement, an employment relationship is established between the employer and the recipient of the work concerned, and then provisions governing labor law will apply, including regarding work conditions, social security, occupational health and safety, termination of employment, and so on.

An employment agreement is a special agreement that is in principle the same as other agreements in general. Therefore, the legal terms of the agreement, which are general provisions, also apply to the employment agreement. The conditions for the validity of the work agreement are the agreement of both parties, the ability or ability of the parties in order to carry out legal actions, the existence of agreed work, and the agreed work does not conflict with public order, decency, and applicable laws and regulations.

If it does not meet the subjective requirements, the employment agreement can be canceled, while if it does not meet the objective requirements, the employment agreement is null and void. The relationship between employment agreements and agreements in general can be seen from the provisions governing employment agreements as contained in Chapter 7a of the third book of BW, which is part of the third book on employment agreements. An employment agreement is a coercive agreement, because the parties cannot determine their own wishes in the agreement. The difference in position of the parties entering into an employment agreement causes the parties not to determine their own wishes in the agreement, especially the workers, however, the parties to the employment relationship are subject to the provisions of labor law. The parties who enter into an employment agreement have a legal relationship called an employment relationship, and since then those who enter into an employment agreement apply to the provisions of labor law.

The provisions contained in section 7a BW are general to all employment agreements, this means that it is possible to enter into specific provisions, based on the specifics of the employment agreement. Review from places, for example specifically work done at sea, in plantations, in forests, or types of work, such as mining companies, pharmaceutical companies, health services and so on.

A work agreement, including a work agreement in the field of medical services, has its constituent elements, namely:

- 1) Elements of work, namely achievements that must be done by doctors as recipients of work. The work is individual, meaning that it must be done alone by the worker who accepts the work and must not be transferred to other parties.
- 2) Elements under *orders* that make the doctor very dependent on superior orders, instructions, or instructions from hospital management. Although the doctor has his own special expertise or ability to do the work, while there is still dependence on the Hospital, it can be said that there is still a subordination relationship, between doctors who accept work under the orders of the Hospital management who give work.
- 3) The element of wages is a salary or reward for work done by doctors as recipients of work.

Wages can be in the form of money or non-money. This wage can be seen in nominal terms, the actual amount received by workers, or in terms of the usefulness of these wages in order to meet the needs of workers' lives. Related to the needs of workers' lives, known as the minimum wage, which is usually determined by the government to review the benefits of wages in order to meet the needs of life. The minimum wage is implemented by determining a certain minimum amount that employers are obliged to pay to workers in return for work performed.

Some general principles in society related to wages include:

- 1) Wages become obligations paid by the Employer;
- 2) The principle of non-discrimination, there is no difference in terms of wages.
- 3) The principle of *no work no pay*, enforced with its exceptions. The parties involved in the employment relationship can make an agreement regarding wages, provided that it is more profitable for the workers. Prohibition of wage deductions. In the event that there is a deduction against wages, it must be with the consent of the worker concerned. The application of fines, deductions, compensation, etc. that will be taken into account in wages.
- 4) The existence of a certain time. The element of time in this case is the existence of a time in order to do the work in question or the length of time the worker performs the work given by the employer. Therefore, the determination of time in an employment agreement can be related to the agreed period, the length of time needed to complete the work, or the time associated with the results of work, certain events or a trip or activity. Starting from this time, the employment agreement can be distinguished between a certain time work agreement, that is, the time to perform has been specified in the agreement. Originally, the provision regarding a certain time work agreement was intended to limit the arbitrariness

of the employer who thought that workers (who worked under his orders) could be treated the same as slaves.

Development in the health sector is aimed at achieving the ability to realize a healthy life for every citizen in order to realize an optimal degree of public health. The objectives as described above are the embodiment of one of the elements of the general welfare of the national goals of the Indonesian nation as outlined in the Preamble to the 1945 Constitution and it is in line with what is outlined in Law Number 23 of 1992 which regulates health.

Excellent health is sometimes difficult to maintain and when we are sick, it is an axiom that someone who is sick will try to recover by seeing a doctor. In ancient times, there was a relationship of trust between two people, namely the medicine and the sufferer, where in modern times this relationship is called the therapeutic agreement relationship between doctor and patient.

A therapeutic agreement is an agreement between a doctor and a patient that authorizes a doctor in order to carry out activities to provide health services to patients based on the expertise and skills possessed by the doctor.¹¹ A therapeutic agreement arises when the patient agrees to perform a medical course and from then on the rights and obligations of the doctor and patient arise that are binding on medical services. Based on the legal relationship arising in the *therapeutic* agreement, the rights and obligations of the parties arise where the patient has rights and obligations and vice versa with the doctor. So that if both parties neglect their rights and obligations, it can be said to have defaulted. It should be underlined here that a therapeutic agreement does not at all mean that the doctor or patient can agree to make an agreement in order to commit acts or acts that violate or are prohibited by law.

Hospitals today are no longer considered social institutions that are immune from all forms of lawsuits. Previously, hospitals were considered as social institutions with impunity under the *doctrine of charitable immunity*, because punishing hospitals by paying compensation is equivalent to reducing their assets, which in turn reduces the ability of hospitals to help the community. The paradigm shift is based on the consideration that many hospitals are starting to forget their social functions and are managed like an industry with modern management, complete with risk management. Therefore, hospitals should start placing every claim for compensation as a form of business risk so it needs to implement good risk management.

The malpractice crisis situation has significant domino access to the development of Indonesian hospitals, therefore it needs to be watched out. But the most important thing to consider for every hospital manager and owner is to understand that before malpractice can be proven, any dispute that occurs between

¹¹ Anny Isfandyarie, Hajah, Fachrizal Affandi, Agus Gufron. *Legal Responsibility and Sanctions for Doctors Book II*. Jakarta: Prestasi Pustaka Publisher, 2006.

the health care receiver and the *health care provider* can only be viewed as a mere conflict, if the conflict arises as a result of a logical discrepancy in a problem.

Basically, problems in the world of hospitalization are caused by two factors, first the gap between the patient's expectations and the reality he obtained for medical efforts in these health facilities. This is sometimes supported by differences in perception, ambitious communication or individual styles of a person that can come from the doctor and patient. Both weaknesses and shortcomings in implementing good clinical *governance*, including risk management when handling claims from patients.

2. Legal Protection in the Medical Profession

Until now there has been no specific law regulating the legal protection of doctors, such as Law Number 35 of 2014 which regulates Child Protection, Law Number 8 of 1999 which regulates Consumer Protection. Currently, the legal protection of doctors is implied in Law Number 36 of 2009 which regulates Health and Law Number 29 of 2004 which regulates the Practice of Medicine. The position of the two laws only focuses on legal protection of doctors when patients are victims. What about today, doctors can become victims of patients' families who are not satisfied with the services provided. The form of legal protection obtained by doctors in carrying out their professional duties, namely preventive legal protection and repressive legal protection. Preventive legal protection refers to Article 50 of the Medical Practice Law,¹² while repressive legal protection refers to Article 29 of the Health Law.¹³

Preventive legal protection as stipulated in Article 50 of the Medical Practice Law provides conditional legal protection, meaning that it does not necessarily provide legal protection to doctors. Doctors will get legal protection if they are qualified, namely: having an STR, SIP, performing medical actions according to standards (professional standards, operational standards, service standards and ethical standards), there is *informed consent* for every medical action and all must be well documented in books known as medical records. While repressive legal protection is more focused on unraveling disputes faced by doctors, for example in the event of alleged malpractice or alleged negligence, where patients claim compensation. Because the relationship between doctors and patients

¹² Article 50 of the Medical Practice Law states that doctors or dentists in carrying out medical practice have the right to obtain legal protection as long as they carry out their duties in accordance with professional standards and standard operational procedures.

¹³ Article 29 of the Health Law states In the event that health workers are suspected of negligence in carrying out their profession, such negligence must first be resolved through mediation.

is a civil relationship, every civil dispute that goes to court must be resolved by mediation first, unless otherwise stipulated by Perma Number 1 of 2016.¹⁴

Some mediations are carried out in court and some are carried out outside the court. Mediation in court is mandatory, the regulation is clear. Meanwhile, mediation outside the court, there are no rules governing how the process is, so mediation outside the court tends to be universal and not legalistic. The absence of rules governing mediation outside the court is a strength for the mediation process, as well as a weakness. Being a strength, because the process will be flexible for the parties and mediators in organizing it according to the needs and types of cases handled. Being a weakness, because there are no rules that govern, means there is no standardization and certainty. Mediation conducted outside the court is assisted by certified mediators.

The formal education standards of a doctor must be met academically and juridically, meaning that based on the formal academic standards required by passing formal medical education, a medical personnel has mastered the initial standard of ability to be able to perform medical service duties. In subsequent developments, the initial standard alone turned out to be insufficient for a medical personnel, because it must be supplemented and equipped with the development of science and technology that occurs at any time. The world of medicine is always developing, even its development is considered very rapid. For medical personnel who do not keep up with the development of science and technology will fall behind. Medical personnel who are left behind with the development of science and technology that have something to do with the medical world, if they carry out the duties of medical services can be classified as a medical personnel who do not meet the standards, if they carry out their duties and it turns out to have a negative impact can be classified as errors or negligence, which is now better known as malpractice.¹⁵

The medical profession is not a field of science that everything can definitely measure. The medical profession according to Hippocrates is a combination or combination of knowledge and art (*science and art*). As in making a diagnosis is an art in itself from the doctor, because after hearing the patient's complaints, the doctor will do imagination and make careful observations of his patients. The knowledge or theories of medicine and experience he has received so

¹⁴ Cases that have a grace period for resolution, at the time of examination not attended by either party, counterclaims cases (reconvention) or the entry of third parties in cases (intervention), disputes of prevention/rejection/cancellation/legalization of marriage and cases that have been attempted mediation but failed (Article 4 Paragraphs (1) and (2).

¹⁵ Mudakir Iskandar Shah, *Criminal & Civil Charges, Malpractice*, Permata Aksara, Jakarta, 2011, p. 5.

far are the basis for diagnosing the patient's disease and it is expected that the diagnosis is close to the truth.¹⁶

Article 50 letter (a) of Law Number 29 of 2004 which regulates the Practice of Medicine, "doctors or dentists in carrying out medical practice have the right to obtain legal protection as long as they carry out their duties in accordance with professional standards and standard operational procedures."¹⁷ Law Number 29 of 2004 which regulates the Practice of Medicine which is expected to protect and provide legal certainty, apparently still has shortcomings and the removal of criminal threat articles in the Law by the Constitutional Court led to the use of Articles in the Criminal Code in order to ensnare doctors suspected of malpractice.

The resolution of malpractice cases is often brought to court, but it is still a question whether the court is able to prove the truth in the medical field. Even if the doctor or medical personnel are expert witnesses, whether the judge can understand the opinion of the medical world. Supposedly, the resolution of medical disputes first through mediation, or reported to the authorized institution to consider violations of medical discipline, namely the Indonesian Medical Discipline Honor Council (MKDKI). The lack of socialization causes ordinary people to be less familiar with MKDKI, so the legal channels they use. MKDKI has the authority to examine and give decisions on complaints related to violations of medical discipline and sanctions.

The legal bases that provide legal protection for doctors in carrying out the medical profession are legal provisions that protect doctors in the event of suspected malpractice contained in Article 50 of the Medical Practice Law, Article 24 Paragraph (1), jo Article 27 Paragraph (1) and Article 29 of the Health Law, and Article 24 Paragraph (1) of the PP which regulates Health Workers. Things doctors should do to avoid lawsuits.

The reasons for the abolition of penalties against doctors suspected of medical malpractice are:

1) Treatment Risk

Treatment risks consist of:

a. Inherent risk

Every medical action taken by a doctor must contain risks, therefore doctors must carry out the profession in accordance with applicable standards. Risks that can arise for example hair loss due to chemotherapy with cytostatics.

b. Hypersensitivity reactions

¹⁶ Shahrul Machmud, *Law Enforcement and Legal Protection for Doctors Suspected of Medical Malpractice*, KDP, Bandung, 2012. h. 18, 23.

¹⁷ Article 50 of the Medical Practice Act.

The body's excessive immune response to the entry of foreign bodies (drugs) often cannot be predicted in advance.

- c. Complications that occur suddenly and cannot be expected in advance
It often happens that the patient's prognosis seems already favorable, but suddenly the patient's condition worsens and even dies without known cause. For example, the occurrence of amniotic fluid embolism.¹⁸

2) Medical Accidents

Medical accidents are often considered the same as medical malpractice, because they cause harm to patients. These two conditions should be distinguished, because in the medical world doctors try to cure rather than harm patients. In the event of a medical accident, the doctor's liability refers to the manner in which the accident occurred or the doctor must prove the occurrence of the accident.¹⁹

3) *Contribution Negligence*

The doctor cannot be blamed if the doctor fails or is unsuccessful in handling his patient if the patient does not explain truthfully about the history of the disease he has suffered and the drugs he has used during illness or does not obey the doctor's instructions and instructions or refuses the agreed treatment method. This is considered the patient's fault known as contribution negligence or the patient's guilt. Honesty and obeying the doctor's advice and instructions is considered the patient's obligation to the doctor and to himself.

4) *Respectable Minority Rules & Error Of (in) Judgment*

The field of medicine is a very complex field, as in a treatment effort there is often a disagreement or opinion about the therapy that is suitable for a particular medical situation. Medical science is an art and science in addition to technology that is matured in experience. So it could be that the way of approaching a disease is different for one doctor to another. Based on the above circumstances, a legal theory emerged by the court called *respectable minority rule*, namely a doctor is not considered negligent if he chooses from one of the many recognized means of treatment. The mistake of doctors choosing alternative medical actions in their patients then a new theory emerged called *error of (in) judgment* commonly referred to as *medical judgment* or *medical error*, namely the choice of medical action from doctors who have been based on professional standards turned out to be the wrong choice.

¹⁸ Wiradharma, Danny., *Medical Law School Guide*, Binarupa Aksara, Jakarta, 1996.

¹⁹ *Ibid*, h. 108.

5) *Volenti Non Fit Iniura* atau *Asumption Of Risk*

Volenti non fit iniura or assumption of risk is an old doctrine in legal science that can also be applied to medical law, which is a previously known assumption about the existence of a high medical risk to patients if a medical action is carried out on them. If a full explanation has been made and it turns out that the patient or family agrees (*informed consent*), if there is a risk that has been previously suspected, then the doctor cannot be held responsible for his medical actions. In addition, this doctrine can also be applied to cases of forced return (return of one's own free will even if the doctor has not consented), so such a thing exempts doctors and hospitals from lawsuits.²⁰

6) *Res Ipsa Loquitur*

The doctrine of *res ipsa loquitur* is directly related to the *burden* of proof, which is the transfer of the burden of proof from the plaintiff (patient or family) to the defendant (medical personnel). Against certain negligence that is obvious, it is clear so that it can be known to a layman or according to common knowledge between laymen or the medical profession or both, that defects, injuries, injuries or facts are clearly evident from the negligence of medical acts and this kind of thing does not require proof from the plaintiff but it is the defendant who must prove that his actions do not fall into the category of negligent or wrong.²¹

The Supreme Court through its Circular (SEMA) in 1982 has given directions to the Judges, that the handling of cases of doctors or other health workers who are suspected of negligence or mistakes in carrying out medical actions or services should not be directly processed through legal channels, but first requested an opinion from the Honorary Board of Medical Ethics (MKEK). Currently, MKEK functions are replaced by the Honorary Council of Indonesian Medical Disciplines (MKDKI), an independent institution under the Indonesian Medical Council (KKI).

Article 29 of the Health Law says that in the event that a health worker is suspected of negligence in the exercise of his profession, the negligence must first be resolved through mediation. In the explanation, it is not clear to what body the mediation will be settled, but the Medical Practice Law mandates the establishment of a medical discipline settlement institution which later became known as the Indonesian Medical Discipline Honor Council (MKDKI). MKDKI is not a mediation institution, in the context of mediation dispute resolution, but MKDKI is a State institution authorized to determine whether or not there are mistakes committed by doctors or dentists in the application of medical or dental disciplines

²⁰ *Ibid*, h. 285.

²¹ *Ibid*, h. 287.

and determine sanctions for doctors or dentists found guilty²². In terms of guaranteeing the neutrality of MKDKI, Article 59 paragraph (1) of the Law on Medical Practice, it is stated that MKDKI consists of 3 (three) doctors and 3 (three) dentists from their respective organizations, a doctor and a dentist representing hospital associations and 3 (three) legal scholars²³. So it is no longer feared that the doctor will defend his colleagues.

In therapeutic transactions, doctors should establish good communication with patients and perform medical actions in accordance with professional standards, service standards and standard operational procedures. The public and law enforcement officials should better understand the difference between medical malpractice and medical risks. For the government, it should make specific legal regulations regulating medical malpractice clearly, so that systematic laws and regulations can provide legal protection and certainty to doctors and patients.

Doctors and patients involved in medical disputes should first resolve by mediation or kinship, if it is necessary to prove malpractice, it can be through MKDKI as the authorized institution in resolving violations of doctor discipline. For the government, it should be able to help socialize the introduction of MKDKI to the public and enforce new regulations for each member in MKDKI is a doctor with an additional law degree.

The field of medicine that was originally closed is now starting to enter various legal issues. At present, it can be felt that the doctor's activities in curing patients are often hampered by the attitude of patients or their families, namely in the form of threats and lawsuits if the treatment is considered less successful²⁴. Based on this, in order to provide legal protection and certainty to patients (recipients of health services), doctors and dentists need more special arrangements, in addition to the "Umbrella act" in Law Number 36 of 2009 which regulates health.

C. CONCLUSION

Labor law protection for doctors in employment relations with hospitals is regulated in the employment agreement. Employment agreements are the entrance to labor law protection norms for doctors who are bound by an employment relationship with hospitals. The working relationship between doctors and hospitals is born from an employment agreement. The employment agreement stipulates the rights and obligations of each party who signs the employment agreement.

²² Wahjoepramono, Eka Julianta J., *Legal Consequences in the Medical Profession*, Karya Putra Darwati, Bandung, 2012.

²³ Ari Yunanto, *Medical Malpractice Criminal Law*, ANDI, Yogyakarta, 2010, p. 85.

²⁴ Erna Tri Rusmala Ratnawati, *Legal Protection of the Medical Profession in Medical Services Based on the Law on Medical Practice*, Pranata Journal, 2018, Vol. 1, No. 1, 90-101.

Employment agreements between doctors and hospitals become an autonomous source of law in employment relations.

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