

## Hospital Bylaws As A Lex Specialist of Internal Dispute Settlement In Hospital

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### Abstract

*Abstract Background - The world of hospitals is something that has an important role to be able to provide health services for the community, so that it will be able to form healthy and strong humans who are able to contribute to the development process. Thus the government must make regulations that can provide protection and legal certainty for the existence of hospitals. With this regulation, it is hoped that the hospital as a public health service facility can run well which in turn can provide good service to the community. Furthermore, to be able to carry out the constitutional mandate as regulated in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia above, the Government has been present by making regulations related to hospitals, namely the existence of Law Number 44 of 2009 concerning Hospitals. . Where Article 29 is required to make Hospital Internal Regulations (Hospital Bylaws). There are regulations regarding hospitals, some are lex generalis and some are lex specialists. Both aim to provide legal protection and certainty for hospitals in running their business, namely providing health services to the community as the main business (core business). The author examines internal disputes in hospitals, where the dispute in its resolution refers to the legal basis of lex specialis, namely Hospital Bylaws. The dispute in question is a dispute that arises between the hospital management in this case the Director and the hospital owner or often referred to as the Management Board. Internal hospital disputes that require a comprehensive settlement and bind both parties, namely binding the hospital owner and binding the hospital director, so that the settlement is obeyed by both parties. So we need a way to resolve the dispute in accordance with the regulations that should be running Purpose - To find out the resolution of hospital regulations disputes by accommodating regulations regarding hospitals, some are lex generalis and some are lex specialists. dispute resolution.. methodology - This research methodology uses normative juridical based on case study Findings - Finding forms of hospital regulation dispute resolution that are in accordance with the provisions of the Hospital Internal Regulations (Hospital Bylaws) as special rules (lex specialist) that must be complied with. like law. Originality - The value of novelty in research can be seen from two aspects. First, when viewed from the resolution of hospital regulatory disputes, there must have been a lot of previous research, but if viewed from the second aspect, it is based on case studies carried out, meaning this research has original news value*

Keywords: Hospital Regulation, Dispute Settlement, Hospital Bylaws

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## I. INTRODUCTION

One of the priority developments is development in the health sector. This is very important because actually in a healthy body there is a healthy soul. Healthy, superior human resources are a great basic capital for the Indonesian people to carry out development that is able to compete with other major nations in the world.

Departing from the above, the world of hospital is something that has an important role to be able to provide health services for the community, so that it will be able to form healthy and strong people who are able to contribute to the development process. Thus the government must make regulations that can provide protection and legal certainty for the existence of hospitals. With this regulation, it is hoped that the hospital as a public health service facility can work well which ultimately can provide good service for the community.

## II. LITERATURE REVIEW

Lex specialis derogat legi generali is the law-seeking principle which states that special law (lex specialis) overrides general law (lex generalis). According to Bagir Manan in his book entitled Indonesian Positive Law (p. 56), as we quote from the article written by A.A. Oka Mahendra entitled "Harmonization of Legislation", there are several principles that must be considered in the lex specialis derogat legi generalis principle, namely:

a. The provisions obtained in the general rule of law remain in effect, except for those specifically regulated in the said special rule of law; b. The provisions of the lex specialis must be equal to the provisions of the lex generalis (law by law); c. The provisions of the lex specialis must be in the same legal environment (regime) as the lex generalis. The Commercial Law Code and the Civil Code are both included in the civil law environment.

Based on the principle of Lex Specialis Derogat Legi Generali, rules that are general in nature do not only belong to validity as laws that already have rules that are specific in nature, rules that are specific in nature are valid laws that have binding power to apply to concrete events.

Legal rules containing the principle of Lex Specialis Derogat Legi Generali are included in the rule of recognition category. The Lex Specialis Derogat Legi Generali principle regulates legal rules that can be recognized as one of the rules that are enforced and this principle is a secondary rule which is not only to regulate primary rules but involves limiting the use of the authority of the apparatus in creating repression. The principle of Lex Specialis Derogat Legi Generali is a legal principle whose job is to provide an application policy whose job is to regulate authority. In a sense, it is not related to the formulation of a policy regarding the law, but is involved in game rules in implementing the Lex Specialis Derogat Legi Generali principle.

One of the legal rules contained in the Lex Specialis Derogat Legi Generali principle applies not in responding to an act that is known as beststand with a criminal rule that is in the Criminal Code, but prioritizes criminal rules that are in laws outside the Criminal Code.

As long as it is not regulated in reverse, the principle of Lex Specialis Derogat Legi Generali can be applied to other laws outside the Criminal Code which is regulated in Article 103 of the Criminal Code which states that this provision applies to all acts which are punishable by other statutory provisions, except if the law it is determined otherwise (Bagir Manan, 2004)

## III. METHODOLOGY

This research methodology uses normative juridical based on case study Findings, Case study is defined as a method or strategy in research to uncover certain cases. There is also another meaning, namely the result of a study of a particular case. If the first meaning refers more to the research strategy, then the second meaning refers more to the research results. In this short presentation, the first meaning is described. that case study is a research method whose focus lies in determining the dynamics of further questions about why someone thinks, does something, or even develops himself. Both also argue that this focus is very

important for the case study method because it requires intensive analysis. The main focus is on the reasons why someone wants to achieve a goal, not the results or achievement of that person's go. (Pollit dan Hungler (1990))

#### IV. RESULTS AND DISCUSSION

Public health services are the rights of every person guaranteed by the constitution which must be realized by increasing the level of public health as high as possible. This can be seen in the provisions of Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) which states that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to health services.

Furthermore, to be able to implement the constitutional mandate as stipulated in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia above, the Government has been present by making regulations related to hospitals, namely the existence of Law Number 44 of 2009 concerning Hospitals. Where Article 29 is obliged to make Hospital Internal Regulations (Hospital Bylaws).

There are regulations regarding hospitals, some are *lex generalist* and some are *lex specialist*. Both of them aim to provide legal protection and certainty for hospitals in carrying out their business, namely providing health services to the community as their main business (core business).

Regarding *Lex Specialist* which is a special rule for internal hospitals, a hospital must have Hospital Internal Regulations (Hospital Bylaws). Where the Hospital Internal Regulations (Hospital Bylaws) regulate the legal relationship (*rechtsbetreking*) between Hospital Owners (Governing Board).

To be able to have Hospital Internal Regulations (Hospital Bylaws), then business actors or hospital owners must understand several things, namely:

- a. About the procedures and procedures for making an Internal Hospital Regulation (Hospital Bylaws).
- b. About the Function and Role of Hospital Internal Regulations (Hospital Bylaws).

*The basis for the preparation of Hospital Internal Regulations (Hospital Bylaws) in the implementation of Government Regulation Number 47 of 2021 concerning Hospital Management can be seen based on several provisions of the following article:*

1) Article 22 :

- 2) The owner of the hospital and the Head, Director of the hospital are responsible for fulfilling human resources with the number and qualifications adjusted to the results of the analysis and the workload, needs, and capabilities of hospital services.

3) Article 27:

Each hospital has the following obligations:

- Provide correct information about hospital services to the public;
- Providing safe, quality, anti-discriminatory and effective health services by prioritizing the interests of patients in accordance with hospital service standards;
- Provide emergency services to patients in accordance with their service capabilities and play an active role in providing health services in disasters in accordance with their service capabilities;
- Providing facilities and services for the underprivileged or poor;

- Carry out social functions by providing service facilities for underprivileged / poor patients, emergency services without a down payment, free ambulances, services for victims of disasters and extraordinary events or social services for humanitarian missions;
- Create, implement and maintain quality standards of health services in hospitals as a reference in serving patients;
- Organizing medical records;
- Providing proper public facilities and infrastructure, including religious facilities, parking areas, waiting rooms, facilities for disabled people, breastfeeding women, children, the elderly, implementing a referral system;
- Refuse the patient's wishes that are contrary to professional and ethical standards as well as statutory provisions;
- Provide true, clear and honest information regarding the rights and obligations of patients;
- Respect and protect patient rights;
- Implement hospital ethics;
- Have a system of accident prevention and disaster management;
- Implement government programs in the health sector, both regionally and nationally;
- Make a list of medical personnel who practice medicine or dentistry and other health workers;
- Develop and implement Hospital Internal Regulations;
- Protect and provide legal assistance for all hospital staff in carrying out their duties;
- Treat the entire hospital environment as a smoke-free area.

In compiling Hospital Internal Regulations (Hospital Bylaws), the guidelines used are the Decree of the Minister of Health Number 772/Menkes/SK/VI/2002 concerning Guidelines for Hospital Internal Regulations (Hospital Bylaws), Decree of the Minister of Health Number 631/Menkes/SK/IV/ 2005 concerning Guidelines for Internal Regulations of Medical Staff.

Hospital Internal Regulations (Hospital Bylaws) have the following functions:

- As a reference for hospital owners in carrying out hospital supervision.
- As a reference for hospital directors in managing hospitals and formulating operational technical policies.
- Means to ensure effectiveness, efficiency and quality.
- Means of legal protection for all parties related to the hospital.
- As a reference for conflict resolution within the hospital between Owners, Directors and Medical Staff.
- To meet hospital accreditation requirements.

Furthermore, referring to the title of this study, the author examines internal disputes in hospitals, where the dispute in its resolution refers to the legal basis of *lex specialis*, namely Hospital Bylaws. The dispute in question is a dispute that arises between the hospital management, in this case the Director and the owner of the hospital or often referred to as the Governing Board.

This dispute arises when the Director of the hospital is suddenly dismissed by the owner of the hospital and is even prohibited from entering the area or environment of the hospital again, thus causing a protest or objection from the Director concerned. The objection was because the Director of the hospital felt that he was not given the opportunity to provide clarification and/or self-defense in advance because he was dismissed suddenly without any prior written warning or warning. The objection is stated in the form of a summons from the Director to the hospital owner. One of the demands in the subpoena is for the hospital

owner to revoke and cancel his decision to dismiss the director from the status of hospital director. Meanwhile, on the other hand, the owner of the hospital felt he was right in taking action to unilaterally dismiss the Director of the hospital, so that he remained consistent with his decision to dismiss the Director. One of the reasons is because the Director often does not come to work, often leaves the office during working hours for no apparent reason, does not focus on work so that hospital productivity decreases which results in a decrease in hospital turnover.

The above conditions have actually caused a dispute within the hospital internally, which requires a comprehensive resolution and is binding on both parties, namely binding on the owner of the hospital and binding on the Director of the hospital, so that the settlement is adhered to by both parties.

The above dispute in the resolution process is quite time consuming and also thought-provoking and even causes instability in hospital management, resulting in hospital services for patients quite constrained. This is more pronounced when the Director is no longer allowed to enter the office/hospital environment by the hospital owner on the grounds that the Director has been officially dismissed. This condition has caused instability in the hospital due to the vacancy of the Director's position in the hospital and thus there is no longer any internal leader in the hospital.

The writer who just happened to join the hospital as an in-house lawyer who was appointed and appointed by the owner of the hospital, was given the task of resolving the dispute so that it could be resolved according to the applicable legal provisions, final and binding so that it could end the dispute and be appointed immediately. New hospital director.

Furthermore, armed with this task, the author begins work to resolve the dispute/case as well as possible by referring to the framework and legal basis that exists and applies to a hospital. The author conducts research on the cause by conducting legal analysis and mapping of legal issues (law mapping). Where in conducting the legal analysis, the author initially used a framework of reference using several legal bases, including:

- Civil Code (KUHPer);
- Law Number 44 of 2009 concerning Hospitals;
- Law Number 13 of 2003 concerning Manpower;
- Government Regulation Number 47 of 2021 concerning the Implementation of Hospitals;
- Hospital Internal Regulations (Hospital Bylaws);
- Collective Labor Agreement (PKB);
- Documents related to disputes and other related regulations.

After preparing some of these frameworks that are used in conducting legal analysis of the dispute, then the author makes a problem formulation by researching and finding out why the hospital director was dismissed by the hospital owner? Was there a fatal mistake made by the Director that led to his dismissal?

- a. From the research by conducting a legal analysis conducted by the author, it can be revealed the facts obtained from the staff and management even from the owner of the hospital itself, as follows: The director of the hospital, often does not come to work and is often late for work.
- b. The hospital director often left the office without a clear agenda even if he left the office, he did not return to the office.
- c. The director of the hospital often came home before working hours were over.
- d. The hospital director has violated the commitment and agreement with the hospital owner.



Referring to the facts above, the author then conducts further investigations to find out why these facts can occur? In fact, he is an important figure in the hospital because of his position as Director. After conducting a focused and more in-depth investigation and research, it turns out that there is evidence that the Director actually works as the Director of another newly opened/established hospital. The Director's actions without the prior knowledge and permission of the hospital owner. This made the hospital owner angry because the Director's actions resulted in the closure of the hospital and the service to patients was not optimal.

In resolving the dispute above, because this was the fault of a Director in the hospital, then after conducting a legal analysis using several legal grounds as a framework of reference, it turned out that the For more information on this source text, the most appropriate solution is to refer to the Hospital Internal Regulations (Hospital Bylaws). This is because the Hospital's Internal Regulations (Hospital Bylaws) are special rules within the hospital's internal which regulate the legal relationship between the Management (Directors) of the hospital and the Owner/Owner of the hospital.

If it refers to the labor provisions, the case will widen and can be prolonged until the tripartite process and even to the stage of a lawsuit at the Industrial Relations Court (PHI). Where the lawsuit process can be prolonged until the Cassation stage at the Supreme Court of the Republic of Indonesia can even go to the Judicial Review stage. An ineffective solution, of course. Whereas hospitals need the right solution, quickly in order to provide the best service to the community in the health sector. How is it possible that health services to the community can run well if there is a prolonged dispute between the Director and the owner of the hospital? The dispute that occurred above, initially worsened when the summons from the Director was responded to by the Owner with a more "spicy" tone, by revealing the facts of the Director's violation. Where the reply of the summons happened to be the author himself who composed it. The director of the hospital still refused to accept his dismissal. This attitude was judged by the hospital owner as stubborn and ignorant. Why is that? Because apart from the facts mentioned above, it turns out that the Director has violated his agreement with the hospital owner in the form of an agreement on scholarships. Where the owner of the house and the Director have agreed that the owner of the hospital provides scholarships for the Director to continue his MARS study at Gadjah Mada University with reciprocal compensation that the Director will work by practicing and devoting science in the hospital. But the fact is that after being investigated, it turns out that the Director did not take the study.

Not only that, it turns out that what makes the Director stubborn, one of them is because the Director himself does not understand what the Hospital Internal Regulations (Hospital Bylaws) are? This is of course very unfortunate. Because the Hospital Internal Regulations (Hospital Bylaws) are special legal rules that bind the Director and the hospital owner and must be implemented like a law. As stipulated in Article 1338 of the Civil Code (KUHP), the principle of Pacta Sunt Servanda.

In resolving the case, the author confidently uses the Hospital Internal Regulations (Hospital Bylaws) because in addition to the Hospital Internal Regulations (Hospital Bylaws) there are special binding legal rules that regulate the legal relationship between the Board of Directors and the hospital owner, in the Hospital Internal Regulations. (Hospital Bylaws) is regulated clearly and firmly (*expressis verbis*) regarding the prohibition imposed on a hospital Director and the sanctions that govern it. In the Hospital Internal Regulations (Hospital Bylaws), it also clearly and firmly regulates the rights of hospital owners regarding sanctions that can be applied by them to hospital directors who commit violations.

The provisions of Article 25 concerning the Appointment, Term of Office and Dismissal of Directors, have explicitly regulated:

- Paragraph (3). The position of Director is a full time/full position, so it is forbidden to hold concurrent positions as Director in another hospital. If this provision is violated, the Director may be dismissed immediately by the hospital owner.
- Verse (7). Directors may be dismissed because:
  - a. his term of office expires and is not renewed;
  - b. at his/her own request/resigned;
  - c. die;
  - d. dismissed by the Governing Board for the reasons referred to in item 3 (three) above.

By referring to the provisions in the Hospital Internal Regulations (Hospital Bylaws), accompanied by correspondence and arguments as well as a familial approach taken by the author to the Director, the Director finally realized his mistake and finally accepted the owner's decision to dismiss him from his position. Director. With this effort, the person concerned is finally willing to submit to the hospital owner's decision because it is realized that the decision actually adheres to the provisions of the Hospital Internal Regulations (Hospital Bylaws) as a special rule (lex specialist) that must be obeyed like a law.

Because Hospital Bylaws are internal rules of a hospital, where the arrangement is carried out by the internal hospital jointly between the Hospital Owner (Governing Board), Hospital Management (Board of Direction) and the Medical Committee, in this case the principle of freedom of contract applies..

The principle of freedom of contract, which in sharia law is known as al-hurriyah, is the basic and main principle in Islamic law. A number of hadiths and fiqh principles clearly show this principle of freedom of contract.

## V. CONCLUSION

Based on the discussion of the problem above, it is thus necessary to have rules that can bridge the problem. between hospital rules made based on the hospital's internal policies and the laws governing hospitals in general. in this case the owner of the hospital realized that the decision actually adhered to the provisions of the Hospital Bylaws as special rules (lex specialist) that had to be obeyed. like law.

Because Hospitals Hospital Budget is an internal rule of a hospital, where the arrangements are carried out by the internal hospital jointly between the Hospital Owner (Management Board), Hospital Management (Board of Direction) and the Medical Committee, in this case the principle of freedom get treatment. valid contract. The principle of freedom of contract, which in sharia law is known as al-hurriyah, is a basic and main principle in Islamic law. A number of hadiths and fiqh principles clearly demonstrate this principle of freedom of contract. as explained in the results of the discussion and discussion.

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