

## **LEGAL PROTECTION FOR FOREIGN MEDICAL PERSONNEL ACCORDING TO LAW NO. 17 OF 2023 CONCERNING HEALTH**

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### **ABSTRACT**

Legal protection for foreign doctors/doctors in carrying out their profession refers to Article 273 and Article 291 (1) of the Health Law. Article 291 paragraph (1) if you comply with professional standards, service standards, rational procedural standards and professional ethics, taking into account the patient's health needs, organizational culture in the hospital or medical institution where the doctor works. Doctors' responsibilities towards patients refer to statutory provisions, including legal, administrative and ethical responsibilities. The research method used in this study is a normative research method using various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature materials related to legal protection of foreign doctors/doctors as a source of research materials. Based on the Health Omnibus Law, foreign medical personnel (medical personnel) and foreign health workers (health workers) who graduated from abroad (Foreign Personnel) can now practice in Indonesia. The protection of foreign doctors is reflected in the existence of a registration certificate that has legal force which is a means of controlling and supervising foreign doctors, if foreign doctors do not have a registration certificate can be subject to criminal sanctions.

**Keywords:** *Protection, Law, Liability of foreign doctors*

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### **INTRODUCTION**

The enactment of the Health Law, regarding foreign doctors, is contained in article 248 Paragraph (1) of Law No. 17 of 2023, determining that foreign citizens who can practice in Indonesia are only specialist medical personnel and sub-specialists, as well as health workers with a certain level of competence who have participated in competency evaluations. "The competency evaluation is carried out by the minister of health involving the minister who organizes government affairs in the field of education, as well as councils and collegiates. Foreign doctors practicing in Indonesia are required to have a practice license, Registration Certificate.

By looking at the above background, the formulation of the problem can be drawn, including: first, how is the form of legal protection for foreign doctors according to Law No. 17 of 2023 concerning Health and second, how is the legal responsibility for foreign doctors who commit mistakes/negligence as a result of medical actions according to Law No. 17 of 2023 concerning Health. This study aims to find out about the form of legal protection for foreign doctors and legal responsibility for foreign doctors who commit mistakes/negligence as a result of medical actions according to Law No. 17 of 2023 concerning Health.

### **METHOD**

The research method used in this study is a normative research method using various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature materials related to legal protection of foreign doctors/doctors as a source of research materials. Johnny Ibrahim argues that normative legal research is a form

of scientific research aimed at finding the truth based on legal scientific logic reviewed from the normative part, or which is in the form of legal discovery efforts that are adjusted to a particular case (Ibrahim, 2006).

## **RESULTS AND DISCUSSION**

### **A. Legal Protection for Foreign Doctors According to Law No. 17 of 2023 concerning Health**

Based on the Health Omnibus Law, foreign medical personnel (medical personnel) and foreign health workers (health workers) who graduated from abroad (Foreign Personnel) can now practice in Indonesia. Nonetheless, strict rules still apply to foreigners, and they must meet specific requirements and procedures before they can practice locally. What is meant by "medical personnel" only includes doctors and dentists. On the other hand, the term "health workers" includes a broader range of individuals, namely those who have qualifications in the fields of clinical psychology, nursing, midwifery, pharmacy, public health, environmental health, nutrition, physical therapy, medical technology, biomedical engineering, traditional health, and other health workers designated by the Minister of Health.

As for foreign doctors who want to practice medicine in Indonesia either in the form of Limited Practice (temporary practice) or Expert Visit (transfer of technology/skills/science), they must first go through the registration process at the Immigration Office through the Directorate General of Immigration of the Republic of Indonesia so that they are not considered as Foreign Workers (TKA) or illegal immigrants. If the foreigner has obtained a visa, then a residence permit will be granted depending on the type of visa they have. Every foreigner who wants to get a residence permit, there are requirements, namely (Hamidi & Christian, 2021) : (a) Have a valid travel document; (b) Have a passport; (c) Have a visa; (d) Have a reentry permit; (e) Be healthy, do not suffer from psychiatric disorders or infectious diseases that endanger public health; (f) Have an entry permit to another country, and g. Provide correct information in obtaining a travel document.

In the case of Foreign Workers who want to work in Indonesia, of course there is a Guarantor or party responsible for the arrival of the Foreign Workers. The guarantor is obliged to take care of the Foreign Worker Use Plan (RPTKA) and the Foreign Employment Permit (IMTA). As contained in Law No. 13 of 2003 concerning Manpower in article 43 paragraph (1) which reads that employers who use TKA must have an RPTKA approved by the minister or appointed official. Then in article 42 paragraph (1) that employers who use foreign workers must have written permission from the minister or appointed official. The description of the articles in question can be interpreted that RPTKA is the main requirement for obtaining IMTA and work visas. This means that the RPTKA must first be submitted, then the RPTKA is used as a condition for obtaining IMTA (Fasa & Ja'far, 2021).

These requirements must be fulfilled by every foreigner who wants to work in Indonesia, as well as for the Guarantor who wants to hire Foreign Workers (foreign doctors), they must go through the requirements and procedures that have been established based on the law in Indonesia. If these requirements are not met, then the Foreign Worker is said to

be illegal or illegal. In immigration, illegal immigration is the unauthorized movement of foreigners across the country's territorial boundaries (Bradley, 2017) (Oktavian et al., 2022).

Several things related to foreign doctors are regulated in Law Number 17 of 2023 concerning Health. Foreign Citizen Doctors (WNA) who can practice in Indonesia are only valid for specialist doctors and subspecialists. This means that Law Number 17 of 2023 concerning Health does not provide opportunities for foreign graduates to practice in Indonesia. Basically, foreign doctor graduates must take part in a competency evaluation which includes an assessment of administrative completeness and an assessment of practical ability (competency equalization and competency test). The result of the competency evaluation is that the doctor is declared competent or incompetent. If the doctor is declared competent, the doctor must take part in an adaptation program at a health service facility. On the other hand, if the doctor is declared incompetent, the doctor must return to his home country. The period of practice for foreign graduate foreign doctors is also limited, which is for a maximum period of 2 years and can be extended 1 time and only for the next 2 years. For foreign doctor graduates who are experts in certain fields of excellence in health services, the assessment is enough through a portfolio assessment. The condition is that the doctor has been practicing for at least 5 years. Likewise, regarding the provisions of the practice period. The provision of the practice period is exempted for the utilization of specialist doctors and subspecialists of foreign graduates who practice in special economic zones.

The protection of foreign doctors is reflected in the existence of a registration certificate that has legal force which is a means of controlling and supervising foreign doctors, in terms of law enforcement. If a foreign doctor does not have a registration certificate, he or she may be subject to criminal sanctions. The existence of the MEA does not change the slightest requirement for foreign workers to enter Indonesia and the existence of protection for foreign doctors who commit negligence, namely not directly litigated through the legal channel but can be resolved first in a familial manner through the Indonesian Medical Discipline Honorary Council (MKDKI) is the enforcement of medical discipline that is authorized to determine whether there is a mistake made by doctors. MKDKI as an authorized institution in resolving violations of doctors' discipline with patients as long as the doctor carries out his duties.

Article 249 Specialist and sub-specialist Medical Personnel and Health Workers with a certain level of competence foreign nationals who graduate abroad who follow the adaptation to Health Service Facilities must have STR and SIP, Article 251 (1) Specialist Medical Personnel and subspecialists as well as Health Workers at a certain level of competence foreign nationals graduated abroad may practice at Health Service Facilities in Indonesia, with the following provisions: a. there is a request from the Health Service Facility for the use of specialist and subspecialist medical personnel as well as health workers with a certain level of competence of foreign nationals who graduate abroad according to their needs; b. for technology and science transfer; and c. for the most time period; RNA for 2 (two) years and can be extended 1 (one) time and only for the next 2 (two) years. (2) Requests from the user's Health Service Facility as intended in paragraph (1) a must prioritize the use of Medical Personnel and Health Personnel of Indonesian citizens and meet the competency standards. (3) The provisions of the period as intended in

paragraph (1) c are exempted for the utilization of specialist and sub-specialist medical personnel as well as health workers with a certain level of competence of foreign nationals graduated abroad in special economic zones.

#### **B. Legal Liability to Foreign Doctors Who Make Mistakes/Omissions from Medical Procedures**

According to the law, responsibility is a consequence of the consequences of a person's freedom about his actions related to ethics or morals in doing an act. (Soekidjo, 2010) Next according to the Quarterly Point (Dot & Shita, 2018) (Tutik & Febriana, 2010) Accountability must have a basis, namely things that cause the legal right for a person to sue others as well as things that give birth to the legal obligation of others to give accountability. The definition of responsibility, sometimes it is often difficult to explain it correctly. Sometimes responsibility is associated with having to do something, or sometimes it is associated with sadness to accept the consequences of an action, these many forms of responsibility make it difficult to formulate it in simple and easy-to-understand words, but if we look further, the meaning of responsibility always revolves around the awareness to do, the willingness to do and the ability to do (Sobur, 1985).

Medical practice is not a job that can be recognized by anyone, but can only be done by a certain group of medical professionals who are competent and meet certain standards and obtain permission from the authorized institution, as well as work in accordance with the standards of professionalism set by professional organizations. From a legal point of view, negligence or mistake will always be related to the nature of illegality, an act committed by a person who is able to take responsibility. A person is said to be able to be responsible if he can perceive the true meaning of what he is doing, can perceive his actions can be seen as appropriate in the society and is able to determine his intention or will in doing his actions.

Based on the above description, it can be concluded that the responsibilities of a doctor are as follows: 1. Carrying out functional duties in accordance with science through multi-level education; 2. In accordance with competencies that meet certain standards; 3. Obtain permission from the authorized institution; 4. Work in accordance with professional standards. Doctors as professional bearers are people who devote themselves to the health sector and have knowledge and skills through education in the field of medicine who are given the authority to carry out health efforts.

The actions or actions of doctors as legal subjects in community associations can be distinguished between their daily actions that are not related to the profession and actions related to the implementation of the profession. Likewise, the legal responsibility of a doctor, and can also be a legal responsibility related to the implementation of his profession. The responsibility of employing foreign doctors practicing in Indonesia based on the criminal law is essentially regulated in Law No. 17 of 2023 concerning Health, but the existing regulations are still general, namely criminal for doctors in general, it is not further explained whether the sanctions can also be imposed on foreign doctors in accordance with Articles 440 and 442 of the Health Law. According to the Civil Law, a doctor commits malpractice and the patient suffers an injury, which can give rise to civil liability for a doctor, on the basis of a lawsuit for default, unlawful acts, negligence resulting in losses, and negligence as a responsible person, whose sanctions are usually in the form of

compensation (material) to the patient (victim). Regarding the responsibility of doctors in terms of administrative law in relation to the implementation of informed consent, it has been expressly stated in article 13 of the Minister of Health Regulation Number 585 of 1989, namely: "Doctors who carry out medical actions without the consent of the patient or his family can be asked for administrative sanctions in the form of revocation of the practice license". In addition to the provisions in article 13 of the Permenkes, it is further strengthened by the provisions of article 11 of the Law. No. 6 of 1963, namely by not reducing the provisions in the Criminal Code and other laws and regulations, administrative action can be taken against health workers. The responsibility of medical personnel (doctors), including foreign doctors, is regulated in the Health Law, in its implementation doctors can carry out their duties in accordance with competence, full of professionalism, and must prioritize moral teachings in behavior to patients who need medical assistance. Disciplinary violations committed by doctors will receive sanctions that are received by doctors, ranging from fines to revocation of practice licenses (The Nation, 2001) (Moelyatno, 2021) (Handoko, 2018) (Aly, 2018) (Meliala, 2014) (R. Indonesia, 2004) (P. R. Indonesia, 2023).

## **CONCLUSION**

The protection of foreign doctors is reflected in the existence of a registration certificate that has legal force which is a means of controlling and supervising foreign doctors, if foreign doctors do not have a registration certificate can be subject to criminal sanctions. Doctors' responsibility to patients is an obligation, including legal, administrative, and ethical responsibilities, starting from the beginning of the patient's treatment until the patient recovers. If the doctor does not do what he should do or makes an unintentional mistake, in the form of negligence, then he is prosecuted and threatened with a criminal offense according to Article 359 and Article 360 of the Criminal Code.

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