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'Hartal Doktor Kontrak': Our Doctors' Right to Industrial Action

Since the beginning of the COVID-19 pandemic, healthcare workers in countries that have been the hardest hit have expressed their frustrations to their respective governments for being either overworked, underpaid, or both. In August 2020, when South Korea was facing one of its worst outbreaks from the virus, medical residents and doctors went on a 24-hour strike in Seoul to protest a government plan.¹

At the start of July 2021, the British Medical Association advised “exhausted and demoralised” members to take industrial action if their annual pay was not increased to at least five percent.² Back home in Malaysia, at 11am on Monday, 26 July 2021, the “*Hartal Doktor Kontrak*” unfolded at various public hospitals, which saw junior contract doctors — dressed in black and holding placards — walk out of their posts into the streets. In this article, we will discuss the right of our doctors to initiate industrial action under Malaysian employment laws.

'Hartal Doktor Kontrak'

Labour rights in Malaysia have been elevated to constitutional rights guaranteed under the Federal Constitution, by expanding the meaning of the “right of life” to include the “right to livelihood”. “*Harta*”, Gujarati for mass protest or strike, was the culmination of a years-long issue that junior doctors under fixed-term employment contracts (**Contract System**) are being offered poorer employment terms than their predecessors in public hospitals. On 1 July 2021, an anonymous group of doctors, relying on their right to freedom of speech and expression under the Federal Constitution,³ released an online public memorandum that

¹ ‘South Korea orders striking doctors back to work amid surge in coronavirus cases’ *The Japan Times* (26 August 2020) <<https://www.japantimes.co.jp/news/2020/08/26/asia-pacific/south-korea-striking-doctors-coronavirus/>> accessed 29 July 2021

² Paul Gallagher, ‘NHS pay row: doctors and nurses could start being mobilised for strike action this week’ *iNews* (19 July 2021) <<https://inews.co.uk/nhs/nhs-pay-row-doctors-nurses-mobilised-strike-action-this-week-1110384/>> accessed 29 July 2021

³ Arif Atan, ‘Hartal doktor kontrak: KANUN sediakan hotline jika ada intimidasi’ *Malaysia Dateline* (25 July 2021) <<https://malaysiadateline.com/hartal-doktor-kontrak-kanun-sediakan-hotline-jika-ada-intimidasi/>> accessed 26 July 2021

they would proceed with a nationwide strike on 26 July 2021 based on the following demands:

- (a) Firstly, that the government must offer a permanent employment contract to all the contract doctors; and
- (b) Secondly, a detailed explanation of what the permanent employment contract entails.⁴

The Contract System

In October 2016, the former Minister of Health, Dr S Subramaniam, announced that in line with the 2017 Budget, the government would introduce the Contract System to solve the problems of graduates who waited too long for placements.⁵ Starting in December 2016, medical school graduates were given five-year contracts to fast-track their entry into the workforce.⁶

Prior to the introduction of the Contract System, medical officers who completed their housemanship training were guaranteed permanent posts in government healthcare facilities.⁷ However, after the implementation of the Contract System, medical officers who have since entered the workforce were now only employed on five-year contracts, with a lower service without job security beyond their term of contract.

Right to industrial action

The principal aim of the Industrial Relations Act 1967 (**IRA 1967**) is to regulate relations between employers, workers and trade unions. Accordingly, Dr Milton Lum, the former president of the Malaysian Medical Association (**MMA**), highlighted that disagreements over the Contract System should in fact be brought to the Labour Department instead of the Malaysian Medical Council (**MMC**) since the issue is an employer-employee conflict.⁸

Strikes, pickets and lock-outs are expressions used to describe the various types of common industrial actions. Industrial action is usually resorted to when employees are involved in a trade dispute with their employer that cannot be resolved by negotiation *per se*. It is pertinent to note that these industrial actions are recognised and regulated under the IRA 1967 and the Trade Unions Act 1959. Although workers have the general right to strike, this right is very closely regulated under the law in order to minimise the disruptive and potentially crippling consequences of strikes to the nation.

⁴ Danisha Hakeem, '#HartalDoktorKontrak: Malaysia's junior doctors to proceed with end-July nationwide strike if govt fails to tackle problems with contract-based employment' *The Online Citizen* (2 July 2021) <<https://www.theonlinecitizen.com/2021/07/02/hartaldokorkontrak-malaysias-junior-doctors-to-proceed-with-end-july-nationwide-strike-if-govt-fails-to-tackle-problems-with-contract-based-employment/>> accessed 26 July 2021

⁵ '2,600 medical, dental and pharmacy grads to serve under contract' *Malaysiakini* (22 October 2016) <<https://m.malaysiakini.com/news/360090>> accessed 26 July 2021

⁶ Minxi Chua, "'We Are All Hartal': Malaysian Contract Doctors to Strike' *New Naratif* (23 July 2021) <<https://newnaratif.com/we-are-all-hartal-malaysian-contract-doctors-to-strike/>> accessed 26 July 2021

⁷ *Ibid*

⁸ Alifah Zainuddin, 'Doctors' Strike A Trade Dispute, Not Under MMC: Ex-MMA Head' (*CodeBlue*, 13 July 2021) <<https://codeblue.galencentre.org/2021/07/13/doctors-strike-a-trade-dispute-not-under-mmc-ex-mma-head/>> accessed 26 July 2021

Statutory compliance

Under the First Schedule of the IRA 1967, “public health services” has been listed as “essential services”. Section 43 requires workmen in essential services to give their employer notice of the intended strike within 42 days before the event.⁹ However, it also allows strikes to be held after 21 days of giving such notice.¹⁰ The contemplated strike can be deemed illegal if it contravenes s 45.¹¹

Power to restrain strikes

Although doctors have the right to strike, they should be mindful of a new s 44A in the IRA 1967, which gives the Minister of Human Resources the power to restrain them from carrying out the strike if he deems that it may endanger the life, personal safety or health of the whole or part of the population.

Conclusion

The Contract System has no clear policy in terms of renewals, which are not automatic based on years of service or even merit. This has led to contract doctors fearing termination at the end of their contracts despite years of study and compulsory training. Unfortunately, this has led to a brain drain in our public medical service as many have left for greener pastures in the private sector or overseas. Their extraordinary efforts as Malaysia’s foremost frontliners in the battle against COVID-19 must be appreciated and rewarded accordingly.

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⁹ IRA 1967, s 43(1)(a)

¹⁰ IRA 1967, s 43(1)(b)

¹¹ IRA 1967, s 45(1)(a)