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## УПРАВЛЕНИЕ УЧЕБНЫМИ БОЛЬНИЦАМИ В МАЛАЙЗИИ: ПРАВОВЫЕ ВОПРОСЫ И ЗАДАЧИ

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**Аннотация.** Больница – это учреждение, которое построено, располагает персоналом и оборудованием для диагностики заболеваний, для оказания медицинской и хирургической помощи больным и пострадавшим, а также для их временного проживания во время лечения. В целом, больницы в Малайзии делятся на две категории: государственные и частные. Другой тип больниц, которые служат центром исследований и обучения, называется учебной больницей. Помимо предоставления медицинской помощи пациентам, здесь проводятся клиническое обучение и подготовка будущих и текущих врачей, медсестер и других медицинских работников. Некоторые учебные больницы также занимаются исследованиями и являются центрами экспериментальных, инновационных и технически усовершенствованных услуг. Тем не менее в Малайзии не существует специального законодательства, регулирующего деятельность учебной больницы. Такая ситуация приводит к неопределенности в некоторых важнейших областях управления. Поэтому целью данного исследования является изучение правовых вопросов и проблем, связанных с управлением учебной больницей в Малайзии. Проводится тщательный доктринальный анализ для изучения пробелов в текущей правовой практике. Полученные результаты будут использованы для выработки рекомендаций по улучшению управления учебными больницами в Малайзии.

**Ключевые слова:** учебная больница, управление больницей, Малайзия

Original article

## GOVERNING THE TEACHING HOSPITALS IN MALAYSIA: LEGAL ISSUES AND CHALLENGES

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**Abstract.** Hospital, is an institution that is built, staffed, and equipped for the diagnosis of diseases; for the treatment, both medical and surgical, of the sick and the injured; and for their housing during this process. Generally, hospitals in Malaysia are being categorized into two categories which are: public and private. Another type of hospital that serves as a centre for investigation and teaching is known as a teaching hospital. It provides clinical education and training for future and current doctors, nurses, and other health professionals, in addition to delivering medical care to patients. Some teaching hospitals also have a commitment to research and are centres for experimental, innovative and technically sophisticated services. Despite its important roles, there is no specific legislation to govern the teaching hospital in Malaysia. This situation leads to uncertainties in some crucial areas of the governance.

Therefore, this study aims to explore the legal issues and challenges with regard to the teaching hospital's governance in Malaysia. A thorough doctrinal analysis is being conducted to examine the loopholes of the current legal position. The findings will be used to propose some recommendations for the improvement of the governance of the teaching hospitals in Malaysia.

**Keywords:** teaching hospital, hospital governance, Malaysia

## 1. Introduction

Throughout the years, many types of healthcare facilities were established to facilitate different functions and objectives of medical services. The most common types of hospitals are: public hospital, private hospital and teaching hospital. Public hospitals generally are owned and fully funded by the government. Thus it is expected to provide free medical care to their patients and if not fully free, certain subsidies and discounts are to be given.

In contrast, a private hospital is normally owned by a profit company or a non-profit organisation and funded by various sources such as the patients themselves, the government, and the insurers. They are generally known with exorbitant fees charged to their patients to enable them to cover the high medical costs incurred while at the same time ensuring the flow of profit to their stakeholders. Despite the expensive charge, it is still a preferred choice by many people who believe that the private hospitals are better in terms of services and facilities. Whereas, a teaching hospital is a place where two main functions are conducted: providing services to the general public in terms of healthcare treatment and at the same time facilitating the educations and training for future health practitioners.

Malaysia is one of the countries that established teaching hospitals that provide healthcare services to the public.

In the year 2019, the number of beds in the teaching hospital in Malaysia has increased by 400 which resulted in the total number of beds in Malaysia's teaching hospitals amounting to 4,264. The additional 400 beds in the year 2019 had shown not less than a 10 % increase from the total number of beds Malaysia's teaching hospitals had prior to the year 2019 [1]. The total number of beds in the teaching hospitals is equivalent to 10 % of the total number of beds that public hospital in Malaysia has and is also equivalent to 27 % of the total number of beds in Malaysia's private hospitals. These percentages show that teaching hospitals are also playing a key role in providing healthcare facilities and services in Malaysia and at the same time are responsible for training the future healthcare professionals of the country. This percentage will keep on increasing in the near future since there are another three (3) teaching hospitals that are currently under development and are expected to begin their operation in the year 2021 to 2022.

With the statistics mentioned in the above paragraph, it is to be expected that a specific law should be in place to govern the teaching hospitals Malaysia. However, there is no specific legislation regulating the teaching hospitals. In general, the available laws only regulating public and private hospitals in Malaysia. The related legislations are listed in Table 1 below:

Table 1

**Acts Relevant to Public Hospitals and Private Hospitals in Malaysia**

Public Hospitals	Private Hospitals
Fees Act 1951 (Act 209) An act that stipulates the fees implemented in all public offices in Malaysia	Private Healthcare Facilities and Services Act 1998 (Act 586) An act that stipulates the rules that need to be complied in operating as a private healthcare provider in Malaysia as well as the relevant fees implemented in all private hospitals in Malaysia
Medical Act 1971 (Act 50) An act that regulates medical practitioners and the practice of medicine	

The newly developed teaching hospitals in Malaysia need to follow Act 586 for their structural plan as well as pre-operation development before the teaching hospitals are authorised to operate. Nevertheless, the said compliance stops there since once the teaching hospitals had gone into operation, most of their governing laws and legislations are constructed internally with the approval from its board of directors or any relevant authorities. This has led to some confusion in the general public especially with regard to the bills imposed on them as patients. Therefore, it is believed that all these problems can only be addressed if there is a proper legislation to govern the teaching hospitals in Malaysia.

## 2. Literature Review

Teaching hospitals are institutions that provide clinical education and training to doctors, nurses, and other health professionals in addition to delivering medical care to patients [2]. Some teaching hospitals also have a commitment to research and are centres for experimental, innovative and technically sophisticated services [3]. Accordingly, teaching hospitals have greater roles and responsibilities to be carried out considering the three-fold functions that it carries out. This also means that various issues and challenges are faced by these hospitals. Some of the educational challenges include: decline of educational mission attendance, lack of educational facilities,

and non-compliance with educational standards. In addition, the therapeutic role of teaching hospitals by providing medical care and services to the general public have also its own sets of challenges. Concerns have been raised over the issues of quality of health services provision, lack of resources and facilities. On top of that, the role of teaching hospitals as research centres also poses certain challenges such as research structure, research quality in the hospitals, and low research facilities. On the other hand, there are also opportunities which should not be missed by teaching hospitals. Teaching hospitals provide bright prospects and potentials for research opportunities, medical specialist training, up-to-date medical facilities and the benefits of teaching hospitals to patients [4].

The growing number of teaching hospitals in Malaysia is obvious. Apparently, in Malaysia, there are currently six public teaching hospitals that are affiliated with their respective universities. Before the year 2019, Malaysia has only five teaching hospitals, which are UMMC, National University of Malaysia Medical Centre (HUKM), University of Science Malaysia Hospital (HUSM), International Islamic University of Malaysia Medical Centre (IIUMMC) and MARA University of Technology Teaching Hospital [5]. In 2019, a new teaching hospital was opened and known as University Putra Malaysia Teaching Hospital with another two universities that are still in development phases for the teaching hospital. From the first teaching hospital in Malaysia, which is UMMC in the year 1968, there is an increasing trend in Malaysia to develop its own teaching hospital for each public university that has a medical school or medical faculty in their courses offered. By taking this trend into consideration, there will be at least 11 teaching hospitals in Malaysia in the coming future. This has yet to include private universities that also offered medical studies.

Against these challenges, opportunities and growth faced by teaching hospitals, legislations are viewed as requisites for maximizing the benefits of teaching hospitals and simultaneously, minimizing any unwelcoming effect of such establishment. Any legislation in a form of an Act will become some form of guidance as well as a framework to the design and implementation of profound healthcare services [6]. The emphasis on the roles of legislations was found in a study carried out by Huang Biliu on the topic of hospital reform in China. The same study came up with six criteria that should be enhanced by the hospitals in China so as to be in line with the new healthcare reform [7]. One of these aspects is to improve the rules and regulations applicable in the hospital so as to ensure that the hospital is appropriately controlled. By doing so, it will then be able to enhance the management of the hospital. The same study, therefore, give emphasis on the roles of rules and regulations as a significant means to ensure better control and management of hospitals.

In view of the significant roles posed by the laws, Ghana sets out a specific legislation relating to teaching

hospitals known as Ghana Health Services and Teaching Hospitals Act 1996 (Act 525). In fact, some amendments were made in recent times in order to improve the governance and management systems of the hospital [8]. It was believed that the same amendment would give the teaching hospitals in Ghana a new facelift as well as ensuring the mistakes done in previous teaching hospitals will not be repeated. It can also be seen on how the government of Ghana place much importance in the governance of teaching hospital in that country which led them to amend the current statutes to govern the hospitals.

The statutory requirement of teaching hospitals in Taiwan conforming to accreditation is another method of effective governance [9]. One of the rules that needs to be passed for any hospital in Taiwan to be accredited as a teaching hospital is by looking at its operation of the administrative system, operation of the medical education committee, budgeting and spending, and assessing teaching and research performance. From this, it can be said that the governing of the hospital by following a set of laws is essential in Taiwan to enable the hospital to be accredited as a teaching hospital. Accreditation to be a teaching hospital was also discussed in an article written by Ahmed Al-Kuwaiti and Fahd Al Muhanna [10]. The article has mentioned the legal and governance structure or support as one of the challenges that hospitals face to receive teaching hospital accreditation. From there, it can be concluded that for a hospital to be accredited as a teaching hospital, it needs to comply with the legality as well as to have support from the government and without it, the accreditation will become a failure. One article from Indonesia that is closely related to this topic has made the analysis about the concept of governance and corporate governance in Indonesian hospitals [11]. The article has compared the legality which is the law stated under Indonesia Hospital Law 2009 with the concept as well as on how the law contradicts each other in ensuring good governance in Indonesia Hospital. The article has later concluded that there is no clear definition of the term of corporate governance and governance in the hospital law.

### 3. Methodology

This study used doctrinal research to identify and determine the sources of law to analyse the legal doctrine and how it has been developed and applied (Singhal and Malik, 2012). References were made to journals, online journals, articles, and books to gain relevant, essential information and a deep understanding on the issue of governance of the teaching hospital in Malaysia. The study also utilised online databases such as Scopus, ProQuest, Lexis Nexis and the Current Law Journal (CLJ) using keywords 'teaching hospital', 'public hospital', 'private hospital' and 'hospital governance'. A thorough doctrinal analysis is being conducted to examine the loopholes of the current legal position. The findings will be used to propose some recommendations for the improvement of the governance of the teaching hospitals in Malaysia.

#### 4. The Legal Aspects of Hospital Governance in Malaysia

##### 4.1. Public Hospitals

Public hospitals in Malaysia are directly under the Ministry of Health. The operation of this type of hospital is totally funded by the federal government. Thus, they are subjected to rules and regulations set by the government or policies by the recognised government bodies. The following are some of the laws governing the public hospitals in Malaysia:

1. Fees Act 1951 (Act 209).
2. Poisons Act 1952 (Act 366).
3. Sales of Drugs Act 1952 (Act 368).
4. Medical Act 1971 (Act 50).
5. Dental Act 1971 (Act 51).
6. Nurse Act 1950 (Act 14).

These above Acts will form the backbone in ensuring uniformity of policies and regulations among the public hospitals in Malaysia. Some of these Acts will also govern other types of hospitals in this country. One of the most common issues in the public hospitals is the fees charged to the patients. Since this is a prevalent public interest, a specific Act was established to ensure the synchronization between all public hospitals in Malaysia.

The Fees Act 1951 (Act 209) was the first Act ever introduced to regulate hospitals in Malaysia.

Throughout the years, Act 209 has been amended and evolved to cater to the current social and economic situation in Malaysia. As of the year 2021, Act 209 has been amended for at least five times. The orders are as follows:

1. P.U. (A) 47/2017: Fees (Medical) (Amendment) Order 2017.
2. P.U. (A) 304/2016: Fees (Medical) (Amendment) Order 2016.
3. P.U. (A) 87/2015: P.U. (A) 22/2014: Fees (Medical) (Full Paying Patient) (Amendment) Order 2015.
4. P.U. (A) 22/2014: Fees (Medical) (Full Paying Patient) (Amendment) Order 2014.
5. P.U. (A) 363/2014: Fees (Medical) (Cost of Services) Order 2014.

##### 4.2. Private Hospitals

Private hospitals can be further explained in accordance with the types of ownership they were established. This is important as it will determine which laws and regulations a private hospital is subjected to before it can be established. In general, there are three types of ownerships and their related legislations can be seen in the following table:

Table 2

**Types of ownerships and related legislations**

Type of Private Hospitals Ownerships	Legislations
Sole Proprietorship	Registration of Business Act 1956
Partnership	Limited Liability Partnership Act 2012 (Act 743) Limited Liability Partnership (Amendment) Act 2015 (Act A1477)
Body Corporate	Companies Act 2016

Once the ownership of a private hospital is established, the second phase will need to be carried out: which is the development of building for the private hospital. All three (3) types of ownerships for private hospital will need to adhere to one (1) similar Act which is the Private Healthcare Facilities and Services Act 1998 (Act 586). Act 586 deals with the rules and regulations in approving the establishment and license to operate

the business as a private hospital. This particular Act has also established various subsidiary legislation in ensuring that the establishment of private hospitals in Malaysia caters to the minimum acceptable standards as well as the quality needed. Besides Act 586, other laws and legislation relating to the establishment as well as the governance of the private hospitals are listed in the following table:

Table 3

**Legislations for the establishment of a private hospital [12]**

Legislations	Areas of Regulations
The Atomic Energy Licensing Act 1984 (Act 304)	Radioactive material, nuclear material and prescribed substances
Factories and Machinery Act 1967 (Act 139)	Steam boiler, unfired pressure vessel and machinery equipment
Uniform Building By-Laws 1984, Street, Drainage and Building Act 1974 (Act 133)	Land, certificate of completion and compliance of buildings and equivalent and signboard approval
Fire Services Act 1988 (Act 241)	Safety for fire exit
Environmental Quality Act 1974 (Act 127)	Environment safety and clinical waste management
Workers Minimum Standards of Housing and Amenities Act 1990 (Act 446)	Healthcare facilities for estate workers
Medical Device Act 2012 (Act 737)	Medical device
Pathology Laboratory Act 2007 (Act 674)	Pathology laboratory

Besides having a proper legislation, an enforcement agency is also important in ensuring the private hospitals in Malaysia follow the standard of quality required by the government. For this purpose, the Ministry of Health has established the Private Medical Practice Control Section (CKAPS) which one of its main functions is relating to the licensing of the private hospital. Further, the subsidiary legislations were also establish to regulate the operation of the private hospital including the maximum amount of fees that can be charged for every type of service provided to their patients [13]. The related subsidiary legislations are listed below:

1. P.U. (A) 260/2016: Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) (Amendment) Order 2016.
2. P.U. (A) 358/2013: Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) (Amendment) Order 2013.
3. P.U. (A) 138/2006: Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) Order 2006.

#### 4.3. Teaching Hospitals

Teaching hospital is affiliated to a medical school that provides practical training to medical students and graduated medical doctors. At the beginning, the teaching hospitals were always affiliated to public universities in Malaysia. Thus the earlier teaching hospitals were established under the Universities and College Universities Act 1971 (Act 30), similar to the public universities. They were being directly monitored and supervised by the Ministry of Higher Education (MOHE). The law has defined government healthcare facilities as any facilities used or intended to be used for the provision of healthcare services established, maintained, operated or provided by the Government but exclude privatized or corporatized government healthcare facilities [14]. Therefore, this definition excludes teaching hospital since it was established as a corporate entity under the public university. Recently, the teaching hospitals need to follow the legislations set out for a private hospital instead of a government hospital in its establishment phase. The related legislations are listed in the following table:

Table 4

**Legislations for the Establishment of Teaching Hospitals**

Legislation	Areas of regulation
Private Healthcare Facilities and Services Act 1998 (Act 586)	Approval and licensing of the hospitals
The Atomic Energy Licensing Act 1984 (Act 304)	Radioactive material, nuclear material and prescribed substances
Factories and Machinery Act 1967 (Act 139)	Steam boiler, unfired pressure vessel and machinery equipment
Uniform Building By-Laws 1984, Street, Drainage and Building Act 1974 (Act 133)	Land, certificate of completion and compliance of buildings and equivalent and signboard approval
Fire Services Act 1988 (Act 241)	Safety for fire exit
Environmental Quality Act 1974 (Act 127)	Environment safety and clinical waste management
Workers Minimum Standards of Housing and Amenities Act 1990 (Act 446)	Healthcare facilities for estate workers
Medical Device Act 2012 (Act 737)	Medical device
Pathology Laboratory Act 2007 (Act 674)	Pathology laboratory

Besides the legislation listed in the above Table, teaching hospitals in Malaysia have the autonomy to charge any amount of fees for their services. The teaching hospitals are not bound by either Act 209 (Chargeable fees for the public hospital in Malaysia) or P.U. (A) 138/2006 (Maximum chargeable fees for private healthcare facilities). Instead, a teaching hospital has the power to decide the fees amount own its own. The approval for the fees only needs to be tabled and approved by the teaching hospitals/university's board of directors.

#### 5. Legal issues and challenges

##### 5.1. The Ambiguity in the Classification of Teaching Hospital

As previously mentioned, the category of teaching hospital itself is a confusion. At the beginning it was

regarded as a public hospital, but later as a private hospital. At the end, it depends on individuals' interpretation in accordance to the purpose they wish to achieve. Due to this, there are times where teaching hospital was said to be a public hospital and should then be treated like one where it will enjoy all the privileges and exemptions as a government institution, but there are times where teaching hospital was regarded as a private hospital. Example of such situation was during the implementation of Goods and Services Tax (GST) in the year 2015, where Royal Customs Department of Malaysia had classified teaching hospital as a private hospital for the treatment of Government Services Tax (GST) [15]. This ambiguity will cause difficulty for teaching hospital as it is the very basic concept that needs certainty for proper governance of this institution.

### **5.2. The Necessity to Follow Private Medical Practice Division of the MOH Malaysia (CKAPS) in the Development of Teaching Hospital**

The initial development phase of teaching hospitals involves a few stages in accordance with the guidelines stipulated under Act 586 [14]. Under the development phase, teaching hospitals need to follow the relevant standard of building requirements as set out in Act 586.

The development of teaching hospitals needs to follow the standard of hospital buildings and facilities as set out by the Private Medical Practice Division of the MOH Malaysia (CKAPS). This in accordance with Section 16 (1) of Act 586 whereby, the premises for the hospital need to comply with the building layout plan, design, construction and specification to which the approval to establish or maintain relates. All relevant equipment, apparatus, instrument, material, article, sample or substance or any other things found in the premises or any matter connected therewith shall also be in compliance with the standard set out by CKAPS. The floor plan requirements for the building as well as the design have been detailed out by CKAPS in a very detailed requirement that includes its size and length.

One of the issues with regards to this is that the standard that has been set out by CKAPS is relatively higher compared to the public hospitals. Since it involves higher standards, it has resulted in a higher cost in developing the teaching hospitals. This will automatically force the government to fund more money to complete the project. It has to be noted also that the higher the cost means the longer the time for the development of a teaching hospital.

### **5.3. Problems relating to Maintenance of Teaching Hospital at the operational stage**

All teaching hospitals need to follow the standards set out by the Private Medical Practice Division of the MOH Malaysia (CKAPS) for the construction of the hospital premises as well as the purchasing of its equipment and apparatus. Complying with this standard will make the teaching hospitals in a better condition and quality as compared to the public hospitals. This will contribute to the higher cost of maintenance just like the private hospital which definitely has more money from the expensive fees they charge to the patients. However, in reality most of the teaching hospitals in Malaysia are actually a public hospital.

### **5.4. Problems relating to Licensing of Teaching Hospital for Operational Purpose**

In ensuring that the teaching hospitals are always following the same standard as required by CKAPS, they should get the hospital registered and licensed under Private Healthcare Facilities and Services Act 1998 (Act 586). Even though they are constructed in accordance with CKAPS and licensed under Act 586, however this body does not have the enforcement power towards them as in reality they are not a private hospital. Due to this

reason, the continuity of high-quality hospital premises is very difficult to achieve.

### **5.5. The Variation of Fees Charged in Teaching Hospital**

As mentioned earlier, teaching hospitals have autonomy in deciding the fees that will be charged to their patients. This has resulted in each teaching hospital having its own set of fees to be used in charging its patients. Two teaching hospitals situated in the same state will not necessarily have the same fees charged for the patients of the same condition. This will cause confusion and difficulties to the public. For them, since most teaching hospitals are under public universities, they should be regarded as public hospitals.

Apart from the above problems, the difference in fees charged will also make it difficult for the relevant quality assurance body to monitor the teaching hospitals and to produce a ranking or rating between all teaching hospitals. Since the fees of these hospitals are not comparable to each other, it is not appropriate to relate the fees charged with the quality of services provided to their patients. Thus, a teaching hospital that charged their patients at higher fees could not be said to have provided better services as compared to a teaching hospital that charged lower fees.

## **6. Conclusion**

The previous discussion highlights the milestones of healthcare law in Malaysia. Some important concerns over governing teaching hospitals were highlighted; ranging from classifying teaching hospitals, autonomy of teaching hospitals, financial sustainability, licensing to fees prescriptions. Accordingly, there is a dire need for legislations aiming to enforce legal conduct of teaching hospitals either by creating specific legislations on teaching hospitals or by incorporating relevant provisions into the current and existing laws. Developing such legislations can be settled by identifying and recognizing the stakeholders involved including enforcement agencies. The proposed legislations should also prescribe the right conduct and standards operating a teaching hospital considering the three-fold roles of teaching hospitals as centres for education, service provider and research. On top of that, in order to ensure the legislative effectiveness, the legislations should be able to facilitate proportionate penalties and sanctions.

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