

Legal Implications of Underhand Agreements Between Hospitals and Medical Device Distributors

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Abstract. *Procurement of medical devices is an important part in supporting health services in hospitals. In practice, cooperation between hospitals and distributors of medical devices is often stated in the form of private agreements without involving a notary. This study aims to analyze the legal implications of private agreements in the event of a breach of contract between hospitals and distributors of medical devices, both from the perspective of civil law and health law, and to provide legal recommendations as a reference for dispute resolution. The type of research used is sociological juridical research with a case study at RSAU dr. Yuniati Wisma Karyani Natuna. The research specifications are descriptive analysis, the types of data used are primary data, secondary data, primary legal materials, secondary legal materials and tertiary legal materials, then the data collection method is by interviewing health workers at RSAU dr. Yuniati Wisma Karyani Natuna, and the analysis method in this study is qualitative analysis. The results of the study indicate that private agreements still have binding legal force as long as they meet the legal requirements of the agreement as regulated in Article 1320 of the Civil Code. However, the agreement has limitations in terms of evidentiary power compared to authentic deeds. In the event of a breach of contract, the injured party has the right to demand fulfillment of the contractual obligations, compensation, cancellation of the agreement, or transfer of risk. From a health law perspective, a breach of contract has the potential to compromise the quality of healthcare services and patient safety, thus requiring the hospital to retain legal responsibility for the provision of healthcare services. Therefore, this study recommends that cooperation agreements be drawn up in the form of an authentic deed or at least legalized.*

Keywords: *Default; Hospital; Medical Equipment Distributor; Erhand Agreement.*

1. Introduction

Previous research has shown that the legality of contracts in hospital procurement plays a crucial role in ensuring legal certainty and accountability in healthcare services. A study published in the Journal of Law and Development found that weaknesses in contract construction in the public services sector often lead to civil disputes due to a lack of adherence to the principle of prudence and adequate legal documentation (Sutiyoso, 2021). Another study in the Indonesian Legislation Journal concluded that the use of underhand agreements in government procurement of goods and services has the potential to create evidentiary challenges in the event of default (Prasetyo, 2020). These findings demonstrate a gap between the ideal of legal certainty in contracts and prevailing practices.

A hospital is a healthcare facility that provides comprehensive individual healthcare services through promotive, preventive, curative, rehabilitative, and/or palliative care, providing inpatient, outpatient, and emergency care. Hospitals have a significant responsibility to provide high-quality and adequate medicines and medical equipment to support optimal healthcare services for the community. Considering the hospital's role, adequate efforts are needed to improve health standards and foster the implementation of equitable, comprehensive, and integrated healthcare efforts.

To improve service quality, hospitals must meet the vital needs required to support services, including the procurement of medicines and medical equipment. The availability of medical equipment significantly determines the effectiveness of medical procedures and the success of patient healing. The more complete and adequate the medical equipment, the greater the hospital's capacity to provide optimal care. In practice, to acquire these medical equipment, hospitals enter into sales agreements with third parties, namely drug and medical equipment distributors.

A sales and purchase agreement is the primary legal instrument for meeting the need for medical devices. However, in practice, the legal relationship between hospitals and distributors is often formalized in private agreements without the involvement of a notary, a public official authorized to draw up an authentic deed. Normatively, based on Articles 1320 and 1338 of the Civil Code, private agreements remain valid as long as they meet the requirements for validity. However, in terms of evidentiary strength, private agreements have weaknesses compared to authentic deeds, particularly in the event of a future dispute.

In the context of public procurement of goods and services, contracts must meet the principles of transparency, accountability, and effectiveness. Research in the *Bina Mulia Hukum Journal* shows that weak formal aspects of procurement contracts can open up opportunities for conflicts of interest and abuse of authority (Rahardjo, 2022). In reality, not all medical device procurement agreements are drawn up in authentic deeds, either due to a lack of understanding among the parties or due to efficiency considerations. This situation creates a gap between the principles of good governance that should be applied and the contractual practices that occur in the field.

This issue is important to examine from the perspective of civil law and health law because the legal implications of underhand agreements not only impact the legal relationship between hospitals and distributors but also have the potential to affect patient quality and safety. Legal certainty in contracts is an integral part of the healthcare quality management system. Therefore, identifying issues regarding the legal implications of underhand agreements in the procurement of medical devices is crucial to ensure legal protection for the parties and ensure the continuity of quality healthcare services. This study aims to analyze the legal implications of underhand agreements between hospitals and medical device distributors from a health law perspective.

2. Research Methods

The type of research used is sociological juridical research with a case study at RSAU dr. Yuniati Wisma Karyani Natuna. The specifications of this research are descriptive analysis, the types of data used are primary data, secondary data, primary legal materials, secondary legal materials and tertiary legal materials, then the data collection method is by interviewing health workers at RSAU dr. Yuniati Wisma Karyani Natuna, and the analysis method in this study is qualitative analysis.

3. Results and Discussion

3.1. Legal Implications of Underhand Agreements between Hospitals and Medical Device Distributors in the Event of Default at Dr. Yuniati Wisma Karyani General Hospital

Among the general public and among officials, there is often a misunderstanding regarding the meaning of *waarmerking*, some people think that by *waarmerking* a private deed, the deed obtains the status of an authentic deed or equate such a deed with an authentic deed which is the responsibility of a notary.¹The thing that determines the status between an authentic deed and a private deed is:

1) Authentic Deed Is a perfect evidence as referred to in Article 1870 of the Civil Code, this deed has such evidentiary power because it is considered attached to

¹Salim, HS, Regulations on the Position of Notary, (East Jakarta: Sinar Graha, 2018), p. 15

the deed itself so that it does not need to be proven again and for the judge it is "Mandatory Evidence" (Verplicht Bewijs). Thus, whoever states that an authentic deed is fake must prove the falsity of the deed, therefore an authentic deed has external, formal and material evidentiary power.

2) For the judge, a private deed is "Free Evidence" (VRU Bewijs) because a private deed only has material evidence after its formal strength has been proven, while its formal evidential strength only occurs if the parties concerned know the truth of the contents and the method of making the deed, thus a private deed is different from an authentic deed, because if a private deed is declared fake, then the person using the private deed as evidence must prove that the deed is not fake.²

A private letter that has been registered/waarmaking does not have legal force to be used as evidence against a third party, however for the first party and the second party it can be used as evidence as long as the parties acknowledge the signature and contents of the deed, for a private letter it has no influence at all on its evidentiary power because the Notary only numbers and records it.³ If the signature is denied, the judge must order that the authenticity of the document be examined. If the signature is acknowledged by the person concerned, the private deed has force and effect and constitutes complete evidence. The contents of the statement in the private deed can no longer be denied, because the signature on the private deed has been acknowledged by the person concerned.

The minimum strength limit for proving private deeds is regulated in Article 1875 of the Civil Code, which explains as follows:

The Value of the Strength of Proof:

In private deeds, the power of proof is attached, the formal and material requirements must first be fulfilled:

- 1) Made unilaterally or in the form of a party (at least 2 (two) parties) without the intervention of authorized officials.
- 2) Signed by the maker or the parties who made it.
- 3) Contents and signatures are acknowledged.

If the above conditions are met, then according to the provisions of Article 1875 of the Civil Code:

- 1) The value of the strength of the proof is the same as authenticity;

²NG Yudara, 2006, Main points of thought regarding the position and function of Notaries and Notarial deeds according to the Legal System in Indonesia, Renvoi, Number 10.34.III, March 3

³Darwin Prinst, 1998, Criminal Procedure Law in Practice, Jakarta: Djambatan, p. 133

2) Thus, the value of the evidentiary power attached to it is perfect and binding (volledig en bindendebewijskracht).

1) Minimum Limit of Proof If its existence perfectly fulfills the formal and material requirements, apart from having perfect and binding evidentiary power, it also has a minimum limit of proof:

- a. Able to stand alone without the help of other evidence
- b. In itself, the minimum limit of proof is met.

2) The Strength Value and its minimum limit are subject to change.

There are 2 (two) factors that can change and reduce the value of the strength and minimum limit of proof of private deeds, namely:

- a. Counter-evidence was presented against him
- b. The contents and signature are denied or not recognized by the opposing party.⁴

In such cases, a very substantial change occurs, namely the evidentiary power attached to it, falls to initial written evidence, while the minimum limit changes to evidence that cannot stand alone, but requires the addition of one of the other pieces of evidence.⁵

The legal force of a private agreement deed registered by a Notary (waarmaking), namely in a private deed the evidentiary force only includes the fact that the information was given, if the signature is acknowledged by the signer or is considered to have been acknowledged as such according to the law for a private letter the evidentiary force will depend greatly on the truth of the acknowledgement or denial of the parties to the contents of the deed and their respective signatures. If a private deed is acknowledged in content and signature by each party then the evidentiary force is almost the same as an authentic deed, the difference lies in the evidentiary force, which is not automatically possessed by a private deed. This private deed as referred to in Article 1880 of the Civil Code will not have the power of proof against a third party except from the day a statement is made by a Notary or another official appointed by law and recorded according to the Statutory Regulations or from the day the signatory or one of the signatories dies or from the day the existence of the private deed is proven from deeds made by public officials, or from the day the private deed is acknowledged in writing by the third party against whom the deed is used.

⁴M. Yahya Harapan, 2010, Civil Procedure Law Concerning Lawsuits, Trials, Seizure of Evidence and Court Decisions, Sinar Grafika, Jakarta, pp. 546-547

⁵Cici Harfiah, Op. Cit, p. 97

3.2 Legal Aspects of Private Deeds Notarized by a Notary

Written evidence in civil cases is the main evidence, because in civil traffic often people intentionally provide evidence in making an agreement that can be used if a dispute arises. In general, it can be said that if a person by way of agreement makes an agreement, because the person wants it, then the basis for binding oneself is his will or intention. A person's intention cannot be known directly, therefore, in social life, people can know what is desired by others only from their statements alone, whether spoken or written, in writing, it is the statement that embodies the will of the person and because the intention of a person cannot be touched or seen, then a person's binding to the statement is a manifestation of his intention or will. Based on the above, the law recognizes the existence of a binding state, both according to written regulations, and according to unwritten regulations or customs.⁶

In theory, an agreement arises from mutual consent, occurring because of the intention of the parties concerned, but in practice, the basis is the statement of will or intention. Based on this mutual statement of intention, an agreement is formed, and from that agreement, rights and obligations arise for both parties or one of the parties. The rights of one party are contrary to the obligations of the other party, thus giving the right to sue. In a reciprocal agreement, both parties each have the right to sue and each has obligations. The matter of being bound by the question of will or intention is very important to be used as written evidence. The use of written evidence by a party in a deed against another party has other consequences for or by a third party. Judges in a trial really need evidence to be able to provide a settlement (decision) based on the evidence presented. In the process of proof, the truth can be determined according to law and can guarantee protection for the rights of the parties in the case in a balanced manner. This is based on the belief that the parties who signed the deed can certainly know for sure when to affix their signatures to the deed. The third party, namely the person who did not sign it and who is not an heir or who receives the right to sign, can only see the black and white contents of the statement but will not be able to check or ascertain whether the signature was placed on the date stated in the deed. However, materially, the evidentiary power of the private deed only applies to the person for whom the statement was given, while for other parties, the evidentiary power depends on the judge's assessment (independent evidence). All cases in court are solely the power and authority of the judge or court to decide. This judge or court is an equipment in a state of law that is tasked with determining the actual legal relationship between the parties involved in the dispute or dispute.

In the trial, if what is submitted is only a private deed, considering its limited evidentiary power, other supporting evidence is still sought so that other

⁶Habib Adji & Sjaifurrahman, Aspects of Notary Accountability in the Preparation of Deeds, (CV. Mandar Maju, 2011). P. 102

evidence is obtained which is considered sufficient to reach the truth according to law. Based on the above, then the authentic deed and the private deed which are recognized, against anyone are undeniable evidence, that the parties concerned have made statements as written in the deeds. The difference in the strength as evidence of an authentic deed with a private deed, is that the authentic deed is proof of the truth of all its contents, until there is evidence that indicates the falsity of the deed, while the private deed only has the power of evidence, if later the signature is recognized or considered as recognized as true, as for the date of the deed, against a third party it has the power as evidence. In terms of evidence in court, the judge must acknowledge the power of authentic deeds and private deeds as evidence between the disputing parties, even if the judge is not sure of the truth of the contents, but this does not mean that it becomes an obstacle for the opposing party to object to the evidence. Article 285 RBg also states that the deed is also evidence of what is written in it as "a mere notification" as long as it has a direct relationship with the contents of the deed. In Staatblad 1867 No. 29, a regulation on private deeds states as follows: "As private letters, deeds signed privately, register letters, notes regarding households and other writings, which are made without using the intermediary of a public official are considered."

Equated with a signature on a private letter is a fingerprint that is strengthened by a dated statement and a notary or other official appointed by law stating that the fingerprint on the deed was made by the person appearing before the notary or other official appointed by law, then the official records the deed in question. Based on the above, the signed deed, if denied the agreement can only be accepted as the beginning of the evidence. In the case of the amount stated in the deed, different from the amount stated in the statement to strengthen it, then the agreement will be considered up to the smallest amount between them, if the deed was written by the person who binds himself to the agreement with the handwriting, unless the person can prove in which part of the contents of the deed there has been an error. valid evidence, which means that the judge may only make a decision based on evidence determined by law. The evidence in civil proceedings mentioned by law is stated in Article 284 RBg and Article 1866 of the Civil Code. Written evidence or letters are anything that contains written signs that are intended to express one's feelings or convey one's thoughts and are used as proof.

According to Article 285 RBg, an authentic deed for the parties and their heirs and those who obtain rights from it, is perfect evidence, regarding what is contained therein and even regarding what is contained in the deed as mere narration, the latter only as long as what is narrated is directly related to the subject of the deed. In the case that what is explained in the deed has no direct relationship with the subject of the deed according to Article 1871 of the Civil Code, it will only apply as initial written evidence. Furthermore, according to

Article 1872 of the Civil Code, if an authentic deed, whatever its nature, is suspected of being fake, its implementation can be suspended.

The evidentiary power of an authentic deed is based on the principle of *acta publica probant sese ipsa*, which means that a deed that appears to be an authentic deed and meets the specified requirements is valid or can be considered an authentic deed until proven otherwise. This means that an official's signature is considered authentic until proven otherwise. The burden of proof lies with the person who questions the authenticity of the deed. This evidentiary power applies to the interests or benefits of everyone and is not limited to the parties alone, and as evidence, authentic deeds, both official deeds and parties' deeds, have the advantage of being evidentiary.

A private deed that has been legalized by a notary helps the judge in terms of proof because with the recognition of the signature, the contents of the deed are considered as an agreement between the parties because the truth of a private deed lies in the signatures of the parties, so with the recognition of the signature, the deed becomes perfect evidence. If viewed from the perspective of its legal strength for proof, then of course Legalization is stronger than Registration (*waarmaking*).

4. Conclusion

The legal implications of an underhand agreement between a hospital and a medical device distributor still have binding legal consequences as long as it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. Based on the principle of *pacta sunt servanda*, the agreement applies as law to the parties. However, in terms of evidentiary power, an underhand agreement has limitations when compared to an authentic deed, especially if one party denies the contents or signature in the agreement. In the event of a breach of contract, the injured party has the right to demand fulfillment of performance, compensation, cancellation of the agreement, or transfer of risk in accordance with applicable civil law provisions. From a health law perspective, a breach of contract in the procurement of medical devices has the potential to disrupt the quality of service and patient safety, so the hospital still bears legal responsibility as a health service provider. Based on the research findings, dispute resolution over breach of contract can, in principle, be pursued through non-litigation or litigation, prioritizing deliberation as the initial step. Hospitals are advised to use authentic deeds or at least legalize agreements to strengthen legal certainty, particularly for large-value and high-risk contracts. Medical device distributors need to improve compliance with quality standards, timely delivery, and contractual obligations to prevent breaches. Notaries are expected to play an active role in providing legal counseling and ensuring that agreements have optimal evidentiary force. Furthermore, policymakers and academics need to encourage strengthened regulations and further study of legal protection in medical device procurement to create a contractual system that is fair, legally

certain, and oriented toward patient protection.

5. References

Journals:

Harnoko. (2025). Interview regarding the practice of somation in medical device procurement agreements.

Irawan. (2024). Drug and medical equipment procurement system in hospitals.

Mulya, N. (2025). Legal certainty of underhand agreements in practice.

Sugandha, & Rasji. (2025). Default in the perspective of Indonesian civil law.

Sulistianingsih, & Wijaya, CC (2024). Anticipatory breach in Indonesian contract law.

Suryani, et al. (2021). Contract dispute resolution and legal certainty.

Suyanto. (2020). Hospital financial management and legal implications of procurement.

Books:

Darmawan, DI (2024). Interview regarding the mechanism for procuring medical devices in hospitals.

Fuady, M. (2015). Contract law (From a business law perspective). Bandung: Citra Aditya Bakti.

Hadikusuma, W. (2021). Indonesian Contract Law. Bandung: Mandar Maju.

Subekti, R., & Tjitrosudibio, R. (2020). Civil Code (Burgerlijk Wetboek). Jakarta: Pradnya Paramita.

Regulations:

Republic of Indonesia. (1847). Civil Code (KUHPPerdata).

Republic of Indonesia. (2014). Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.