

Doctors Strike During COVID-19 Pandemic in Malaysia: Between Right and Wrong

Jazlan Jamaluddin, Nurul Nadia Baharum, Siti Nuradliah Jamil, Mohd Azzahi Mohamed Kamel*

ABSTRACT

A strike to highlight the plight facing contract doctors which has been proposed has received mixed reactions from those within the profession and the public. This unprecedented nationwide proposal has the potential to cause real-world effects, posing an ethical dilemma. Although strikes are common, especially in high-income countries, these industrial actions by doctors in Malaysia are almost unheard of. Reviewing available evidence from various perspectives is therefore imperative to update the profession and the complexity of invoking this important human right.

Keywords: Malaysia, Contracts, Strikes, Employees, Ethics, Pandemic, Healthcare System

INTRODUCTION

Contract doctors in Malaysia held a strike on July 26, 2021. COVID-19 cases are increasing in Malaysia. In June, daily cases ranged between 4,000 to 8,000 despite various public health measures. The R naught, which indicates the infectiousness of COVID-19, remains unchanged. During the pandemic, health care workers (HCWs) have been widely celebrated, resulting in a renewed appreciation of the risks that they face.¹ The pandemic has exposed flawed governance in the public healthcare system, particularly surrounding the employment of contract doctors.

Contract doctors in Malaysia are doctors who have completed their medical training, as well as two years of internship, and have subsequently been appointed as medical officers for another two years. Contract doctors are not permanently appointed, and the system did not allow extensions after the two years nor does it offer any opportunity to specialize.² Last week, Parliament did decide to offer a two-year extension but that did not hold off the impending strike.³ In 2016, the Ministry of Health introduced a contract system to place medical graduates in internship positions at government healthcare facilities across the country

* Jazlan Jamaluddin, Siti Nuradliah Jamil, Mohd Azzahi Mohamed Kamel, Family Medicine Trainee, Universiti Teknologi MARA, Malaysia

Nurul Nadia Baharum, Family Medicine Specialist, Klinik Kesihatan Bukit Chera, Malaysia

© 2021 Jamaluddin, Jamil, Kamel, and Baharum. This is an open access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction, provided the original author and source are credited.

rather than placing them in permanent posts in the Public Service Department. Social media chronicles the issues that doctors in Malaysia faced. However, tensions culminated when and contract doctors called for a strike which ended up taking place in late July 2021.

BACKGROUND

Over the past decade, HCW strikes have arisen mostly over wages, work hours, and administrative and financial factors.⁴ In 2012, the British Medical Association organized a single “day of action” by boycotting non-urgent care as a response to government pension reforms.⁵ In Ireland, doctors went on strike for a day in 2013 to protest the austerity measures implemented by the EU in response to the global economic crisis. It involved a dispute over long working hours (100 hours per week) which violated EU employment laws and more importantly put patients’ lives at risk.⁶ The strike resulted in the cancellation of 15,000 hospital appointments, but emergencies services were continued.

Other major strikes have been organized in the UK to negotiate better pay for HCWs in general and junior doctors’ contracts specifically.⁷ During the COVID-19 pandemic, various strikes have also been organized in Hong Kong, the US, and Bolivia due to various pitfalls in managing the pandemic.⁸ A recent strike in August 2020 by South Korean junior doctors and medical students was organized to protest a proposed medical reform plan which did not address wage stagnation and unfair labor practices.⁹ These demands are somewhat similar to the proposed strike by contract doctors in Malaysia. As each national health system operates within a different setting, these strikes should be examined in detail to understand the degree of self-interest involved versus concerns for patient’s welfare.

I. The Malaysia Strike

An anonymous group planned the current strike in Malaysia. The group used social media, garnering the attention of various key stakeholders including doctors, patients, government, and medical councils.¹⁰ The organizers of the strike referred to their planned actions as a hartal. (Although historically a hartal involved a total shutdown of workplaces, offices, shops, and other establishments as a form of civil disobedience, the Malaysian contract doctors pledged no disturbance to healthcare working hours or services and intend a walk-out that is symbolic and reflective of a strike.)¹¹ The call to action mainly involved showing support for the contract doctors with pictures and placards. The doctors also planned the walk-out.¹²

Despite earlier employment, contract medical doctors face many inequalities as opposed to their permanent colleagues. These include differences in basic salary, provisions of leave, and government loans despite doing the same job. The system disadvantages contract doctors offering little to no job security and limited career progression. Furthermore, reports in 2020 showed that close to 4,000 doctors’ contracts were expected to expire by May 2022, leaving their futures uncertain.¹³ Some will likely be offered an additional two years as the government faces pressure from the workers. Between December 2016 and May 2021, a total of 23,077 contract doctors were reportedly appointed as medical officers, with only 789 receiving permanent positions.¹⁴ It has been suggested that they are appointed into permanent positions based on merit but the criteria for the appointments remain unclear. Those who fail to acquire a permanent position inevitably seek employment elsewhere.

During the COVID-19 pandemic, there have been numerous calls for the government to absorb contract doctors into the public service as permanent staff with normal benefits. This is important considering a Malaysian study that revealed that during the pandemic over 50 percent of medical personnel feel burned out while on duty.¹⁵ This effort might be side-lined as the government prioritizes curbing the pandemic. As

these issues remain neglected, the call for a strike should be viewed as a cry for help to reignite the discussions about these issues.

II. Right to strike

The right to strike is recognized as a fundamental human right by the UN and the EU.¹⁶ Most European countries also protect the right to strike in their national constitutions.¹⁷ In the US, the Taft-Hartley Act in 1947 prohibited healthcare workers of non-profit hospitals to form unions and engage in collective bargaining. But this exclusion was repealed in 1947 and replaced with the requirement of a 10-day advanced written notice prior to any strike action.¹⁸ Similarly, Malaysia also recognizes the right to dispute over labor matters, either on an individual or collective basis. The Industrial Relations Act (IRA) of 1967¹⁹ describes a strike as:

“the cessation of work by a body of workers acting in combination, or a concerted refusal or a refusal under a common understanding of a number of workers to continue to work or to accept employment, and includes any act or omission by a body of workers acting in combination or under a common understanding, which is intended to or does result in any limitation, restriction, reduction or cessation of or dilatoriness in the performance or execution of the whole or any part of the duties connected with their employment”

According to the same act, only members of a registered trade union may legally participate in a strike with prior registration from the Director-General of Trade Unions.²⁰

Under Section 43 of the IRA, any strike by essential services (including healthcare) requires prior notice of 42 days to their employer.²¹ Upon receiving the notice, the employer is responsible for reporting the particulars to the Director General of Industrial Relations to allow a “cooling-off” period and appropriate action. Employees are also protected from termination if permitted by the Director General and strike is legalized. The Malaysian contract healthcare workers’ strike was announced and transparent.

Unfortunately, even after legalization, there is fear that the government may charge those participating in the legalized strike.²² The police have announced they will pursue participants in the strike.²³ Even the Ministry of Health has issued a warning stating that those participating in the strike may face disciplinary actions from the ministry. However, applying these laws while ignoring the underlying issues may not bode well for the COVID-19 healthcare crisis.

III. Effects of a Strike on Health Care

There is often an assumption that doctors’ strikes would unavoidably cause significant harm to patients. However, a systematic review examining several strikes involving physicians reported that patient mortality remained the same or fell during the industrial action.²⁴ A study after the 2012 British Medical Association strike has even shown that there were fewer in-hospital deaths on the day, both among elective and emergency populations, although neither difference was significant.²⁵ Similarly, a recent study in Kenya showed declines in facility-based mortality during strike months.²⁶ Other studies have shown no obvious changes in overall mortality during strikes by HCWs.²⁷ There is only one report of increased mortality associated with a strike in South Africa²⁸ in which all the doctors in the Limpopo province stopped providing any treatment to their patients for 20 consecutive days. During this time, only one hospital continued providing services to a population of 5.5 million people. Even though their data is incomplete, authors from this study found that the number of emergency room visits decreased during the strike, but the risks of mortality in the hospital for these patients increased by 67 percent.²⁹ However, the study compared the

strike period to a randomly selected 20-day period in May rather than comparing an average of data taken from similar dates over previous years. This could greatly influence variations between expected annual hospital mortality possibly due to extremes in weather that may exacerbate pre-existing conditions such as heart failure during warmer months or selecting months with a higher incidence of viral illness such as influenza.

Importantly, all strikes ensured that emergency services were continued, at least to the degree that is generally offered on weekends. Furthermore, many doctors still provide usual services to patients despite a proclaimed strike. For example, during the 2012 BMA strike, less than one-tenth of doctors were estimated to be participating in the strike.³⁰ Emergency care may even improve during strikes, especially those involving junior doctors who are replaced by more senior doctors.³¹ The cancellation of elective surgeries may also increase the number of doctors available to treat emergency patients. Furthermore, the cancellation of elective surgery is likely to be responsible for transient decreases in mortality. Doctors also may get more rest during strike periods.

Although doctor strikes do not seem to increase patient mortality, they can disrupt delivery of healthcare.³² Disruptions in delivery of service from prolonged strikes can result in decline of in-patient admissions and outpatient service utilization, as suggested during strikes in the UK in 2016.³³ When emergency services were affected during the last strike in April, regular service was also significantly affected.

Additionally, people might need to seek alternative sources of care from the private sector and face increased costs of care. HCWs themselves may feel guilty and demotivated because of the strikes. The public health system may also lose trust as a result of service disruption caused by high recurrence of strikes. During the COVID-19 pandemic, as the healthcare system remains stretched, the potential adverse effects resulting from doctor strikes remain uncertain and potentially disruptive.

In the UK, it is an offence to “willfully and maliciously...endanger human life or cause serious bodily injury.”³⁴ Likewise, the General Medical Council (GMC) also requires doctors to ensure that patients are not harmed or put at risk by industrial action. In the US, the American Medical Association code of ethics prohibits strikes by physicians as a bargaining tactic, while allowing some other forms of collective bargaining.³⁵ However, the American College of Physicians prohibits all forms of work stoppages, even when undertaken for necessary changes to the healthcare system. Similarly, the Delhi Medical Council in India issued a statement that “under no circumstances doctors should resort to strike as the same puts patient care in serious jeopardy.”³⁶

On the other hand, the positions taken by the Malaysian Medical Council (MMC) and Malaysian Medical Association (MMA) on doctors’ strikes are less clear when compared to their Western counterparts. The MMC, in their recently updated Code of Professional Conduct 2019, states that “the public reputation of the medical profession requires that every member should observe proper standards of personal behavior, not only in his professional activities but at all times.” Strikes may lead to imprisonment and disciplinary actions by MMC for those involved. Similarly, the MMA Code of Medical Ethics published in 2002 states that doctors must “make sure that your personal beliefs do not prejudice your patients' care.”³⁷ The MMA which is traditionally meant to represent the voices of doctors in Malaysia, may hold a more moderate position on strikes. Although HCW strikes are not explicitly mentioned in either professional body’s code of conduct and ethics, the consensus is that doctors should not do anything that will harm patients and they must maintain the proper standard of behaviors. These statements seem too general and do not represent the complexity of why and how a strike could take place. Therefore, it has been suggested that doctors and

medical organizations should develop a new consensus on issues pertaining to medical professional's social contract with society while considering the need to uphold the integrity of the profession.

Experts in law, ethics, and medicine have long debated whether and when HCW strikes can be justified. If a strike is not expected to result in patient harm it is perhaps acceptable.³⁸ Although these debates have centered on the potential risks that strikes carry for patients, these actions also pose risks for HCWs as they may damage morale and reputation.³⁹

Most fundamentally, strikes raise questions about what healthcare workers owe society and what society owes them. For strikes to be morally permissible and ethical, it is suggested that they must fulfil these three criteria:⁴⁰

- a. Strikes should be proportionate, *i.e.*, they 'should not inflict disproportionate harm on patients', and hospitals should as a minimum 'continue to provide at least such critical services as emergency care.'
- b. Strikes should have a reasonable hope of success, at least not totally futile however tough the political rhetoric is.
- c. Strikes should be treated as a last resort: 'all less disruptive alternatives to a strike action must have been tried and failed', including where appropriate 'advocacy, dissent and even disobedience'.

The current strike does not fulfil the criteria mentioned. As Malaysia is still burdened with a high number of COVID-19 cases, a considerable absence of doctors from work will disrupt health services across the country. Second, since the strike organizer is not unionized, it would be difficult to negotiate better terms of contract and career paths. Third, there are ongoing talks with MMA representing the fraternity and the current government, but the time is running out for the government to establish a proper long-term solution for these contract doctors.

One may argue that since the doctors' contracts will end in a few months with no proper pathways for specialization, now is the time to strike. However, the HCW right to strike should be invoked only legally and appropriately after all other options have failed.

CONCLUSION

The strike in Malaysia has begun since the drafting of this paper. Doctors involved assure that there will not be any risk to patients, arguing that the strike is "symbolic".⁴¹ Although an organized strike remains a legal form of industrial action, a strike by HCWs in Malaysia poses various unprecedented challenges and ethical dilemmas especially during the pandemic. The anonymous and uncoordinated strike without support of the appropriate labor unions may only spark futile discussions without affirmative actions. It should not have taken a pandemic or a strike to force the government to confront the issues at hand. It is imperative that active measures be taken to urgently address the underlying issues relating to contract physicians. As COVID-19 continues to affect thousands of people, a prompt reassessment is warranted regarding the treatment of HCWs, and the value placed on health care.

¹ Ministry of Health (MOH) Malaysia, "Current situation of COVID-19 in Malaysia." <http://covid-19.moh.gov.my/terkini> (accessed Jul. 01, 2021).

² “Future of 4,000 young doctors who are contract medical officers uncertain,” *New Straits Times* - November 26, 2020. <https://www.nst.com.my/news/nation/2020/11/644563/future-4000-young-doctors-who-are-contract-medical-officers-uncertain>

³ “Malaysia doctors strike, parliament meets as COVID strain shows,” *Al Jazeera*, July 26, 2021. <https://www.aljazeera.com/news/2021/7/26/malaysia-doctors-strike-parliament-meets-as-covid-strains-grow>

⁴ R. Essex and S. M. Weldon, “Health Care Worker Strikes and the Covid Pandemic,” *N. Engl. J. Med.*, vol. 384, no. 24, p. e93, Jun. 2021, doi: 10.1056/NEJMp2103327; G. Russo *et al.*, “Health workers’ strikes in low-income countries: the available evidence,” *Bull. World Health Organ.*, vol. 97, no. 7, pp. 460-467H, Jul. 2019, doi: 10.2471/BLT.18.225755.

⁵ M. Ruiz, A. Bottle, and P. Aylin, “A retrospective study of the impact of the doctors’ strike in England on 21 June 2012,” *J. R. Soc. Med.*, vol. 106, no. 9, pp. 362–369, 2013, doi: 10.1177/0141076813490685.

⁶ E. Quinn, “Irish Doctors Strike to Protest Work Hours Amid Austerity,” *The Wall Street Journal*, 2013. <https://www.wsj.com/articles/no-headline-available-1381217911?tesla=y> (accessed Jun. 29, 2021).

⁷ “NHS workers back strike action in pay row by 2-to-1 margin,” *The Guardian*, 2014. <https://www.theguardian.com/society/2014/sep/18/nhs-workers-strike-pay-unison-england> (accessed Jun. 29, 2021); M. Limb, “Thousands of junior doctors march against new contract,” *BMJ*, p. h5572, Oct. 2015, doi: 10.1136/bmj.h5572.

⁸ J. Parry, “China coronavirus: Hong Kong health staff strike to demand border closure as city records first death,” *BMJ*, vol. 368, no. February, p. m454, Feb. 2020, doi: 10.1136/bmj.m454; “MultiCare healthcare workers strike, urging need for more PPEs, staff support,” *Q13 FOX*, 2020. <https://www.q13fox.com/news/health-care-workers-strike-urging-need-for-ppes-risks-on-patient-safety> (accessed Jun. 29, 2021); “Bolivia healthcare workers launch strike in COVID-hit region,” *Al Jazeera*, 2021. <https://www.aljazeera.com/news/2021/2/9/bolivia-healthcare-workers-strike-covid-hit-region> (accessed Jun. 29, 2021).

⁹ K. Arin, “Why are Korean doctors striking?” *The Korea Herald*, 2020. <http://www.koreaherald.com/view.php?ud=20200811000941> (accessed Jun. 29, 2021).

¹⁰ “Hartal Doktor Kontrak,” *Facebook*. <https://www.facebook.com/hartaldoktorkontrak>.

¹¹ “Hartal,” *Oxford Advanced Learner’s Dictionary*. <https://www.oxfordlearnersdictionaries.com/definition/english/hartal> (accessed Jun. 29, 2021).

¹² “Hartal Doktor Kontrak,” *Facebook*. <https://www.facebook.com/hartaldoktorkontrak>.

¹³ R. Anand, “Underpaid and overworked, Malaysia’s contract doctors’ revolt amid Covid-19 surge,” *The Straits Times*, 2021.

¹⁴ Anand.

¹⁵ N. S. Roslan, M. S. B. Yusoff, A. R. Asrenee, and K. Morgan, “Burnout prevalence and its associated factors among Malaysian healthcare workers during covid-19 pandemic: An embedded mixed-method study,” *Healthc.*, vol. 9, no. 1, 2021, doi: 10.3390/healthcare9010090.

¹⁶ Maina Kiai, “Report by the Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association,” 2016. [Online]. Available: http://freeassembly.net/wp-content/uploads/2016/10/A.71.385_E.pdf.

¹⁷ ETUI contributors, *Strike rules in the EU27 and beyond*. The European Trade Union Institute. ETUI, 2007.

¹⁸ National Labor Relations Board, *National Labor Relations Act*. 1935, pp. 151–169.

¹⁹ Ministry of Human Resources, *Industrial Relations Act 1967 (Act 177)*, no. October. 2015, pp. 1–76.

²⁰ Article 10 of the Federal Constitution states that all citizens have the right to form associations including registered trade or labor unions. A secret ballot with two-third majority will suffice to call for a strike required for submission to the DGTU within 7 days as stated in Section 25(A) of the Trade Union Act 1959.

²¹ Ministry of Human Resources Malaysia, *Guidelines on Strikes, Pickets and Lockouts in Malaysia*. Putrajaya, 2011.

²² Ordinance Emergency which was declared in Malaysia since 12 January 2021. Under the Ordinance Emergency, the king or authorized personnel may, as deemed necessary, demand any resources.

²³ "Malaysia doctors strike, parliament meets as COVID strain shows," Al Jazeera, July 26, 2021. <https://www.aljazeera.com/news/2021/7/26/malaysia-doctors-strike-parliament-meets-as-covid-strains-grow>

²⁴ S. A. Cunningham, K. Mitchell, K. M. Venkat Narayan, and S. Yusuf, "Doctors' strikes and mortality: A review," *Soc. Sci. Med.*, vol. 67, no. 11, pp. 1784–1788, Dec. 2008, doi: 10.1016/j.socscimed.2008.09.044.

²⁵ M. Ruiz, A. Bottle, and P. Aylin, "A retrospective study of the impact of the doctors' strike in England on 21 June 2012," *J. R. Soc. Med.*, vol. 106, no. 9, pp. 362–369, 2013, doi: 10.1177/0141076813490685.

²⁶ G. K. Kaguthi, V. Nduba, and M. B. Adam, "The impact of the nurses', doctors' and clinical officer strikes on mortality in four health facilities in Kenya," *BMC Health Serv. Res.*, vol. 20, no. 1, p. 469, Dec. 2020, doi: 10.1186/s12913-020-05337-9.

²⁷ G. Ong'ayo *et al.*, "Effect of strikes by health workers on mortality between 2010 and 2016 in Kilifi, Kenya: a population-based cohort analysis," *Lancet Glob. Heal.*, vol. 7, no. 7, pp. e961–e967, Jul. 2019, doi: 10.1016/S2214-109X(19)30188-3.

²⁸ M. M. Z. U. Bhuiyan and A. Machowski, "Impact of 20-day strike in Polokwane Hospital (18 August - 6 September 2010)," *South African Med. J.*, vol. 102, no. 9, p. 755, Aug. 2012, doi: 10.7196/SAMJ.6045.

²⁹ M. M. Z. U. Bhuiyan and A. Machowski, "Impact of 20-day strike in Polokwane Hospital (18 August - 6 September 2010)," *South African Med. J.*, vol. 102, no. 9, p. 755, Aug. 2012, doi: 10.7196/SAMJ.6045.

³⁰ M. Ruiz, A. Bottle, and P. Aylin, "A retrospective study of the impact of the doctors' strike in England on 21 June 2012," *J. R. Soc. Med.*, vol. 106, no. 9, pp. 362–369, 2013, doi: 10.1177/0141076813490685.

³¹ D. Metcalfe, R. Chowdhury, and A. Salim, "What are the consequences when doctors strike?" *BMJ*, vol. 351, no. November, pp. 1–4, 2015, doi: 10.1136/bmj.h6231.

³² D. Waithaka *et al.*, "Prolonged health worker strikes in Kenya- perspectives and experiences of frontline health managers and local communities in Kilifi County," *Int. J. Equity Health*, vol. 19, no. 1, pp. 1–15, 2020, doi: 10.1186/s12939-020-1131-y.

³³ The study has shown that there were 9.1% reduction in admissions and around 6% fewer emergency cases and outpatient appointments than expected. An additional 52% increase in expected outpatient appointments cancellations were made by hospitals during that period. D. Furnivall, A. Bottle, and P. Aylin, "Retrospective analysis of the national impact of industrial action by English junior doctors in 2016," *BMJ Open*, vol. 8, no. 1, p. e019319, Jan. 2018, doi: 10.1136/bmjopen-2017-019319.

³⁴ D. Metcalfe, R. Chowdhury, and A. Salim, "What are the consequences when doctors strike?" *BMJ*, vol. 351, no. November, pp. 1–4, 2015, doi: 10.1136/bmj.h6231.

³⁵ R. Essex and S. M. Weldon, "Health Care Worker Strikes and the Covid Pandemic," *N. Engl. J. Med.*, vol. 384, no. 24, p. e93, Jun. 2021, doi: 10.1056/NEJMp2103327.

³⁶ M. Selemogo, "Criteria for a just strike action by medical doctors," *Indian J. Med. Ethics*, vol. 346, no. 21, pp. 1609–1615, Jan. 2014, doi: 10.20529/IJME.2014.010.

³⁷ Malaysian Medical Association, "Malaysian Medical Association Official Website." <https://mma.org.my> (accessed Jun. 29, 2021).

³⁸ M. Toynbee, A. A. J. Al-Diwani, J. Clacey, and M. R. Broome, "Should junior doctors strike?" *J. Med. Ethics*, vol. 42, no. 3, pp. 167–170, Mar. 2016, doi: 10.1136/medethics-2015-103310.

³⁹ R. Essex and S. M. Weldon, "Health Care Worker Strikes and the Covid Pandemic," *N. Engl. J. Med.*, vol. 384, no. 24, p. e93, Jun. 2021, doi: 10.1056/NEJMp2103327.

⁴⁰ M. Selemogo, "Criteria for a just strike action by medical doctors," *Indian J. Med. Ethics*, vol. 346, no. 21, pp. 1609–1615, Jan. 2014, doi: 10.20529/IJME.2014.010; A. J. Roberts, "A framework for assessing the ethics of doctors' strikes," *J. Med. Ethics*, vol. 42, no. 11, pp. 698–700, Nov. 2016, doi: 10.1136/medethics-2016-103395.

⁴¹ “Malaysia doctors strike, parliament meets as COVID strain shows,” Al Jazeera, July 26, 2021.
<https://www.aljazeera.com/news/2021/7/26/malaysia-doctors-strike-parliament-meets-as-covid-strains-grow>