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Journal Homepage: https://joecy.org/index.php/joecy
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Faculty of Education
University of Pahlawan Tuanku Tambusai
ISSN 2775-771X (Online)
ISSN 2962-570X **(Printed)**
5 (3) 2025, Page : 33145-33153

Legal Protection and Certainty of Partner Doctors' Status in Partnership Relationships with Health Care Facilities: A Preventive Approach through Contract Models and Legal Risk Management

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Published: November, 2025

ABSTRACT

This article examines the legal protection and certainty of legal status for partner doctors who enter partnerships with health care facilities (fasyankes) in Indonesia, through a preventive approach based on the preparation of a partnership contract model and legal risk management. The issues studied include: (1) what form of legal protection and certainty of status of partner doctors in partnerships with health care facilities; (2) what is the ideal partnership contract model to avoid giving rise to a hidden employment relationship; and (3) how the implementation of legal risk management can minimize the potential for disputes between partner doctors and health care facilities. The method used is a juridical-normative approach with a statutory approach, as well as legal doctrine. The results of the study indicate that to ensure the certainty of status and protection of partner doctors, the partnership agreement must clearly state the doctor's clinical independence, be based on the sharing of business results risks, and integrate the health care facility's internal legal audit mechanism. Systematic legal risk management can prevent health care facilities from the potential recognition of hidden employment relationships and strengthen medical professional governance. The novelty of this research lies in the development of a preventive partnership contract model construction and the integration of legal risk management in the doctor-health care facility partnership relationship.

Keywords: partner doctors, partnerships, hidden employment relationships, contract models, legal risk management.

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INTRODUCTION

The development of the Indonesian healthcare system has undergone significant transformation in the last two decades. One of the most prominent aspects is the change in the pattern of relationships between doctors and healthcare facilities (fasyankes), especially hospitals, primary clinics, and laboratories, from a conventional employment relationship to a partnership agreement. This change is rooted in the need for efficiency and flexibility in the modern healthcare industry. Hospitals are no longer merely public service providers, but also business entities that must be competitive and sustainable. On the other hand, doctors have professional freedom in carrying out medical practice based on the provisions of Article 273 paragraph (1) of Law Number 17 of 2023 concerning Health, as long as the implementation of medical services is carried out in accordance with professional standards, professional service standards, operational procedure standards, and professional ethics, and always prioritizes the interests and health needs of patients.

To maintain a balance between business interests and medical professionalism, many hospitals have adopted partnership agreements instead of formal employment relationships. In this model, physicians are considered independent contractors who collaborate with healthcare facilities to provide services to patients, without employee status.

In practice, many partnership agreements between doctors and healthcare facilities substantively resemble employment relationships. This is evident in the presence of elements of control by the healthcare facility over the doctor, a subordinate relationship, and the provision of fixed and regular compensation. These characteristics essentially reflect the main elements of an employment relationship as referred to in Article 1 number 15 of Law Number 13 of 2003 concerning Manpower, which defines an employment relationship as a relationship between an employer and an employee or labourer based on an employment agreement containing elements of work, wages, and orders. Therefore, although formally called a "partnership agreement," substantially the relationship can be qualified as a disguised employment relationship, which has legal consequences for both the doctor and the healthcare facility. Legally, such partnership relationships are qualified as disguised employment relationships. This concept is widely recognized in international employment law, including in Recommendation No. 198 on the Employment Relationship (ILO, 2006), which emphasizes that the assessment of employment relationships must be based on the actual conditions of work implementation, not just the formal form of the agreement.

This phenomenon creates legal uncertainty for partner doctors. On the one hand, they are not recognized as workers and therefore are not entitled to employment law protections such as social security, severance pay, and protection from layoffs. On the other hand, they are also not fully free as business actors, as in practice they are bound by the hospital's schedule, service system, and oversight. This partnership situation between doctors and hospitals often creates a contractual power asymmetry, with hospitals having a much stronger bargaining position than doctors.

The research findings show that the contractual relationship between doctors and hospitals is highly complex and not solely economic. In practice, contractual mechanisms designed to align incentives and share financial risk have the potential to undermine professional relationships that should be built on trust and equality. The dominance of transactional contractual approaches often creates social and psychological distance between hospitals and doctors, creating an unequal and non-integrative relationship. This situation suggests that the use of contracts as an instrument of economic control often exacerbates the imbalance in bargaining power, shifting the partnership into a subordinate relationship that benefits hospitals more than doctors. [1]

In these circumstances, doctors often find themselves in a de facto subordinate position, despite being formally referred to as "partners," without the legal protection and adequate employment guarantees afforded to workers in an employment relationship. This phenomenon demonstrates that partnership practices in the healthcare sector do not fully reflect the principles of contractual fairness and the balance of the parties' positions. As a result, doctors potentially bear legal, administrative, and ethical risks unilaterally in the event of disputes or violations, while their fundamental rights are not adequately protected by the existing legal system.

This situation highlights a regulatory gap, as the Health Law does not explicitly regulate the partnership model between doctors and healthcare facilities. As a result, many partnership contracts are drafted unilaterally by hospitals, without the active participation of doctors or professional associations

METHOD

The method used is a juridical-normative approach with a statutory approach and legal doctrine. This legal research method is conducted by researching existing and written legal sources based on literature such as applicable laws and regulations, books, and journals related to the research problem regarding the Certainty of Partner Doctors' Status in Partnership Relations with health care facilities.[2] The nature of the research conducted is descriptive analytical. The sources of legal materials used are secondary data,[3] namely data obtained from previously existing sources (libraries) by collecting data

[1] Valérie Van den Heede, Walter Sermeus, Paul Van Royen, et al., "Physician-Hospital Contracting and the Alignment of Financial Incentives: A Qualitative Study in Belgian Hospitals," *BMC Health Services Research* Vol. 13 (2013): 1–9.

[2] Zainal Asikin Amiruddin, Pengantar Metode Penelitian Hukum (Jakarta: Rajawali Press, 2014).

[3] Soerjono Soekanto, and Sri Mahmudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat, Raja Grafindo Persada, Jakarta, 2003; Lexy J. Moleong, Metodologi Penelitian Kualitatif,: Remaja Rosdakarya, Bandung, 2002

contained in laws and regulations, books, and papers or articles related to the problem being studied. Primary legal materials include: the 1945 Constitution and Law Number 12 of 2011 and its amendments. Secondary legal materials are materials that provide explanations related to primary legal materials such as books, journals, theses, and papers. Furthermore, tertiary legal materials are materials that provide explanations regarding Primary Legal Materials and Secondary Legal Materials, which consist of the Big Indonesian Dictionary, the internet related to the problem.

The analysis of legal materials in this study uses a qualitative prescriptive method. For primary legal sources in the form of legislation, the legal interpretation method is used. These methods include systematic interpretation to understand the relationship between norms, historical interpretation to trace the intent of legislation, and teleological interpretation to capture the philosophical purpose behind a norm—particularly the mandate to prioritize justice in Law Number 1 of 2023. To analyse court decisions, qualitative content analysis is used with a focus on the judge's legal reasoning (ratio decidendi). This technique aims to deconstruct how the judge justifies judicial discretion and the legal findings he makes. Finally, through a conceptual approach, a critical analysis is conducted to deconstruct the meaning of "legal certainty" and "substantive justice." The results are then synthesized to construct an "ideal concept of the judge's legal discovery" that is coherent, systematic, and academically accountable.

ANALYSIS AND DISCUSSION

The Ideal Form of Preventive Legal Protection for Partner Doctors in Partnership Relations with Health Care Facilities

Legal protection for partner doctors in partnerships with healthcare facilities (fasyankes) is an urgent need amidst the development of collaboration models between medical personnel and healthcare institutions in the modern era. This partnership relationship is essentially born from the principle of freedom of contract as stipulated in Article 1338 of the Civil Code (KUHPerdata), which states that "all agreements made legally apply as law for those who make them." However, in practice, the form of partnership in question often deviates from the principles of professional partnership and instead resembles a covert employment relationship, which creates legal uncertainty for both parties.

According to Patrick Grusenmeyer, partnerships between doctors and hospitals can be a mutually beneficial form of cooperation if they are based on the principle of mutual respect for each party's professional independence. In practice at the Christiana Care Health System, the hospital acts as a provider of managerial support and research facilities, while doctors continue to carry out their primary role as independent professionals responsible for medical services, including the clinical decision-making process and providing informed consent to patients. This collaboration demonstrates that the ideal partnership is not a subordinate relationship, but rather a functional collaboration between two equal legal entities, where the hospital supports the smooth running of doctors' practices without interfering with their professional independence.[4]This model positions doctors as independent legal entities, not as workers subordinate to hospitals. However, in practice, contractual power asymmetries often occur between doctors and hospitals, with hospitals having a dominant position in determining the content of agreements, work mechanisms, and even remuneration. This situation often results in doctors losing their bargaining power and facing legal uncertainty. In such situations, doctors can potentially be categorized as workers if the relationship substantively fulfils the elements of "work, wages, and orders" as referred to in Article 1 number 15 of Law Number 13 of 2003 concerning Manpower.

In order to ensure legal protection and certainty of status, it is necessary to build an ideal legal protection model that integrates three main pillars, namely: (1) strengthening contractual aspects, (2)

[4] Farber, Matthew et al. "Hospital and Private Practice Partnerships: Which Model Is Right for You?." *Journal of oncology practice* vol. 3,3 (2007): 130-132. doi:10.1200/JOP.0732505

recognizing the professional rights of doctors, and (3) implementing legal risk management at the institutional level.

Strengthening Contractual Aspects: A Clear and Equal Partnership Contract Model

The ideal partnership contract model must reflect the principle of contractual justice as put forward by Charles Fried, that a fair contract is a contract based on autonomy of will and mutual assent namely a free agreement that reflects the true will of the parties.[5] Thus, the clauses in the contract must be designed to ensure a balance of rights and obligations between doctors and health facilities.

a. An ideal partnership contract should include, among other things:

An explicit statement that the relationship between the parties is a professional partnership, not an employment relationship.

b. Regulations regarding the scope of work and professional independence, in accordance with Article 273 paragraph (1) of Law Number 17 of 2023 concerning Health, which emphasizes that doctors have the freedom to provide medical services based on professional standards and operational procedure standards. Compensation scheme based on professional services,not a fixed monthly salary;
c. Dispute resolution clause through professional mediation or arbitration before resorting to litigation, to maintain reputation and continuity of professional relationships.

With these arrangements, the partnership contract can become a preventive legal protection instrument that guarantees the certainty of the doctor's status as a professional partner.

Recognition of Professional Rights and Ethical Protection

Legal protection for doctors stems not only from contracts but also from professional norms and health law. Law Number 17 of 2023 concerning Health guarantees that doctors who perform their duties in accordance with professional standards, service standards, and professional ethics are entitled to legal protection. This reinforces the principle of lex specialis in health law, which states that a doctor's responsibilities must be viewed within the context of their profession, not merely their employment relationship.

Within the framework of professional protection, it is also crucial for healthcare facilities to provide a medical incident reporting system oriented towards a non-punitive learning system, so that doctors can carry out services with a sense of security without the threat of disproportionate sanctions. As emphasized in patient safety literature, safety will never be achieved without the realization of a just culture, namely an environment where staff are encouraged to provide important information about safety without fear of punishment, while still understanding the line between human error, risky behavior, and negligence.[6] This model is in line with the principle of preventive legal protection put forward by Satjipto Rahardjo, that the law should function to protect citizens' rights from the start by creating a just social structure, not just imposing sanctions after a violation occurs.[7]

Implementation of Legal Risk Management

The implementation of legal risk management is an integral part of preventative legal protection efforts for partner doctors and healthcare facilities. According to ISO 31000:2018, legal risk management encompasses the stages of identification, analysis, evaluation, and mitigation of legal risks.[8]

[5] Charles Fried, *Contract as Promise: A Theory of Contractual Obligation*, (Harvard University Press, 1981), hlm. 16.
[6] James Reason, *Human Error: Models and Management*, BMJ, 2000. (Reason adalah ahli terkemuka yang mengembangkan model "just culture" dalam manajemen risiko dan *human error*).
[7] Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), hlm. 54.

In the context of doctor-health care facility partnerships, the implementation can be described as follows:

a. Legal Risk Identification
   Healthcare facilities need to identify potential legal risks, such as the risk of the partnership being classified as a covert employment relationship, violation of professional ethics, or liability for medical errors.

b. Risk Analysis
   This is done by assessing the likelihood and impact of each risk. For example, a risk is categorized as high if the partnership contract does not specify limits on the physician's independence or a clear compensation mechanism.

c. Risk Mitigation
   Through the preparation of legally compliant contracts, legal training for management and doctors, and periodic legal compliance audits.

d. Monitoring and Evaluation
   An internal oversight system needs to be established so that any changes in work practices do not create the potential for new legal violations.

The implementation of good legal risk management not only provides preventive legal protection but also improves the institutional governance of health care facilities (legal governance), while creating a healthy and professional climate of cooperation.

In this way, healthcare facilities can minimize the risk of lawsuits alleging "hidden employment relationships," as was the case in Supreme Court Decision No. 36 K/Pdt.Sus-PHI/2023, where the court considered the substance of the relationship more important than the title of the agreement. Implementing a sound legal risk management system not only protects the institution but also strengthens the position of partner doctors as professionals with secure status.

Drafting a Contract Model and Implementing Legal Risk Management in Doctor-Healthcare Facility Partnerships

The Urgency of an Ideal Partnership Contract Model

The uncertainty surrounding the legal status of partner doctors has largely stemmed from partnership contracts that were not drafted with due regard for the principles of contractual fairness and professional protection. In some cases, these agreements resemble disguised employment agreements, as they contain elements of subordination and direct control by the hospital. As a result, agreements originally intended as a form of professional collaboration have become instruments of legal uncertainty for both doctors and healthcare facilities. According to Subekti, contracts are the primary source of obligations, creating reciprocal rights and obligations between the voluntarily entering parties.[8] This principle requires that partnership contracts should not be drafted unilaterally, but rather reflect the equal position of doctors and healthcare facilities. Therefore, an ideal partnership contract model must meet the legal principles of contracts stipulated in Articles 1320 and 1338 of the Civil Code, namely: agreement, competence, a specific matter, and a lawful cause.

As emphasized by Charles Fried, a fair contract is a contract based on autonomy of will and mutual assent, where the parties consciously and freely give their consent to the contents of the agreement.[9] In the context of the doctor-healthcare facility relationship, this principle means that doctors must have

[8] **International Organization for Standardization (ISO),** ***ISO 31000:2018 — Risk Management Guidelines*****.**
[8]Subekti, *Pokok-Pokok Hukum Perdata*, (Jakarta: Intermasa, 2008), hlm. 45
[9] Charles Fried, *Contract as Promise: A Theory of Contractual Obligation*, (Harvard University Press, 1981), hlm. 16

the freedom to negotiate clauses concerning the scope of work, compensation, and limits on legal and ethical liability. This is crucial to prevent doctors from being placed in a subordinate position that diminishes their independence as professionals.

Key Elements in the Doctor–Healthcare Facility Partnership Contract Model

The ideal partnership contract model needs to contain the following basic elements to align with the principles of legal protection and certainty[10] of status:

a. Legal Status Clause of the Parties

The contract should explicitly state that the relationship between the doctor and the healthcare facility is a professional partnership (independent contractor relationship), not an employment relationship. This arrangement will clarify that the doctor acts on the basis of professional responsibility, not subject to administrative instructions as in an employment relationship.

b. Physician Professional Independence Clause

In accordance with Article 273 paragraph (1) of Law Number 17 of 2023 concerning Health, doctors have the freedom to provide medical services based on professional standards and standard operating procedures. This clause needs to be emphasized in the contract to ensure that every medical decision is made based on clinical considerations, not managerial directives.

c. Professional Fee-Based Remuneration Clause

In a partnership relationship between a doctor and a hospital, the compensation scheme applied should reflect the characteristics of an independent professional relationship. Unlike an employment relationship that positions the doctor as a salaried worker, a partnership relationship allows the doctor, as an independent contractor, to receive compensation based on a professional agreement that is proportional to their contribution and performance results. Payment schemes can vary, including fee-for-service, hourly payments, or a lump sum payment for specific services, as long as the mechanism is clearly defined in the partnership agreement. This model emphasizes that the partner doctor's compensation is not a "wage" in the sense of an employment relationship, but rather a form of professional remuneration that reflects the principles of independence and equality in the legal relationship between two autonomous entities.[11]

d. Legal Protection Clause and Professional Liability Insurance

The professional liability insurance clause stipulates that hospitals are obligated to provide insurance coverage for doctors against legal risks arising from the performance of their medical duties. This insurance serves as a form of professional liability, providing compensation to patients in the event of losses resulting from the doctor's negligence. This is a common form of risk transfer in modern medical practice, designed to mitigate legal and financial risks.[12]

[10] Sandra, Rio, and Muhamad Hasan Sebyar. "Implikasi Hukum Perjanjian Kerjasama antara Perusahaan dengan Kontraktor: Analisis Kontrak: BIC/LGL-22-007-002." *Hukum Inovatif: Jurnal Ilmu Hukum Sosial dan Humaniora* 1, no. 3 (2024): 205-220

[11] **PhysiciansThrive, "Physician's Guide to Independent Contractor Agreement," *Physicians Thrive* (2023), diakses melalui https://physiciansthrive.com/ contract-review/physician-independent-contractor-agreement/**

[12] Deni Wijaya, "Legal Protection for Doctors in Legal Disputes in Hospitals from The Perspective of Employment Agreements," *International Journal of Islamic Education, Research and Multiculturalism* (IJIERM), Vol. 6 No. 3, 2024, hlm. 8

e. Dispute Resolution Clause

In order to maintain the reputation of the profession and the sustainability of the working relationship, the contract must contain a clause for dispute resolution in stages—starting with internal mediation, ethical mediation at the MKEK and MDP before the litigation route.

f. Integration of Legal Protection and Risk Management

Within the framework of the theory of legal protection (Satjipto Rahardjo), the law functions to protect the rights of citizens, especially the weak, by creating a system that prevents injustice from occurring.[13] Meanwhile, in legal risk management theory, protection is provided through control mechanisms against potential legal losses before a dispute arises. Both can be integrated into the doctor-healthcare facility relationship with the following principles:

Preventive – through the design of clear, balanced and transparent partnership contracts;
Progressive – through the implementation of legal risk management in institutions;
Restorative – through dispute resolution based on professional ethics and contractual justice.

With this model, the doctor-healthcare facility partnership system not only provides certainty of legal status, but also guarantees professional protection and the continuity of quality health services.

The following is a version of the analytical discussion that focuses on the application of legal risk management without repeating the previous discussion on forms of legal protection or hidden employment relationships.

Implementation of Legal Risk Management to Strengthen the Protection and Certainty of Partner Doctor Status

The implementation of legal risk management in partnerships between doctors and health care facilities (fasyankes) is a strategic step to strengthen legal protection and certainty of status for the parties, especially partner doctors.[14] In this context, legal risk management is defined as a series of systematic processes to identify, assess, control, and monitor potential legal risks that may arise from the implementation of such partnerships. The goal is not only to prevent disputes but also to ensure that every form of cooperation is carried out in accordance with the principles of legal compliance, transparency, and contractual accountability. This approach aligns with Peter Cane's view that legal risk management is a form of risk governance that integrates the legal dimension into organizational decision-making so that legal compliance becomes part of the strategic management of health institutions.[15] By implementing this system, healthcare facilities can identify areas prone to disputes such as employment status, division of professional responsibilities, and termination mechanisms so that mitigation steps can be taken in the form of drafting clearer and more proportional contract clauses.

Furthermore, the implementation of legal risk management also strengthens the position of partner physicians from a legal predictability perspective. Audits and monitoring are essential components of a compliance program for all medical practices. Audit results can be used to continuously improve the compliance program and demonstrate good faith in the effective implementation of the compliance program, which can legally serve as evidence of protection against allegations of inadequate oversight.

[13] Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), hlm. 54.
[14] Maduratna, Enggal Sari, Loso Judijanto, Rai Riska Resty Wasita, Yeyen Gustina Irawan, Ni Luh Kade Wiradani, and Fransiska Br Sitepu. *Manajemen Dan Administrasi Pelayanan Kesehatan*. PT. Green Pustaka Indonesia, 2025.
[15] Peter Cane, *Responsibility in Law and Morality*, Oxford University Press, 2002, hlm. 114.

With a legal audit and compliance monitoring system, physicians have assurance that the partnership is conducted within a clear legal framework, including protection against potential criminalization of medical practice due to administrative errors or differences in interpretation of the employment relationship.[16] In this case, contractual transparency and a risk-sharing-based dispute resolution mechanism will prevent doctors from the uncertainty of legal status that often arises due to non-standardized partnership contracts.

Furthermore, legal risk management serves as a means of strengthening the internal governance of healthcare facilities. The effectiveness of risk management depends heavily on the active involvement of management and the board in reviewing and updating the risk register, while fostering a culture of risk awareness throughout the organization. In a partnership between physicians and hospitals, this means that the responsibility for managing legal risk cannot be solely placed on the individual physician partner. Hospitals, as institutions, must periodically review the register of legal and operational risks associated with the implementation of partnership practices and ensure a culture of compliance and transparency among all parties. Management involvement in this risk review will promote a balance of responsibilities between physicians and the institution, ensuring that the partnership operates within clear legal boundaries and provides mutual protection.[17] This pattern builds contractual justice and affirms the principle of partnership of equals in health partnerships, where legal relationships are not subordinate like conventional employment relationships.

The effective implementation of legal risk management ultimately provides concrete preventative legal protection for partner doctors. As stated by Philipus M. Hadjon, preventative legal protection is essential to provide legal subjects with the opportunity to file objections or corrections before violations or disputes occur.[18] In this context, contract audit mechanisms, due diligence, and periodic monitoring of the implementation of partnership agreements are important instruments to ensure that there are no violations of partnership principles and that there is no overlapping jurisdiction between employment law and contractual civil law.

Thus, legal risk management serves as a proactive, rather than a reactive, legal protection tool. This system ensures that each partnership clause is designed with the principles of balance and clarity, thereby ensuring the legal status of partner physicians and reducing the potential for conflict resulting from differing interpretations or abuse of dominant positions by healthcare facilities. At this point, legal risk management not only substantively strengthens legal protection but also reinforces the rule of law and business ethics in medical personnel partnership practices in Indonesia.

Well, here is a concise and concise version of the conclusion, structured based on the three problem formulations, followed by a Suggestions section that is relevant to the results of your thesis analysis.

CONCLUSION

Ideal legal protection for partner physicians should be built on the principles of equality and professional independence within a partnership, not an employment relationship. This protection is both preventative through a clear and fair partnership agreement and repressive through dispute resolution mechanisms and professional liability protection. Thus, partner physicians obtain certainty of legal status and guarantee their professional rights in accordance with statutory provisions. An ideal partnership contract model reflects the principles of balance and fairness, affirming the parties' positions as equal partners. The contract should include a professional independence clause, a fee-for-

[16] MetricStream, *"Blending Compliance and Audit to Strengthen Healthcare Governance,"* MetricStream, accessed 9 November 2025, https: //www.metricstream.com/insights/audit- compliance- strengthen- healthcare- governance

[17] Department of Health (Victoria), *Directors' Toolkit – Chapter 7: Risk Management*, (Melbourne: Victorian Government, December 2022), p. 163-164.

[18] Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat Indonesia*, Bina Ilmu, Surabaya, 1987, hlm. 29.

service mechanism, and a non-litigation dispute resolution system. Such a contract model prevents hidden employment relationships and ensures proportional legal protection for both parties. Legal risk management strengthens legal protection and the certainty of partner physicians' status through a system for identifying and mitigating legal risks in the implementation of partnerships. The application of legal compliance principles and regular contract audits promote transparent and accountable healthcare facility governance. Thus, legal risk management serves as an instrument for dispute prevention and strengthens the system of professional protection for medical personnel.

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