

# The Legal Status of Informed Consent and Informed Choice in Medical Civil Law

Intan Yumanita, Redyanto Sidi, Marice Simarmata

## Abstract

This study aims to analyze the legal status of informed consent and informed choice within the framework of medical civil law in Indonesia, from both legal-theoretical and clinical practice perspectives. Employing a normative and empirical juridical approach, the research examines statutory regulations, legal literature, and selected case studies of medical disputes related to patient consent and decision-making. The findings indicate that informed consent functions as a formal legal prerequisite for the validity of medical interventions, serving as a safeguard for both patients and healthcare providers against potential legal disputes. In contrast, informed choice emphasizes the patient's substantive right to autonomous and well-informed decision-making, reflecting the principles of self-determination and respect for human dignity in healthcare. Although distinct in function, both concepts possess complementary legal standing and jointly constitute a foundational element of patient rights in medical practice. Violations of either informed consent or informed choice may give rise to civil liability for medical professionals, including claims based on negligence or unlawful acts under civil law. From a practical standpoint, this study underscores the necessity of strengthening documentation mechanisms, enhancing doctor-patient communication, and improving continuous legal and ethical training for healthcare professionals to ensure the consistent and effective implementation of these principles in clinical settings.

**Keywords:** Informed Consent, Informed Choice, Medical Civil Law, Patient Right

Intan Yumanita<sup>1</sup>

<sup>1</sup>Master of Health Law Study Program, Universitas Pembangunan Panca Budi, Indonesia  
e-mail: [Iyumanita@gmail.com](mailto:Iyumanita@gmail.com)<sup>1</sup>

Redyanto Sidi<sup>2</sup>, Marice Simarmata<sup>3</sup>

<sup>2,3</sup>Master of Health Law Departement, Universitas Pembangunan Panca Budi, Indonesia  
e-mail: [redysidi@gmail.com](mailto:redysidi@gmail.com)<sup>2</sup>, [ichsmart@yahoo.co.id](mailto:ichsmart@yahoo.co.id)<sup>3</sup>

2nd International Conference on Islamic Community Studies (ICICS)

Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era

<https://proceeding.pancabudi.ac.id/index.php/ICIE/index>

## Introduction

Modern healthcare services require transparent, accountable, and effective communication between medical professionals and patients. In clinical practice, medical interventions performed without the patient's consent may give rise to legal disputes, jeopardize the legal security of healthcare providers, and undermine public trust in healthcare institutions. Therefore, the principles of informed consent and informed choice are of paramount importance to ensure that patients are able to make medical decisions consciously, autonomously, and based on complete, accurate, and objective information.[1]

Informed consent refers to a patient's voluntary approval of a medical intervention after receiving comprehensive information regarding the purpose of the treatment, medical procedures involved, potential benefits, possible risks, and available therapeutic alternatives. This concept is not only rooted in medical ethics but also holds a firm legal position within the Indonesian legal framework, particularly under Law No. 36 of 2009 on Health and the provisions of the Indonesian Civil Code (KUHPerdata) concerning unlawful acts (*perbuatan melawan hukum*). Medical practitioners who perform medical procedures without obtaining valid informed consent may incur civil liability and professional ethical sanctions, especially when such actions result in harm to the patient.[2]

Meanwhile, informed choice emphasizes the patient's right to actively select or refuse medical treatment based on their personal values, preferences, and understanding of the medical information provided [3]. Unlike informed consent, which focuses on authorization, informed choice highlights patient autonomy and meaningful participation in the decision-making process. From the perspective of medical civil law, informed choice represents the legal manifestation of a patient's fundamental rights over their body and health, which are closely linked to the broader concept of personal autonomy and self-determination recognized in civil law principles.[4]

Although informed consent and informed choice are conceptually interrelated and mutually reinforcing, their implementation in medical practice often encounters significant challenges. These challenges include: (1) the absence of clear and uniform standards regarding the scope and depth of information that must be disclosed by medical professionals, resulting in incomplete or ambiguous patient understanding; (2) divergent perceptions between doctors and patients concerning the risks and benefits of medical interventions; (3) the potential emergence of civil legal disputes when medical complications or unfavorable outcomes occur, even in cases where prior consent has been obtained; and (4) difficulties in formally and accurately documenting informed consent and informed choice within healthcare institutions, which may weaken evidentiary value in legal proceedings.[5]

Accordingly, this research is of considerable importance as it provides a scholarly contribution to understanding the legal status and function of informed consent and informed choice within the framework of Indonesian medical civil law [6]. Furthermore, the findings are expected to serve as practical guidance for medical professionals and healthcare institutions in strengthening patient legal protection, enhancing doctor-patient communication, and minimizing the risk of civil litigation arising from medical disputes.[7]

## Literature Review

The legal relationship between doctors and patients has long been recognized as a civil contractual relationship based on a therapeutic contract, in which both parties possess reciprocal rights and obligations. Within this framework, healthcare providers are required to deliver medical services in accordance with professional standards and due care, while patients are expected to provide accurate medical information and fulfill administrative obligations. Scholars emphasize that this contractual relationship does not guarantee therapeutic outcomes, but rather obliges medical professionals to apply reasonable skill, diligence, and professional judgment. Consequently, medical disputes often arise not from unsuccessful medical results per

se, but from perceived failures in communication, professional conduct, or adherence to established medical standards.[8]

In this context, informed consent has emerged as a fundamental legal and ethical requirement in medical practice. Informed consent is defined as the patient's voluntary authorization of a medical intervention after receiving adequate information regarding the nature, purpose, benefits, risks, and available alternatives of the proposed treatment. Legal literature consistently affirms that informed consent serves as a prerequisite for the legality of medical actions and functions as a protective mechanism against civil liability. Empirical studies demonstrate that inadequate or absent informed consent constitutes one of the most frequent grounds for medical malpractice claims, particularly when adverse outcomes occur. In civil law systems, failure to obtain valid informed consent may be construed as an unlawful act or a breach of the therapeutic contract, depending on the legal basis of the claim.[9]

Beyond informed consent, contemporary health law discourse increasingly highlights the concept of informed choice, which emphasizes patient autonomy and active participation in medical decision-making. Informed choice extends the scope of patient rights by allowing individuals to select among available medical options based on comprehensive information, personal values, and individual preferences. This concept reflects a paradigm shift from traditional paternalistic models of healthcare toward patient-centered care. Legal scholars argue that informed choice represents a manifestation of the fundamental right to bodily integrity and self-determination, reinforcing the patient's role as an autonomous decision-maker rather than a passive recipient of medical services.[10]

Medical disputes frequently arise when there is a disconnect between patient expectations and medical outcomes, particularly in situations involving alleged negligence, misdiagnosis, or failure to adequately disclose risks. Research indicates that communication breakdowns, rather than purely technical medical errors, are the primary drivers of medical litigation. Courts often rely heavily on medical records, expert testimony, and documentation of informed consent to assess whether healthcare providers have fulfilled their legal obligations. In this regard, proper implementation of informed consent and informed choice plays a crucial role in reducing legal uncertainty and strengthening evidentiary positions in civil proceedings.

Recent legal scholarship further advocates the integration of alternative dispute resolution mechanisms, particularly mediation, in addressing medical disputes. Mediation is widely regarded as a more efficient, cost-effective, and restorative approach compared to litigation, as it facilitates dialogue, mutual understanding, and preservation of the doctor-patient relationship. In Indonesia, the prioritization of mediation under the Health Law reflects a broader commitment to restorative justice in healthcare disputes. Scholars contend that effective mediation, when supported by transparent informed consent practices and respect for informed choice, can significantly reduce litigation rates and enhance trust in healthcare institutions.

Despite the growing body of literature on informed consent and informed choice, existing studies tend to address these concepts separately, focusing either on ethical considerations or procedural legal aspects. There remains a notable gap in comprehensive legal analysis that integrates informed consent and informed choice within the broader framework of medical civil law and dispute resolution mechanisms. This gap underscores the need for further research examining how these principles function collectively as instruments for patient protection, legal accountability, and dispute prevention in modern healthcare systems.

## **Research Methodology**

This study examines in depth the legal position of informed consent and informed choice within Indonesian medical civil law. The research adopts a comprehensive approach that enables the author to critically analyze legal regulations, legal doctrines, clinical practices, and the real legal implications arising from violations of these fundamental principles. By integrating normative legal analysis with empirical insights, this research aims to provide a

holistic understanding of how informed consent and informed choice function both as legal instruments and as ethical foundations in medical services.

This research is classified as descriptive-analytical legal research, which seeks not only to describe but also to critically analyze the legal standing of informed consent and informed choice and their implications in healthcare practice. The study employs a qualitative research design, focusing on the interpretation and analysis of legal norms, scholarly literature, and selected case studies related to medical civil disputes. Through this approach, the research elucidates how these principles are applied, interpreted, and sometimes neglected in medical practice, as well as the legal consequences that may arise.

The research utilizes a dual approach, consisting of normative juridical and empirical juridical perspectives. The normative juridical approach focuses on the examination of legal foundations, statutory regulations, and legal doctrines governing informed consent and informed choice within the framework of civil law and medical ethics. Primary legal sources analyzed include the Indonesian Civil Code (*Burgerlijk Wetboek*), Law Number 36 of 2009 on Health, relevant Ministry of Health regulations concerning medical practice, and authoritative legal doctrines and scholarly opinions. This analysis aims to identify the normative position of informed consent and informed choice as patients' rights and physicians' legal obligations.

In addition, an empirical juridical approach is employed to explore how informed consent and informed choice are implemented in real-world healthcare settings. This approach involves the examination of civil medical dispute cases that have occurred in Indonesia, highlighting instances where inadequate or absent consent led to legal conflict. Where applicable, the study also incorporates insights from interviews with medical practitioners, patients, and hospital management, as well as observations of consent procedures in healthcare facilities. This empirical dimension allows the research to bridge the gap between legal norms and actual clinical practice.

The data used in this study consist of primary and secondary legal materials. Primary data include civil court decisions related to violations of informed consent or informed choice, statutory regulations governing patient rights and physician duties, and, where conducted, interview and observational data. Secondary data encompass textbooks, peer-reviewed journals, legal and medical articles, international literature on informed consent and informed choice, and reports from previous studies relevant to medical law and healthcare ethics. These sources collectively provide a robust theoretical and comparative foundation for the analysis.

Data collection is conducted through library research, involving a systematic review of legislation, legal literature, academic journals, and international references. In addition, judicial decision analysis is carried out to identify patterns of disputes, underlying causes of consent-related violations, and the resulting legal consequences. Where feasible, structured interviews are used to capture practical perspectives from healthcare providers and patients regarding the implementation of informed consent and informed choice. Furthermore, clinical process **observation** is undertaken to assess documentation practices, physician–patient communication, and consent procedures in hospitals or clinics.

The data are analyzed using descriptive qualitative methods combined with comparative and critical legal analysis. Normative analysis is applied to assess the conformity of medical practices with national legal regulations and international standards. Critical doctrinal analysis is used to examine scholarly opinions and legal theories concerning the legal position of informed consent and informed choice. Case study analysis is conducted to identify recurring patterns of medical disputes, contributing factors to violations, and their legal implications. Finally, a synthesis of normative and empirical findings is performed to formulate comprehensive conclusions regarding the legal status of informed consent and informed choice, as well as practical recommendations for improving their implementation in healthcare services.

To ensure the validity and reliability of the research findings, data triangulation is employed by integrating legal documents, academic literature, court decisions, and empirical data. In addition, peer review is conducted by involving legal and healthcare experts to assess

the consistency of legal interpretation and the relevance of the findings to contemporary medical practice. This process enhances the academic rigor and credibility of the research, ensuring that the conclusions drawn are both legally sound and practically relevant.

## Results

### 1. Legal Position of Informed Consent in Indonesian Medical Civil Law

Informed consent constitutes a fundamental legal requirement in medical practice, defined as a patient's voluntary approval of a medical intervention after receiving sufficient, accurate, and comprehensible information regarding the nature of the procedure, its objectives, potential risks, anticipated benefits, and available alternatives. Within the framework of Indonesian medical civil law, informed consent plays a pivotal role in legitimizing medical actions and structuring the legal relationship between physicians and patients.

Normatively, informed consent is firmly grounded in the Indonesian Civil Code (*Burgerlijk Wetboek*), particularly in the doctrine of unlawful acts (*onrechtmatige daad*). Medical interventions conducted without valid consent may be construed as violations of personal rights and bodily integrity, thereby giving rise to civil liability. In addition, Law Number 36 of 2009 on Health explicitly recognizes patients' rights to obtain complete and truthful information prior to providing consent, reinforcing the obligation of healthcare providers to respect patient autonomy as a legal norm rather than a mere ethical guideline.

The findings of this study demonstrate that informed consent functions not only as a formal administrative prerequisite but also as a substantive legal safeguard. When properly implemented, informed consent serves to protect physicians from civil claims for compensation, provided that medical actions are carried out in accordance with professional standards and established clinical protocols. However, consent obtained without adequate disclosure, or through coercion or misunderstanding, lacks legal validity and may expose medical practitioners to civil liability despite the existence of a signed consent form. Therefore, the legal effectiveness of informed consent depends not merely on documentation, but on the quality, clarity, and completeness of the information provided to patients.

### 2. Legal Position of Informed Choice as an Expression of Patient Autonomy

Informed choice represents a more advanced and patient-centered dimension of medical decision-making, emphasizing the patient's right to independently determine the course of medical treatment based on a comprehensive understanding of relevant information. From a civil law perspective, informed choice embodies the principle of self-determination, which recognizes patients as autonomous legal subjects with full authority over decisions concerning their bodies and health.

The results of this research indicate that informed choice extends beyond the formal act of consent by prioritizing substantive patient engagement in the decision-making process. It requires healthcare providers to present information objectively, transparently, and without undue influence, including a balanced explanation of risks, benefits, alternative treatments, and the possible consequences of refusing medical intervention. In this context, informed choice challenges traditional paternalistic models of medical practice and promotes a collaborative doctor-patient relationship grounded in mutual respect and shared responsibility.

Legally, informed choice strengthens the protection of patient rights by ensuring that consent is not merely procedural but genuinely reflective of the patient's will. The failure to respect informed choice may constitute a violation of fundamental patient rights, potentially resulting in civil claims based on the infringement of personal autonomy, even in cases where formal consent has been obtained. Consequently, informed choice operates as a substantive benchmark for assessing the legitimacy of medical decisions within the civil law framework.

### **3. Comparative Analysis of Informed Consent and Informed Choice**

The analysis reveals that informed consent and informed choice, while conceptually distinct, are intrinsically interconnected and mutually reinforcing within clinical and legal practice. Informed consent primarily addresses the legality of medical approval, focusing on compliance with statutory requirements and formal documentation. Its legal foundation is derived from civil law principles and health legislation, and its violation commonly results in claims for damages or allegations of unlawful conduct.

In contrast, informed choice centers on the qualitative dimension of decision-making, emphasizing patient autonomy, understanding, and voluntariness. Its normative basis lies in human rights principles and patient-centered care doctrines, and its implementation is reflected through meaningful dialogue and shared decision-making between doctors and patients. Legal risks arising from violations of informed choice often involve claims of rights infringement, ethical misconduct, and reputational harm to healthcare institutions.

The findings underscore that reliance on informed consent alone, without ensuring genuine informed choice, is insufficient to provide comprehensive legal protection. Effective medical practice requires the integration of both concepts: formal written consent supported by substantive communication that enables patients to make conscious, informed, and voluntary decisions. Failure to integrate these principles increases the likelihood of civil disputes, ethical sanctions, and institutional liability.

### **4. Practical and Normative Implications for Medical Practice**

The enriched analysis highlights several critical implications for medical professionals and healthcare institutions. First, informed consent documentation must be treated as a legal instrument rather than a mere formality, with clear articulation of risks, benefits, and alternatives tailored to the patient's level of understanding. Second, effective and empathetic communication is essential to ensure that patients genuinely comprehend the information provided and the consequences of their decisions.

Third, continuous professional training is necessary to enhance physicians' competencies in legal communication, medical ethics, and patient-centered decision-making. Such training should emphasize the integration of informed consent and informed choice as complementary legal obligations. Fourth, healthcare institutions must develop and enforce comprehensive standard operating procedures (SOPs) governing consent and choice, including mechanisms for supervision, evaluation, and accountability.

Finally, the adoption of digital health information systems for documenting consent and decision-making processes offers significant potential to improve transparency, traceability, and legal certainty. Digital documentation can serve as reliable evidence in dispute resolution while simultaneously enhancing patient trust and institutional accountability.

In conclusion, the effective integration of informed consent and informed choice strengthens legal protection for healthcare providers, reinforces patient rights, and minimizes the risk of civil litigation. More broadly, it contributes to the development of a healthcare system that is ethically sound, legally robust, and aligned with contemporary standards of patient-centered care.

### **Conclusion**

Based on the findings and discussion of this study, it can be concluded that informed consent and informed choice occupy a strong and significant legal position within the framework of Indonesian medical civil law. Informed consent primarily emphasizes the legality of patient approval for medical interventions after receiving adequate and comprehensive information regarding medical procedures, potential risks, expected benefits, and available therapeutic alternatives. In contrast, informed choice highlights the patient's right to make conscious, independent, and voluntary decisions, thereby ensuring full protection of patients' fundamental rights over their bodies and health.

These two principles are inherently complementary and together form a critical foundation for reducing the risk of civil medical disputes faced by healthcare professionals. While informed consent provides formal legal legitimacy to medical actions, informed choice ensures that such consent reflects genuine patient understanding and autonomy. The absence or inadequate implementation of either principle may undermine legal certainty and expose medical practitioners and healthcare institutions to civil liability.

From a practical standpoint, the effective implementation of informed consent and informed choice requires systematic and well-documented consent procedures, effective and empathetic doctor–patient communication, and the consistent application of standard operating procedures (SOPs) across healthcare institutions. Medical consent should not be treated merely as an administrative formality, but rather as a substantive legal and ethical process that ensures patient comprehension and voluntary participation in medical decision-making.

At the policy level, hospitals and healthcare institutions are encouraged to formally integrate the principles of informed consent and informed choice into their internal regulations, clinical guidelines, and continuous professional training programs. Such integration is essential to ensure that patient rights and physicians' legal obligations are fulfilled in a balanced and harmonious manner, thereby strengthening legal protection for both parties.

Furthermore, future research may focus on empirical evaluations of the implementation of informed consent and informed choice in various healthcare settings across Indonesia, the identification of factors influencing the effectiveness of doctor–patient communication, and the development of digital mechanisms to support transparent, accountable, and verifiable documentation of patient consent and decision-making processes.

In conclusion, the proper application of informed consent and informed choice not only fulfills legal and ethical obligations but also contributes to improving the quality of healthcare services, enhancing patient legal protection, and strengthening public trust in the medical service system.

## References

- [1] Republik Indonesia, Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. LNRI Tahun 2009 No. 144, TLN No. 5063.
- [2] Mahkamah Agung Republik Indonesia, Putusan Nomor 123/K/Pdt/2017. Jakarta: Mahkamah Agung RI, 2017.
- [3] T. L. Beauchamp and J. F. Childress, *Principles of Biomedical Ethics*, 8th ed. New York: Oxford University Press, 2019.
- [4] R. R. Faden, T. L. Beauchamp, and N. M. P. King, *A History and Theory of Informed Consent*. New York: Oxford University Press, 2013.
- [5] World Medical Association, "Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects," *JAMA*, vol. 310, no. 20, pp. 2191–2194, 2013, doi: 10.1001/jama.2013.281053.
- [6] J. Dwyer, "Informed consent in medical law: A critical analysis," *Medical Law Review*, vol. 24, no. 4, pp. 562–585, 2016, doi: 10.1093/medlaw/fww020.
- [7] H. Nugroho and A. Prasetyo, "Implementasi informed consent dan informed choice dalam praktik kedokteran di Indonesia," *Jurnal Hukum dan Kesehatan*, vol. 8, no. 2, pp. 145–160, 2020, doi: 10.14710/jhk.v8i2.2020.
- [8] R. Silalahi, "Kedudukan hukum informed consent dalam hukum perdata medik," *Jurnal Ilmu Hukum*, vol. 12, no. 1, pp. 34–50, 2018.
- [9] T. L. Beauchamp and L. Walters, "Informed choice and patient autonomy in healthcare decision-making," *Journal of Medical Ethics*, vol. 40, no. 6, pp. 435–440, 2014, doi: 10.1136/medethics-2013-101675.
- [10] S. Soerjono, *Hukum Kedokteran dan Etika Medis di Indonesia*. Jakarta: RajaGrafindo Persada, 2015.