Legal Implications of Procedural Defects in Informed Consent on the Evidentiary Position of Dentists in Criminal Proceedings

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Abstract

This study aims to analyze the legal implications on the evidentiary position of dentists in trials if the implementation of informed consent is proven to be procedurally flawed under contemporary regulations. Using a normative juridical method with a statutory approach and doctrinal analysis, this research examines the shift in evidentiary value when medical documentation fails to meet statutory requirements. The results indicate that the validity of informed consent possesses a cumulative construction requiring both material information disclosure and formal written execution. When a dentist fails to deliver comprehensive verbal explanations regarding clinical risks, the written document experiences a defect of will, rendering the consent voidable. In criminal proceedings governed by Law Number 20 of 2025 on the Criminal Procedure Code, a procedurally flawed informed consent loses its material evidentiary value as documentary evidence. Consequently, the legal protection and statutory immunity provided under Article 273 of Law Number 17 of 2023 concerning Health are deactivated. The ultimate legal implication transforms clinical complications from excusable medical risks into the materialization of professional negligence, opening a direct pathway for criminal liability on the grounds of fault. In conclusion, strict procedural compliance in informed consent is the absolute legal boundary protecting dentists from malpractice convictions.

Keywords :Dental Services, Evidentiary Value, Informed Consent, Medical Negligence, Procedural Flaw.

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Introduction

Oral health services represent an integral part of public health improvement efforts guaranteed by the constitution under Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The legal relationship between a dentist and a patient relies on a unique engagement termed a therapeutic contract. In health law dogma, this agreement is classified as an *inspanningsverbintenis*—meaning a commitment and maximum effort by the dentist to heal the patient based on the standards of medical science, rather than a *resultaatsverbintenis* that guarantees absolute recovery. Given that dental interventions are highly dominated by invasive procedures such as tooth extractions or odontektomi surgery, the risk of natural biological complications like massive hemorrhages or permanent nerve damage is inherently attached to every clinical intervention.[1]

Along with the paradigm shift from paternalistic medical authority to patient autonomy, individuals now possess the absolute right to determine what physical interventions may be performed on their bodies. This autonomy generates a new legal obligation for medical professionals through the execution of informed consent. Under Law Number 17 of 2023 concerning Health, specifically within Article 276 paragraph (1) letter b and Article 292, any high-risk medical action imperatively requires written consent from the patient after receiving comprehensive verbal disclosure regarding the diagnosis, procedure, alternatives, and potential complications.[2]

However, operational realities demonstrate that this obligation is frequently reduced to a mere administrative formality. Amid highly crowded clinical queues, informed consent sheets are often handed directly by nursing staff to patients to be signed immediately, bypassing the critical phase of structured verbal education by the responsible dentist. This operational deviation triggers severe legal issues when a biological complication actually materializes. Patients who are blindsided by adverse clinical impacts easily accuse a standard biological risk of being an act of professional negligence, leading to civil lawsuits and criminal complaints.

When a malpractice allegation enters the courtroom, the informed consent document serves a crucial function as documentary evidence. A legally valid and comprehensive document acts as exculpatory evidence that activates statutory immunity and legal protection for the dentist as guaranteed under Article 273 paragraph (1) letter a of Law Number 17 of 2023. Conversely, if the document is proven at trial to have been obtained through a flawed disclosure process, this defensive shield collapses. This proceeding article aims to comprehensively dissect the legal

implications on the evidentiary position of dentists at trial when the execution of informed consent is proven to be procedurally defective and non-compliant with statutory disclosure standards.

Literature Review

In the doctrine of health law, the validity of informed consent cannot be evaluated solely by the physical existence of a signature on paper. Medical action consent possesses a cumulative validity construction, wherein the fulfillment of formal requirements (written execution) must be rooted in the satisfaction of material requirements (verbal information disclosure). The patient's intent to agree to a medical procedure must stem from a comprehensive understanding (*informed*) for the contract to be legally binding.

When a divergence occurs where material disclosure is neglected while formal execution is pushed forward, the document suffers from a defect of will (*wilsgebrek*), implying a voidable legal status for the consent. In the realm of evidentiary law, informed consent functions as a private deed (*akta di bawah tangan*) recording the limited biological risks agreed upon. Losing material validity due to administrative malpractices automatically paralyzes the evidentiary strength of the document, rendering it useless as a preventive protective instrument for the medical profession before the law.

Research Methodology

This research applies a normative juridical method utilizing a statutory approach and a doctrinal or conceptual approach.[3] Legal materials were gathered through literature studies of national legislation, including Law Number 17 of 2023 concerning Health, Law Number 1 of 2023 on the Criminal Code (New Penal Code), and Law Number 20 of 2025 regarding the Criminal Procedure Code (New Criminal Procedure Code). All legal materials were analyzed descriptively and qualitatively through doctrinal analysis to formulate systematic legal arguments regarding the impact of procedural defects in informed consent on the judicial standing of dentists.

Results

4.1 Procedural Validity In Informed Consent Within Dental Services

Indonesian positive law strictly regulates that every high-risk dental intervention must absolutely integrate formal and material requirements. The material requirement is manifested through the dentist’s obligation to provide verbal explanations covering five cumulative

indicators under Article 7 paragraph (1) of Minister of Health Regulation Number 290/Menkes/Per/III/2008, which are diagnosis, purpose of action, alternative therapies, complications risks, and prognosis. This verbal disclosure must be delivered directly by the operating dentist to ensure that the patient's autonomy is articulated consciously and rationally. The fulfillment of this therapeutic communication element is positioned as the most fundamental pillar of validity before a medical action is executed.

The existence of a signature on a physical form is essentially an external formal manifestation of an internal psychological consensus already reached. In accordance with the mandate of Article 292 of Law Number 17 of 2023 concerning Health, this written form is imperative as a formal legal documentation instrument for high-risk procedures. However, the legal efficacy of such written documents will never materialize if it is detached from the substance of its disclosure. This causal relationship confirms that formal validity must not negate material validity; rather, it must serve as written proof of the verbal information fully understood by the patient.

If, in clinical operations, it is revealed that a dentist ignored the verbal education phase and directly presented the consent form through a clinical assistant, a defect of will (*wilsgebrek*) has doctrinally occurred. Signing a document under a state of clinical information blindness is categorized as an implicit misrepresentation (*misleiding*), because the patient's will is manipulated by ignorance regarding the biological hazards threatening their body.[4] Based on the construction of contract law regulated under Article 1320 of the Indonesian Civil Code, the absence of free and conscious consent directly impairs the subjective requirements of an agreement, rendering the legal status of the informed consent voidable (*vernietigbaar*).

This subjective legal defect inside the consent document collapses its primary function as *volenti non fit injuria*, or the doctrine of the victim's consent which eliminates the unlawful nature of an action. In the classification of health law, an invasive medical intervention executed without the protection of a valid informed consent automatically undergoes a radical shift in its juridical status. An action initially aimed at healing the patient (*animus healing*) mutates into a medical tort or Perbuatan Melawan Hukum (PMH). The dentist in this position is deemed to have performed an illegal physical intervention, violating the patient's right to bodily integrity protected by the constitution.[5]

This violation is further compounded when connected to professional ethical standards enshrined in the Code of Ethics for Indonesian Dentists (Kodekgi). Kodekgi obligates every practitioner to respect patient rights by disclosing treatment options honestly, transparently, and politely. When a dentist shortcuts disclosure procedures for time efficiency or high patient

volume, they violate positive law and diminish the moral integrity of the profession. This multidimensional connection among law, ethics, and technical procedures proves that executing informed consent correctly is an absolute obligation that cannot be traded for any operational excuse.

4.2 Value Of Informed Consent Sheets As Documentary Evidence

In contemporary criminal justice, the handling of cases involving alleged medical negligence is strictly oriented toward discovering material truth to prove the presence or absence of a defendant's subjective fault. The informed consent document holds a superior judicial role because it is recognized as a manifestation of valid documentary evidence. This formal recognition is explicitly regulated under Article 235 paragraph (1) letter c of Law Number 20 of 2025 regarding the Criminal Procedure Code (New Criminal Procedure Code). The presence of this regulation provides definitive standing for medical records to be evaluated by judges when deciding malpractice trials.

The characteristics of documentary evidence in criminal procedural law are independent, objective, and inherently written. An informed consent sheet signed prior to medical action serves as a pre-dispute documentary instrument recording the agreed-upon risk boundaries. When a public prosecutor indicts a dentist for negligence causing severe injury, this document serves as the first line of defense.[6] Through this written record, the court can objectively assess the scope of information and biological risks whose management was intentionally transferred by the patient to the dentist.

However, the binding power and perfect evidentiary value of this documentary evidence heavily depend on procedural integrity when the document was obtained in the practice room. If, during trial, the prosecutor proves through patient witness testimonies that the form was signed without verbal education, the material evidentiary strength of the document collapses entirely. The written document submitted by the defense team will be assessed by judges as an empty administrative act that fails to represent material truth. This procedural execution defect judicially neutralizes the document's function as valid evidence.

The collapse of this material value places the dentist in a vulnerable defensive position (*verweer*) before the court. Verbal statements delivered by the dentist claiming at trial that adequate information was given can easily be refuted by a patient's denial. Under procedural law principles, a defendant's statement unsupported by valid documentary evidence holds weak evidentiary value (*minimal evidence*). The paralysis of written evidentiary instruments deprives judges of an objective basis to justify the clinical actions taken by the practitioner..[7]

Furthermore, the fall of informed consent as documentary evidence breaks the chain of evidentiary synchronization in court. In medical litigation practices, documentary evidence must be elaborated with expert testimonies from clinical dentistry fields to build the judge's conviction (*rechterlijke overtuiging*). When a consent sheet is declared invalid due to procedural defects, the expert testimony brought to defend the dentist's technical clinical actions loses its legal foundation. Failing to meet the minimum threshold of two valid pieces of evidence leaves a wide opening for a guilty verdict against the accused dentist.

4.3 Legal Implications Of Informed Consent Violations On The Criminal Liability Status Of Dentists

Violating the execution procedures of informed consent brings catastrophic material implications for the ongoing legal protection of dentists. The most fundamental impact of proving a procedural flaw is the deactivation of professional immunity guaranteed under Article 273 paragraph (1) letter a of Law Number 17 of 2023 concerning Health. The legal protections and immunities provided by the health legislation are strictly conditional (*conditional immunity*). Medical professionals are only entitled to protection if their duties are proven to align with professional standards and standard operating procedures.[8]

Proving that the dentist bypassed the statutory verbal disclosure process classifies the action as serious ethical and administrative malpractice. This procedural violation is constructed by criminal law as an omission of the professional duty of care, reflecting initial negligence in professional decision-making (*professional judgment negligence*). Consequently, the comprehensive preventive protection shield provided by national health legislation is revoked by law. The loss of professional immunity removes the normative boundary, allowing law enforcement officers to pursue criminal prosecution without statutory professional hurdles.[9]

The next material implication for the accused dentist is the inability to claim the statutory justification doctrine (*rechtvaardigingsgrond*) at trial. The justification doctrine regulated under Article 31 of Law Number 1 of 2023 on the Criminal Code (New Penal Code) states that actions performed to execute statutory mandates cannot be penalized. However, because the absolute prerequisites of information transparency and patient autonomy are violated, judges can no longer interpret the dentist's physical perlukaan action as a lawful execution of professional duties. The element of unlawfulness (*wederrechtelijkheid*) re-emerges fully, anchoring onto the defendant.[10]

The most radical criminal consequence of this lost legality is a judicial transmutasi in how judges view clinical complications. In dental practices, patient deteriorations such as

permanent parestesia (nerve numbness) post-odontektomi or massive hemorrhages post-extraction are biological risks excusable by law. However, if executed upon a procedurally flawed informed consent foundation, the court stops viewing the physical trauma as a medical risk. The absence of valid consent severs the defense concerning medical risk, mutating the biological complication into the direct outcome of an unauthorized act.[11]

As a final result of this judicial mutation, the path toward indictment through material professional negligence delicts opens automatically. Dentists can be held criminally liable on the grounds of fault (*culpa*) causing severe injury, as regulated under Article 474 paragraph (1) of the New Penal Code in conjunction with Article 440 paragraph (1) of Law Number 17 of 2023 concerning Health. Judges can easily construct that the severe injuries suffered by the patient stemmed from the dentist's intentional execution of an invasive procedure without lawful risk disclosure. This sequence of legal implications leading to potential imprisonment confirms that procedural compliance in obtaining patient consent is the absolute boundary separating professional service from criminal malpractice.

Conclusion

The legal implication on the evidentiary position of dentists at trial when informed consent is proven to be procedurally flawed is the total collapse of its material evidentiary value as valid documentary evidence under Article 235 paragraph (1) letter c of Law Number 20 of 2025 concerning the Criminal Procedure Code (New Criminal Procedure Code). This condition paralyzes the dentist's self-defense mechanisms to prove statutory justification (*rechtvaardigingsgrond*) under Article 31 of Law Number 1 of 2023 (New Penal Code) and deactivates professional immunity under Article 273 of the Health Law. Consequently, the characteristics of clinical complications shift from excusable medical risks into the materialization of professional decision-making negligence, opening a direct pathway for criminal liability on the grounds of fault. Strict procedural compliance in delivering comprehensive verbal explanations is the absolute legal boundary separating lawful medical interventions from criminal malpractice convictions.

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