



## Informed Consent as an Instrument of Legal Protection for Dentists

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### ABSTRACT

**Background:** Informed Consent is patient consent based on an explanation by a doctor at the hospital and is used in law and medicine to protect the public as a patient who receives health services based on information provided by the hospital through a dentist. **Research methods** This was normative research methods, which examines the law along with literature studies. It aimed to find out how to apply informed consent and to find out the legal protection related to informed consent for medical staff. **Research result:** In the Ministry of Health's Decision No. 290 of 2008 concerning the Legalization of Medical Actions, a doctor's complete explanation for the patient must include the diagnosis and implementation of the medical action, alternative actions and risks, possible complications, prognosis for the procedure, and financing. Informed consent is mandated by law to protect patients and medical professionals, especially dentists. It offers patients the comfort they need to make their own decisions. For dentists, it aims to provide legal protection against the risk of imposition associated with deficiencies in medical action. **Conclusion:** Patients and dentist can make an informed decision after receiving a thorough explanation as they have the freedom to refuse or accept the recommended treatment and seek a second opinion. Legal protection for medical staff in Article 50 of Law No. 29/2004 Medical Practice and Article 57 of Law No.36/2014 regarding Health Workers.

**Keywords:** Dentist, legal protection, informed consent, medical worker, Indonesia.

## 1. Introduction

Every person must prioritize their health as it is important to support their lives and to function in the world (Nabilla, 2014). As a basic need of every person, health is a key component of national growth (Fikriya, Sariatmi, & Jati, 2016, pp. 248–253). The government's establishment of health services is encouraged, due to the importance of health (Wahyudi, 2020, pp. 62–75).

The administration of health services for the whole population, including varied oral health services, is required to manifest health as a human right. This is in line with the Republic of Indonesia's Law No. 36 of 2014 (Meyyulinar, 2019, pp. 34–45). The Republic of Indonesia's 1945 Constitution guarantees the human right to health services as an initiative to increase the degree of public health (Oktavia, 2020, p. 24). Health services are constitutionally guaranteed for all Indonesians. Every societal group has the right to a good standard of life as stipulated in Article 28H clause (1) of the 1945 Constitution (Syafuruddin & Anand, 2015, p. 164).

Human interaction leads to legal aspects. Health law encompasses interpersonal interaction as well as the relationship between patients and dentists. Informed consent agreements are signed to state and explain the relationship between two or more parties. It is one of the reciprocal legal relationships in health services (Azizah, 2017).

Dentists as well as patients are legal subjects. They are both legally and medically bound. The legal sector regulates the protection of dentists and patients in obtaining and providing health services based on the patient's information to dentists as well as the patients' agreement based on the information from dentists called informed consent (Dzulhizza, Anatami, & Nofrial, 2023, pp. 43–50).

'Informed' refers to the acceptance of information or explanation. Meanwhile, 'consent' refers to the provision of a permit or an agreement. The agreement given after having obtained information is called *informed consent* (Isha, 2021). It means that the dentist's patients provided truthful information on their health conditions and the dentist has recommended the required medical actions. Patients have the option to approve or reject this recommendation. They also have the option to seek a second opinion from other dentists.

Informed consent aims to protect patients and medical professionals, including dentists. It also allows patients to make a comfortable decision, encouraging a better patient-dentist relationship. For dentists, it aims to offer legal protection for medical services, especially in the case of unwanted events (Sidi, 2020, pp. 214–219).

The health law concept is still deemed new. In Indonesia, it was first formulated by Fred Ameln and Oetama quoted Azizah. The fast advancement of the national health system requires an extension, including legal supervision over dental practices to insert issues associated with health and the law.

A flexible health law is crucial for legal certainty. It is also crucial to protect dentists and to develop this sector. Health principles have changed, one of them relating to the rights and obligations involved in health efforts as well as legal protection for the parties from both sides (Jadda, 2017, pp. 1–28). The law relating to health treatments is threatened to be categorized in the "health law" category that involves health treatments. Health law applies both criminal and civil laws (Azizah, 2017, p. 2).

Different countries have different informed consent policies (Saputra, 2021, pp. 235–254). On the conclusion of the agreement on dentistry actions in the Decision of the Ministry of Health No. 290 of 2008, it stated that the agreement given by the patient or close family members after obtaining information on the efforts carried out by dentists or by dentists to patients (Menteri Kesehatan Republik Indonesia (Minister of Health of the Republic of Indonesia), 2008). Information and agreements that have been agreed upon by the patient will then provide legal protection for dentists in carrying out medical actions (Gustina, Fauziah, & Agustina, 2022, p. 78).

Informed consent has a great role in the medical efforts that medical workers will carry out for patients. Because of that, in cases of high-risk medical activities, written agreements are crucial. Article 8 of the Law No. 36 of 2009 states the rights of every person to health information and medical efforts of health workers (Sugiana, 2020). In this case, medical workers and other health professionals are given protection when providing health services (Budiasuti, Ardiansah, & Triana, 2022). Legal research problem from this research was how the effectiveness informed consent as instrument of legal protection for dentist.? Thus, this research aims to analyze the ideal application of informed consent as well as to analyze the legal protection provided by the application of informed consent.

## **2. Research Method**

This study employed normative analysis. (Yunus, 2020) Its benchmark is statute studies as the source of written laws (Purwati, 2020). Apart from the literary review, this study was conducted by examining literary materials associated with the problems of this research. (Dimiyati & Wardiono, 2004) This was normative research as legal regulations were used as the main bases and sources. To collect legal information concerning the related topics, the authors analyzed information from media, journals, books, and legal decisions. These sources were then descriptively analyzed to answer the research problems.

## **3. Results and Discussion**

### **Results**

The success of health service qualities can be perceived from various subjects, i.e., (1) the users, (2) the executors, as well as (3) the investors of the health services. The workers' responsiveness to the patients' needs as well as the ease of connection between medical workers and patients are important factors associated with the quality of medical service for patients. For health workers, the advancement of health services based on the development of information and technology in the application of health services are characteristics of quality health services that need to obtain special attention. But for the parties that pay for the health services, the most important things are the consideration for the efficiency of the management of health service funds (Busro, 2018, pp. 1–18).

In 2002, the United States of America ratified the Charter on Medical Professionalism which contained several principles, i.e., prioritizing the welfare of patients, patient autonomy, as well as social justice. Then, there are ten obligations, such as professional competencies, the reality of patients, success, development of health quality, development of access to health, the equal allocation of scarce resources, and knowledge, maintaining trust through problem management, as well as professional commitment (Oktariana, 2019, pp. 34–45).

Patient protection is the objective of informed consent for all medical procedures. Medical procedures that are carried out without the acknowledgement of the patients or the family members may endanger them. Informed consent can protect medical workers from the risk of unknown impacts. Even though they are very cautious and follow the Standard Operational Procedures (SOP), dentists may not always succeed. Sometimes, they may even hurt their patients (Nasution, 2005).

In general, health services conducted by doctors and dentists start from a legal relationship (*rechtbetrekking*) in the form of contractual informed consent. This relationship demands both parties to fulfill the principle of trust and good relationships in the form of health services. Informed consent is signed by both parties (or the representative family member of the patient in the case where the patient can't do so). Referring to the principles of trust and good faith, patients must be honest in providing information before undergoing orthodontist procedures by dentists. This is so that dentists may make conclusions and formulate medical actions in the form of dental treatment, therapy, healing, and medicine (Yunanto & Helmi, 2010).

The decision of the Ministry of Health No. 290 of 2008 on the Agreement of Medical Actions state that dentists must fully inform patients of the diagnosis, treatment and risks, potential side effects, chances for the success of the surgery, and estimated fees required. Patients may also determine their own choices after obtaining a complete explanation. They have the option to reject the recommended treatment and consult other dentists (Koeswadji, 1988).

## **Discussion**

The relationship between doctors and patients is an agreement whose object is medical services or efforts of healing, known as the therapeutic agreement. A therapeutic agreement is an agreement to determine and seek the right therapy for patients (Koeswadji, 2013). In consequence, the patient's position that was formerly only a party that depended on the doctor in determining the method of healing then changed to become equal with the doctor, i.e., as a subject of medical treatment. Thus, between these two parties, a reciprocal relationship of rights and responsibilities occurs. If the rights and responsibilities are not fulfilled by one of the parties, it is possible for the party who experienced losses to sue the opposing party (Isfandyarie, 2005).

The existence of informed consent provides the protection needed by dentists, as it contains information on the health condition of the patients. It also contains offers of medical actions from doctors and dentists. When a dentist has carried out professional medical actions approved by patients, but then an unwanted event occurred (such as patients' health suddenly dropped), thus, in the examination by the ethical assembly, informed consent becomes the first thing to be examined to seek data that the dentist has excreted his greatest capabilities in undergoing his profession (Berg, 2021).

Legally, the protection for dentists encompasses three legal dimensions, i.e., legal administration, civil law, and criminal law. Legal protection is positioned as a premium ultimatum. (Sulaiman, 2019). This process starts with ethical examination in the dentistry ethical trial in the case an unwanted event or a malpractice happened. This examination is firstly carried out to see the informed consent. In the examination, the informed consent is matched with other information profession (Susila, 2021) (for instance, patients suffer from certain diseases that can endanger them when certain orthodontic medical actions are conducted, but they did not inform this to the dentists). There is also an examination of whether or not the medical actions conducted are suitable. In this examination, the assembly also checks the application of the Work Order, SOP, Permit of Practice, and other documents, apart from examining the medical records. (Retnowati, 2022) In the case of the violation of the SOP, the perpetrator will be imposed with administrative sanctions. In the case of the violation of informed consent, the doctors will be imposed with civil punishments. Then, in the case of malpractice or negligence, the doctors will be imposed with sanctions based on criminal law (Shidarta, 2006).

The decision of the Ministry of Health No. 290 of 2008 on the Agreement of Medical Actions Article 2 explains that the holistic efforts of doctors that will be carried out on patients must obtain validation. Informed

consent was created due to a therapeutic agreement between dentists and patients (Shidarta, 2006). According to Kerry Breen, doctors who fail to accurately inform (based on the description from patients and the results of examination) of their conditions, the required treatments, risks, materials, and technicalities may be sued for negligence (Breen, 2016).

Law No. 29 of 2004 on Medical Practices has explained the information that the "Legal protection for dentists on the administration of medical actions", and the rights, as well as obligations of dentists, are stipulated in Article 50. In carrying out their practices, dentists have the right to (The Government of the Republic of Indonesia, 2004):

- a. obtain legal protection in undergoing their tasks according to the professional standard and SOP;
- b. administer medical treatments according to the professional standard and SOP;
- c. obtain holistic information based on the facts from patients and their families; and
- d. receive payments.

Article 57 of Law No. 36 of 2014 on Health Workers, Chapter of the Health Workers' Rights and Responsibilities states that in carrying out their practices, medical workers have the right to (The Government of the Republic of Indonesia, 2014):

- a. obtain legal protection in undergoing their tasks according to the professional standard, the standard of professional services, as well as the SOP;
- b. obtain holistic information based on the facts from health service recipients or their families;
- c. receive payments;
- d. obtain protection related to occupational safety and health, good treatment based on morality, decency, and religious values;
- e. obtain opportunities in developing their profession;
- f. reject the request of health service recipients or other parties that violate the professional standard, ethical code, service standard, SOP, as well as legal regulations; and
- g. obtain other rights according to the legal regulations.

Patients may file a lawsuit in the form of default or law-violating actions. The lawsuit on default may be submitted based on the agreement or binding according to Articles 1320 and 1243 of the Criminal Code. Informed consent is basically a therapeutic agreement containing an agreement between doctors and patients, the capabilities of doctors and patients, certain things, i.e., medical treatments, and lawful causes. The informed consent had extent limit if the dentist neglect or do a malpractices on his medical practice.

This research proposes the dentist to ensure patient to sign informed consent and writes clearly on the informed consent about patient reports about his sickness, dentist medical suggestion and medical action. Different from others medical personels, most of the dentist patient had consciousness at the time they came to dentist. This condition have advantages for dentist because the patient usually aware with informed consent.

Dentist cant suits with the mal-practices or neglected action if his medical suggestion and action had been written on informed consent and signed by patient or family (in case patient unconscious). After patient signed informed consent, dentist should ensure he must be careful and follow any scientific procedures according to informed consent. After all of this fulfilled if there any unwanted happened then dentist cant be sued according to law

A lawsuit against a law-violating action may be submitted if a dentist has violated the principle of decency, accuracy, and caution. In submitting a lawsuit against a law-violating action, four requirements must be fulfilled, i.e., the patients must experience loss, there is neglect, there is an error (from dentists, hospitals, or health facilities), and there is a causal relationship between the losses suffered and the error or negligence as well as a law-violating action (Trisnadi, 2016, pp. 150–156).

#### **4. Conclusion**

From the results and discussion above, it was shown that the ideal application of informed consent is that referring to the principles of trust and good faith, patients must be honest in providing information before undergoing orthodontist procedures by dentists. The decision of the Ministry of Health No. 290 of 2008 on the Agreement of Medical Actions state that dentists must fully inform patients of the diagnosis, treatment and risks, potential side effects, etc. Patients may also determine their own choices after obtaining a complete explanation.

Concerning legal protection for medical workers in informed consent, it was found that dentists obtain legal protection in cases where unwanted events occurred, especially when they have carried out their best efforts according to the SOP. This was regulated in Law No. 29 of 2004 on Medical Practices and Article 57 of Law No. 36 of 2014 on Health Workers, Chapter of the Health Workers' Rights and Responsibilities.

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