

Civil Legal Liability of Doctors in Malpractice Cases Due to Violations of Informed Consent

Nabita Aulia^{1,*}, Vero Dumonda Silitonga¹, Edwin¹

¹Sekolah Tinggi Hukum Militer, Jakarta Timur, Indonesia

*Corresponding Author. Email: aulia_nab@yahoo.com, Telp: +628114342600

ABSTRACT

Introduction: The purpose of this study is to examine the civil legal liability of doctors in malpractice cases resulting from violations of informed consent.

Method: This study employs a normative legal research method, utilizing both statutory and conceptual approaches.

Results: The results of the study indicate that informed consent must be given to patients before medical action is taken, and if there is medical negligence in providing medical services, then the doctor who commits the negligence can be held criminally responsible as stated in “Article 1365, 1234, 1320 of the Indonesian Civil Code.”

Conclusion: Informed consent plays a crucial role for both patients and doctors, and failure to obtain it before a procedure can result in an unlawful act if negligence occurs, leading to harm to the patient.

Keywords: Informed consent, malpractice cases, responsibility on civil legal liability



Published by:
Universitas Negeri Gorontalo

Mobile number:
+62852 3321 5280

Address:
Jend. Sudirman St. No.6, Gorontalo
City, Gorontalo, Indonesia

Email:
jmhsj@ung.ac.id

Article History:
Received 26 July 2025
Accepted 5 September 2025
Published 6 September 2025

DOI:
<https://doi.org/10.37905/jmhsj.v4i2.33683>

Introduction

In the current framework of Health Law, the concept of informed consent is not explicitly addressed. Instead, the terms "agreement," "acceptance," or "rejection" of medical interventions are utilized, referring to an individual's decision made after fully understanding the relevant medical information.¹ In the medical field, informed consent is characterized as a patient's explicit permission or agreement to undergo treatment, which the patient must comprehend.² According to Article 293 of Law Number 17 of 2023 concerning Health, informed consent refers to any health service action performed by medical personnel and health workers, which is given after the patient has received an adequate explanation.³ This process is not only an ethical imperative but also a regulatory requirement integral to the routine practice of medicine. Essential components of informed consent include the patient's or family's explicit approval or refusal, a comprehensive explanation of the intended medical procedure, and a declaration that the consent was provided voluntarily, without coercion.⁴

The term "informed consent" is derived from two key components: "informed," which refers to the provision of relevant information, and "consent," denoting the act of giving permission.⁵ Therefore, informed consent can be defined as a patient's agreement to undergo medical treatment or care, based on a clear understanding of their diagnosis.⁶ In Indonesia, the implementation of informed consent within hospital medical services remains a significant challenge, highlighting the need for improvement in this critical aspect of patient care.⁷

In the course of their professional duties, physicians are required to adhere to the stipulations outlined in Law Number 17 of 2023 concerning Health, specifically in Article 274. This legislation provides a clear framework for informed consent and mandates that medical personnel and health workers must adhere to five essential elements in their practice. Notably, paragraph (b) emphasizes the necessity of securing consent from both the patient and their family before the implementation of any medical interventions. The question of errors is a critical intersection between health Law and criminal Law. Before determining whether an error has occurred, a medical evaluation must be conducted, as the actions of healthcare providers are inherently linked to their professional responsibilities.⁸

Informed consent is a critical safeguard for physicians against allegations of unlawful acts such as malpractice. Legally, informed consent must adhere to the criteria for a valid agreement as outlined in Article 1320 of the Civil Code, which includes mutual consent, the capacity to consent, a defined subject matter, and a lawful purpose. Within the realm of medical services, informed consent constitutes a formal agreement between a physician and a patient, wherein the patient voluntarily agrees to proceed with a medical intervention based on

comprehensive and accurate information provided by the physician regarding the diagnosis, proposed procedure, associated risks, and available alternatives. In this case, informed consent is closely related to the terms of mutual consent as one of the conditions for the validity of an agreement in the Civil Code.

Informed consent embodies the principle of trust within the legal framework governing the doctor-patient relationship. Failure to uphold this principle may lead to legal disputes, including civil lawsuits for breach of contract (as stipulated in Article 1234 of the Civil Code) or claims of unlawful acts (*perbuatan melawan hukum*, PMH) if harm to the patient occurs (Article 1365 of the Civil Code). Consequently, informed consent should be viewed not merely as an administrative formality but as a fundamental aspect of legal protection for physicians and a vital respect for patient rights. In this context, it is essential to differentiate between the concept of contract breach and PMH. At first glance, PMH and contract breach may appear similar since both can lead to lawsuits for damages. However, the fundamental distinction lies in their origins: a breach of contract occurs when one party fails to fulfill an agreement established with another party, which necessitates a prior contractual relationship. Conversely, PMH arises from actions that infringe upon the rights of others or violate one's own legal obligations, even in instances where societal ethics may be compromised.⁹

An illustrative example of inadequate informed consent in medical practice is highlighted by the case of Dr. Ayu, which gained widespread attention in 2013. This incident involved alleged malpractice that resulted in a patient's death following a cesarean section.¹⁰ Article 1365 of the Civil Code states that any unlawful act causing harm to another person obligates the responsible party to compensate for the resulting damages. For instance, if a patient suffers paralysis due to complications from an invasive procedure, yet the physician failed to provide adequate verbal or written disclosures regarding the associated risks, the validity of the patient's consent may be compromised. In such scenarios, the patient or their family can pursue legal action against the physician for negligence, even in the absence of a formal written agreement, as civil Law allows for claims based on PMH without prior contractual obligation.⁸

Informed consent is a fundamental obligation of healthcare professionals, extending beyond mere documentation to encompass the responsibility of providing patients with thorough and accurate information about their medical treatment options. It is essential, except in cases of emergencies that necessitate immediate intervention without the patient's consent. The principle of self-determination underpins the necessity of informed consent, affirming each individual's right to make *autonomous* decisions regarding their own health and bodily

autonomy. Additionally, informed consent functions as a legal safeguard, minimizing the risk of justifying medical procedures that could endanger the health or safety of individuals. From a legal standpoint, it also helps prevent malpractice.¹¹ Consequently, healthcare providers must obtain an unambiguous expression of consent from patients prior to any medical procedure. Failure to secure informed consent may expose the physician to legal and professional repercussions for their interventions.¹²

Healthcare services are fundamentally designed to deliver both treatment and preventive measures for diseases, grounded in the unique relationship between patients seeking care and physicians dedicated to curing ailments. In this framework, a physician is a qualified individual possessing the necessary medical knowledge and expertise to practice medicine competently and effectively. Conversely, a patient is defined as an individual affected by a medical condition who has entrusted their health management to a physician. Consequently, physicians have an ethical obligation to provide the highest standard of medical care to their patients. Should a physician be found negligent in their practice, they may be subject to civil liability.

Numerous studies have explored the issue of informed consent in medical practice. For instance, research by Damayanti et al. highlights the provisions of the 2023 Health Law regarding informed consent in emergencies, noting that physicians are protected from civil liability when providing life-saving treatment without written consent under such conditions.¹³ Wijaya & Kusumaningrum further illustrate that the absence of informed consent can serve as evidence of administrative negligence, potentially influencing criminal penalties for healthcare providers.¹⁴ Additionally, Saputra discusses the civil liability of physicians as outlined in Article 1365 of the Civil Code and violations of Article 45 of the Medical Practice Law, asserting that judicial evaluations of the informed consent process have been inadequate.¹⁵ Fadillah & Sewu indicate that current derivative regulations, such as Government Regulation No. 28/2024, do not sufficiently bolster informed consent procedures, suggesting the need for further legislation to enhance patient protection following the 2023 Health Law enactment.¹⁶ This study aims to analyze the civil liability of both physicians and hospitals within the framework of therapeutic contracts, with a focus on the critical role of informed consent in the formulation of medical agreements.

Methods

This study employed normative legal research to investigate methodologies for gathering library data across various formats, including books, documents, newspapers, articles, regulations, and other relevant sources. The research adopted legislative and

conceptual approaches. The notion of civil legal liability, as discussed in this study, is grounded in the framework proposed by Baghdasaryan (2022). Civil liability refers to the primary obligation that arises in cases of extracontractual liability, or an ancillary obligation stemming from the breach of a primary obligation. From a methodological standpoint, this concept encompasses the enforcement mechanisms of liability, including the identification of liable parties, their respective rights and responsibilities, as well as the extent of their liability.¹⁷ The analysis conducted in this paper was qualitative, utilizing techniques that involve classifying data into distinct categories, presenting findings in narrative form, and formulating conclusions.

Result

The relationship between medical malpractice and breach of informed consent

The primary objective of obtaining informed consent is to uphold human dignity, which is characterized by individual freedom and autonomy. Every patient has the right to make informed choices regarding their medical care. Prior to any intervention, a physician must secure the patient's explicit consent, typically documented through a consent form integrated within the patient's medical record. This written consent is essential, as it ensures compliance with established protocols within healthcare settings.¹⁸ Consequently, the healthcare institution bears responsibility for ensuring that all elements of informed consent are adequately fulfilled. Additionally, the physician who conducts the procedure may face administrative penalties if these requirements are not met.¹⁹

The therapeutic relationship established between a physician and their patient is fundamental to the concept of informed consent. Both parties possess rights and responsibilities that must be honored. It is essential to recognize various rights while ensuring the fulfillment of corresponding obligations.²⁰ The relationship between patients and healthcare professionals, which can lead to issues of medical malpractice and informed consent, encompasses all healthcare services as outlined in Article 293, paragraph 1 of Law Number 17 of 2023 on Health. This scope includes activities related to health maintenance, disease prevention, treatment, health recovery, or a combination of these, along with the methodologies employed in service delivery.²¹

Civil liability of doctors in malpractice disputes arising from informed consent

Health is a fundamental human right that must be upheld, promoted, and safeguarded by all health service providers, encompassing government entities, the private sector, and individual practitioners. This principle is articulated in Article 28, paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Furthermore, the right to health is reaffirmed in

Article 4 of Law Number 36 of 2009 on Health, emphasizing its universal applicability to all individuals.

As a public health organization, hospitals have the duty and authority over all medical assistance provided by them. The responsibilities in question include providing affordable and high-quality services, adhering to the principles of safety, inclusivity, non-discrimination, participation, and protection for members of the public, specifically users of medical services. The responsibilities of hospitals as stakeholders in medical services are stated in the provisions of "Article 15 of Law Number 25 of 2009 on Public Services." The objectives of organizing public assistance are to: (a) implement clear boundaries and affiliations regarding the rights, responsibilities, obligations, and authorities of all groups bound by the management of public assistance; (b) implement orderly enforcement of service provision following the general principles of corporate governance and responsible business management; (c) ensure that the performance of public assistance provision is following legal provisions; (d) implement legal protection and legal clarity for the general public in the management of public services.

The responsibilities and authorities of hospitals are outlined in Article 46 of Law Number 44 of 2009 on Hospitals. This article states that hospitals are held legally responsible for any damage resulting from negligence by healthcare professionals within their facilities. Hospital liability arises exclusively in instances of medical malpractice due to negligence or intentional misconduct by healthcare professionals. Under the principle of *vicarious liability*, hospitals are accountable for the negligent actions of their health workers. This responsibility encompasses the quality of care, as dictated by the doctrine of *respondeat superior*, which establishes that the institution is liable for actions undertaken by its staff that result in harm to patients. In cases of negligence by healthcare workers, hospitals can implement various responses, including reporting to the Medical Ethics Committee (MKEK/MKDKI), pursuing mediation, initiating civil lawsuits, or notifying Law enforcement authorities of potential criminal conduct.²²

Discussion

According to Soejatmiko in Isfandyarie, performing medical procedures without obtaining consent can lead to potential lawsuits from patients, constituting malpractice due to negligence.²³ Valid informed consent requires that patients receive comprehensive information regarding their proposed treatment. Physicians are required to convey, in clear and understandable terms, details about the condition, available treatment options, potential outcomes, and associated risks. Consequently, patients have the right to refuse the treatment

after being informed; this is termed informed refusal.²⁴ Recognizing human rights helps address issues related to the patient's privacy and decision-making. Before opting for informed refusal, patients must thoroughly understand the implications and sign a refusal form, thereby protecting the physician from liability associated with their decision.

When a patient provides informed consent to a healthcare professional, it reinforces the professional's legal standing. The informed consent document indicates that the patient waives the right to sue if the healthcare provider fails to meet specific obligations. However, it is essential to note that, legally, the patient retains the right to pursue legal action if the healthcare provider, physician, or hospital fails to adhere to acceptable professional standards of care.²⁵ The core components of informed consent encompass two critical elements: the information supplied by the physician and the patient's agreement to proceed based on that information.²⁶

Informed consent, although often perceived as just a signed document, carries significant weight as potential evidence in legal proceedings should a lawsuit arise. It also serves as a protective measure for physicians against patient-initiated claims, particularly when it includes explicit provisions stating that the physician will not face litigation for future complications. In the absence of informed consent, patients may pursue legal action.²⁷ Patients must be comprehensively educated about all associated risks of the medical procedure, as this understanding is essential to uphold the agreement that they relinquish their right to sue for adverse outcomes that may occur during the procedure.

When delivering medical services, hospitals have responsibilities that can be examined through the lenses of professional, administrative, civil, and criminal Law. The foundation of hospital accountability is the legal relationship established between the hospital as a service provider and the patient as the recipient of healthcare. This relationship is established through a therapeutic agreement that outlines the expectations and obligations of both parties.²⁸ Specifically, this civil legal relationship underscores the mutual fulfillment of rights and responsibilities. The hospital is obligated to uphold the rights of the patient, while the patient must respect the rights of the hospital. If either party fails to meet these obligations, it may lead to civil litigation or claims for damages from the aggrieved party who believes they have suffered harm.

Civil liability can be pursued against hospitals as legal entities or individual medical personnel, depending on the determination of who committed the error or negligence. This liability encompasses the obligation to compensate for both material and immaterial losses.²⁹ Unlawful acts within civil Law include actions or omissions that cause harm to patients and violate legal obligations or applicable norms. This highlights that hospitals and medical

professionals bear not only moral responsibilities but also legal liabilities, which can be enforced in court.³⁰

As the prevalence of civil liability cases due to medical negligence rises, it is essential to examine this issue through a civil Law lens. Physicians may be deemed culpable for professional errors, such as misdiagnoses or treatment failures, that result in patient harm.³¹ When a negligent act satisfies the criteria for an unlawful act (*onrechtmatige daad*) as defined in Article 1365 of the Civil Code—which includes elements of fault, damage, and causation—both doctors and hospitals may be held civilly liable for compensation. Cases of malpractice that align with these criteria are often classified as civil malpractice.³²

Professional negligence can be classified into two categories: *culpa lata* (*gross negligence*) and *culpa levis* (*minor negligence*). This includes acts of carelessness or failure to adhere to established medical standards. When negligence is established, patients are entitled to seek compensation for both material and immaterial damages.³¹ Furthermore, beyond individual physician liability, hospitals can also be held accountable for the actions of their medical staff under the principle of *vicarious liability* as outlined in Article 1367 of the Civil Code. Institutions may face legal action for negligence related to their employees, including issues surrounding informed consent and the inability to follow standard protocols.³³ Compensation awarded to patients typically encompasses reimbursement for medical expenses, lost income (both material and immaterial), and non-economic losses, such as pain and suffering. Legal precedents, including the Supreme Court decision PK/Pdt/515/2011, affirm that physicians can be held liable for malpractice, as evidenced by a ruling for 2 billion IDR in compensation to affected patients as a civil liability measure.³¹

In the context of medical malpractice, Taylor emphasizes the importance of the "4Ds" that must be established for a physician to be held liable: (a) Duty, (b) Dereliction of Duty, (c) Damage, and (d) Direct Causal Relationship. "Duty" entails the physician's obligation to adhere to established professional standards and to obtain informed consent from patients. This process requires that the physician communicate comprehensive information, enabling the patient to grasp the implications of medical actions. Essential elements include the risks involved, potential unexpected outcomes, alternative treatments, and the consequences of forgoing treatment. Regulatory guidelines for informed consent are outlined in "Articles 274 and 293 of Law Number 17 of 2023 concerning Health". "Dereliction of Duty" refers to a breach of these professional standards, determined by the specifics of each case and evaluated by specialists. It is crucial to distinguish between adverse outcomes resulting from complications and those resulting from negligence, as patients may conflate these scenarios.

Establishing that a physician has met their "duty" necessitates proof of negligence. "Damage" encompasses the harm experienced by the patient, including physical, financial, and emotional consequences. Lastly, a "Direct Causal Relationship" implies a clear link between the physician's actions and the subsequent harm inflicted on the patient.³¹

Conclusion

The research highlights the crucial role of informed consent in medical practice, underscoring its importance for both patient protection and legal protection for healthcare providers. Physicians must obtain valid consent before any intervention to prevent legal repercussions, including civil liability for negligence. Adhering to professional standards and ethical guidelines is essential in the informed consent process. Deviations may result in unlawful acts, allowing patients to seek compensation for damages under Article 1365 of the Civil Code. Furthermore, healthcare institutions may face vicarious liability as per Article 1367, reinforcing the importance of diligent consent practices.

Conflicts of Interest

Nothing to declare.

Funding sources

Nothing to declare.

Acknowledgment

Nothing to declare.

References

1. Octaria H, Trisna WV. Pelaksanaan Pemberian Informasi dan Kelengkapan Informed Consent di Rumah Sakit Umum Daerah Bangkinang (RSUD Bangkinang). *J Kesehatan Komunitas*. 2016;3(2):59-64.
2. Yuda B. Tingkat Pemahaman Pasien Terhadap Informed Consent: Literature Review. *J Juristik*. 2021;2(3):230-235.
3. Presiden Republik Indonesia. Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 Tentang Kesehatan. Published online 2023. Accessed May 9, 2025. <https://peraturan.bpk.go.id/details/258028/uu-no-17-tahun-2023>
4. Utami JP. Informed Consent Bukanlah Sekadar Lembar Persetujuan Medis - Alomedika. 2022. Accessed July 26, 2025. <https://www.alomedika.com/informed-consent-bukanlah-sekedar-lembar-persetujuan-medis>
5. Sulistyaningrum HP. Informed Consent: Persetujuan Tindakan Kedokteran dalam Pelayanan Kesehatan bagi Pasien Covid-19. *Simbur Cahaya*. 2021;28(1):166-186.

6. Chazawi A. Malpraktik Kedokteran. Bayu Media; 2007.
7. Kementerian Kesehatan RI. Peraturan Menteri Kesehatan Republik Indonesia Nomor 290/Menkes/Per/III/2008 Tentang Persetujuan Tindakan Kedokteran. Published online 2008.
8. Syahrizal D, Nilasari S. Undang-Undang Praktik Kedokteran Dan Aplikasinya. Dunia Cerdas; 2010.
9. Cevitra M, Djajaputra G. Perbuatan Melawan Hukum (*Onrechtmatige Daad*) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata dan Perkembangannya. *UNES Law Rev.* 2023;6(1):2722-2731.
10. Kurniawan AT. Kasus dokter Ayu, Risiko Medis Wajib Dijelaskan | tempo.co. Tempo. Desember | 10.59 WIB 2013. Accessed September 5, 2025. <https://www.tempo.co/politik/kasus-dokter-ayu-risiko-medis-wajib-dijelaskan-1561244>
11. Barhaspati KY. Pertanggungjawaban Pidana Terhadap Tindakan Malpraktek Yang Dilakukan bidan dan Perawat. *J Kertha Wicara.* 2020;9(7):1-11.
12. Yunanto Y. Pertanggungjawaban Dokter Dalam Transaksi Terapeutik. *J Law Reform.* 2011;7(1):109-123.
13. Damayanti T, Putra HD, Anggraeni HY. Informed Consent pada Kasus Kegawatdaruratan di Rumah Sakit Berdasarkan Undang-Undang No. 17 Tahun 2023. *UNES Law Rev.* 2024;7(1):246-254.
14. Wijaya B, Kusumaningrum AE. The Role of Informed Consent in Proving Medical Malpractice Cases (Review of Indonesian Supreme Court's Decision No. 233 K/PID.SUS/2021). *J Huk Polit Dan Ilmu Sos.* 2022;1(2):214-226.
15. Saputra AR. Analisis Terhadap Pertanggung Jawaban Perdata Dokter dalam Tindakan Malpraktik (Studi Kasus Putusan Mahkamah Agung. 1507 K/Pdt/2013). Undergraduate Thesis. Universitas Muhammadiyah Yogyakarta; 2024.
16. Fadillah MRH, Sewu LS. Perlindungan Hukum Bagi Pasien yang diberi Tindakan Medis Tanpa Informed consent dihubungkan dengan Asas Perlindungan dan Keselamatan Pasca Lahirnya Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. *J Ilmu Huk Hum Dan Polit.* 2025;5(3):2049-2062.
17. Baghdasaryan H. The Concept of Civil Liability. *Государство И Право N.* 2022;3(94):77-83.
18. Irfan I. Kedudukan Informed Consent Dalam Hubungan Dokter Dan Pasien. *LEGA LATA J Ilmu Huk.* 2018;3(2):154-165.
19. Komalawati V. Peranan Informed Consent Dalam Transaksi Terapeutik Suatu Tinjauan

- Yuridis, Persetujuan Dalam Hubungan Dokter Dan Pasien. Citra Aditya Bakti; 1999.
20. Syafruddin S, Anand G. Urgensi Informed Consent terhadap Perlindungan Hak-hak Pasien. *Hasanuddin Law Rev.* 2015;1(2):164-177.
 21. Tsanie ML. Tinjauan Yuridis Risiko Medis Terhadap Persetujuan Dokter Kepada Pasien Atas Tindakan Medis. *ALADALAH J Polit Sos Huk Hum.* 2023;1(1):148-165.
 22. Ekasari MT. Pertanggungjawaban Yuridis dalam Transaksi Layanan Medis (Transaksi Terapeutik) Termasuk Informed Consent Atas Tindakan Medis Pada Rumah Sakit. *Leg Spirit.* 2020;4(1):1-14.
 23. Isfandyarie A. Malpraktek Dan Resiko Medik Dalam Kajian Hukum Pidana. Prestasi Pustaka Publisher; 2005.
 24. Pakendek A. Informed Consent Dalam Pelayanan Kesehatan. *Al-Hikam.* 2010;5(2):309-318.
 25. Salim H, Nurbani ES. Perkembangan Hukum *Kontrak Innominaat* di Indonesia. Sinar Grafika; 2014.
 26. Koeswadji HH. Hukum Kedokteran (Studi Tentang Hubungan Hukum Dalam Mana Dokter Sebagai Salah Satu Pihak). Citra Aditya Bakti; 1998.
 27. Nasichin M. Pelaksanaan Persetujuan Tindakan Medis (*Informed Consent*) Antara Pihak Rumah Sakit Muhammadiyah Gresik Dengan Pasien Operasi Caesar Berdasarkan Pasal 45 Undang-Undang No 29 Tahun 2004 Tentang Praktik Kedokteran. *J Pro Hukum.* 2017;6(1):15-19.
 28. Sinaga NA. Perjanjian Terapeutik Kaitannya Dengan *Informed Consent* Dalam Praktik Kedokteran di Indonesia. *J Ilm Huk Dirgant.* 2021;12(1):1-11.
 29. Adolf H. Aspek-Aspek Negara Dalam Hukum Internasional. Raja Grafindo; 2004.
 30. Fuady M. Perbuatan Melawan Hukum. Citra Aditya Bakti; 2005.
 31. Syahrir W, Alwy S, Indar. Tanggung Jawab Hukum Perdata Terhadap Tindakan Malpraktik Tenaga Medis. *Amanna Gappa.* 2023;15(2):1-11.
 32. Hutagaol R, Harjono D, Panjaitan H. Pertanggungjawaban rumah sakit terhadap malpraktik dalam perspektif hukum perdata. *J Huk -Ra.* 2024;10(2):359-371.
 33. Tenda MMA. Tanggung gugat hukum perdata atas kelalaian tenaga medis dalam penerapan informed consent di rumah sakit. *Lex Adm.* 2024;12(3):1-13.