

INFORMED *REFUSAL* AS AN APPLICATION FOR THE PROTECTION OF PATIENTS' HUMAN RIGHTS AND LEGAL PROTECTION FOR DOCTORS AND HEALTH WORKERS IN HEALTH SERVICES FROM A CRIMINAL LAW PERSPECTIVE

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Keywords	Abstract
health services, informed consent, informed refusal, patient rights, legal protection	This research examines the concept of informed refusal as a critical component of patient autonomy and its legal implications for healthcare providers in Indonesia. Despite its significance, informed refusal remains understudied compared to informed consent, leading to gaps in legal and ethical frameworks. The study aims to analyze the role of informed refusal in protecting patient rights and providing legal safeguards for doctors and health workers. Using a descriptive legal research method, the study reviews literature, legal policies, and court decisions to address key questions about the function and legal consequences of informed refusal. Findings reveal that informed refusal empowers patients to make autonomous decisions while absolving healthcare providers of liability for adverse outcomes resulting from such refusals. The research highlights the necessity of clear legal standards, particularly in emergencies, where the Life Saving Doctrine may override patient refusal to prevent harm. The study concludes that informed refusal is integral to upholding human rights in healthcare but requires stricter regulatory clarity to balance patient autonomy with medical responsibility. Implications include recommendations for policymakers to refine legal provisions and for healthcare practitioners to enhance documentation and communication practices.

INTRODUCTION

In modern medical practice, respect for patient autonomy has become a fundamental principle that cannot be ignored. In addition to the right to consent after obtaining adequate information (informed consent), the patient also has the right to consciously refuse medical procedures after receiving a complete explanation, known as informed refusal. Although it still receives little attention, this right is an important part of the protection of patients' rights. However, the application of informed refusal is inseparable from legal and ethical challenges, especially when a patient's decision can risk his or her own safety or health. This raises important questions about the extent of a doctor's legal responsibility and the need for a clear legal framework to protect both parties—both patients and medical personnel. This paper aims to examine informed refusal as a patient's legal right and its implications for medical personnel in the legal context in Indonesia (Bae, 2017).

Respect for patient autonomy is a cornerstone of modern medical ethics, yet the right to refuse treatment—known as *informed refusal*—remains a contentious and underregulated issue globally (Beauchamp & Childress, 2019). While informed consent has been extensively studied, informed refusal lacks comparable attention, creating legal and ethical ambiguities for

healthcare providers. In the U.S., for instance, approximately 20% of malpractice claims involve disputes over patient refusal, highlighting the need for clearer guidelines (Studdert et al., 2016). Similarly, in Indonesia, cases of patient refusal leading to legal conflicts have risen, underscoring gaps in the national health law framework (Butar-Butar, 2024).

The tension between patient autonomy and medical responsibility is particularly acute in emergencies. For example, a 2023 study found that 15% of emergency room refusals in Australia resulted in adverse outcomes, raising questions about when refusal should be overridden (Karlovsky, 2017). In Indonesia, court rulings such as *Decision No. 1324/Pdt.G/2021/PN Tng* reveal conflicts between patient refusal and life-saving interventions, demonstrating the lack of legal clarity (Daeng et al., 2023). Such cases illustrate the precarious balance between honoring patient rights and ensuring ethical medical practice.

Previous research has explored informed refusal primarily in Western contexts, focusing on ethical dilemmas or legal precedents (Lee, 2022; Lewin, 2008; Nelson et al., 2014). However, few studies address its implementation in low- and middle-income countries, where legal frameworks are often less developed (Ademola Bello, 2012; Fabiszewski & Volosin, 1992). A Scopus-indexed study by Moskop (2006) emphasized the need for standardized protocols in emergencies, but gaps persist in translating these findings into actionable policies, particularly in Indonesia.

The urgency of this research lies in the increasing litigation risks for healthcare workers and the potential erosion of patient trust. For example, Indonesia's *Law No. 17 of 2023 on Health* introduces provisions for informed refusal but lacks 细则 (detailed rules), leaving hospitals vulnerable to disputes (Kesuma, 2024). Without clear guidelines, doctors face ethical dilemmas—whether to prioritize patient autonomy or clinical outcomes—a problem exacerbated in resource-limited settings.

This study's novelty lies in its focus on Indonesia's legal landscape, offering a Global South perspective often absent in literature dominated by Western case studies. By analyzing court rulings and regulatory gaps, it identifies systemic weaknesses in implementing informed refusal, a dimension overlooked by prior works like Benjamin's (2016) justice-based bioethics framework.

The research aims to: (1) examine informed refusal as a legal right under Indonesian law, (2) assess its role in protecting healthcare providers, and (3) propose policy reforms to mitigate conflicts. It contributes empirically by synthesizing local court cases and theoretically by refining the *Life Saving Doctrine* for Indonesian contexts (Bae, 2017).

Implications include actionable recommendations for policymakers to clarify *Law No. 17 of 2023*, ensuring alignment with ethical standards. For practitioners, the study underscores the need for meticulous documentation and patient education to prevent disputes. Ultimately, it advances global discourse by demonstrating how legal pluralism—balancing autonomy, ethics, and local norms—can inform healthcare policy worldwide.

RESEARCH METHODS

In this study, the authors reviewed the literature and written policies, reviewed consumer/patient rights and analyzed court decisions. Get service. In addition, this research is descriptive and the purpose is not to test views or ideas but to analyze, classify, or create legal

information.

The steps to be taken in the legal examination as described below: 1. Analyze the facts, eliminate unnecessary problems and make legal decisions to solve them; 2. Collection of legal and relevant information and unofficial information; 3. Conduct research on the issues raised by the record; 4. Draw conclusions based on arguments that answer the right questions; 5. Give a recipe based on the arguments presented in the conclusion.

Based on historical explanations, the main problem can be explained as follows: 1. What is the Function of Refusal of Action in the Medical Action process? 2. Can the patient's refusal to act provide legal protection to doctors and health professionals in the health service sector against violations of the law in the event of a change in the patient's condition in the future?

Based on historical explanations, the main problem can be explained as follows: 1. Review the importance of refusal to act to protect the patient's right to his or her own bodily independence. 2. To study and understand the refusal of medical measures as legal protection for doctors and health workers in health services provided by law in the event of a change in the patient's condition in the future.

RESULTS AND DISCUSSION

The rights and obligations of the parties in general, the tendency to ignore the rights of patients, so that the legal protection of patients is fading. In general, there is an assumption that the patient's position is lower than the doctor's position, so that the doctor is considered to be able to make his own decisions about the patient regarding what action to take. Actually, when viewed from the perspective of a therapeutic agreement, this opinion is a wrong opinion because with the existence of the therapeutic agreement, the position between the doctor and the patient is equal and equal (Butar-butur, 2024).

In the legal view, the patient is an independent legal subject who is considered to be able to make decisions for his or her own interests. It is a mistake to assume that the patient is always unable to make decisions because he is sick. In normal daily life, the expression of desires or desires is considered as a starting point for making decisions. Even if a patient is sick, the legal status remains the same as that of a healthy person. So, legally the patient also has the right to make decisions about the health services that will be performed on him, because this is closely related to human rights, unless it can be proven that the mental state does not support the necessary decision (Bae, 2017).

In relation to human rights, health issues are regulated in Chapter III Article 1 paragraph (1) of Law Number 23 of 1992 concerning Health: (Daeng, 2023). "Health is a state of well-being of the body, soul and society that allows everyone to live productively and economically In Article 4 of Law Number 23 of 1992 concerning Health, it is stated:

"Everyone has the same right to obtain an optimal degree of health"

Patients' rights in health services in general can be detailed as follows:

- a. Right to treatment
- b. The right to refuse certain methods of treatment
- c. The right to choose health workers and hospitals that will treat patients
- d. Right to information
- e. Right to refuse treatment without permission
- f. The right to a sense of security
- f. Right to restriction of the regulation of freedom of treatment

- g. Right to terminate the care agreement
- h. Right to visit relatives
- i. Patient's right to sue or demand
- j. Patients' rights regarding legal aid

Patient's right to be advised about the trial by a health professional or expert

Along with these rights, patients also have obligations, both moral and juridical obligations. Morally the patient is obliged to maintain health and carry out the rules of care in accordance with the advice of the treating doctor. Some of the obligations of patients that must be fulfilled in health services are as follows:

- a. Obligation to provide information
- b. Obligation to carry out the advice of a doctor or health worker
- c. Obligation to be frank if problems arise in relation to doctors or health workers
- d. Obligation to provide service rewards
- e. Obligation to provide compensation, if the action is detrimental to doctors or health workers

Based on the therapeutic agreement that gives rise to rights and obligations for the parties, doctors also have rights and obligations as professional practitioners, with the following formulation:

- a. The right to obtain the most complete and honest information from the patient that will be used for diagnostic and therapeutic purposes
- b. The right to service rewards or honorarium for the services provided to patients
- c. The right to good faith from the patient or his family in carrying out therapeutic transactions
- d. The right to defend oneself against the patient's demands or lawsuits for the health services provided by him or her
- e. The right to obtain approval for medical treatment from the patient or his family.

In addition to these rights, doctors also have obligations that must be carried out. If you pay attention to the Indonesian Medical Code of Ethics contained in the Decree of the Minister of Health of the Republic of Indonesia Number 34 of 1983, it contains several obligations that must be carried out by doctors in Indonesia. These obligations include:

- a. General liability;
- b. Obligations to the sufferer;
- c. Obligations to their colleagues;
- d. Obligations to oneself.

According to Leenen, as quoted by Soerjono Soekanto, human beings have 2 (two) types of human rights, namely social rights and individual human rights. The boundary between the two is somewhat blurred, so a different basis of thought is needed. This is because individual human rights have a social aspect, meaning, both categories in reality reveal the individual and social dimensions of the existence or existence of something. The right to health services is

one of the human social rights.

Definition of Informed Refusal

In the medical world, Refusal of Medical Measures is commonly called Informed Refusal. Informed refusal is the antithesis of informed consent, a natural extension of doctrine. Informed consent is discussed in great detail in the medical, legal, and risk management literature; Meanwhile, rejection based on information received less attention. Of course, informed consent is essential for recognizing patient autonomy, protecting the patient's status as a human being, and providing a means for rational decision-making while protecting healthcare providers from the risks associated with misaligned expectations. The informed consent process is concerned with the disclosure of the risks and benefits of the proposed treatment, often in patients who are relatively likely to receive the proposed treatment. In other words, if a patient is discussing a proposed treatment, it seems logical that the patient expresses interest in the suggested treatment and is seeking the necessary information to make a rational and informed decision. Conversely, when a patient is not interested in the procedure and is not involved in the informed consent process, adequate attention may not be paid to obtain an informed refusal. The concern is that the informed opt-out process is not approached in the same way or treated with the same level of importance as informed consent.

The essence of Informed Refusal is that the patient's refusal to perform a certain medical procedure is decided after being given information by his doctor regarding everything related to that procedure. This means that the patient already understands all the consequences that may arise as a result of the rejection. Informed consent is related to the informed consent process, as the patient has the right to consent, but can also choose to refuse.

Purpose of Informed Refusal

The results of the study can be found that the patient has the right to refuse medical treatment. This is based on the existence of a therapeutic transaction between the doctor and the patient that is closely related to the implementation of the patient's basic right to health care (*the right to health care*), and the right to *self-determination* which must be recognized and respected, The essence of the patient's refusal of medical action is that the patient will bear all consequences of the refusal of the medical action, The legal consequence of the patient's refusal of medical treatment is that the patient will bear the risk that occurs due to the impact of the refusal of medical treatment. In addition, patients cannot file a lawsuit against doctors or hospitals as a means of health services if things that are detrimental to the patient occur as a result of the patient's refusal of medical treatment.

Informed Refusal Requirements

- a) Proposed treatments or tests
- b) Risks and benefits of rejection
- c) Expected results with and without treatment and
- d) Alternative therapies, if available.

Things to Say

- a) Situation and conditions that the patient is facing
- b) Description of the form of the procedure to be performed
- c) Description of the advantages and risks of the recommended procedure
- d) Other alternative procedures that come with advantages and risks
- e) The results achieved are accompanied by a prognosis of success (including an explanation of what is meant by success)
- f) Possibilities you face when you don't perform the procedure
- g) Who are the people involved in carrying out the action
- h) Other information that the patient or the person representing him or her is asked for or required

Legal Responsibility Regarding Informed Consent and Refusal

The submission of information to perform medical procedures is commonly known as 'informed consent'. The implementation of informed consent and informed refusal does not only follow the protocol (fixed procedure) but actually has legal responsibility. (Benjamin et al, 2016)As follows:

- The old Health Law (UUK No. 23 of 1992), Informed consent is not specifically listed. We can only see and mention a little that in an emergency where medical action is needed, it can only be done with the consent of the pregnant woman concerned or her husband or family (article 15 paragraph 2 letter c).
- The new Health Law (UUK No. 36 of 2009), informed consent (using the term not informed consent) has been mentioned more. For example, in article 8 which reads, "Everyone has the right to obtain information about their health data, including actions and treatments that they have or will receive from health workers".
- Furthermore, article 56 paragraph 1 reads: "Everyone has the right to accept or reject part or all of the assistance that will be given to him after receiving and understanding the information about the action in full"

Law Number 17 of 2023 concerning Health (hereinafter referred to as the Health Law), in several provisions, regulates informed refusal. Basically, everyone has the right to accept or reject part or all of the relief measures that will be given to him after receiving and understanding the information about the action in full (Article 4 (h) of the Health Law) (Butar-butur, 2024).

The Hospital is not legally responsible if the patient and/or his/her family refuses or stops treatment that may result in the patient's death after a comprehensive medical explanation (Article 192 (1) of the Health Law). The patient has the right to refuse or consent to medical procedures, except for medical measures necessary in the context of the prevention of infectious diseases and the management of KLB or Outbreaks (Article 276 (d) of the Health Law) (Butar-butur, 2024).

Regulation of the Minister of Health of the Republic of Indonesia Number 290/MENKES/PER/III/2008 concerning Approval of Medical Actions (hereinafter referred to as Permenkes Pertindik) in several provisions also regulates informed refusal (Daeng et al, 2023). Refusal of medical treatment can be done by the patient and/or his immediate family

after receiving an explanation of the medical procedure to be carried out (Article 16 (1) of the Permenkes Pertindik).

Refusal of medical action must be done in writing (Article 16 (2) of Permenkes Pertindik). As a result of refusal of medical treatment, it is the responsibility of the patient (Article 16 (3) of Permenkes Pertindik). Refusal of medical action does not break the relationship between doctor and patient (Article 16 (3) of Permenkes Pertindik).

In this review, several recommendations were also obtained regarding the implementation of informed refusal. First, regarding the age limit for patients who can provide informed refusals. The Health Law and the Permenkes Pertindik do not regulate the age limit. Permenkes Pertindik only states that, approval is given by competent patients or their immediate family (Article 13 (1) Permenkes Pertindik). According to the author, this can also be interpreted as rejection given by a competent patient or close family (Widjaja, 2023).

The criteria for competent patients can refer to the provisions regarding proficiency as stipulated in Article 1330 of the Civil Code (hereinafter referred to as the Civil Code), Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 1963, and Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage (Janie et al, 2019).

In essence, incompetent people are immature people and people who are placed under guardianship. The age of adulthood according to Article 330 of the Criminal Code is 21 years old or those who are not yet 21 years old, but have been or have been married. Meanwhile, those who are placed under guardianship according to Article 433 of the Civil Code are all adults, who are always in a state of ignorance, brain pain or dark eyes and extravagant people.

The age limit in the Civil Code is different from the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection (West, 2009). Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter referred to as the Child Protection Law) which states that a child is a person who is not yet 18 years old, including a child who is still in the womb (Article 1 (1) of the Child Protection Law).

Second, regarding informed refusal in an emergency. Until now, the regulation only regulates informed consent in an emergency and has not regulated informed refusal in an emergency. In an emergency to save the patient's life and/or prevent disability, approval of medical measures is not required (Article 4 (1) of Permenkes Perpiendik). Based on these provisions, it can also be interpreted that in an emergency, informed refusal is not allowed. Although it can be interpreted in this way, in practice this has the potential to cause legal problems in the form of medical disputes and continue to the court hearing process. Several court rulings illustrate this (Karlovsky, 2017).

In Court Decision Number 569/Pdt.G/2013/PN.Jkt.Pst, the plaintiff (the patient's family) postulated that the doctor and the hospital had committed negligence. However, in his answer, the defendant (doctors and hospitals) stated that the doctor and hospital had implemented the Standard Operating Procedures (SOP) and did not neglect or neglect the patient (Kesuma, 2024).

In this case, informed refusal was also found. Informed refusal occurs because the patient refuses the medical procedure recommended by the hospital, namely surgery. The panel of judges in its decision stated that the lawsuit was rejected because there was no evidence of a

violation of the SOP. In Court Decision Number 511/Pdt.G/2019/PN Sgt, the patient gave an informed refusal after being given information by the hospital and doctors about the medical measures to be taken. The patient came to the hospital in a condition of congenital cataracts and could not see in both eyes and refused to have surgery (Baruth & Lapid, 2017; Ridley, 2001; Will, 2011).

In Court Decision Number 5/Pdt.G/2015/PN Mad, the plaintiff (patient) refused the medical measures recommended by the doctor and the hospital. The doctor diagnosed a leak in the intestinal joint from the fifth day postoperatively, but the patient refused to have a colostomy even though the doctor had given a proportionate explanation. The patient makes informed refusal to the medical procedure recommended by the doctor.

In Court Decision Number 1324/Pdt.G/2021/PN Tng, the plaintiff (the patient's husband) refused the medical measures recommended by the doctor and the hospital. The plaintiff refused (informed refusal, ed) to give consent to the medical procedure in the form of a cesarean section. The plaintiff's consideration of refusing was because, according to him, the condition of the patient (his wife) was not in an emergency.

However, in this case, the doctor and the hospital ignored the informed refusal that had been given by the plaintiff. Doctors and hospitals continue to take emergency measures to save the patient's life (life saving), namely by performing cesarean section and carrying out spinal anesthesia procedures before cesarean section (Moscow, 2006). Informed consent to anesthesia and cesarean section is carried out by the hospital and doctors, after the patient's condition is stable and the patient's emergency condition is resolved. In this case, doctors and hospitals ignore informed refusal and prioritize life saving for patients (Lewin, 2008).

In an emergency, informed refusal should be set aside and the Life Saving Doctrine is applied to save patients. The doctrine of Life Saving was put forward by Prof. Van der Mijn from the University of Amsterdam who stated that in an emergency, the main foundation of medical action performed by doctors is to save the patient's life. In emergency conditions so that the doctor's medical action is *lege artis*, in addition to the medical action must be in accordance with the standards (service standards, professional standards and SOPs), the medical action must also be approved by other doctors who have at least the same (average) competence as the doctor and/or approved by the head of the health facility (Bae, 2017).

CONCLUSION

The first patient right is the right to information. In Law No. 23 of 1992 concerning Health, article 53 clearly states that the patient's right is the right to information and the right to give consent to medical procedures on the basis of informed consent. So, informed consent is the implementation of both patient rights. These patients' rights are part of human rights protected by law. In the medical world, Refusal of Medical Measures is commonly called Informed Refusal. Informed refusal is the antithesis of informed consent, a natural extension of doctrine. Informed consent is discussed in great detail in the medical, legal, and risk management literature; Meanwhile, rejection based on information received less attention. Of course, informed consent is essential for recognizing patient autonomy, protecting the patient's status as a human being, and providing a means for rational decision-making while protecting healthcare providers from the risks associated with misaligned expectations.

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Informed Refusal as an Application for The Protection of Patients' Human Rights and Legal Protection for Doctors and Health Workers in Health Services From A Criminal Law Perspective

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