

Dentist's Responsibility for Improper Implementation of Informed Consent

R. Veryanto Kurniawan¹, Sutarno² Hari Pudjo Nugroho³

¹ Hang Tuah University Surabaya, Indonesia; kurniawan.verri@gmail.com

² Hang Tuah University Surabaya, Indonesia; sutarno@hangtuah.ac.id

³ Hang Tuah University Surabaya, Indonesia; haripnugroho@gmail.com

ARTICLE INFO

Keywords:

Responsibility;
Dentist;
Informed Consent

Article history:

Received 2025-06-07

Revised 2025-07-02

Accepted 2025-08-06

ABSTRACT

The purpose of this study is to analyze the application of informed consent to dentists' responsibilities under civil law and to analyze the application of informed consent to dentists' responsibilities under criminal law. This study falls into the category of normative legal research. The research approaches used consist of a legislative approach, a comparative approach, and a conceptual approach. The findings in this study indicate that the implementation of informed consent, in the context of civil liability, reflects the application of contractual principles in the professional relationship between dentists and patients. This relationship is based on a valid agreement as stipulated in Article 1320 of the Indonesian Civil Code (KUHPerdata). This study also shows that without valid consent from the patient, medical actions performed by dentists may lose their legal justification and, from a juridical perspective, can be classified as unlawful acts, such as abuse or negligence resulting in criminal consequences. This is in line with the provisions of Article 440 of Law Number 17 of 2023 concerning Health, which regulates criminal sanctions for medical personnel whose negligence causes serious injury or death. This provision is further strengthened by the general provisions in Articles 466 to 469 of Law Number 1 of 2023 concerning the Criminal Code (KUHP) which regulates criminal acts against the human body.

This is an open access article under the [CC BY-NC](#) license.



Corresponding Author:

R. Veryanto Kurniawan

Hang Tuah University Surabaya, Indonesia; kurniawan.verri@gmail.com

1. INTRODUCTION

A crucial aspect of dental practice is providing informed consent to patients, which serves as a form of consent given consciously and based on sufficient information before a medical procedure is performed. Ambiguity in the application of informed consent often triggers legal disputes, particularly in cases of alleged dental malpractice. Informed consent norms in Indonesia are regulated by various regulations, one of which is Law Number 17 of 2023 concerning Health. Dentists are required to explain procedures,

risks, and alternatives to medical procedures before obtaining consent from patients. However, in practice, many cases show that informed consent is merely an administrative formality without providing adequate understanding to patients. This can lead to lawsuits if patients suffer losses due to medical procedures performed without sufficient understanding (Aulia & Yusuf, 2025).

In practice, many cases of informed consent are still found to be improperly implemented, such as using incomplete information, language that is difficult for patients to understand, or even obtaining a patient's signature without adequate explanation. This can lead to harm, misunderstandings, or even lawsuits against dentists, especially if complications arise after the procedure. Improperly implementing informed consent has the potential to violate patients' human rights and weaken the legal standing of medical personnel (Budiasuti, Ardiansah, & Triana, 2022).

A dentist's legal responsibility in the context of informed consent extends beyond administrative aspects to ethical and professional responsibilities. According to Indonesian law and the Code of Dental Ethics, doctors are required to communicate the risks, benefits, and alternatives of a medical procedure to patients. If a dentist fails to fulfill this obligation, they may be subject to ethical sanctions, civil and criminal law.

In dentistry, procedures such as tooth extractions, root canal treatments, implant placement, and other surgical procedures carry certain medical risks. Therefore, proper informed consent is crucial to ensure that patients understand these risks. Improper performance can potentially give rise to malpractice claims, even if the procedure was performed technically correctly.

The issue of informed consent in dental practice is often viewed as a mere administrative formality, when in fact it is an essential form of two-way communication. Patients' ignorance of the procedures they will undergo, including the risks and costs, can lead to dissatisfaction, trauma, or even lawsuits. In such circumstances, the dentist's accountability is at stake, both in terms of professional integrity and public trust (Ramadhan, 2021).

Several legal cases in Indonesia have shown that patients or their families have sued medical professionals because they felt they were not given adequate explanations before performing medical procedures. In these legal proceedings, the implementation of informed consent is key evidence to determine whether the patient gave their consent consciously or unconsciously. If informed consent is proven to have been improperly implemented, the dentist can be deemed negligent or have committed a violation of the law. A dentist's responsibility for improperly implementing informed consent encompasses three main aspects: ethical responsibility, legal responsibility, and professional responsibility. Ethically, dentists are obligated to uphold the principle of patient autonomy. Legally, dentists can be held liable civilly, criminally, or administratively for negligence. Professionally, errors in implementing informed consent can tarnish the reputation of the profession and the institution where they work (Dzulhizza, Anatami, & Nofrial, 2024).

Given the importance of informed consent in dental practice, it is crucial to examine the responsibilities that dentists face when errors occur in the implementation of informed consent. This research is crucial for providing practitioners and dental students with an understanding of the legal consequences that arise from negligence in implementing informed consent. The objectives of this research are: 1) to analyze the application of informed consent to dentists' responsibilities under civil law; and 2) to analyze the application of informed consent to dentists' responsibilities under criminal law.

2. METHODS

This research falls under normative legal research. The research approaches include a legislative approach, a comparative approach, and a conceptual approach. The legal materials comprise primary, secondary, and tertiary legal materials. The collection and processing of legal materials were conducted through documentary studies. The legal materials were analyzed using qualitative analysis.

3. FINDINGS AND DISCUSSION

3.1. Application of Informed Consent to Dentists' Responsibilities Under Civil Law

Informed consent is approval given by a patient consciously and voluntarily after receiving sufficient information and clear information from medical personnel regarding the medical action to be taken, including the purpose, procedure, risks, benefits, and alternative actions (Tjoman & Agus, 2024). Ethically, informed consent reflects respect for the principle of patient autonomy, namely the individual's right to make choices about their own body and life. In the Indonesian Code of Medical Ethics and the Code of Dental Ethics, this principle is the basis for maintaining trust between medical personnel and patients. Doctors and dentists are obliged to convey information honestly, communicatively, and according to the patient's capacity to understand, not merely as an administrative formality, but as part of essential therapeutic communication (Kusuma & Wahyuni, 2024).

Legally, informed consent provides dual protection: it protects patients from unwanted medical procedures and provides a legal basis for doctors to practice their profession. Without informed consent, medical procedures can be considered a violation of the law, either in the form of a breach of contract or an unlawful act, depending on the legal relationship established between the doctor and patient. Informed consent is not simply a consent form, but a legal and ethical communication process that places patients in an active role in medical decision-making. Violations of this principle can result in legal sanctions and ethical discipline for the medical personnel involved (Nugroho, 2025).

In civil law, a contract is a legal relationship between two or more parties, in which one party has the right to demand performance and the other party is obligated to fulfill that performance. Contracts can arise from agreements or from laws, as regulated in Article 1233 of the Civil Code (Aprita & Wulandari, 2023). In dental practice, the relationship between a dentist and a patient is generally based on an agreement, either written or verbal. This agreement is consensual, meaning it arises from an agreement between two parties: the patient agrees to receive medical treatment, and the dentist agrees to provide professional services based on competency standards and the profession's code of ethics.

Although not always formalized in a legal document, the legal relationship between a dentist and a patient creates a legally binding contract. When a patient seeks dental treatment, the dentist cannot proceed without the patient's consent. This consent, in a legal context, represents a therapeutic contract binding both parties. Within this contract, the dentist is obligated to provide complete, honest, and understandable information regarding the proposed medical procedure, including risks and alternatives. If the dentist fails to fulfill this obligation, they may be deemed to have committed a breach of contract, meaning they have failed to fulfill the obligations agreed upon in the contract. The consequences of this breach can include a lawsuit for damages or termination of the legal relationship under civil law.

Furthermore, the principle of agreement in the context of informed consent also upholds the principle of freedom of contract, meaning that patients have the full right to agree to or refuse medical treatment after obtaining adequate information. The consent given by the patient is not a mere formality, but rather a legally valid expression of will and can only be considered valid if given voluntarily, consciously, and without coercion. Therefore, the principle of engagement and agreement in civil law is a very important basic framework in understanding the position of informed consent as part of the legal relationship between dentists and patients. Without this basis, every medical action will lose its legal legitimacy and could potentially become the object of a lawsuit if harm occurs to the patient (Elizar, Arief, & Satia, 2022).

The application of informed consent to the Dentist's responsibilities under civil law is a form of implementation of the principle of engagement in the professional relationship between doctor and patient, which is based on a valid agreement as regulated in Article 1320 of the Civil Code. The patient's consent to medical procedures after receiving a complete, honest, and understandable explanation is a manifestation of the element of agreement in the engagement. This makes informed consent not merely

an administrative formality, but evidence that the patient has consciously and voluntarily agreed to the medical intervention to be carried out.

If a dentist fails to provide adequate explanation or properly document informed consent, it can result in legal consequences in the form of civil liability. If the relationship is considered an agreement, such negligence can be categorized as breach of contract under Article 1243 of the Civil Code. However, if there is no written contract but the patient suffers a loss, then liability may arise based on unlawful acts as regulated by Article 1365 of the Civil Code. In both cases, the dentist can be held liable for damages.

In the civil legal relationship between a dentist and a patient, the obligation to explain medical procedures completely, honestly, and understandably is an integral part of the therapeutic agreement that binds both parties. If the dentist fails to fulfill this obligation, this can be classified as a breach of contract. Based on Article 1243 of the Civil Code, a breach of contract occurs when one party fails to fulfill its obligations under the contract or does so but not properly. In this context, failure to explain the risks, benefits, procedures, and available alternatives means that the proper performance in the legal relationship between the doctor and the patient is not fulfilled.

Failure to provide accurate and comprehensive information directly impacts the validity of the patient's informed consent. Without sufficient understanding, the patient's consent is legally invalid because it is not based on adequate information. Consequently, if a patient suffers a loss due to a medical procedure performed without a full explanation, the patient has the right to file a civil lawsuit for breach of contract. This lawsuit can be in the form of a claim for compensation for material or immaterial losses, depending on the impact of the procedure performed without valid consent. In dental practice, breach of contract is not only related to the final outcome of the medical procedure but also includes the process leading up to the procedure, particularly regarding communication and fulfilling the patient's right to information. Violation of the obligation to provide adequate information indicates negligence in fulfilling the terms of the agreement and therefore has legal consequences according to applicable civil law principles (Pratama & Ngadino, 2022).

In dental practice, the legal relationship between a dentist and a patient is legally established through a consensual agreement, even if it is not explicitly written. This agreement arises when the patient consciously comes to the practice or clinic and submits themselves to be examined and treated by the dentist (Ujianto & Wijaya, 2020). Based on the provisions of Article 1320 of the Civil Code, this agreement is valid because it fulfills the elements of agreement, capacity, certain object, and lawful cause (Haryanti & Sari, 2024). In this legal relationship, dentists are obligated to provide healthcare services in accordance with professional standards and standard operating procedures (SOPs), including the important obligation to provide informed consent before performing medical procedures. This obligation to provide informed consent is not merely a formality, but rather an integral part of the agreement that dentists must fulfill as providers of medical services. This is emphasized in Law Number 17 of 2023 concerning Health, specifically Article 293, and is detailed technically in Minister of Health Regulation Number 290 of 2008, which stipulates that medical procedures may only be performed after the patient has been given adequate explanation regarding the diagnosis, procedure, risks, alternative treatments, and prognosis.

If a dentist performs a medical procedure without first obtaining valid informed consent from the patient, this cannot be classified as an unlawful act, but rather as a breach of contract within the context of the agreement between the two parties. This breach arises because the dentist fails to fulfill the obligations that are part of his or her obligation, namely providing complete information and obtaining the patient's informed consent before the procedure is performed. Failure to fulfill this obligation can result in legal liability in the form of compensation, both material and immaterial, as stipulated in Articles 1243 and 1246 of the Civil Code. Such losses can arise, for example, when a patient experiences complications from a medical procedure whose risks were not recognized due to the lack of prior explanation. Therefore, in a civil law approach that focuses on contractual relationships, the dentist's actions in ignoring the informed consent procedure are more appropriately viewed as a breach of the

medical service agreement that was secretly agreed upon with the patient, rather than as an unlawful act. This approach emphasizes the importance of dentists' compliance with their contractual obligations and upholding patient rights within the framework of professional and responsible healthcare services.

The legal relationship between doctors and patients, including in dental practice, is not only bound by formal agreements and regulations, but is also built on fundamental principles of civil law, namely the principles of prudence and good faith. These two principles serve as the moral and legal foundations that govern how each party exercises its rights and obligations responsibly and with mutual respect. The principle of prudence requires that every medical procedure be carried out with careful consideration, based on professional competence, and in accordance with standard medical procedures. This principle requires that dentists take firm decisions and provide information that is accurate, honest, and understandable to patients. Every potential risk, benefit, and alternative treatment must be explained objectively. This prudence is crucial because medical procedures, no matter how small, can have serious consequences for the patient's health and psychological well-being. By implementing the principle of prudence, dentists demonstrate professionalism that not only prevents malpractice but also builds ongoing patient trust (Rizka, Khairunnisa, Annabila, & Windiani, 2023).

Meanwhile, the principle of good faith requires that each party in a legal relationship act with sincere intentions, refrain from deception, and refrain from abusing their position or information. Good faith is reflected in the dentist's commitment to truly respect the patient's autonomy in making informed decisions. Doctors must not conceal risks, exaggerate benefits, or coerce patients into agreeing to medical procedures. Likewise, patients are obligated to provide honest health information and not manipulate facts for personal gain. Thus, good faith serves as a moral bond that ensures legal relations are fair and balanced (Sutamaya, Ravena, & Zakaria, 2022).

3.2. Application of Informed Consent to Dentists' Responsibilities Under Criminal Law

In practice, medical procedures performed without consent can be classified as a form of abuse (Hijrina, 2023). As regulated in Law Number 1 of 2023 concerning the Criminal Code (KUHP), abuse is defined as an act carried out intentionally and without right that causes another person to experience pain, injury, or physical or mental suffering. The elements of this crime include: 1) The existence of an active act that attacks a person's physical or psychological integrity; 2) It is done intentionally; 3) It is not accompanied by consent or a valid legal basis; and 4) It causes consequences in the form of suffering. In Law Number 1 of 2023 concerning the Criminal Code (KUHP), provisions regarding abuse are regulated more systematically in Chapter XXII concerning Criminal Acts against the Body. Abuse is regulated in Articles 466 to 471. Article 466 paragraph (1) states that anyone who commits abuse shall be punished with a maximum prison sentence of 2 years and 6 months or a maximum fine of category III, and in paragraph (4) it is emphasized that acts that damage health are also included in the definition of abuse, which explicitly opens up space for the assessment of medical actions that violate legal procedures.

If the medical action without consent results in serious injury to the patient, such as disability, permanent organ damage, or other serious physical disorders, then based on Article 466 paragraph (2), the perpetrator can be punished with a maximum of 5 years' imprisonment. If the result is the patient's death, then the penalty is increased as regulated in paragraph (3), namely a maximum of 7 years' imprisonment. The Criminal Code also regulates serious assault in Article 468, which specifically targets acts of seriously injuring another person, with a criminal penalty of up to 8 years' imprisonment, or 10 years if it results in death. In certain conditions, such as if the action is carried out with prior planning or involves materials that are harmful to health (for example, drugs or equipment that do not meet medical standards), the threat of punishment can be increased as regulated in Articles 467, 469, and 470 of the Criminal Code.

Medical procedures performed without the patient's valid consent can potentially be classified as abuse, particularly if they are performed outside the scope of medical indications, without a basis for

authorization, or if they deviate from professional standards. In this context, whether the perpetrator is a medical professional or not is irrelevant, because if consent is absent and results in injury or death, criminal law can fully apply. The new Criminal Code even emphasizes that harm to health is a form of abuse, expanding the scope of protection to the patient's right to bodily integrity. In this regard, it is crucial for all medical professionals to understand that without informed consent, medical procedures can lose their justification and become criminal acts, not simply ethical or administrative violations.

Health Ministry Regulation 290/2008 states that informed consent is the consent given by a patient or their immediate family after receiving a complete explanation regarding the medical or dental procedure to be performed on the patient. Consent given by a patient to the doctor who will perform the medical procedure should be preceded by the provision of clear, focused, honest, and accurate medical information. One of the most important things to convey to patients regarding the medical procedure they will receive is the possibility of medical risks that could be fatal for the patient (Nizar, Amiruddin, & Sabardi, 2019).

Criminal law is a collection of laws and regulations that regulate prohibited acts and the threats of sanctions imposed by the state on perpetrators of acts that violate criminal provisions. One of the main objectives of criminal law is to maintain public order and security by imposing criminal sanctions on perpetrators of criminal acts. Criminal law serves as a tool to encourage social change by criminalizing acts that are detrimental to society and encouraging people to live in accordance with the values recognized by law (Renuat et al., 2023).

In criminal law, the principle of causality is used to assess whether an outcome, such as serious injury, disability, or even death, can legally be considered the result of a specific act, in this case, a medical procedure performed without adequate explanation to the patient. Lack of informed consent constitutes serious negligence because it deprives the patient of the right to make a decision based on complete and accurate information. If a dentist performs a medical procedure without providing sufficient explanation, for example regarding risks, side effects, or alternative options, and the procedure results in serious harm such as disability or death, then a legal causal relationship can be established between the negligence and the resulting outcome. If it can be proven that the outcome would not have occurred if the patient had been provided with sufficient information and had the opportunity to refuse the procedure, then the element of legal causality is considered fulfilled. In such a situation, the dentist can be held criminally liable, at least for negligence resulting in serious injury or death.

Article 440 paragraph (1) of Law Number 17 of 2023 states that any medical or health worker who commits negligence resulting in serious injury to a patient shall be subject to a maximum imprisonment of three years or a maximum fine of IDR 250,000,000 (two hundred and fifty million rupiah). Paragraph (2) states that if negligence results in death, any medical or health worker shall be subject to a maximum imprisonment of five years or a maximum fine of IDR 500,000,000 (five hundred million rupiah). This provision demonstrates that the standard of care in medical services is not only ethical, but also has legal consequences. If a dentist is negligent, for example by failing to provide adequate informed consent, and as a result the patient suffers serious injury or dies, this provision can be used as a basis for criminal prosecution. This reinforces the importance of the *lex specialis* principle in health law, where negligence in carrying out medical procedures has the potential to result in direct criminal sanctions.

The application of informed consent in dental practice is not only an ethical and administrative obligation but also has significant criminal law implications. From a criminal law perspective, any medical procedure performed on a person's body can essentially be classified as a criminal act if it is not based on the patient's valid consent. Therefore, informed consent serves as a legal boundary and legal protection for dentists to prevent their actions from being considered abuse, negligence, or other forms of criminal offense. The absence of informed consent can give rise to criminal liability if the medical procedure results in physical or psychological consequences that are detrimental to the patient and is carried out without consent or outside of a legally permitted emergency situation (Sastrani, 2025).

The application of informed consent in criminal law serves as a justification for the legality of medical procedures performed by dentists. Without valid consent from the patient, medical procedures essentially lose legal protection and can be considered a violation of an individual's right to bodily integrity. This is important because in criminal law, any intervention on another person's body, even by medical personnel, is essentially a form of assault or violation of the law, unless it is carried out with valid consent, within professional standards, and does not violate applicable law. Informed consent is key to determining whether a medical procedure is considered a criminal offense.

4. CONCLUSION

The application of informed consent to the Dentist's responsibilities under civil law is a form of implementation of the principle of engagement in the professional relationship between doctor and patient, which is based on a valid agreement as regulated in Article 1320 of the Civil Code. If the dentist fails to provide adequate explanation and the medical action causes harm, then he can be held legally responsible in the form of breach of contract or unlawful acts in accordance with the provisions of the Civil Code and applicable laws and regulations.

The application of informed consent to a dentist's responsibilities under criminal law is an absolute requirement to guarantee the legality of a medical procedure and avoid potential criminal liability. Without valid consent from the patient, medical procedures performed by a dentist may lose their justification and may be legally classified as unlawful acts, such as abuse or negligence that give rise to criminal consequences. This is in line with the provisions of Article 440 of Law Number 17 of 2023 concerning Health, which regulates criminal penalties for medical personnel whose negligence causes serious injury or death, and is reinforced by the general provisions of Articles 466 to 469 of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, which regulate criminal acts against the body.

REFERENCES

- Aprita, S., & Wulandari, M. (2023). *Hukum Perikatan*. Jakarta: Kencana.
- Aulia, H., & Yusuf, H. (2025). Tinjauan Yuridis Atas Perlindungan Hukum Bagi pasien dan Dokter Terkait Dugaan Malpraktek Berdasarkan Undang-Undang Nomor 17 Tahun 2023. *Jurnal Intelek Insan Cendikia*, 2(1).
- Budiastuti, D. K., Ardiansah, A., & Triana, Y. (2022). Tanggung Jawab Dokter Gigi Atas Kelalaian Terhadap Pasien. *Law, Development and Justice Review*, 5(1), 115–127. <https://doi.org/10.14710/ldjr.v5i1.16213>
- Dzulhizza, D. S. R., Anatami, D., & Nofrial, R. (2024). Aspek Yuridis dalam Pertanggungjawaban Hukum Profesi Dokter pada Perspektif Pelayanan Informed Consent Untuk Mewujudkan Perlindungan Hukum. *Jurnal Kajian Ilmiah*, 23(1), 43–50. <https://doi.org/10.31599/ns23rd60>
- Elizar, S. P., Arief, M. T., & Satia, R. A. (2022). Etika Kesehatan Dalam Upaya Persetujuan Tindakan Medis (Inform Consent) Dalam Pelayanan Kesehatan. *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora*, 1(1).
- Haryanti, A. T., & Sari, L. (2024). *Buku Referensi Hukum Perdata (Teori dan Praktik)*. Jambi: Sonpedia Publishing Indonesia.
- Hijrina, I. (2023). *Buku Ajar Etika Keperawatan*. Jambi: Sonpedia Publishing Indonesia.
- Kusuma, M., & Wahyuni, S. (2024). *Aspek Etik dan Hukum Praktik Kedokteran Gigi*. Palembang: Bening Media Publishing.
- Nizar, M., Amiruddin, & Sabardi, L. (2019). Ajaran Kausalitas dalam Penegakan Hukum Pidana (Studi Putusan Mahkamah Agung Nomor 498 K/PID/2016). *Jurnal Education and Development*.
- Nugroho, T. (2025). *Pidana Medik*. Indramayu: Adab Indonesia.

- Pratama, C. A. E., & Ngadino. (2022). Kedudukan Informed Consent Sebagai Perlindungan Hukum Hubungan Dokter Dan Pasien Dalam Kasus Malpraktek. *Notarius*, 15(1), 241–252. <https://doi.org/10.14710/nts.v15i1.46038>
- Ramadhan, M. S. (2021). Implementasi Asas Hukum Perjanjian Terapeutik Dan Informed Consent. *Istinbath : Jurnal Hukum*, 18(1), 32–49. <https://doi.org/10.32332/istinbath.v18i1.2850>
- Renuat, F., Jamba, P., Siagian, A. A., Putra, Y. H., Darlisma, Rismanto, D., ... Yustrisia, L. (2023). *Pengantar Hukum Pidana*. Padang: Gita Lentera.
- Rizka, A., Khairunnisa, C., Annabila, Z. I., & Windiani, S. (2023). Pelaksanaan Informed Consent Dalam Pelayanan Medik. *Malahayati Nursing Journal*, 5(4), 1284–1294. <https://doi.org/10.33024/mnj.v5i4.8033>
- Sastrani, I. D. A. N. U. (2025). Analisis Yuridis Peran Informed Consent dalam Penghapusan Pertanggungjawaban Pidana bagi Tenaga Medis. *Journal Evidence Of Law*, 4(1), 347–359. <https://doi.org/10.59066/jel.v4i1.1214>
- Sutamaya, A. G., Ravena, D., & Zakaria, C. A. F. (2022). Informed Consent As A Therapeutic Agreement In Health Services. *Interdental Jurnal Kedokteran Gigi (IJKG)*, 18(1), 7–13. <https://doi.org/10.46862/interdental.v18i1.4306>
- Tjoman, A. L., & Agus, A. S. S. (2024). *Informed Consent Sebagai Alasan Penghapus Pidana*. Jakarta: Raja Grafindo Persada.
- Ujianto, M. B., & Wijaya, W. (2020). Tanggung Jawab Hukum Dokter terhadap Gugatan Pasien Dalam Pelayanan Kesehatan di Rumah Sakit. *Jurnal JURISTIC*, 1(01), 52. <https://doi.org/10.35973/jrs.v1i01.1482>