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Communication in Health Care Services: An Overview of the Legal Position of Informed Consent

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Abstract:

The principle of informed consent requires physicians to communicate with patients before administering medical treatment. The information provided by physicians serves as a guide or consideration for patients when making an informed decision and gives the physician permission to proceed with the medical intervention. The obligation of physicians to communicate effectively has been regulated in Articles 35 and 45 of Law No. 29 of 2004 concerning Medical Practice and further strengthened by the Regulation of the Minister of Health of the Republic of Indonesia No. 290/ Menkes/ Per/ III/ 2008 concerning Approval of Medical Measures. Effective communication in health care services cannot be exaggerated when it comes to providing medical care. Before the administration of medical treatment, the patient had already been informed of his condition, the probability of recovery, the potential risks associated with treatment and alternative therapy methods to ensure that patients were well informed about the disease and procedures that would be performed by physicians. Efficient communication between patients and healthcare providers is crucial to preventing medical malpractice.

Keywords: Legal Position; Informed Consent; Health Communication; Indonesia

INTRODUCTION

The is of health professionals aim to treat patients with various diseases. According to the Hippocratic Oath and the 1948 Geneva Conventions, the primary objective of therapeutic interaction is to promote patient well-being (Stan, 2002). To achieve these objectives, physicians should not rely solely on their own judgment, even if they are bound by ethical codes, professional standards, or legal frameworks. Despite the presence of such guidelines, there are instances in which doctors fail to fulfill their obligations.

In the context of medical practice, physicians typically adopt a paternalistic approach characterized by a one-sided communication pattern, which excludes patients from the decision-making process. This approach often disregards the patient's opinion, as physicians are considered the primary decision-makers in the best interests of the patient. Physicians who subscribe to the doctrine of paternalism in the provision of medical care believe that patients lack the necessary competence in medical science and are unfamiliar with the technical procedures or medical interventions that must be performed. By involving patients in decision making prior to medical intervention, it is argued that the outcome would be futile and would not prove beneficial in the healing process (Hidayani, 2023).

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The concept of paternalism in healthcare has existed since the era of Hippocrates (Siti Zubaidah Ismail, 2011). However, as paternalism has become increasingly disfavored, a new approach based on patient autonomy and human rights has emerged. Karbala asserts that the paternal model of healthcare service delivery is evolving toward a partnership paradigm in which the physician's standing is equated with that of the patient (Karbala, 2005). The physician-patient relationship is grounded in the principles of democracy, characterized by open communication, mutual agreement, and shared participation, thus that all medical interventions are discussed in advance. It is crucial that physicians obtain the patient's consent prior to making any decisions and that patients have the autonomy to select the most suitable medical treatment for their individual needs. As outlined in the Indonesian Medical Code of Ethics and relevant legislation, physicians and patients have mutual rights and responsibilities that require respect and protection.

In practical applications, the principle of patient autonomy in healthcare is achieved through informed consent agreements, which encapsulate the contractual and participatory aspects of patient participation in healthcare services provided by physicians and other healthcare professionals (Kokkonen, 2004). In the context of informed consent, patients are granted the authority to accept or decline any medical intervention after receiving comprehensive and accurate information. To facilitate this, effective communication between healthcare providers and patients or their families is essential. It is important to note that without strong communication skills, other skills, such as theoretical and clinical knowledge, may not be effective. Implementing the patient autonomy principle, specifically informed consent, promotes productive communication between healthcare professionals and patients, ultimately affecting patient recovery and protecting healthcare professionals from potential malpractice claims.

The primary reason patients prefer to seek medical care outside their country is because of effective, adaptable, and professional communication between patients and doctors. Although the clinical abilities of Indonesian doctors may not be inferior to those of foreign physicians, they lack communication skills. In Indonesia, medical consultations are rare to last 15-20 minutes. Typically, interactions between physicians and patients in Indonesia are characterized by a lack of two-way communication. Doctors often do not allocate enough time to listen to patients' concerns, which makes them hesitate to disclose their health problems. This study aimed to analyze the benefits of communication in health services subject to legal review in Indonesia.

METHODS

To address this issue, this study used a qualitative method with a legalistic or doctrinal approach (Maanen, 1979; McCracken, 1998). This study used a legalistic analysis technique (Rowe, 2015). Content analysis serves as a systematic review to assess and clarify facts, principles, concepts, theories, and regulations with the aim of uncovering innovative insights and knowledge that can potentially lead to changes in healthcare services in Indonesia (Hatta, 2018; Yaqin, 2007). This study was a prescriptive analysis using secondary data collected through legal documentation techniques. The data were then analyzed using qualitative methods that relied on deductive logical thinking.

RESULTS

The principle of patient autonomy emerged after the Nuremberg Code, which was established in 1947 after the Nuremberg Court decision. This code stipulates that any physician engaged in clinical research must obtain informed consent from his patient. In 1947, the Nuremberg Code established the principle of autonomy for patients, which is outlined in Rule 1, and emphasizes the importance of patients making decisions based on accurate and complete information and maintaining valid medical records (respect of persons). This principle has since become the foundation for the concept of informed consent in doctor-patient relationships.

The principle of patient autonomy is a fundamental aspect of preserving human dignity, which was first established in the Universal Declaration of Human Rights in 1948; the International Covenant on Economic, Social, and Cultural Rights in 1966; the European Convention on Human Rights in 1959;

and the European Convention on Bioethics, which was adopted by the Council of Europe on December 1, 1999 (Kokkonen, 2004).

According to Keown's definition, autonomy refers to an individual's capacity to think and make decisions voluntarily without any form of coercion (Tan, 2006). Patient autonomy, as defined by Anisah, includes the rights of individuals to seek medical care. It is essential that physicians provide clear and accurate information when requested by their patients and obtain explicit consent before performing any examinations or treatments. According to the 1987 and 1995 Patients' Charter Code of Professional Conduct, it is stipulated that patients must be informed in advance and provide their consent prior to any medical intervention (Nawi, 2011; Yuhanif Yusof, Anisah Che Ngah, Mohamad Zaher, 2014).

The principle of patient autonomy has also been introduced in Indonesia through the Executive Board decisions of the Indonesian Medical Association (PB-IDI) No. 319/PB/A.4/1988. This decision was strengthened by the enactment of Minister of Health Regulation No. 585 of 1989 concerning the consent of Medical Measures (principle of informed consent). According to Article 45 of the Republic of Indonesia's Law No. 29 of 2004 on Medical Practice, any action or treatment for both general and dental patients must be carried out only after the patient has signed the consent form and received a complete explanation of the relevant information.

The application of the principle of principle of informed consent in Indonesia begins with the establishment of a therapeutic agreement between physicians and patients, which is formalized through an informed consent form. This form must be signed by both the doctor and the patient or their family members. A therapeutic agreement does not require physicians to treat patients because they cannot predict the outcomes of treatment. However, medical professionals utilize their expertise and experience to provide the best possible care. Therefore, physicians should focus on applying their efforts to improve the health of patients rather than solely focusing on therapeutic results (Patil & Anchinmane, 2011).

Implementation of informed consent in health services. The approval of medical procedures is regulated in various statutory regulations, namely Law no. 36 of 2009 concerning health, Law no. 44 of 2009 concerning Hospitals, Law no. 29 of 2004 concerning Medical Practice, Civil Code (Civil Code), Minister of Health Regulation no. 290/Menkes/Per/III/2008 Concerning Approval of Medical Procedures. Every action that will be carried out in implementing medical action approval is guided by existing laws and regulations, based on a standard medical action approval form.

In the process of obtaining informed consent, it is essential that the physician provides the patient with complete information regarding the proposed treatment method, as well as the potential risks and benefits associated with recovery. Before giving consent, the patient was informed of the details. According to Article 45, paragraph 3 of Law No. 29 of 2004 on Medical Practice, physicians are obligated to inform patients about specific issues before administering medical treatment:

a. Diagnosis and procedures for medical treatment
b. Purpose of Medical Treatment
c. Another alternative treatment;
d. Risks and complications that may occur
e. The prognosis.

The Ministry of Health in Indonesia's decree No. 585 of 1989 on the consent of patients to medical measures stipulates that patients must be informed about their medical information or that they can choose not to be informed. Patients lack comprehensive medical knowledge, so they must be fully informed about their rights and obligations, as well as the benefits and drawbacks of medical procedures in both the diagnostic and therapeutic stages. Patients have the autonomy to decline the medical treatments advised by healthcare professionals and opt for alternative therapeutic approaches.

In the context of healthcare care, informed consent can be expressed verbally, in writing or in an implicit manner; however, Law No. 29 of 2004 requires that informed consent be obtained in writing. It is essential to obtain written informed consent for medical procedures that carry the risk of death.

Physicians who administer medical treatment to patients or other healthcare providers based on the instructions of other physicians are obligated to provide information or explanations regarding the medical action to be performed. This information or explanation can be provided by other healthcare professionals, except in cases where medical action involves surgery or other invasive treatments, in which case other physicians are not permitted to provide such information or explanations.

The Indonesian Code of Medical Ethics states several patient rights.

a. The right to life, the right to their own bodies, and the right to die naturally
b. Right to humane medical care according to the standards of the medical profession
c. The right to obtain an explanation of the diagnosis and treatment from the doctor;
d. The right to refuse diagnostic and therapeutic procedures;
e. The right to be referred to other specialists if needed;
f. The right to confidentiality or personal medical records
g. Right to obtain information on regulations and the cost of hospitalization
h. Right to contact with family, clergy, or others
i. Right to obtain details about the cost of treatment.

Physicians must provide patients with a comprehensive understanding of their medical condition, possible recovery options, proposed surgical intervention, and inherent risks associated with the procedure. After being adequately informed, patients exercise their right to self-determination and make decisions based on their personal preferences. The principle of patient autonomy is upheld and patients have the authority to accept or decline medical treatment offered by healthcare providers. Although physicians may have extensive knowledge, they must respect patients' right to refuse treatment, even if they may compromise their well-being.

DISCUSSION

Patient autonomy in healthcare is based on the principle of self-determination, which enables people to make choices about medical treatment options. This includes the right to accept or decline recommendations provided by healthcare professionals that are personalized to the specific condition being addressed. Physicians typically present recommendations and alternatives, while patients are responsible for making decisions. In clinical settings, the principle of patient autonomy is often represented in the form of an Act of Agreement, commonly referred to as informed consent. Patients must be able to communicate effectively to provide informed consent. In the United States, only adult patients are considered competent to make decisions regarding the acceptance or rejection of medical interventions. When a patient is considered incapable of making a decision, a court order is required to obtain consent (Robert, 1994).

Historically, the principle of patient autonomy was recognized after the Nuremberg trials in 1947, during which it was mandated that physicians engaging in research must obtain informed consent from patients as subjects of research. This principle is a form of upholding human dignity recognized in the *Universal Declaration of Human Rights* 1948, the *International Covenants on Economic, Social and Cultural Rights and Civil Rights* 1966, *the European Convention on Human Rights* (1959) and the Convention on the Bioethics of the European Assembly, effective on December 1, 1999.

The principle of patient autonomy, rooted in moral and ethical values, comprises two key components. First, each patient has the right to make independent and voluntary decisions, guided by sufficient knowledge and comprehension of the information provided by their healthcare provider. Second, these decisions must be made in an unbiased and noncoercive environment free from any external influence.

Beauchamp and Childress described that to achieve an ethical decision in healthcare, four basic moral principles are required (Lawrence, 2007):

a. The principle of autonomy is a moral principle that respects the rights of patients based on the principle of the right to self-determination. This principle asserts that a patient's right to self-determination is grounded in the declaration as a whole. Data were valid and accurate due to the patient's right to autonomy, which led to the principles of informed consent.

b. The principle of beneficence is the moral principle that emphasizes actions intended for the good of the patient. Beneficience does not only mean acts of kindness but also actions that have more benefits than the bad side.

c. The principle of non-maleficence is rooted in the idea of not causing harm to patients during medical treatment. This principle dictates that physicians should choose the treatment option with the least risk of harm to patients. This principle is closely associated with the ancient concept of "first, do no harm," which emphasizes the importance of avoiding harm when providing medical care. David Thomasma proposed that this principle is akin to two sides of a coin. On the one hand, the objective of patient care is to promote well-being; on the other hand, there may be potential risks that could harm patients. However, it is important to note that this principle should only be applied in situations where it is necessary to ensure patient safety and there are no other suitable methods for treating or saving a patient's life.

d. The fundamental principle of justice is to provide what is due to each person, since all individuals possess equal worth to human beings. It is essential to treat everyone equally, which is the basic requirement of justice. Healthcare professionals should not differentiate between patients according to socioeconomic status. Doctors must provide assistance to those who require it regardless of their background or social standing.

According to Keown J, autonomy refers to the ability to think and make decisions (Siti Zubaidah Ismail, 2011). Kant and Rawls posited that the principle of autonomy must be rational, as patients, in their capacity as decision-makers, are unable to forecast the prognosis and must therefore make decisions based on thorough information for their own well-being and recovery (Sampurna, 2005). According to Anisah, maintaining patient autonomy requires respect for patient rights. It is essential to communicate information clearly and accurately when requested by patients. Moreover, if an examination is necessary, the physician must obtain the patient's consent (Packer, 2011).

Patient autonomy is based on the principle of self-determination, which is essential for obtaining informed consent from patients. As a legal obligation, physicians must provide patients with comprehensive and precise details. This information must be transmitted unambiguously and accurately regardless of whether the patient has explicitly requested it. Provide information to patients in a manner that is easily comprehensible, using easy language to describe the potential side effects of medication, the risks associated with surgery, and the anticipated outcomes of surgical intervention, if necessary. The Indonesian Medical Code of Ethics states that patients have the right to be informed prior to the administration of any medical treatment. According to Borfitz, obtaining informed consent involves acquiring the consent of the patient, whether explicitly stated or implied. If human subjects are involved in medical research, getting their consent is crucial. The physicians were responsible for revealing all relevant information about the study (Borfitz, 2013).

To secure patient consent, it is essential that physicians refrain from misleading the patient or concealing any relevant information or potential risks associated with the medical procedure. As the subject of the study, the patient must be treated with transparency and honesty. In Salgo v. The Leland Board of Trustees determined that the outcome was that a physician was found responsible for not disclosing critical information about patients' medical conditions (1957, 317 P 2d 170, 154 Cal). A physician should not mislead a patient by diminishing the significance of potentially hazardous medical procedures to secure their approval.

> 'A *physician violates his duty to his patient and is liable if he holds any fact necessary to form a basis of intelligent consent from the patient. Likewise, the physician must not minimize the known danger of a procedure or operation in order to induce his patient to give consent.*”

The principle of informed consent is a vital aspect of medical treatment that emphasizes the prudent approach of a doctor. Effective communication plays a pivotal role in facilitating the healing process of patients. The authors suggest that the implementation of informed consent is not just a legal obligation imposed on physicians, but also a reflection of their honest and sincere attention to their patients. Furthermore, the application of the informed consent principle encompasses not only the provision of information to the patient, but also the consideration of the patient's perspective to facilitate two-way communication as a partner in therapeutic interactions.

Informed consent has significant benefits for both physicians and patients. For physicians, it facilitates access to information on a patient's medical history, medication usage, and previous treatments, which can be critical for making informed prognostic decisions. Based on the available information, physicians can offer patients a selection of suitable medical treatments that align with the standards of professional expertise recognized by the relevant association. Informed consent will serve as written documentation in the event that a patient decides to pursue legal action against a healthcare provider. If the patient successfully completed and signed an informed consent form, it showed their understanding of the potential risks associated with the medical procedure, as the necessary information was communicated in accordance with the legal and regulatory requirements applicable to the situation.

Informed consent provides several benefits, including informed disclosure of an individual's medical condition, as well as the potential risks and alternative treatment options associated with their condition. By providing this information, patients are better equipped to make informed decisions about the most suitable treatment plan for their specific illnesses. Consequently, the patient must fully understand the nature of the treatment to be administered by the physician, including any potential risks and prognosis. Once the patient is in detail informed about the medical interventions that will be performed, they will experience a sense of calm and preparedness for the worst possible outcome.

According to the examination of the advantages of informed consent in therapeutic interactions, not only do physicians have the responsibility to provide patients with information about medical treatments, but patients also have the responsibility to provide information about the illnesses they have experienced, the medications they have consumed, and the medical precautions they have taken. According to Picard, patients are obligated by both themselves and physicians to meet the standards of being well-intentioned without concealing their illness (Picard, 2007).

To provide effective medical treatment, it is essential to obtain accurate and reliable patient information prior to medical follow-up. If a patient provides inaccurate or misleading information about their illness, medications they have taken or drugs to which they are allergic, this is considered an error on their part and can result in adverse medical consequences (*contributory negligence*) (Yule, 2011). Therefore, it is important to note that not all failures in medical follow-up can be attributed solely to physician neglect, as patient factors also play a role. If all failures are subjected to litigation, physicians can adopt a defensive approach that prioritizes their self-interest.

CONCLUSION

The ongoing advancement of scientific knowledge has extended the field of healthcare communication. In the context of healthcare care, the principle of paternalism is considered outdated and irrelevant to current global developments. However, there are certain exceptional circumstances, such as in pediatrics, emergency care, and psychiatry, in which its application may be warranted. The principle of patient autonomy, a central ethical principle in healthcare care, is based on the notion of self-determination. The principle of patient autonomy gives the individual the authority to accept or decline medical treatments recommended by healthcare professionals, which is generally consistent with the severity of their condition. In practical applications, this principle typically manifests itself through the concept of informed consent.

The doctor’s obligation to communicate effectively has been regulated in Articles 35 and 45 of Law No. 29 of 2004 on Medical Practice and is further strengthened by the Regulation of the Minister of Health of the Republic of Indonesia No. 290/ Menkes/ Per/ III/ 2008 on Approval of Medical Measures. According to regulatory guidelines, physicians must establish communication with the patient prior to administering medical treatment. This communication should take the form of a medical agreement between the doctor and the patient (informed consent). Informed consent is limited to patients who have adequate communication skills and are able to make judgments or draw conclusions to accept or reject medical interventions.

The importance of obtaining informed consent extends to both physicians and patients. For physicians, the provision of informed consent facilitates the extraction of critical information from patients. This information, which includes the patient's medical history, medications they have taken, and any prior treatments, serves as a valuable reference that can influence the success of medical treatment. Health communication in the form of informed consent is a type of effective communication between medical professionals and patients and serves as a significant determinant of patient satisfaction and adherence to treatment regimens. Effective communication between healthcare professionals and patients can offer comfort to patients and help prevent or avoid medical malpractice in healthcare services.

Conflict of Interest

All the authors declare that there are no conflicts of interest.

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REFERENCES

Borfitz, D. (2013). *Informed Consent. A Guide to the Risks and Benefits of Volunteering for clinical Trialz*. Thomson Centre Watch.

Hatta, M. (2018). The Position of expert witnesses in medical malpractice cases in indonesia. *Al-Ahkam: Jurnal Pemikiran Hukum Islam*, *29*(1), 47–72.

Hidayani, P. P. (2023). Medical negligence concept in Malaysia: A legal study. *Cendekia : Jurnal Hukum, Sosial Dan Humaniora*, *1*(4), 298–314. https://doi.org/10.5281/zenodo.8422287

Karbala, H. (2005). *Segi-Segi Etis dan Yuridis Informed Concent*. Pustaka Sinar Harapan.

Kokkonen, P. (2004). Medicine, The law and medical ethics in a changing society. *World Medical Journal*, *50*(1), 5–8.

Lawrence, D. J. (2007). The four principles of biomedical ethics: A foundation for current bioethical debate. *Journal of Chiropractic Humanities*, *14,* 34–40.

Maanen, J. Van. (1979). Reclaiming qualitative methods for organizational research: preface. *Administrative Science Quarterly*, *24*, 520–526. https://doi.org/https://doi.org/10.2307/2392358

McCracken, G. . (1998). *The Long Interview*. Sage.

Nawi, M. (2011). Skop kelakuan buruk dalam kod kelakuan profesional 1987: satu analisis menurut etika perubatan Islam. *JUUM*, *1*(15), 53–74.

Packer, S. (2011). jima.imana.org. *Journal of the Islamic Medical Association of North America*, *43*, 215–218.

Patil, A. M., & Anchinmane, V. T. (2011). Medicolegal aspects of consent in clinical practice. *Bombay Hospital Journal*, *53*(2), 203–208.

Picard. (2007). *Legal liability of doctors and hospitals in Canada*. Thomson Carswell.

Robert, G. W. (1994). Nurse/Patient Communication within a Biliongual Healthcare Setting. *British Journal of Nursing*, *3*(2), 60–64.

Rowe, S. E. (2015). Legal research, legal analysis, and legal writing: putting law school into practice.

Stetson Law Review, *1193*(2000), 1–19. http://dx.doi.org/10.2139/ssrn.1223682

Sampurna, B. (2005). *Bioetika dan Hukum Kedoktoran*. Pustaka Dwipar.

Siti Zubaidah Ismail. (2011). Medical negligence according to the law of tort and its authority from the shariah. *Journal Syariah*, *19*(2), 133–162.

Stan, N. H. S. S. (2002). Deconstructing paternalism--what serves the patient best? *Singapore Medical Journal*, *43*(3), 148–151. http://www.ncbi.nlm.nih.gov/pubmed/12005342

Tan, P. (2006). Case comment:when death knocks, who will answer and what will they say? Re LP (Adult Patient : Medical Treatment). *Singapore Academy of Law Journal*, *13*(18), 493–521.

Yaqin, A. (2007). Legal research and writting Malaysia. *Malayan Law Journal SDN BHD*, *1*, 10.

Yuhanif Yusof, Anisah Che Ngah, Mohamad Zaher, Z. M. (2014). Informed consent in clinical trials with reference to information disclosure to patient-subjects. *Nternational Journal of Public Health Research*, *4*(1), 384–390.

Yule, J. M. (2011). Defences in medical negligence: to what extent has tort law reform in Australia limited the liability of health professionals? *Journal of Australasian Law Teachers Association*, *4*(1), 53–63.