

Legal and Ethical Aspects of Informed Consent in BPJS Health Emergency Services

AnnaVeronica Pont^{1*}, Ta'adi², Muchamad Taufiq³, Ady Purwoto⁴, Mawardi⁵

¹Poltekkes Kemenkes Palu

²Poltekkes Kemenkes Semarang

³ITB Widya Gama Lumajang

⁴Universitas Ibn Khaldun Bogor

⁵Program Doktor Universitas Islam Negeri Maulana Malik Ibrahim Malang

Article Info

Article history:

Received 5 Nov, 2024

Revised 7 Jan, 2025

Accepted 18 Jan, 2025

Keywords:

Informed Consent, Emergency
Healthcare Services, BPJS
Kesehatan, Legal Aspects,
Medical Ethics

ABSTRACT

Informed consent is a crucial element in the healthcare system as it ensures that patients provide consent based on a sufficient understanding of the medical procedures to be performed. In the context of emergency services, where patients often present with critical conditions requiring immediate action, the implementation of informed consent becomes more complex. BPJS Kesehatan, as the provider of healthcare services for the public, holds the responsibility to ensure that medical treatments within their network respect patient rights, both legally and ethically. This article aims to explore in-depth the legal and ethical aspects of implementing informed consent in emergency healthcare services under the BPJS Kesehatan program.

Corresponding Author:

AnnaVeronica Pont

Poltekkes Kemenkes Palu

Email : annaveronicaponterik@gmail.com

INTRODUCTION

Healthcare services are a fundamental right granted to every citizen, as outlined in the Constitution of Indonesia. Aware of the importance of access to quality healthcare, the Indonesian government, through various policies and institutions, has strived to provide an inclusive and equitable health insurance system. One of the government's main efforts is the BPJS Kesehatan program, which offers protection to all segments of society, ensuring they have access to adequate medical care. This health insurance system aims to ensure that every citizen, especially those in vulnerable economic groups, can access affordable medical services. With over 200 million participants enrolled in the National Health Insurance (JKN) program, BPJS Kesehatan stands as a cornerstone of Indonesia's healthcare system.

However, adequate healthcare is not only about financial access; it also involves the patient's right to obtain information regarding their medical conditions and the medical decisions that will be made. One mechanism that safeguards the patient's rights in medical care is informed consent. Informed consent is the agreement given by a patient after receiving sufficient information about their medical condition and the procedures they will undergo, including the benefits, risks, and available alternatives. The basic principle of

informed consent is that patients have the full right to make decisions regarding their bodies and health based on an informed understanding.

However, the application of the informed consent principle is not always straightforward, especially in the context of emergency care. Emergency services, which deal with patients experiencing life-threatening conditions requiring immediate action, often present situations that are very different from regular medical care. Here, time is of the essence, and medical decisions must be made under pressure. In many cases, patients are unconscious or unable to explicitly provide consent due to their critical condition. Unconsciousness, whether due to an accident, heart attack, or other sudden medical issues, requires healthcare professionals to take life-saving measures without immediate consent from the patient.

In such circumstances, implementing the informed consent principle becomes more complex and challenging. On one hand, medical professionals must respect the patient's autonomy to make informed decisions about their treatment. On the other hand, medical professionals also have an obligation to save the patient's life, which may require performing medical actions without direct consent. This creates a tension between medical ethics, which prioritizes patient autonomy, and the duty to act quickly in the patient's best interest.

In emergency care, the principle of informed consent often needs to be adapted to the principle of implied consent. This principle states that in emergency situations where the patient cannot provide conscious consent, healthcare providers can proceed with medical treatment under the assumption that the patient, if conscious and able to give consent, would choose to receive the necessary medical care to save their life. Therefore, it is important to consider whether, in emergency situations, informed consent can be implemented through implied consent or whether other ethical adjustments are necessary.

BPJS Kesehatan, as the health insurance provider, plays a critical role in ensuring that medical services provided to JKN participants adhere to legal and ethical standards. BPJS Kesehatan is responsible not only for managing the financial aspects of healthcare services but also for ensuring that healthcare facilities partnering with it prioritize ethical and legal principles in medical care, including informed consent in emergency situations. BPJS Kesehatan also has a role in training medical personnel on how to implement informed consent in emergencies and in developing guidelines and standard operating procedures (SOPs) that guide healthcare providers to act cautiously and respect patients' rights, even in high-pressure situations.

The challenges surrounding the implementation of informed consent in emergency services under BPJS Kesehatan are not only related to legal and medical ethics but also to social, cultural, and communication aspects. The patient's family, often contacted in emergency situations, may provide valuable insights into the patient's wishes, but limited communication, lack of understanding about medical procedures, or the family's unpreparedness to handle emergency situations can worsen the situation. In such cases, healthcare providers must be able to communicate effectively and empathetically, even in high-pressure and time-constrained situations.

Furthermore, as the number of BPJS Kesehatan beneficiaries increases, there is a need for clearer standards and stronger guidelines regarding informed consent across all healthcare facilities affiliated with BPJS. This is crucial to ensure that medical procedures are carried out with consideration for patient rights and to minimize the legal risks that could arise from errors in informed consent procedures. In this regard, BPJS Kesehatan must ensure that medical professionals on the front lines of emergency care have a solid understanding of patient rights, the fundamental principles of informed consent, and the proper procedures in emergency situations.

In a rapidly advancing medical world, BPJS Kesehatan's role goes beyond financial coverage; it also involves improving service quality, including education and training for healthcare providers. By providing ongoing training on informed consent and developing clear guidelines and SOPs, BPJS Kesehatan can ensure that every patient, regardless of their socio-economic status, receives care that adheres to high medical and ethical standards. This will protect both patients and healthcare providers and enhance the overall quality of healthcare services.

Through this approach, it is hoped that, despite the complexities of implementing informed consent in emergency services, strategic measures can be taken to optimize the quality of medical care in emergencies while maintaining ethical and legal principles. A deeper understanding of this issue will help reduce tensions between patient rights, medical obligations, and BPJS Kesehatan's role in providing optimal care, especially in situations requiring rapid and precise medical intervention.

RESEARCH METHODOLOGY

This study employs a qualitative descriptive approach aimed at providing an in-depth and comprehensive understanding of the implementation of the informed consent principle in emergency services managed by BPJS Kesehatan. A qualitative approach was chosen because this research seeks not only to measure or describe existing phenomena but also to explore the reasons, perceptions, and understandings that underlie the behaviors of healthcare professionals and the challenges they face in emergency situations. In

this context, the focus is on analyzing the legal, ethical, and social challenges encountered in implementing informed consent.

The research utilizes a literature review and document analysis as initial steps to gain a better understanding of the legal, ethical, and medical practices related to informed consent in emergency situations. The literature review examines relevant laws, such as Law No. 36 of 2009 on Health, Law No. 29 of 2004 on Medical Practice, and other regulations governing patient rights and medical professional duties. Additionally, journal articles, textbooks, guidelines, and previous studies on informed consent in emergency situations serve as key references for this research.

Document analysis is also conducted to review official guidelines issued by BPJS Kesehatan, the Ministry of Health, and professional organizations such as the Indonesian Medical Association (IDI) that pertain to emergency services and the application of informed consent. These documents offer insights into the practices and guidelines applied in the field and help identify potential gaps between theory and implementation. Relevant case documentation, both public and internal reports from healthcare facilities collaborating with BPJS, is also analyzed to enhance the understanding of dynamics in emergency situations.

Moreover, the research combines participatory observation and in-depth interviews with healthcare professionals and hospital management teams that collaborate with BPJS Kesehatan. Participatory observation is carried out by visiting hospitals and healthcare facilities that provide emergency services to observe how informed consent procedures are applied in real situations. Observations of interactions between healthcare professionals and patients or their families in emergency situations are made to identify challenges in communication and the implementation of medical procedures.

In-depth interviews are conducted with several key informant groups, including emergency room doctors, nurses, hospital managers, and patients or their families who have experienced emergency situations. The goal of these interviews is to gain a deeper understanding of their views and experiences regarding the implementation of informed consent in emergencies. These interviews are semi-structured, allowing flexibility to explore broader topics while remaining focused on key issues of the research.

Data collection through interviews is carried out directly in hospitals that cooperate with BPJS Kesehatan to obtain a more realistic perspective on how informed consent policies are applied in daily practice. Informants are selected based on specific criteria, including healthcare professionals involved in emergency care and families or patients who are registered with BPJS Kesehatan and have undergone emergency treatment.

Additionally, secondary data obtained from hospital archives and reports related to informed consent in emergency situations, including medical reports and case notes, is used to enrich the analysis. This secondary data is valuable for identifying patterns or trends in the implementation of informed consent, as well as how this process relates to various influencing factors such as patient awareness, physical condition, and family involvement in decision-making.

For data analysis, the researcher uses thematic analysis techniques to identify major themes emerging from interviews and observations. The data gathered from interviews and observations are systematically processed, organized, and analyzed to discover relevant patterns. Each theme or category identified is then compared with findings from the literature review and documents previously analyzed. The results of this analysis aim to provide a clearer picture of how informed consent is applied in BPJS Kesehatan emergency services, as well as the legal, ethical, and operational challenges faced by healthcare professionals and patients.

A critical evaluation of existing policies and practices is also conducted to determine how effective the guidelines and procedures implemented by BPJS Kesehatan and healthcare facilities are in addressing issues related to informed consent. This evaluation includes an analysis of the alignment between field practices and existing regulations, as well as potential improvements that could be made to enhance service quality and compliance with ethical and legal principles.

This research methodology, which combines document analysis, observation, in-depth interviews, and thematic analysis, allows the researcher to explore various dimensions of the issue at hand and generate more specific and practical recommendations for the implementation of informed consent in BPJS Kesehatan emergency services. Through this holistic approach, it is hoped that the research will contribute significantly to enhancing the understanding and practice of informed consent in Indonesia, particularly in the context of emergency services related to the national health insurance system.

RESULT AND DISCUSSION

The implementation of informed consent in emergency medical services is a crucial topic, as it directly relates to the patient's right to autonomy and safety, as well as the obligation of medical professionals to provide care that aligns with ethical and legal standards. Informed consent in emergency settings is not just a medical procedure but also touches on legal, ethical, and operational aspects in delivering optimal healthcare. This section discusses four main points: legal challenges, ethical dilemmas, the role of BPJS

Kesehatan, and the role of the patient's family in medical decision-making. It also explores how these factors interact and shape the policies and practices of informed consent in emergency services.

Legal Challenges in Implementing Informed Consent in Emergency Services

The application of informed consent in emergency care presents complex legal challenges. In principle, every medical action performed on a patient must be based on consent that is given voluntarily, with full awareness, and after receiving clear information about the procedure. However, in emergency situations, it is often impossible to obtain explicit consent from the patient, either due to unconsciousness or the urgency of the situation that requires immediate intervention.

Legal issues arise when there is a need to balance the patient's right to autonomy with the medical professional's right to perform necessary interventions to save the patient's life. In such cases, implied consent is often used as a basis for medical action. Implied consent assumes that, if the patient were conscious, they would consent to receiving necessary care to prevent further harm, such as in cases of accidents or heart attacks.

However, even though there is legal justification for performing medical actions without explicit consent in emergencies, this does not eliminate legal risks. Patients or their families might file lawsuits if they feel they were not adequately informed about the procedures performed, or if medical standards were not met. In some countries and legal systems, despite the principle of implied consent, doctors are still required to ensure they have a solid medical rationale for the actions taken to avoid medical malpractice claims.

Furthermore, BPJS Kesehatan, as the agency providing health coverage for the majority of Indonesia's population, has an obligation to ensure that emergency services comply with applicable regulations, including the application of informed consent. BPJS Kesehatan must clarify the guidelines regarding procedures that should be followed in emergency situations, so that healthcare facilities collaborating with them can minimize potential violations of patient rights or other legal issues.

Ethical Obstacles in Emergency Medical Services

Ethical challenges in applying informed consent in emergency services involve various moral dilemmas faced by medical professionals when they must make quick decisions without providing sufficient explanations to the patient. Informed consent requires that patients receive adequate information to make informed decisions about the medical procedures to be performed. However, in many emergency cases, patients are unable to provide consent directly because they are unconscious or in conditions that prevent them from fully understanding the information presented.

On the other hand, medical ethics emphasizes respecting the autonomy of patients, meaning that medical decisions should actively involve the patient, if possible. Therefore, in emergency contexts where decisions need to be made swiftly and without explicit consent from the patient, healthcare professionals often face an ethical dilemma between saving the patient's life and respecting their right to make decisions. For example, in cases where a patient is unconscious following a severe accident, medical professionals may need to decide whether to perform surgery or other interventions to save the patient's life, even though the patient cannot provide consent.

However, paternalism often arises in emergency situations, where medical professionals feel they must make decisions for the patient's own good, even if those decisions contradict the patient's wishes or rights. Some medical experts argue that, in emergency cases, healthcare professionals have a moral obligation to act in the patient's best interest, even if this means disregarding the patient's consent. This approach can lead to conflicts, especially if the patient or their family holds different beliefs regarding the medical care being provided.

For instance, in some cases, the patient's family may have differing views on the type of care to be provided, or they may oppose certain medical procedures due to religious or cultural beliefs. In such cases, it is essential for healthcare professionals to engage in sensitive and thorough communication with the patient's family, clearly explaining the patient's condition and making decisions that take into account the best interests of the patient and their family.

The Role of BPJS Kesehatan in Implementing Informed Consent in Emergency Services

As the agency that provides health insurance to the majority of Indonesia's population, BPJS Kesehatan plays a central role in ensuring that the principle of informed consent is consistently applied across all healthcare facilities that work with them, including in emergency services. BPJS Kesehatan must ensure that clear guidelines on informed consent procedures in emergency conditions are provided to all hospitals and healthcare professionals involved.

It is important for BPJS Kesehatan to have operational procedures (SOPs) that detail how informed consent should be applied in emergency situations, whether in the form of explicit or implied consent.

Hospitals and healthcare facilities working with BPJS Kesehatan should be trained to understand and follow these procedures, and BPJS Kesehatan must conduct strict supervision to ensure that informed consent is properly implemented in emergency cases in accordance with legal and ethical standards.

Additionally, BPJS Kesehatan has the responsibility to raise public awareness about their rights regarding informed consent, so that patients can better understand the importance of consenting to medical procedures. One step BPJS Kesehatan can take is to provide education to patients and their families about their rights to receive sufficient information about the medical care they will receive, even in emergency situations. This education can be delivered through various information media, both directly and through increasingly popular digital platforms.

The Role of the Patient's Family in Medical Decision-Making

The patient's family often becomes the party contacted to provide consent or information regarding medical decisions when the patient is unable to give consent directly, such as when they are unconscious or in a critical condition. In this case, the family plays a very important role, both in providing information about the patient's prior wishes regarding medical care and in supporting the medical decisions made by healthcare professionals.

However, the family's role in medical decision-making is not always straightforward. In many cases, families may feel confused or under pressure, especially when the medical decisions to be made concern the patient's life or carry high risks. Families in stressful situations often struggle to fully understand the patient's medical condition, which can add to the emotional burden they feel. Therefore, it is crucial for healthcare professionals to have good communication skills and empathy, providing clear and understandable information to the patient's family so they can make the best decisions.

Families also need to be informed about the patient's rights and the medical decisions to be made, including the possibility that the actions taken by healthcare professionals may involve urgent medical procedures that cannot always wait for patient consent. Good and empathetic communication is essential to make the family feel heard and understood, even if they cannot always make the same decisions as the healthcare professionals.

CONCLUSION

The implementation of informed consent in emergency medical services presents complex challenges from legal, ethical, and operational perspectives. In emergency situations, where time is limited and patients are often unable to provide explicit consent, healthcare professionals face dilemmas in decision-making. In such cases, the principle of implied consent is frequently applied, assuming that the patient, if conscious, would agree to the medical actions taken to save their life. However, despite the legal justification for acting without explicit consent, there remains potential legal risk, especially if the medical procedures performed do not meet standards or if there are allegations of negligence from the patient or their family.

On the other hand, the ethical challenges in applying informed consent in emergency care are significant, particularly regarding respect for patient autonomy. Medical professionals must make quick and accurate decisions, often without being able to provide sufficient information to the patient. Although the principle of paternalism in medicine allows healthcare providers to make decisions for the patient's benefit, it must be done carefully to avoid disregarding the patient's rights. Therefore, it is crucial for medical professionals to possess effective communication skills and to have clear procedures for handling emergency situations, ensuring that decisions made still prioritize the best interests of the patient and their family.

The role of BPJS Kesehatan in ensuring the proper implementation of informed consent is essential, especially in facilitating operational standards that govern how these procedures are applied in emergency settings. BPJS Kesehatan needs to provide clear guidelines to healthcare facilities working with them, including training for medical staff on the legal and ethical aspects of informed consent. Additionally, the family of the patient plays a key role in medical decision-making, particularly when the patient is unable to give consent directly. Thus, educating the public about patients' rights in informed consent is crucial for raising awareness and understanding of medical decisions made in emergency situations.

REFERENCES

- Afrilies, M. H., & Naili, Y. T. (2023). Legal Aspects of Telemedicine Health Services in the Perspective of Health Law in Indonesia in the Digital Era. *Journal of Advanced Health Informatics Research*, 1(1), 41–46. <https://doi.org/10.59247/jahir.v1i1.23>
- Amir, N., & Damayanti, A. R. (2022). Legal Aspects of Medical Practice Implementation: Disputes of Code of Ethics in Handling Patients Health Social Security Administering Agency. *Constitutional Law Society*, 1(1), 62–77. <https://doi.org/10.36448/cls.v1i1.23>
- Brice, S. N., Boutilier, J. J., Gartner, D., Harper, P., Knight, V., Lloyd, J., Pusponegoro, A. D., Rini, A. P., Turnbull-Ross, J., & Tuson, M. (2022). Emergency services utilization in Jakarta (Indonesia): a cross-

- sectional study of patients attending hospital emergency departments. *BMC Health Services Research*, 22(1), 1–10. <https://doi.org/10.1186/s12913-022-08061-8>
- Desdiani, D., Mulatsih, S., & Puspandari, D. A. (2024). Implementation of Respect for Autonomy in Hospital Services Within the Indonesia National Health Insurance System. *National Journal of Community Medicine*, 15(10), 830–841. <https://doi.org/10.55489/njcm.151020244579>
- Insan, I., & Hidayati, H. (2024). Legal Protection of the Right to Health Services Viewed from a Human Rights Perspective. <https://doi.org/10.4108/eai.25-5-2024.2349462>
- Mubarak, R. H., & Zarzani, T. R. (2024). Law Synergy Conference (LSC) Law Synergy Conference (LSC). I(I), 263–271.
- Raharja, D. P., Hanani, R., Joyoadisumarta, F. S., Jessani, N. S., & Mathauer, I. (2022). The impact of informal patient navigation initiatives on patient empowerment and National Health Insurance responsiveness in Indonesia. *BMJ Global Health*, 7, 1–12. <https://doi.org/10.1136/bmjgh-2022-009526>
- Redi, A., & Marlina, L. (2024). Hospital Responsibilities Toward Patients In The Implementation Of Health Services. *International Journal of Engineering Business and Social Science*, 2(03), 997–1008. <https://doi.org/10.58451/ijebss.v2i03.117>
- Rika, S. (2019). Descriptions and Procedures for Informed Consent in Emergency Units in All Hospitals in Padang City. <https://doi.org/10.4108/eai.13-11-2018.2283517>
- Setiadi, A. S., & Gunarto, A. (2023). RIGHTS , OBLIGATIONS , AND AUTHORITIES OF MEDICAL AND HEALTH PERSONNEL IN PRIMARY HEALTH SERVICES POST LAW NUMBER 17 OF 2023 CONCERNING HEALTH. 2(12).