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# CONCEPTUAL RECONSTRUCTION OF MEDICAL CONSENT IN HEALTHCARE SERVICES: Islamic Contract Law Analysis of the Principle of *At-Tarāḍī*

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***Abstract***

*Medical consent (informed consent) is a fundamental mechanism in ensuring patient autonomy and legal protection in healthcare services. Although comprehensively regulated in Indonesian health law, the practice of informed consent still tends to be procedural and administrative in nature, thus failing to fully guarantee the patient's substantive willingness and understanding. This condition reveals a structural imbalance in the doctor-patient relationship that has the potential to weaken the legal position of patients. This study aims to analyse the conceptual weaknesses of informed consent in Indonesian positive law and reconstruct it through the integration of the principle of at-tarāḍī in Islamic contract law. The research method used is normative legal research with a conceptual, doctrinal, and comparative normative approach,*

*through analysis of health legislation, legal doctrine, and fiqh muʿāmalāt principles. The results of the study indicate that the regulation of informed consent in national regulations emphasises the fulfilment of formalities of consent rather than the substantial quality of the patient's willingness and free will. By reconceptualising informed consent as a medical service contract based on the principle of at-tarāḍī, this study offers a substantive consent model that requires information disclosure, patient understanding, free will, and authentic ridā. This reconstruction strengthens patient legal protection, balances therapeutic relationships, and unifies legal certainty with values of justice and ethics in healthcare.*

*Persetujuan medis (persetujuan yang terinformasi) merupakan mekanisme fundamental dalam menjamin otonomi pasien dan perlindungan hukum dalam layanan kesehatan. Meskipun diatur secara komprehensif dalam hukum kesehatan Indonesia, praktik persetujuan yang terinformasi masih cenderung bersifat prosedural dan administratif, sehingga gagal sepenuhnya menjamin kesediaan dan pemahaman substantif pasien. Kondisi ini mengindikasikan ketidakseimbangan struktural dalam hubungan dokter-pasien yang berpotensi melemahkan posisi hukum pasien. Penelitian ini bertujuan untuk menganalisis kelemahan konseptual persetujuan terinformasi dalam hukum positif Indonesia dan merekonstruksinya melalui integrasi prinsip at-tarāḍī dalam hukum kontrak Islam. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan konseptual, doktrinal, dan komparatif normatif, melalui analisis peraturan kesehatan, doktrin hukum, dan prinsip-prinsip fiqh muʿāmalāt. Hasil penelitian menunjukkan bahwa regulasi persetujuan terinformasi dalam peraturan nasional lebih menekankan pada pemenuhan formalitas persetujuan daripada kualitas substansial kesediaan dan kehendak bebas pasien. Dengan merekonseptualisasikan persetujuan yang terinformasi sebagai kontrak layanan medis berdasarkan prinsip at-tarāḍī, studi ini mengusulkan model persetujuan substantif yang menuntut pengungkapan informasi, pemahaman pasien, kehendak bebas, dan ridā yang autentik. Rekonstruksi ini berkontribusi memperkuat perlindungan hukum pasien, menyeimbangkan hubungan terapeutik, dan menyatukan kepastian hukum dengan nilai-nilai keadilan dan etika dalam pelayanan kesehatan.*

***Keywords**: Informed Consent, Islamic Contract Law, At-Tarāḍī, Patient Autonomy*

## Introduction

Consent based on adequate information in healthcare services is referred to as informed consent (IC), namely a communication process between a physician and a patient that enables the patient to obtain sufficient knowledge in order to make decisions regarding medical treatment.[1] In this process, the physician provides a detailed explanation of the medical procedure to be performed.[2] In Indonesian civil law, informed consent holds a strong legal position: the failure to fulfill the requirements of informed consent may give rise to legal consequences, including the annulment of the therapeutic agreement, claims for damages based on unlawful acts, and allegations of medical malpractice.[3]

The principle of informed consent originates from international human rights law ratified by Indonesia, particularly the International Covenant on Civil and Political Rights (ICCPR)[4] and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[5] It is also firmly rooted in the 1945 Constitution of the Republic of Indonesia (UUD 1945) through guarantees of human dignity, personal protection, the right to health, and the right to be free from degrading treatment.[6] Consequently, informed consent constitutes a constitutional right of patients and a legal obligation for medical professionals and the state to ensure that such rights are fulfilled.

Furthermore, patients as consumers of healthcare services are legally protected in their right to obtain information under Law Number 8 of 1999

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[1] Nathan A. Shlobin et al., "Informed Consent in Neurosurgery: A Systematic Review," *Neurosurgical Focus* 49, no. 5 (2020), https://doi.org/10.3171/2020.8.FOCUS20611.

[2] Majed Almalki and Waad F. Khayat, "The Use of Informed Consent in Endodontic Treatment in Saudi Arabia: A Cross-Sectional Study," *Cureus* 16, no. 5 (2024), https://doi.org/10.7759/cureus.60385.

[3] Kurniawan, I.G., & Chandra, A. (2024). The Civil Law Aspects of Informed Consent to Medical Procedures. SASI, 30(3), 326 - 338. DOI: https://doi.org/10.47268/sasi.v30i3.2277.

[4] Republik Indonesia, *Undang-Undang RI Nomor 12 Tahun 2005 Tentang Pengesahan Internasional Kovenan Hak Sipil Dan Politik*, 2005, 1–14. Pasal 7 : Tidak seorang pun boleh menjadi objek percobaan medis atau ilmiah tanpa persetujuan bebasnya.

[5] Undang-Undang Nomor 11 Tahun 2005 Tentang Pengesahan International Covenant on Economic, Social and Cultural Rights (Kovenan Internasional Tentang Hak-Hak Ekonomi, Sosial Dan Budaya), UU No. 11 Tahun 2005 (2005), https://peraturan.bpk.go.id/Details/40256/uu-no-11-tahun-2005.

[6] Negara Republik Indonesia, *Undang-undang Dasar Negara Republik Indonesia Tahun 1945*, 1945. Pasal 28A, 28G, 28H, 28I, 28J ayat (1). (Hasil Amandemen kedua)

on Consumer Protection. Patient consent to medical intervention represents a manifestation of the protection of personal integrity, family, and property rights guaranteed under Law Number 39 of 1999 on Human Rights. More specifically, the legal foundation of informed consent in Indonesia is currently regulated under Law Number 17 of 2023 on Health.

More detailed regulation of informed consent is provided in Minister of Health Regulation Number 290 of 2008 concerning Consent to Medical Procedures. This regulation remains applicable and continues to serve as the primary legal framework governing informed consent, despite the enactment of the new Health Law in 2023, since the new statute does not explicitly revoke derivative regulations such as this ministerial regulation that regulate technical aspects of medical consent. Nevertheless, the existence of statutory guarantees does not automatically ensure effective protection for patients. In practice, several issues persist, particularly the fact that patients often occupy a weaker position compared to medical professionals.

Many patients feel incapable of evaluating the medical information provided and therefore tend to accept whatever decisions are made by physicians.[7] This situation reflects a systemic vulnerability of patients within therapeutic transactions, which necessitates stronger legal protection. Such vulnerability arises from three principal dimensions. First, asymmetric information, where the physician's technical medical expertise may potentially lead to information imbalance. Second, psychological and medical dependency, which creates inequality in bargaining power between patients and medical professionals. Third, patients' inability to adequately assess risks in the high-risk sector of healthcare services.

In addition, there exists a vagueness of norms in the regulation of informed consent. For instance, the Health Law stipulates that consent must be given after an explanation, while Minister of Health Regulation No. 290 of 2008 requires consent to be given after a "complete explanation." However, these provisions do not provide clear normative indicators regarding the scope, language, or method of explanation, thereby allowing the completeness of information to be interpreted subjectively. Moreover, Government

[7] Widyana Beta Arthanti et al., *Prinsip Otonomi Dalam Praktik Kedokteran di Indonesia :*, 5, no. September (2025): 174–87.

Regulation Number 28 of 2024 states that explanations should be adjusted to the patient's condition, which further obscures the benchmark of what information should be conveyed and how it should be delivered to patients.[8] As a result, medical information and consent procedures tend to become formalistic and standardized, reducing the meaning of consent to a mere formal signature rather than a genuinely informed agreement.

Therefore, the regulation of informed consent requires clearer and more operational standards in order to ensure effective legal protection for both patients and medical professionals. Such standards could include, for example, the establishment of minimum mandatory elements of disclosure, so that the information provided follows an objective standard rather than merely fulfilling procedural formality.[9] Furthermore, the concept of informed consent should emphasize voluntary and conscious consent. Addressing normative ambiguity is essential to prevent legal uncertainty, as the principle of legal certainty requires clear and consistent rules. Normative ambiguity may directly undermine the protection of patient rights.[10]

The principle of *at-tarāḍī* in Islamic contract law may serve as an alternative conceptual framework for the implementation of informed consent in Indonesia. Unlike purely administrative approaches, at-tarāḍī emphasizes substantive mutual consent and may help address the normative gaps in the current regulation of informed consent. Substantively, at-tarāḍī does not merely signify agreement, but reflects genuine willingness (*riḍa*) voluntary consent grounded in knowledge, free from coercion, and expressed

[8] Presiden Republik Indonesia, "Peraturan Pemerintah (PP) Nomor 28 Tahun 2024 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan," *Kemenkes RI*, 2024. Pasal 175.

[9] Hafidz Nur et al., "Legal Consequences Of Incomplete Delivery of Information in Medical Checkups Where The Treadmill Test Was Not Conducted Due To Medical Reasons: Akibat Hukum Ketidaklengkapan Informasi Pada Medical Checkup Yang Treadmill Testnya Tidak Terlaksana Dengan Alasan Medis," *LITIGASI* 26, no. 2 (2025): 37–69, https://doi.org/10.23969/litigasi.v26i2.19783.

[10] Guntur Yudha, Vera Dumonda, Boedi Prasetyo. Peran Etika Profesi Terhadap Risiko Gugatan Hukum Dokter Gigi yang Membuka Praktik Mandiri .Vol. 5, No. 6, 2025. https://dinastirev.org/JIHHP, DOI: https://doi.org/10.38035/jihhp.v5i6 https://creativecommons.org/licenses/by/4.0/

after understanding the legal consequences.[11] This concept provides a clearer interpretation of the notion of "consent" within the Health Law, government regulations, and ministerial regulations on medical consent, thereby enhancing legal certainty.

One country that has integrated the principle of *at-tarāḍī* into informed consent regulation is Saudi Arabia. The Saudi Commission for Health Specialties and the Saudi Ministry of Health (MOH) have developed guidelines governing the process of informed consent, which are based on international standards, Saudi cultural values, and Islamic law. These guidelines provide a comprehensive framework for good clinical practice informed by ethical standards. The integration of legal norms and ethical standards ensures that the practice of informed consent prioritizes genuine understanding, thereby achieving mutually voluntary agreement.

Saudi Arabia also has an official document entitled "Saudi Guidelines for Informed Consent" (1440H / 2019 Edition), which provides detailed rules regarding when and how informed consent must be obtained, including who may give consent (the patient, guardian, or representative), the requirement that consent be given voluntarily, the use of language understood by the patient, and the possibility of consent being given verbally, through gestures, or in written form. The core elements of medical consent in Saudi Arabia include: (1) Capacity, meaning that the patient must possess the mental and legal ability to understand information and make decisions; (2) Voluntariness, ensuring that the decision to accept or refuse treatment is made without coercion, manipulation, or undue influence; and (3) Disclosure, requiring practitioners to provide adequate, clear, and understandable information to the patient. Importantly, consent is not merely a standardized clause requiring the patient's signature, but rather the result of meaningful information and communication.[12]

This study proposes a reconstructive model of informed consent in which consent to medical procedures in healthcare practice integrates the

[11] Almalki and Khayat, "The Use of Informed Consent in Endodontic Treatment in Saudi Arabia: A Cross-Sectional Study."
[12] Kingdom of Saudi Arabia Ministry of Health, *Saudi Guidelines for Informed Consent*, 2019, 1–81.

principle of at-tarāḍī. The proposed model addresses a major gap in the existing literature on informed consent regulation, as previous studies have predominantly focused on evaluating legal implementation and positive law analysis without proposing a reconstructive model capable of ensuring legal protection and justice for patients. The differences between this study and previous research will be presented in the table below.

Several previous studies indicate that research on informed consent in healthcare services has primarily focused on regulatory aspects, procedural implementation, and legal protection. The study conducted by Rohmad Imam Masyuri (2024) finds the necessity of reconstructing informed consent regulations within the Health Law to better reflect the value of justice.[13] Majed Almalki and Waad F. Khayat (2024) demonstrate that the use of informed consent in endodontic treatment practices in Saudi Arabia has been implemented among dental practitioners; however, their research is largely empirical and does not examine the conceptual foundations of informed consent.[14] Meanwhile, Fadel Sitepu (2025) finds that the informed consent procedure in hospitals has been implemented as a form of legal protection, yet its application remains suboptimal due to patients' limited understanding and ineffective communication between medical personnel and patients.

This research lies in its effort to provide a conceptual reconstruction of medical consent through the lens of Islamic contract law by employing the principle of *at-tarāḍī* as a normative basis for assessing the substantive validity and quality of patient consent. The principal distinction from previous studies is that this research does not merely address the regulatory framework or procedural implementation of informed consent; rather, it specifically examines medical consent from the perspective of Islamic contract law, thereby positioning the elements of mutual willingness (*ridà*), free agreement, and contractual justice as foundational principles for understanding and reconstructing the concept of consent to medical treatment within healthcare services. Accordingly, this research aims to analyze the structural weaknesses

[13] Rohmad Imam Masyur, *Rekonstruksi Regulasi Informed Consent Pada Pelayanan Kesehatan Berbasis Nilai Keadilan*, no. February (2024): 1–135.

[14] Almalki and Khayat, "The Use of Informed Consent in Endodontic Treatment in Saudi Arabia: A Cross-Sectional Study."

of the concept of informed consent within Indonesian positive law and to reconceptualize informed consent as a medical service contract (*ʿaqd al-khidmah*) grounded in the principle of at-tarāḍī. The principal contribution of this study is the development of a novel normative reconstruction model of informed consent, which is expected to bridge the gap between the formalism of positive health law and the demands of substantive justice embodied in the principle of *at-tarāḍī*.

**Research Methods**

This study constitutes normative legal research employing both a conceptual approach[15] and a doctrinal approach.[16] In addition, it utilizes a normative comparative approach to compare the concept of informed consent under Indonesian positive law and under Islamic law. Normative legal research is considered appropriate because the primary objective of this study is to reconstruct and evaluate the conceptual foundations of informed consent.[17] This normative reconstruction is undertaken by systematically integrating statutory analysis, the doctrinal framework of Islamic contract law, and comparative legal reasoning in order to develop a coherent and evaluative analytical framework.

The legal materials used in this study consist of three categories.[18] First, primary legal materials, which are legally binding sources, including the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 on Human Rights, Law No. 8 of 1999 on Consumer Protection, Law No. 17 of 2023 on Health, relevant government regulations as implementing regulations of statutes, and Minister of Health Regulation No. 290 of 2008 concerning Consent to Medical Procedures. In addition, this study also refers to the Qur'an and Hadith relating to the principle of mutual consent (*at-tarāḍī*) as sources of Islamic law, as well as the Saudi Guidelines for Informed Consent

[15] Ministry of Health, *Saudi Guidelines for Informed Consent*.
[16] Muhaimin, *Metode Penelitian Hukum*, in *Mataram University Press*, Cetakan Pe (Jln. Majapahit No. 62 Mataram-NTB, 2020).Hal-64.
[17] Muhammad Azam et al., *Harmonizing Environmental Norms in International Trade : Reconciling WTO Rules with Biodiversity Protection in OIC Countries*, 2025, 141–54, https://doi.org/10.18502/kss.v10i26.19986.
[18] Solikin Nur, *Buku Pengantar Penelitian Hukum*, Cetakan Pe (CV. Penerbit Qiara Media, 2021).

(2019) as comparative legal material for examining the regulatory practice of informed consent in another jurisdiction. Second, secondary legal materials, which provide explanations and scholarly interpretations of primary legal materials, including classical and contemporary literature on fiqh muʿāmalāt, academic books, articles in reputable international journals addressing informed consent, health law, and Islamic contract law, as well as relevant previous studies. Third, tertiary legal materials, which provide guidance and clarification regarding primary and secondary legal materials, such as legal dictionaries, encyclopedias of Islamic law, and other supporting references.

The legal materials are analyzed through systematic and conceptual interpretation in order to identify the correspondence between the concept of consent to medical treatment in healthcare services and the principle of at-tarāḍī in Islamic contract law. The results of this analysis serve as the basis for the conceptual reconstruction of medical consent, oriented toward achieving justice, genuine mutual consent of the parties, and legal certainty.[19]

## Discussion

### The Concept of Informed Consent in Indonesian Health Law

In the dynamics of social life, agreements are a solid foundation for building legal relationships between individuals and legal entities. Through these agreements, the parties commit themselves to fulfilling their obligations and obtaining their agreed rights.[20] In healthcare services, these parties are medical or healthcare personnel and patients.[21] Informed consent (IC) is not merely the signing of a document; it is an ethical and legal process that ensures patients understand their diagnosis, the proposed procedure, the risks, benefits, and alternatives before making an autonomous decision about their

[19] Gunardi, *Buku Ajar Metodologi Penelitian Hukum*, Edisi Pert (Damera Press, 2022). Rekonstruksi merupakan salah satu metode penemuan hukum selain interpretasi atau penafsiran.

[20] Desi Syamsiah, Riki Martin Bala Bao, and Nur Fatihah Yuliana, "Dasar Penerapan Asas Pacta Sunt Servanda Dalam Perjanjian," Jurnal Hukum Das Sollen 9, no. 2 (December 25, 2023): 841–48, https://doi.org/10.32520/das sollen.v9i2.2988; Yoga Tri Cahyo and Marisa Kurnianingsih, "Pacta Sunt Servanda: Legal Dynamics in Indonesian Context," Walisongo Law Review (Walrev) 5, no. 1 (April https://doi.org/10.21580/walrev.2023.5.1.14585.

[21] Beauchamp, Tom L. & Childress, James F. *Principles of Biomedical Ethics*, 9th ed. New York: Oxford University Press, 2022, 104–109.

own bodies.[22] Therefore, informed consent is a legal and ethical prerequisite that binds every medical action throughout the world.

The practice of providing information and informed consent is crucial. Informed consent not only reflects medical ethical principles but also has significant relevance in the context of Islamic law. Islamic law, or Sharia, provides a solid ethical foundation for protecting individual rights, including the right to information and independent decision-making regarding health care.[23] Before informed consent is given, the doctor or hospital must explain to the patient or their family as clearly as possible, particularly in relation to: Advantages; Disadvantages; Risks; and Hope of recovery related to the patient's condition.[24] Informed consent gives patients the freedom to act and make medical decisions for themselves.[25]

**Mechanism for Providing Medical Information based on Regulations in Indonesia**

Law No. 17/2023 on Health, as the legal umbrella for therapeutic transactions, stipulates that every action to be taken by medical and health personnel in health services must obtain the consent of the patient or family. [26] Consent for medical actions must be preceded by the provision of clear and complete information.[27] The procedure for obtaining consent from patients or their families must first involve providing sufficient information about the healthcare services to be provided, including the possible consequences, as

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[22] Beauchamp, Tom L. & Childress, James F. *Principles of Biomedical Ethics*, 9th ed. New York: Oxford University Press, 2022, 104–109.

[23] Dea Febrina et al., "Pentingnya Informed Consent Dalam Perspektif Hukum Islam," *Jurnal Ilmiah Wahana Pendidikan* 2024, no. 20 (2024): 178–83.

[24] Argo Sudarga Yohanes et al., "Competency of Legal Subjects in Informed Consent as a Standard Agreement," *International Journal of Health Sciences* 6, no. 3 (2022): 1535–43, https://doi.org/10.53730/ijhs.v6n3.13185.

[25] Anggun Rezki Pebrina et al., "Fungsi Penerapan Informed Consent Sebagai Persetujuan Pada Perjanjian Terapeutik," *Zaaken: Journal of Civil and Business Law* 3, no. 3 (2022): 468–86, https://doi.org/10.22437/zaaken.v3i3.18966.

[26] Negara Republik Indonesia, "Undang-Undang Nomor 17 Tahun 2023," *Peraturan Perundang-Undangan*, 2023, 1–300. Pasal 274 huruf b dan Pasal 293. setiap pelayanan kesehatan perseorangan harus mendapat persetujuan.

[27] Negara Republik Indonesia. Peraturan Menteri Kesehatan No. 290/MENKES/PER/III/2008. Persetujuan Tindakan Medis. Pasal 3, 6 dan 7.

everyone has the right to balanced and responsible health information and education.[28] The type of information that must be provided during informed consent includes personal details, medical history, treatment plan, risks, and alternatives.[29]

Information regarding medical procedures must be provided completely and honestly. The details of information that must be provided to patients relate to the diagnosis and prognosis (course of the disease), the nature and purpose of the medical procedure to be performed, available alternatives and their risks, possible risks and complications, the benefits of the medical procedure, and the risks of not performing the procedure.[30] The information must be provided by the doctor and/or dentist who will perform the medical procedure. If they are unable to do so, it may be provided by another doctor and/or dentist with written authorization.[31]

**Forms of Medical Consent According to Positive Law in Indonesia**

Medical consent may be given in writing or verbally. The authority to give medical consent depends on the status of the patient (adult/incompetent) and the condition of the patient, namely: first, Competent Patients (Adults and Conscious), Medical Consent is given by the patient concerned, if they are an adult or married and in a conscious and mentally healthy state. Second, for an incompetent patient (unconscious/minor), consent is given by the closest family members, namely the husband or wife, biological children, biological parents, biological siblings, or legal guardian.[32]

Verbal consent (implied or oral consent) may be given for medical procedures that carry minimal risk. Examples include temperature

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[28] Indonesia, "Undang-Undang Nomor 17 Tahun 2023." Pasal 4 ayat (1) huruf b UU Kesehatan yang menegaskan hak setiap orang untuk mendapatkan informasi dan edukasi kesehatan yang seimbang dan bertanggung jawab.

[29] Negara Republik Indonesia, "Peraturan Pemerintah (PP) Nomor 28 Tahun 2024 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan," *Peraturan Perundang-Undangan*, no. 226975 (2024): 656. Pasal 727.

[30] Negara Republik Indonesia. Peraturan Menteri Kesehatan No. 290/MENKES/PER/III/2008. Persetujuan Tindakan Medis.

[31] Negara Republik Indonesia. *Ibid.* Pasal 4.

[32] Negara Republik Indonesia. Peraturan Menteri Kesehatan No. 290/MENKES/PER/III/2008. Persetujuan Tindakan Medis. Pasal 3 dan 4.

measurement, injections, and other non-invasive procedures. Written consent is required for medical procedures that carry high risk. Examples include major surgery, general anesthesia, chemotherapy, and other invasive procedures.[33] Patients may refuse the medical treatment offered, and doctors and/or dentists are obliged to inform patients of the consequences of refusing medical treatment. Refusal must be documented in writing through a Medical Treatment Refusal Statement.[34]

**Weaknesses in Informed Consent Practices in Indonesia**

Within the framework of Indonesian positive law, it is emphasized that every medical action must be based on patient consent. However, this norm does not provide clear parameters regarding the quality of consent and the level of understanding that must be achieved. As a result, compliance with the obligation to obtain consent is often measured solely by the existence of a document, rather than by the process and substance of communication between medical personnel and patients. One of the fundamental weaknesses of medical consent in healthcare practice is its reduction to an administrative instrument. Consent is often manifested in a standard form signed by the patient as a procedural prerequisite before medical treatment is carried out. This orientation causes informed consent to lose its substantial meaning as an expression of the patient's free will.

Based on the above analysis, it can be concluded that the weakness of medical consent in healthcare services lies not in the dominance of a procedural approach and the lack of a normative basis for substantive justice. This void opens space for the principle of at-tarāḍī in Islamic contract law to function as a corrective and reconceptualisation framework for informed consent, particularly in strengthening the quality of willingness, balance of relations, and legal protection of patients.

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33 Negara Republik Indonesia. Peraturan Menteri Kesehatan No. 290/MENKES/PER/III/2008. Persetujuan Tindakan Medis.

34 Negara Republik Indonesia. Peraturan Menteri Kesehatan No. 290/MENKES/PER/III/2008. Persetujuan Tindakan Medis. Pasal 13.

**Informed Consent in the Perspective of the Principle of at-tarāḍī in Islamic Contract Law**

Sharia principles do not only serve as guidelines for ethics or behaviour,[35] However, it also serves as a mechanism to prevent crime. Similarly, in conducting contracts or commercial transactions, one must uphold the *Maqashid Shariah*. According to Asy-Syatibi, Maqashid Shariah, or the objectives of Shariah, are divided into five main categories, namely: *Hifẓ an-Nafs* (Preservation of Life/Self), *Hifẓ al-'Aql* (Preservation of Reason), *Hifẓ al-Maal* (Preservation of Wealth), *Hifẓ an-Nasl* (Preservation of Progeny), *Hifẓ ad-Din* (Preservation of Religion).[3637] A contract in Islamic economics is not only interpreted as an ordinary agreement, but also as a commitment that has moral and legal implications.[38]

The relationship between doctors/health institutions and patients in medical services can be conceptualised as a service contract (*'Aqdul Khidmah*), which is specifically often categorised as Akad Ijarah (service lease) in the framework of Fikih Muamalah. Based on this review, the validity and legality of this relationship, including the Informed Consent process, must meet the basic pillars and requirements of an Islamic contract (*al-'Aqd*).[3940] The relationship between doctors/health institutions and patients in medical services can be conceptualised as a service contract (*'Aqdul Khidmah*), which is

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[35] Chaudhry Ghafran and Sofia Yasmin, "Ethical Governance: Insights from the Islamic Perspective and an Empirical Enquiry," Journal of Business Ethics 167, no. 3 (2020): 513–33, https://doi.org/10.1007/s10551-019-04170 3.

[36] Ali Abdurroziq, "Maqashid Al-Shariah Implementation and Islamic Economics Industry in Indonesia Maqashid al-Shariah Implementation and Islamic Economics Industry in Indonesia Faraid & Wealth Management 2.2. Maqashid al-Shariah Implementation and Islamic Economics Industry," *Fara'id and Wealth Management* | 2, no. 2 (2022).

[37] M. Khusnul Khuluq and Asmuni Asmuni, "Hifz Al-Bi'ah as Part of Maqashid Al-Shari'ah and Its Relevance in the Context of Global Climate Change," *Indonesian Journal of Interdisciplinary Islamic Studies* 7, no. 2 (2025), https://doi.org/10.20885/ijiis.vol7.iss2.art3.

[38] Aisyah Defy R. Simatupang Abdul Rachman, Atiqi Chollisni, Muklis, Dewi Reni, "Dasar Hukum Kontrak (Akad) Dan Implementasinya Pada Perbankan Syariah Di Indonesia," *Kontrak ( Akad ) Dan Implementasinya Pada Perbankan Syariah Di Indonesia* 8, no. 01 (2022): 47–58.

[39] Faiq Fatih Alwan et al., *Keabsahan Kontrak Dalam Ekonomi Syariah : Pendahuluan*, 2, no. 2 (2025): 293–305.

[40] Abdul Rachman, Atiqi Chollisni, Muklis, Dewi Reni, "Dasar Hukum Kontrak (Akad) Dan Implementasinya Pada Perbankan Syariah Di Indonesia."

specifically often categorised as an Ijarah contract (service lease) within the framework of Fiqh Muamalah.[41] Based on this review, the validity and legality of this relationship, including the Informed Consent process, must meet the basic pillars and requirements of an Islamic contract (*al-'Aqd*).[42]

The principle of at-tarāḍī is one of the fundamental principles in Islamic contract law which emphasises that the validity of an agreement requires mutual consent from the parties. This principle is rooted in the provisions of the Qur'an, particularly QS. An-Nisā' [4]: 29, which rejects all forms of acquisition of rights or property without a transaction based on mutual consent. In the context of contemporary muamalah, at-tarāḍī is understood as a normative foundation that safeguards the free will of the parties in forming fair and valid contractual relationships, without any element of fraud or coercion.[4344] Thus, it can be concluded that the principle of at-tarāḍī occupies a central position in Islamic contract law as the basis for valid consent and agreement. This principle ensures that agreements are not only formally valid, but also substantively fair.[45] Consent is considered invalid if it is not preceded by adequate understanding. According to Kamali, informed consent in Islamic law requires the provision of sufficient information to ensure that the contracting party is not misled or mistaken. In the formation of a contract, effective communication between the transacting parties is essential; therefore, every term of the contract to be agreed upon must be discussed and explained transparently and in detail, ensuring that genuine understanding exists prior to the conclusion of the agreement.[46]

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[41] Muhammad Sulaiman Al-Ashqar, *Fiqh al-Mu'amalat al-Maliyyah al-Mu'ashirah*, Juz 3 (Kuwait: Maktabah al-Manar al-Islamiyah, 2004), hlm. 120-125. (Mengklasifikasikan hubungan jasa profesional sebagai akad)

[42] Rodia Rotani Rianda et al., "Prinsip Muamalah Dalam Ekonomi Syariah: Tinjauan Dan Implementasi," *Hikmah: Jurnal Studi Pendidikan Agama Islam* 1, no. 4 (2024): 122–36.

[43] Mohammad Hashim Kamali, *Equity and Fairness in Islamic Contract Law*, Oxford University Press, Oxford, 2021.

[44] Rianda et al., "Prinsip Muamalah Dalam Ekonomi Syariah: Tinjauan Dan Implementasi."

[45] Mohammad Hashim Kamali, *Shari'ah Law: An Introduction*, Oxford: Oneworld Publications, 2008.

[46] Mardiaton Mardiaton et al., "Tinjauan Hukum Islam Terhadap Asas Kebebasan Berkontrak Dalam Akad Murabahah (Analisis Kontrak Perjanjian Murabahah Pada PT. Bank Aceh Syariah Cabang Pembantu UIN Ar-Raniry Banda Aceh," *E-Mabis: Jurnal Ekonomi Manajemen Dan Bisnis* 25, no. 2 (2024): 147–61, https://doi.org/10.29103/e-mabis.v25i2.1412.

The information provided must meet minimum disclosure standards, including the diagnosis, the purpose of the procedure, procedural steps, expected benefits, potential risks (including probabilistic risks), available alternatives (including the option of no treatment), and the consequences of refusal. Such information must be communicated in language that is understandable to the patient and may involve the use of supporting tools when necessary. A lack of clarity regarding the risks associated with medical procedures may fall within the category of gharar *fī al-ʿuqūd* (uncertainty in contracts). Accordingly, risks, alternatives, and potential complications must be disclosed in the informed consent process in order to prevent transactions that may cause harm due to the patient's lack of knowledge.[47] Ultimately, the full validity of informed consent depends on the presence of an informed attitude, reflecting the patient's internal judgment that has been consciously formed after receiving adequate disclosure of relevant information.[48]

**Table 1**. Comparison of Informed Consent in Indonesian Health Service Regulations and the Principle of At-Tarāḍī in Islamic Contract Law

| Aspect | Informed Consent in Indonesian Regulations | The Principle of *At-Tarāḍī* in Islamic Contract Law | Critical Notes / Reconstructive Implications |
|---|---|---|---|
| Normative Basis | Health Law, Government Regulations, Minister of Health Regulations, and medical ethical standards. | The Qur'an (Q.S. An-Nisā' [4]: 29), Hadith, and *fiqh muʿāmalāt*. | *At-tarāḍī* provides an ethical–transcendental foundation that strengthens the legitimacy of medical consent. |

[47] Ibn Taymiyyah, *Majmū' al-Fatāwā*, Kairo: Dār Ibn Ḥazm, t.t.
[48] Gary Burkhardt et al., "Privacy Behaviour: A Model for Online Informed Consent," *Journal of Business Ethics* 186, no. 1 (2023), https://doi.org/10.1007/s10551-022-05202-1.

| | | | |
|---|---|---|---|
| Nature of Consent | Patient consent to medical procedures after receiving an explanation. | Mutual willingness and agreement arising from free will. | National regulations tend to be procedural; *at-tarāḍī* requires substantive willingness. |
| Elements | Patient competence, disclosure of information, and consent (written or verbal). | Willingness (*riḍā*), offer and acceptance (*ijab–qabul*), clarity of the contract object, and legal capacity. | The element of *riḍā* adds an inner dimension often absent in administrative practice. |
| Nature of Consent (Form) | Often administrative and standardized (standardized consent forms). | Individual, contextual, and dependent on the genuine understanding of the parties. | The principle of *at-tarāḍī* rejects pseudo-consent resulting from standardized forms with predetermined clauses. |
| Position of the Parties | Doctor–patient relationship characterized by knowledge asymmetry. | Parties are positioned as morally equal within the contract. | *At-tarāḍī* encourages legal engineering to balance asymmetric relationships. |
| Substantive Prohibitions | Not explicitly formulated; focus is primarily on procedural compliance. | Prohibition of *gharar* (uncertainty), *tadlīs* (deception), *ikrāh* (coercion), and injustice. | These principles are relevant for assessing the substantive quality of medical consent. |
| Primary Objective | Legal protection for | Realization of justice, mutual | *At-tarāḍī* integrates ethical and juridical |

| | | | |
|---|---|---|---|
| | medical professionals and fulfillment of patient autonomy. | willingness, and valid agreement. | objectives simultaneously. |
| Legal Orientation | Legal certainty and evidentiary function in case of disputes. | Contractual justice and the moral legitimacy of agreements. | Islamic law expands the orientation of informed consent beyond procedure to include substantive considerations from intention to post-medical action. |
| Implications of Defective Consent | Potential medical disputes or allegations of malpractice. | The contract may be void or defective (*bāṭil/fāsid*) and may give rise to the right of *khiyār*. | *At-tarāḍī* provides normative justification for the annulment of unjust consent. |
| Ethical Dimension | Separated from religious norms (religiously neutral). | Integrated with the values of public welfare and human dignity. | Serves as the basis for integrating law, ethics, and religion in healthcare services. |

Source: Positive Regulations of Indonesia and Sources of Islamic Law

Thus, it can be concluded that the principle of at-tarāḍī in Islamic contract law is the basis for valid consent and agreement. This principle ensures that agreements are not only formally valid, but also substantively fair. In the context of contemporary contract law development, including in the health care sector, *at-tarāḍī* provides a strong normative basis for

reconstructing the concept of consent to align with the values of fairness, protection of the vulnerable, and legal certainty.

**Reconceptualising Informed Consent as a Medical Service Agreement based on the Principle of *At-Tarāḍī***

The application of the principle of at-tarāḍī in health law requires the reconceptualization of informed consent as a medical service contract. Within this framework, consent to medical treatment is understood as a reciprocal contractual relationship rather than merely a unilateral declaration by the patient. The construction of informed consent in healthcare services that reflects the principle of at-tarāḍī (mutual willingness) requires genuine agreement and mutual consent arising from the free will of the parties. This principle emphasizes that the validity of an agreement is not determined solely by its formal aspects, but also by the substantive quality of the process through which consent is formed.

The variables influencing patients' understanding of informed consent must therefore be carefully considered when designing an adequate consent process, as patient comprehension directly affects decision-making regarding medical treatment.[49] Justice cannot be achieved if patients make decisions without fully understanding the risks they face. Through adequate disclosure, the bargaining position between physicians and patients becomes more balanced, which is consistent with the principles of justice recognized in *fiqh muʿāmalāt*.[50]

The reconstruction of informed consent based on the principle of *at-tarāḍī* proposed in this study offers a normative model that integrates law, ethics, and contractual justice. This model not only strengthens the legal legitimacy of medical consent but also provides a more equitable and humane foundation for relationships within healthcare services. From the perspective of maqāṣid al-sharīʿah, comprehensive protection of the human body is a

[49] Francesco Gesualdo et al., "Digital Tools in the Informed Consent Process: A Systematic Review," *BMC Medical Ethics* 22, no. 1 (2021): 18, https://doi.org/10.1186/s12910-021-00585-8.
[50] Khalid Rashid, *Islamic Law of Contracts*, Oxford: Oxford Centre for Islamic Studies, 2020.

fundamental objective.[51] Legal protection therefore constitutes the fulfillment of fundamental rights guaranteed under Article 1(3) of the 1945 Constitution of the Republic of Indonesia, which affirms that Indonesia is a state governed by law. This principle implies that the state is founded upon law and is obligated to ensure justice and legal protection for its citizens. [52]

The reconceptualization of consent to medical treatment must incorporate essential elements consistent with Islamic contract law, particularly those that ensure the authenticity of *at-tarāḍī*. The literature on Islamic contracts emphasizes that every contract must fulfill elements such as voluntary agreement *(riḍā*), clarity of the contractual object, transparency of information, and good faith.[53] These elements are intended to ensure legal protection for patients, particularly as the weaker party in the therapeutic relationship. In a broader sense, legal protection refers to safeguarding individuals from harm and ensuring the protection of their rights, especially those in vulnerable positions.[54]

Reconceptualizing informed consent through the lens of the principle of at-tarāḍī functions as an ethical and substantive filter for the formal regulatory framework in Indonesia. While positive law primarily focuses on procedural compliance such as written consent, formal documentation, and legal capacity fiqh muʿāmalāt requires the authenticity of consent free from gharar (uncertainty), supported by full disclosure and oriented toward the realization of public welfare (*maṣlaḥah*). Accordingly, medical information must be presented in a clear and comprehensible manner so that informed consent can function as a mechanism to prevent gharar in healthcare practices.[55]

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[51] Muhammad Latifil Ansori et al., "Akad Dalam Konteks Syariah," *Al-Fadilah: Islamic Economics Journal* 2, no. 2 (2024): 70–79.

[52] Muhhamad Ziril Amin dan Lalu Husni. 2023. Perlindungan Hukum dan Tanggung Jawab Perusahaan Alfamart yang beroperasi Terhadap Karyawan Alfamart yang Berkerja Malam Hari (Studi Kota Mataram). Jurnal Private Law, Volume 3, Issue 1, Februari 2023. hal 174.

[53] Ansori et al., "Akad Dalam Konteks Syariah."

[54] Kamus Besar Bahasa Indonesia. https://kbbi.web.id/perlindungan. Diakses tanggal 02 Maret 2025

[55] Kamus Besar Bahasa Indonesia. https://kbbi.web.id/perlindungan. Diakses tanggal 02 Maret 2025

The proposed model of informed consent in Indonesia, integrated with the principle of at-tarāḍī and drawing on the Saudi Arabian regulatory framework as a role model, conceptualizes informed consent not merely as a standardized form but as a multi-stage process, consisting of: (1) Honest and complete disclosure of information; (2) Verification of patient understanding (teach-back method); (3) Assurance of voluntariness; (4) Substantive mutual willingness (at-tarāḍī); (5) Expression of consent (written, verbal, or recorded); (6) Legal validity of the medical procedure; and (7) Professional responsibility and trust (amānah) of the physician.

Saudi Arabia is selected as a comparative role model because it possesses informed consent guidelines that are systematic, comprehensive, and explicitly integrate the principle of at-tarāḍī within modern healthcare regulation[56] These regulations demonstrate a dynamic and adaptive approach to developments in medical practice. Such an informed consent framework is particularly relevant for protecting patients with diverse levels of knowledge and varying socio-cultural backgrounds. For clarity, the stages of the proposed informed consent model integrated with the principle of at-tarāḍī, using Saudi Arabia as a role model, are presented in Table 3 below.

**Table 2.** Summary of the Proposed At-Tarāḍī–Based Informed Consent Model
(Saudi Arabia as a Role Model)

| Stage | Brief Description of the Proposed Model | Justification / Inspiration from Saudi Arabia |
|---|---|---|
| 1. Honest and Comprehensive Disclosure (Standard Disclosure) | Physicians are required to provide information regarding diagnosis, procedures, benefits, risks, | *Saudi Guidelines for Informed Consent (2019)* require disclosure that is |

[56] Saudi Patient Center. The Saudi Patient Safety Center discusses updating the Saudi Guidelines for Informed Consent. https://www.spsc.gov.sa/English/News/Pages/news169.aspx?utm_source=chatgpt.com. Diakses tanggal 8 Desember 2025.

| | | |
|---|---|---|
| | alternatives, and the consequences of refusal using language that can be understood by the patient. | adequate, comprehensible, and culturally appropriate. |
| 2. Verification of Understanding (Teach-Back) | Patients are asked to restate the key information provided in order to ensure their understanding. This confirmation is documented as part of the consent record. | Saudi regulations emphasize verbal confirmation of patient comprehension before consent is given. |
| 3. Voluntariness | The patient's decision must be made without pressure, coercion, or manipulation. Physicians are required to consider the patient's psychological and situational condition. | The Saudi Guidelines emphasize that decisions must be made freely, without coercion or undue influence. |
| 4. Substantive Willingness (*At-Tarāḍi*) | Consent is considered valid only when genuine willingness exists based on understanding, not merely through administrative signatures. | Saudi Islamic legal principles reject *gharar* (uncertainty), *tadlīs* (deception), and *ikrāh* (coercion). |
| 5. Expression of Consent (Written / Verbal / Recorded) | Consent may be expressed in written, verbal, or audio-visual form depending on the level of risk involved in the medical procedure. | Saudi regulations permit consent to be given verbally, through gestures, or in written form depending on the risk level. |
| 6. Validity of Medical Action | Consent is valid only when disclosure, | Saudi guidelines assess the validity of |

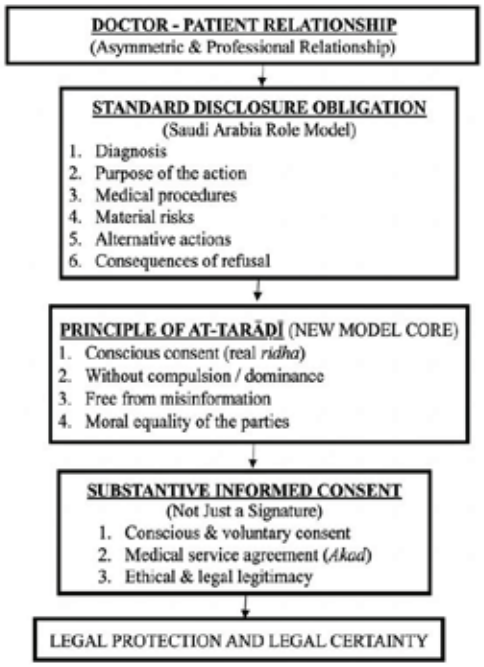
| | | |
|---|---|---|
| | understanding, voluntariness, substantive willingness, and expression of consent are fulfilled. Without one of these elements, consent is substantively invalid. | consent based on the integrity of the process rather than merely the existence of a consent form. |
| 7. Saudi guidelines assess the validity of consent based on the integrity of the process rather than merely the existence of a consent form. | Physicians retain ethical, legal, and religious responsibility before, during, and after medical treatment. | The principle of *amānah* in Saudi Islamic legal practice and clinical ethical codes. |

Source: Saudi Arabia Informed Consent Guidelines 2019

The table above illustrates the comprehensive structure of an informed consent model based on the principle of at-tarāḍī, inspired by the Saudi Arabian guidelines. The model emphasizes several critical stages, including honest and proportionate disclosure of information, verification of patient understanding, decisions made voluntarily, substantive willingness, authentic expression of consent, and the continuing professional responsibility (*amānah*) of medical practitioners.

This model offers an approach that not only refines the procedural framework of informed consent regulation in Indonesia but also addresses the normative gaps concerning the substantive quality of consent. Accordingly, the model introduces a new conceptualization of informed consent that is operational in nature, grounded in the value of mutual willingness, and compatible with both global ethical standards and the tradition of Islamic contract law. The proposed reconstruction of informed consent in Indonesia, drawing upon the Saudi Arabian model and integrating the principle of at-tarāḍī, is illustrated in the diagram below.

**Figure 1.** Reconstruction of Informed Consent in Indonesia with Saudi Arabia as a Role Model Applying the Principle of *at-tarāḍī*




Source: Informed Consent Saudi Arabia with the Principle of *at-Taradi*

Figure 1. The diagram illustrates that, within the proposed model, informed consent does not merely end with the fulfillment of formal consent requirements but is positioned as the outcome of a process involving standardized disclosure, verifiable patient understanding, and conscious mutual willingness *(at-tarāḍī*). By adopting Saudi Arabia as a comparative role model, patient consent is understood as a medical service contract that requires transparency of information, moral equality between the parties, and relational justice. Consequently, informed consent becomes substantively valid and capable of strengthening the legal protection of patients.

Based on the concept of *at-tarāḍī*, informed consent may be defined as a patient's consent given consciously, voluntarily, and on the basis of adequate understanding of relevant medical information, as a manifestation of the principle of *at-tarāḍī* within a medical service contract, both in direct

healthcare services and in telemedicine practices. By taking Saudi Arabia as a role model, informed consent in Indonesia may be reconstructed as a mechanism of substantive legal protection grounded in the principle of at-tarāḍī, without departing from the framework of national law.

**Conclusion**

This study finds that the principal challenge in the implementation of informed consent in Indonesian healthcare services lies in the vagueness of norms within the existing regulatory framework, which predominantly emphasizes procedural compliance without providing clear parameters regarding the quality of medical information, the rational standard of patient understanding, and the voluntariness of consent within the inherently unequal doctor–patient relationship. Such normative ambiguity risks reducing informed consent to a merely formal requirement rather than a substantively meaningful agreement, thereby weakening the legal protection of patients. From the perspective of Islamic contract law, the principle of at-tarāḍī provides a strong normative foundation for reconstructing the concept of consent by emphasizing genuine willingness (riḍā), transparency of information, and fairness between the parties. Accordingly, this study proposes a reconceptualization of informed consent as a medical service contract grounded in the principle of at-tarāḍī, which integrates substantive justice, protection of the weaker party, and legal certainty within healthcare services.

Future research should develop and empirically test the operationalization of an at-tarāḍī-based informed consent model in healthcare practice. This may include examining how the proposed model can be translated into standard operating procedures (SOPs) for medical consent, identifying measurable indicators of patient understanding and voluntariness, and evaluating the effectiveness of communication models between physicians and patients that ensure meaningful disclosure of medical information. Comparative studies between healthcare systems that integrate ethical–religious principles in medical consent regulation and those based solely on positive law may also provide valuable insights into how such a model can enhance patient autonomy, legal certainty, and the protection of

vulnerable patients and doktor in clinical decision-making. This article Contributes by offering model of informed consent as a medical service contrak that is oriented towards subtantive justice and strengthening legal protection for doctors and patients.

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