



BEYOND LEGAL COMPLIANCE: RECONSTRUCTING PATIENT PROTECTION THROUGH THE MORAL CONSTITUTION OF MEDICAL PRACTICE IN INDONESIA

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Abstract

The gap between legal norms (*das sollen*) and the actual implementation of healthcare services (*das sein*) remains a persistent challenge in medical practice in Indonesia. Although the legal framework, including Law No. 17 of 2023 on Health, Law No. 29 of 2004 on Medical Practice, and Law No. 44 of 2009 on Hospitals, provides a normative basis for patient protection, its implementation continues to face disparities in service quality between BPJS and non-BPJS patients, weak informed consent practices, prescribing practices that are not always fully patient-oriented, and ineffective legal accountability mechanisms for medical malpractice. This study aims to examine the axiological foundations of medical practice law and develop a legal reconstruction for substantive patient protection in Indonesia. Employing a normative-empirical approach, the study integrates statutory, conceptual, case, philosophical, and empirical approaches. Data were obtained through literature and legal document analysis, judicial decisions, and interviews with relevant informants, and analyzed qualitatively through data reduction, presentation, and inductive conclusion drawing. The findings reveal persistent disharmony between positive law and professional ethics, administrative and procedural dominance, healthcare inequalities, weak informed consent implementation, and ineffective accountability mechanisms. The study proposes reconstructing medical practice law through stronger integration of legal norms, professional ethics, human rights, and accountability mechanisms to advance substantive justice, utility, and legal certainty in patient protection.



Keywords: Legal Axiology, Medical Practice, Patient Protection, Substantive Justice, Health Law.

1. Introduction

Patient protection is one of the main foundations of an equitable health system (Martín-Delgado & Bodí, 2025; Sousa, 2006). In a state governed by the rule of law, medical services cannot be understood solely as a professional relationship between doctor and patient, but also as an arena for fulfilling human rights, dignity, safety, and autonomy. Therefore, the quality of a health system is not solely assessed by the availability of regulations or adherence to procedures, but also by the extent to which the law is able to provide substantive justice in the patient experience (Gericke, 2024; Ntais & Talias, 2026; Wickins & Wickins-Drazilova, 2026). In this context, the more fundamental question is not simply whether the law has been complied with, but whether the law is truly capable of protecting patients as dignified subjects.

This issue is further complicated by the fact that the doctor-patient relationship takes place within an institutional environment that intersects medical, legal, ethical, economic, and administrative interests. Normatively, Indonesia already has a relatively comprehensive patient protection framework through its constitution and various health regulations (Listyaningrum & Lubis, 2025; Sriwidodo et al., 2025). The rights to health services, legal certainty, safety, and protection of patient dignity have a constitutional basis and are then outlined in laws and regulations concerning health and medical practice. At the same time, the medical profession also has ethical principles through the Doctor's Oath and the Indonesian Code of Medical Ethics (KODEKI), which prioritize patient safety and interests as fundamental principles (Hosen, 2022; Muhtar et al., 2024; Muis et al., 2023). Thus, normatively, patient protection in Indonesia is built on a combination of positive law, human rights, and professional ethical commitments.

However, the existence of a strong legal framework does not automatically guarantee the realization of patient protection in practice (Listyaningrum & Lubis, 2025). Various issues demonstrate the gap between the law on the books and the law in action. The disparity in services between BPJS and non-BPJS patients, the potential reduction of informed consent to an administrative formality, the question of the rationality of drug prescriptions, and the complexity of accountability in cases of alleged malpractice indicate that patient protection still faces implementation challenges (Adhani & Akbar, 2024; Mashdurohatun et al., 2025). In such situations, compliance with legal procedures may be formally met, while substantive justice for patients may not be achieved. In other words, legal compliance does not necessarily translate into substantive patient protection.

This gap highlights the limitations of an approach that views patient protection primarily through the lens of legal certainty and compliance. In healthcare practice, the law confronts situations that cannot always be resolved through formal procedures. Informed consent, for example, should not stop at the patient's signature but should reflect communication that enables



the patient to understand the risks and alternatives of medical treatment (Negash et al., 2023). Similarly, the principle of justice in healthcare cannot be reduced to administrative equality if differences in financing mechanisms actually result in substantively different service experiences. These issues demonstrate that patient protection requires an approach that connects legal norms with the values the law seeks to embody.

This is where the legal axiology perspective becomes relevant. Legal axiology not only questions whether a rule applies and is complied with, but also questions the purpose for which the law was created, what values it seeks to embody, and whether those values are truly present in practice. In the context of medical practice, this perspective opens up space to evaluate the tension between three fundamental values justice, utility, and legal certainty and the reality of medical services. This approach is crucial because laws that emphasize only procedural certainty risk producing formal protection, while protection oriented toward substantive justice requires an integration of legal norms and the moral values underlying the medical profession.

Furthermore, there are conceptual issues that have not been fully addressed in the construction of patient protection. Positive law and professional ethics are often positioned as two domains that exist side by side: law regulates obligations and responsibilities, while ethics regulates professional behavior. This separation has the potential to create a gap between what is required by law and what should be done based on the profession's moral values. In fact, the Doctor's Oath and the Medical Code of Conduct (KODEKI) contain fundamental commitments to patient safety, dignity, confidentiality, and interests. In this study, this issue is understood not simply as a need to strengthen regulations, but as a need to reposition the relationship between law and professional morality in the construction of patient protection.

Based on this, this study proposes the idea that patient protection cannot be built solely on legal compliance, but requires a foundation of values capable of bridging positive law and professional ethics. This study identifies the Physician's Oath as the highest axiological norm in Indonesian medical practice, as it encompasses moral, ethical, juridical, and spiritual dimensions. This position allows the Physician's Oath to be understood not merely as a ceremonial obligation or internal ethical guideline, but as the moral constitution of the medical profession that can serve as a normative foundation for reconstructing patient protection. From this perspective, patient protection is directed not only at ensuring legal certainty but also at ensuring that medical practice is oriented toward substantive justice, benefit, safety, and human dignity.

Based on this framework, this study aims to analyze how legal values, professional ethics, and patient protection principles interact in medical practice in Indonesia; identify gaps between norms and implementation in medical services; and formulate a legal construct that is able to integrate positive law with professional-moral values as the basis for patient protection. Thus, this study contributes to the development of a health law perspective by shifting the focus from patient protection based on legal compliance to patient protection based on the integration of law, ethics, and professional moral values. This framework is expected to serve as a basis for the



development of a legal construct based on *ius constituendum* that not only provides legal certainty but also is able to realize substantive justice in health care practices in Indonesia.

2. Method

Research Design and Approach

This research uses a normative-philosophical legal research design with a statutory, conceptual, and philosophical approach. Normative legal research is used to analyze law as a system of norms encompassing legislation, legal principles, doctrines, professional documents, and decisions related to medical practice. Meanwhile, a philosophical approach is used to examine the values underlying law, particularly the relationship between justice, utility, and legal certainty in patient protection (Calderai, 2026; Hamzani et al., 2024; Khoiri, 2022). The research approach is directed at three analytical objectives. First, to analyze the consistency between health legal norms and the values of justice, utility, and legal certainty. Second, to examine the position of the Physician's Oath and the Indonesian Code of Medical Ethics (KODEKI) in the construction of patient protection. Third, to identify the gap between normative values embodied in law and professional ethics and patient protection practices, and to formulate a legal construct that can bridge this gap. Thus, this research is not intended to test hypotheses or generate statistical generalizations, but rather to construct normative-philosophical arguments regarding the reconstruction of patient protection.

Legal Materials and Data Sources

This study utilizes primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia; Law Number 29 of 2004 concerning Medical Practice; Law Number 17 of 2023 concerning Health; Law Number 44 of 2009 concerning Hospitals; Law Number 36 of 2014 concerning Health Workers; Law Number 39 of 1999 concerning Human Rights; relevant government regulations and ministerial regulations, particularly regarding informed consent and medical records; as well as publicly available court decisions and decisions of the Indonesian Medical Discipline Honorary Council (MKDKI). Professional documents, including the Indonesian Doctors' Oath, the Indonesian Doctors' Oath, and professional organization regulations related to medical ethics, were also analyzed as an important part of the research's normative construction (Adonara et al., 2025; Edi & Laksana, 2026; Idris et al., 2024; Mahajan et al., 2025). Secondary legal materials include books and literature on legal philosophy, health law, bioethics, medical ethics, legal doctrine, and national and international scientific articles relevant to patient protection, informed consent, medical malpractice, professional liability, and bioethical principles. Tertiary legal materials are used to support understanding of the legal terminology and concepts analyzed.

Legal Material Collection and Analysis Techniques

Legal materials were collected through library and document studies, examining laws and regulations, official documents, court decisions, professional organization documents, and



relevant scientific literature. The analysis was conducted qualitatively and normatively through a process of selection, categorization, interpretation, and synthesis of the collected legal materials.

The analysis was conducted in three main stages. First, normative analysis, which identifies and interprets legal provisions governing medical practice and patient protection. Second, axiological-philosophical analysis, which evaluates the extent to which legal norms and patient protection practices reflect the values of justice, utility, and legal certainty, using Gustav Radbruch's framework. Third, reconstructive analysis, which synthesizes positive law, professional ethics principles, the Doctor's Oath, the KODEKI (National Code of Ethics), and patient protection principles to formulate a legal construct that is more oriented towards substantive justice. This analytical framework is used to identify gaps between law on the books and law in action, particularly in the context of service inequality, the implementation of informed consent, prescribing practices, and medical accountability.

Validity of Analysis

The validity of the argumentation is maintained through triangulation of legal sources, namely by comparing and confirming findings across various categories of legal materials, including legislation, court decisions, official documents, professional documents, and scientific literature. This process is used to ensure that the resulting interpretations and normative constructions have an adequate legal and conceptual basis.

3. Results and Discussions

3.1. Beyond Legal Compliance: The Axiological Gap in Patient Protection

The results of the study show that the patient protection system in Indonesia has been normatively built on three fundamental values, namely justice, benefit, and legal certainty, as developed in the thinking of Gustav Radbruch (Radbruch, 1950). These three values have been internalized in various health legal instruments, including constitutions, regulations on health and medical practice, and professional ethics. However, research findings indicate that these values remain stronger at the normative level than at the implementative level. Therefore, the existence of relatively comprehensive regulations does not automatically result in substantive, equitable patient protection.

These findings indicate an axiological gap, namely the gap between the values ideally intended to be realized by law and the experience of patient protection in practice. This gap is reflected in unequal services, weak implementation of informed consent, issues of professional independence in prescribing drugs, and limited mechanisms for resolving medical disputes. From this perspective, the primary problem with patient protection is not simply the absence of law, but rather the law's limitations in transforming normative values into patient-oriented behaviors and service practices.

This finding expands the study of patient protection, which has tended to position regulation as the primary instrument of protection. Listyaningrum and Lubis, "Legal Perspectives on



Healthcare Inequality in Indonesia." (Hosen, 2022; Muis et al., 2023). This research shows that legal compliance is not synonymous with substantive justice. Adherence to procedures may satisfy formal requirements, but it does not necessarily guarantee that patients receive adequate information, are treated equally, or have access to effective justice mechanisms. Therefore, the effectiveness of health law needs to be assessed not only based on the existence and compliance with norms, but also on the ability of those norms to realize the values for which they were created.

In this context, the axiological approach makes an important contribution by shifting the question from "Is the law being complied with?" to "Does the law produce justice, utility, and meaningful protection for patients?" This shift forms the basis for the research's main argument that patient protection requires an approach beyond legal compliance, namely an approach that connects legal certainty with substantive justice and moral-professional values.

3.2. Patient Inequality as a Systemic Failure of Law, Structure, and Professional Culture

Further research shows that injustice in medical practice cannot be explained solely by individual physician behavior. Injustice is a multidimensional issue involving legal substance, institutional structure, legal culture, health economic conditions, professional culture, and the effectiveness of oversight and law enforcement. Although various regulations guarantee patient rights, their implementation still faces obstacles, preventing normative protection from being fully realized in daily care practices.

From a legal system perspective, these findings demonstrate simultaneous problems across three dimensions. At the legal substance level, regulations regarding the rights and obligations of patients and doctors are in place. However, at the legal structure level, limited health facility capacity, distribution of medical personnel, and oversight mechanisms can hinder the implementation of norms. Meanwhile, at the legal culture level, the doctor-patient relationship is still influenced by a paternalistic culture that places doctors as the dominant party in medical decision-making. The combination of these three factors creates a situation where patient protection is formally available, but substantively not always felt by patients (Fikri & Najicha, 2022; Iswandari & Hoque, 2022)

This finding is important because it demonstrates that inequities in healthcare are not solely a matter of compliance failure, but rather a systemic governance failure. Therefore, increasing regulations or tightening sanctions is not always enough to improve patient protection if the service structure and professional culture remain unchanged. The findings of this study also indicate that the approach to patient protection needs to shift from a model oriented toward regulatory control to one that integrates legal accountability, professional ethics, and patient-centered values. In this model, physicians are viewed not only as subjects who must comply with regulations but also as professionals with a moral responsibility to ensure that patient protection values are truly realized in clinical practice.



3.3. Informed Consent and Medical Prescribing: From Formal Compliance to Substantive Patient Autonomy

One of the research's key findings is that patient protection issues are evident in informed consent practices and drug prescribing. In a therapeutic relationship, informed consent should be the primary mechanism for ensuring patient autonomy, not simply an administrative procedure (Cardozo, 2024; Pezza, 2022). However, when patient consent is reduced to formal fulfillment through signing a document, the substantive purpose of informed consent potentially loses its meaning. From an axiological perspective, informed consent should be understood as a communication process that allows patients to obtain sufficient information regarding the diagnosis, treatment options, benefits, risks, and alternatives to medical procedures (Elkaim, 2025)(“Informed Consent in Assisted Reproduction: An Ethics Committee Opinion,” 2023). Therefore, the validity of patient protection cannot be determined solely by the existence of consent documents, but also by the quality of communication and the patient's ability to make informed decisions.

Research findings also indicate that the issue of drug prescribing has a similar axiological dimension. Physicians' professional independence is a crucial component of patient protection, as clinical decisions should be based on the patient's medical needs, not influenced by commercial interests or conflicts of interest (Hassan & Abdul Rani, 2026; Quack, 2023). When medical decisions are influenced by interests beyond the patient's needs, there is a shift in orientation from patient welfare to institutional or economic interests.

Thus, the research findings broaden our understanding of patient autonomy. Patient autonomy cannot be realized simply by granting formal rights to consent to or refuse medical treatment. Autonomy requires a legal and professional environment that ensures transparency of information, therapeutic communication, clinical independence, and respect for patient decisions. These findings also demonstrate a crucial difference from approaches to patient protection that emphasize legal-formal aspects. This research confirms that substantive autonomy requires more than formal consent. Patient protection can only be considered effective when the law ensures that the medical decision-making process truly respects the patient's capacity and dignity.

3.4. The Moral Constitution of Medical Practice: Repositioning the Doctor's Oath

The most important and original finding in this study is the conceptualization of the Physician's Oath as the "Moral Constitution of the Indonesian Medical Profession." The study found that the Physician's Oath has unique characteristics because it integrates four dimensions simultaneously: moral, ethical, legal, and spiritual. Unlike previous approaches that tended to position the Physician's Oath as an ethical obligation or professional commitment, this study positions it as an axiological norm that can bridge positive law, professional ethics, and patient protection (Marcucci & Fourel, 2024; Stigall, 2022). From a moral perspective, the Physician's Oath binds the physician's conscience to prioritize the safety and interests of patients. From an ethical perspective, the Physician's Oath serves as the foundation of values for KODEKI and a standard of professional behavior. From a legal perspective, the oath is linked to the



requirements of medical practice. Meanwhile, the spiritual dimension provides a form of transcendental accountability that strengthens the profession's moral commitment. The integration of these four dimensions gives the Physician's Oath a distinct position from both positive legal norms and stand-alone codes of ethics (Archibong & Ukeagu, 2025; Kopel, 2022).

Based on these findings, this study proposes a conceptual repositioning of the Physician's Oath from a mere professional oath to a moral constitution of medical practice. This concept is not intended to replace positive law, but rather to provide a foundation of values that guide the interpretation and implementation of law. Thus, the relationship between law and ethics is no longer understood as two separate systems, but as two complementary dimensions in building patient protection. This finding is a major contribution of the study because it explains why strengthening regulations alone does not always result in better patient protection. The research shows that some issues of injustice stem not only from weaknesses in legal norms but also from the weak internalization of professional values. Discrimination in services, weak communication of informed consent, potential conflicts of interest in prescribing, and medical disputes indicate a gap between ethical values and professional practice. Therefore, the reconstruction of patient protection must begin with the reconstruction of values, not just the reconstruction of legal norms.

4. Reconstructing Patient Protection Beyond Legal Formalism

4.1. From Regulatory Protection to Value-Based Patient Protection

Based on all research findings, the ideal construction of patient protection cannot rely solely on regulations and sanction mechanisms. Patient protection requires an integration of legal values, professional ethics, medical morality, accountability mechanisms, and public oversight. This study proposes that Gustav Radbruch's three core values justice, utility, and legal certainty remain the primary foundation of a patient protection system (Radbruch, 1950). However, these three values need to be strengthened through the moral-professional dimension represented by the Physician's Oath. Thus, the legal construction proposed by this study does not replace Radbruch's paradigm, but rather extends it to the context of modern therapeutic relationships.

4.2. A Multi-Pillar Model for Reconstructing Medical Practice

Based on the synthesis of research findings, the ideal legal framework for medical practice can be built through several integrated pillars. First, value reconstruction. The Physician's Oath should be positioned as a moral-professional foundation that guides the development of professional standards, medical education, the Medical Code of Conduct (KODEKI), and the evaluation of professional behavior. The research also emphasizes the importance of continuing ethics education encompassing bioethics, therapeutic communication, patient rights, conflicts of interest, and patient legal protection. Second, equality of care. Patient protection must ensure that financial status does not become the basis for treatment that diminishes the quality and dignity of care. Equality does not mean ignoring differences in financing mechanisms, but rather ensuring that every patient continues to receive care that is oriented toward safety and medical needs.



Third, strengthening informed consent. Consent to medical procedures must be positioned as a process of communication and respect for patient autonomy, not simply an administrative document (Cardozo, 2024). Fourth, professional independence. The prescribing system must ensure that clinical decisions are based on medical needs and the patient's best interests and are protected from conflicts of interest (Negash et al., 2023). Fifth, multidimensional accountability. Doctors' accountability must be established proportionally through ethical, disciplinary, civil, and criminal mechanisms, according to the nature of the violation (Wickins & Wickins-Drazilova, 2026). This approach is necessary so that the accountability system not only protects patients but also provides adequate certainty and protection for doctors.

Sixth, access to justice. Medical dispute resolution mechanisms must be effective, transparent, accessible, and capable of providing fair solutions for both patients and doctors. Seventh, participatory oversight. Oversight should not be solely the profession's internal responsibility, but should involve the government, healthcare facilities, professional organizations, academics, patient organizations, the Ombudsman, the media, and the public. Research views public participation as part of strengthening transparency and accountability in medical practice.

4.3. The Proposed Legal Reconstruction: Toward Substantive Patient Justice

The research synthesis resulted in the construction of *ius constituendum* which positions patient protection as a value-oriented system. This system is built on eight main principles: (1) justice, benefit, and legal certainty; (2) the Physician's Oath as the moral constitution of the profession; (3) equality of service; (4) strengthening informed consent; (5) professional independence in prescribing; (6) integration of ethical, disciplinary, civil, and criminal accountability; (7) access to justice through effective dispute resolution; and (8) transparent and accountable participatory oversight.

This construction suggests that effective patient protection requires a paradigm shift from legalistic protection to value-based and patient-centered protection. In the legalistic paradigm, legal success is primarily measured through compliance with regulations. In contrast, in the paradigm proposed by this research, legal success is measured through the ability of the legal system and profession to deliver services that are fair, beneficial, safe, transparent, and respectful of patient dignity (Niforatos, 2016; Yelderman et al., 2024). Thus, this study confirms that "beyond legal compliance" does not diminish the importance of law, but rather broadens the meaning of legal compliance. Ideal compliance is not merely adherence to the legal text, but rather adherence to the values that serve as the law's objectives. In the context of medical practice, these values are realized through the integration of positive law and the Moral Constitution of Medical Practice.

4.4. Theoretical and Policy Implications

Theoretically, this study broadens the perspective of legal axiology in health law by demonstrating that Radbruch's three values justice, utility, and legal certainty need to be



contextualized through professional-moral values. This study offers the Moral Constitution of Medical Practice as a conceptual framework that bridges legal norms, professional ethics, and patient protection. These findings expand previous approaches that tend to separate law and ethics by demonstrating that both need to be integrated to understand the effectiveness of patient protection.

From a policy perspective, the research findings indicate that patient protection reform cannot be achieved solely through the creation or amendment of regulations. Reforms need to include strengthening ethics education, internalizing the Physician's Oath, improving the quality of doctor-patient communication, protecting professional independence, strengthening dispute resolution mechanisms, and developing a more transparent and participatory oversight system. Therefore, the primary contribution of this research lies in shifting the paradigm from "protecting patients through law" to "protecting patients through the integration of law, ethics, and professional morality." Within this framework, the Physician's Oath is no longer positioned as a symbolic norm, but rather as a moral-professional constitution that can serve as a foundation for reconstructing the patient protection system in Indonesia. These findings emphasize that equitable patient protection can only be realized when legal values are not limited to the normative level but are internalized into the structure, culture, and professional practice of medicine.

5. Conclusion

This study demonstrates that patient protection in Indonesian medical practice cannot be secured through legal compliance alone. Although the existing legal framework incorporates the principles of justice, utility, legal certainty, human rights, and professional medical ethics, the implementation of these principles remains constrained by a persistent gap between *das sollen* and *das sein*. This gap is reflected in disparities between BPJS and non-BPJS patients, the formalistic implementation of informed consent, and potential non-medical influences on prescribing practices. These findings indicate that the central challenge lies not primarily in the absence of regulation, but in the weak integration of legal norms, enforcement structures, legal culture, and professional ethics.

The principal contribution of this study is the conceptualization of the Doctor's Oath as the Moral Constitution of Medical Practice, which provides a normative bridge between positive law, professional ethics, and substantive patient protection. This perspective extends conventional compliance-based approaches by demonstrating that effective patient protection requires the internalization of justice, utility, legal certainty, patient autonomy, and professional moral responsibility within medical practice.

The study therefore proposes a reconstruction of medical practice law that integrates positive law, professional ethics, human rights, and substantive justice. Such reconstruction requires strengthening the normative role of the Doctor's Oath and the Indonesian Medical Code of Ethics, ensuring that informed consent genuinely protects patient autonomy, strengthening



oversight of medical services and prescribing practices, and establishing proportionate mechanisms of ethical, disciplinary, administrative, civil, and criminal accountability. Dispute resolution should also be developed toward mechanisms that promote justice, restoration, and legal certainty for both patients and medical professionals.

Overall, this study calls for a paradigm shift from compliance-based patient protection to value-based patient protection. Under this paradigm, law is not merely an instrument of regulation and control but also a means of realizing substantive justice, social utility, and human dignity. The proposed Moral Constitution of Medical Practice provides a conceptual foundation for reconstructing medical practice law in Indonesia and advancing a more integrated, patient-centered, and ethically grounded framework for equitable healthcare.

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