

Reconstructing the Regulatory Balance Between Physicians' Duties and Patient Autonomy: A Gustav Radbruchian Perspective

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Abstract: The relationship between physicians' legal duties and patients' autonomy has become increasingly complex following the enactment of Law Number 17 of 2023 on Health in Indonesia. Although the legislation recognises physicians' professional obligations and patients' rights to informed consent, normative inconsistencies remain, particularly in situations where patients refuse medically necessary treatment or where emergency interventions are performed without prior consent. This study aims to analyse the regulatory relationship between physicians' duties and patients' autonomy from the perspective of Gustav Radbruch's theory of the three fundamental legal values: justice, legal certainty, and legal utility. This research employed normative legal research using policy and doctrinal approaches. The study examined statutory regulations, the medical code of ethics, books, and scholarly journal articles through a conceptual approach and a statutory approach. The legal materials were analysed qualitatively using grammatical and systematic methods of legal interpretation. The findings

demonstrate that the current regulatory framework has not yet achieved an appropriate balance between physicians' professional obligations and patients' autonomy rights. Ambiguities concerning emergency medical treatment, informed consent, and physicians' legal liability continue to create legal uncertainty, weaken substantive justice, and reduce the practical utility of health law. From a Radbruchian perspective, the existing legal framework requires regulatory reconstruction to harmonise physicians' legal protection with patients' autonomy rights while simultaneously strengthening legal certainty, justice, and legal utility within Indonesia's healthcare system.

Keywords: physicians' duties; patient autonomy; informed consent; health law; Gustav Radbruch.

Abstrak: Hubungan antara kewajiban hukum dokter dan otonomi pasien menjadi semakin kompleks sejak berlakunya Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan di Indonesia. Meskipun undang-undang tersebut mengakui kewajiban profesional dokter dan hak pasien atas persetujuan tindakan medis berdasarkan informasi (*informed consent*), masih terdapat inkonsistensi normatif, terutama ketika pasien menolak tindakan medis yang diperlukan atau dalam pelaksanaan tindakan medis darurat tanpa persetujuan terlebih dahulu. Penelitian ini bertujuan menganalisis hubungan pengaturan antara kewajiban hukum dokter dan otonomi pasien berdasarkan teori tiga nilai dasar hukum Gustav Radbruch, yaitu keadilan, kepastian hukum, dan kemanfaatan hukum. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan peraturan perundang-undangan, konseptual, dan doktrinal. Bahan hukum berupa peraturan perundang-undangan, Kode Etik Kedokteran, buku, dan artikel ilmiah dianalisis secara kualitatif melalui metode penafsiran hukum gramatikal dan sistematis. Hasil penelitian menunjukkan bahwa kerangka pengaturan yang berlaku belum mewujudkan keseimbangan antara kewajiban profesional dokter dan hak otonomi pasien. Ketidakjelasan pengaturan mengenai tindakan medis darurat, persetujuan tindakan medis, dan tanggung jawab hukum dokter masih menimbulkan ketidakpastian hukum, melemahkan keadilan substantif, serta mengurangi kemanfaatan hukum. Berdasarkan perspektif Gustav Radbruch, diperlukan rekonstruksi regulasi untuk menyelaraskan perlindungan hukum bagi dokter dengan penghormatan terhadap hak otonomi pasien guna memperkuat kepastian hukum, keadilan, dan kemanfaatan hukum dalam sistem pelayanan kesehatan di Indonesia.

Keywords: kewajiban hukum dokter; otonomi pasien; persetujuan tindakan medis (*informed consent*); hukum kesehatan; Gustav Radbruch.

A. Introduction

The relationship between physicians and patients in medical practice has undergone significant transformation alongside advances in medical science and technology. Whereas this relationship was traditionally paternalistic, with decision-making largely dominated by physicians, contemporary developments have shifted the paradigm towards a more balanced and equitable relationship between physicians and patients.¹ As healthcare professionals, physicians have both legal and ethical obligations to provide medical services in accordance with professional standards and standard operating procedures.² On the other hand, patients possess the right to autonomy in determining the medical treatment to which they will be subjected, including the right to accept or refuse any proposed medical intervention.³

Nevertheless, the implementation of patient autonomy does not always operate harmoniously, as it frequently gives rise to conflicts with physicians' professional obligations founded upon the principles of beneficence and non-maleficence. In practice, physicians often face ethical and legal dilemmas when patients refuse medical treatment that is considered clinically necessary, thereby creating tension between respecting patients' autonomy and fulfilling the professional duty to preserve life. Cases involving the refusal of blood transfusions on religious grounds illustrate that this

¹ Bahder Johan Nasution, 'Hukum Kesehatan Pertanggungjawaban Dokter', in *Jakarta: Rineka Cipta*, 2005, p. 12.

² Kemenkes RI, *Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan*, 2023.

³ Hermien Hadiati Koeswadji, 'Hukum Kedokteran Di Indonesia', in *Bandung: Citra Aditya Bakti*, 2016, p. 45.

dilemma extends beyond a purely moral issue and also concerns the limits of legal intervention in individual autonomy.⁴

According to data from the Ministry of Health of the Republic of Indonesia for 2025, the Health Professional Discipline Council (MDP) received 57 reports of alleged medical malpractice or breaches of professional discipline involving healthcare professionals. Of these cases, 24 had been investigated, and 8 were found to have constituted violations of professional disciplinary standards.⁵

The transformation of Indonesia's healthcare system through Law Number 17 of 2023 on Health has brought significant changes to the regulation of rights and obligations in healthcare services. The Law affirms that physicians are required to provide medical services in accordance with professional standards, while also mandating respect for patients' rights to receive adequate information and to provide informed consent prior to medical treatment.

Previous studies have generally examined physicians' obligations and patients' rights as separate issues. In medical practice, however, these two aspects are closely interconnected and frequently give rise to legal and ethical conflicts, particularly when patients refuse medical treatment that physicians consider necessary to preserve their lives.⁶ Accordingly, there is a need to re-examine the existing regulatory framework, which reveals potential conflicts between the interests of physicians and those of patients. Both physicians and patients are equally entitled to fair treatment under the law.

⁴ L Syafruddin, M., & Dewi, 'Bioethical Dilemmas in Medical Decision-Making in Indonesia. *Asian Bioethics Review*', 14(1) (2022), 67–80.

⁵ Kemenkes RI, *Pedoman Disiplin Profesi Tenaga Medis*, 2025.

⁶ Koeswadji. Hal. 88

In such circumstances, Gustav Radbruch's legal philosophy assumes renewed significance, as it offers a theoretical framework that explicitly formulates the three fundamental values of law—justice, legal certainty, and legal utility—as objectives that must continually be balanced and reconciled. Radbruch maintained that law cannot be separated from the demands of justice, although legal certainty and legal utility remain indispensable for ensuring the stability and effectiveness of the legal system within society.⁷

Gustav Radbruch maintained that the ideal conception of law should always be founded upon these three pillars, with justice serving as the primary determinant, while legal certainty and legal utility remain indispensable complementary values. He emphasised that, in practice, a sound legal system should not derive its legitimacy solely from formal legal validity but must also be assessed according to its capacity to realise justice and promote the welfare of society. He argued that “law is a reality endowed with meaning in order to serve the very idea of law itself,” whereby the idea of law is understood as the embodiment of a balanced relationship among these three fundamental legal values.⁸

In principle, the objectives of the law can be achieved only when an ideal legal framework incorporates the principles of legal

⁷ Suwardi Sagama, ‘Analisis Konsep Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Pengelolaan Lingkungan’, *Mazahib*, 15.1 (2016), 20–41; Muhammad Bintang Firdaus, ‘Dialektika Keadilan, Kepastian, Kemanfaatan Hukum Dalam Perspektif Gustav Radbruch Pada Hukum Indonesia’, *Jurnal Kajian Hukum Dan Kebijakan Publik* | E-ISSN: 3031-8882, 3.1 (2025), 357–67.

⁸ Rahmanu Wijaya and Ade Putra Hasibuan, ‘Justice Versus Certainty: The Antinomy of Law in the New Indonesian Criminal Code from the Perspective of Radbruch’s Formula’, *NOVUM: JURNAL HUKUM*, 12.03 (2025).

certainty, justice, and legal utility as a coherent and inseparable whole. These three values are closely interrelated and mutually reinforcing. They subsequently serve as the guiding principles governing the conduct of legal subjects, reflecting the very purpose for which the law is enacted.⁹

Based on the foregoing, there remains a research gap that demonstrates the need for a study specifically examining the legal issues arising from the relationship between physicians' obligations and patients' autonomy rights. Such an inquiry is essential to assess the extent to which Indonesia's medical legal framework is coherent and consistent.

Accordingly, this study aims to analyse the legal issues concerning physicians' obligations and patients' autonomy rights within the existing regulatory framework. The findings are expected to contribute to the development of health law, particularly by strengthening legal protection for patients while safeguarding physicians' professional obligations.

The novelty of this research can be seen through a literature review, namely the results of previous relevant studies. Among them, Agus Sudradjat and Abu Alim highlighted the effectiveness of Islamic religious education for students at public universities.¹⁰

⁹ Moh Bagus, Ahmad Khubby Ali Rohmat, and Helga Nurmila Sari, 'Derivasi Konsep Hak Asasi Manusia Terhadap Penyetaraan Posisi Anak Melalui Pendekatan Affirmative Action', *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam*, 24.1 (2021), 59–84; Nuraid Fitrihabi, Rafikah Rafikah, and Ardian Kurniawan, 'Kepastian Hukum, Kemanfaatan Dan Keadilan Pemidanaan Kejahatan Asal Usul Perkawinan: Analisis Putusan No. 387/Pid. B/2021/PN. Jmb', *Al-Jinayah: Jurnal Hukum Pidana Islam*, 7.2 (2021), 484–509.

¹⁰ Agus Sudradjat and Abu Alim, 'Membangun Efektivitas Pembelajaran Pendidikan Agama Islam Pada Mahasiswa Di Perguruan

Rahmanu Wijaya and Ade Putra Hasibuan discusses justice versus certainty: the antinomy of law in the new Indonesian criminal code from the perspective of Radbruch's formula.¹¹ Meanwhile, Budi Astuti and M. Rusdi Daud focused on legal certainty regarding the regulation of online transport.¹² In contrast, Sekar Balqis Safitra Rizki Wahyudia Putri discussed An analysis of Gustav Radbruch's theory of the purpose of law in relation to the role of the Medical Dispute Resolution Board under Law No. 17 of 2023 on Health.¹³ Muhammad Bintang Firdaus discussed the dialectic of justice, certainty and the utility of law from Gustav Radbruch's perspective in Indonesian law.¹⁴ Diah Ratu Sari focused on discussing the priority of the principle of justice over the principle of benefit and the principle of legal certainty.¹⁵ Eldbert Christanto Anaya Marbun discuss examining legal certainty and legal protection for investments in Indonesia through the single submission (oss) online

Tinggi Umum', *Pendas: Jurnal Ilmiah Pendidikan Dasar*, 10.03 (2025), 217–39.

¹¹ Wijaya and Hasibuan.

¹² Budi Astuti and Muhammad Rusdi Daud, 'Kepastian Hukum Pengaturan Transportasi Online', *Al-Qisth Law Review*, 6.2 (2023), 205–44.

¹³ Sekar Balqis Safitra Rizki Wahyudia Putri, 'ANALISIS TEORI TUJUAN HUKUM GUSTAV RADBRUCH DALAM KEDUDUKAN MAJELIS PENYELESAIAN PERSELISIHAN MEDIS DALAM UNDANG - UNDANG NOMOR 17 TAHUN 2023 TENTANG KESEHATAN', *Sangaji Jurnal Pemikiran Syariah Dan Hukum*, 8.2 (2024).

¹⁴ Firdaus.

¹⁵ Diah Ratu Sari, 'The Priority Of The Principle Of Justice Over The Principle Of Benefit And The Principle Of Legal Certainty', *Fox Justi: Jurnal Ilmu Hukum*, 15.02 (2025), 90–95.

licensing system.¹⁶ Muhammad Nur Fikri Abdillah et al., discusses professional ethics in the notarial profession as examined through Gustav Radbruch's theory of the three fundamental values of law.¹⁷ Muklis Al'anam focused on discussing the theory of justice from Gustav Radbruch's perspective: the relationship between morality and law.¹⁸ E. Fernando M. Manullang discussed misinterpretations of Gustav Radbruch's ideas on the philosophical doctrine of validity in law-making.¹⁹ Lis Diana Ningsih and Dede Kania discussed criminal liability for medical malpractice.²⁰ Adinda Eka Ramadhani focused on discussing legal protection for doctors in providing healthcare to patients who refuse medical treatment resulting in death.²¹ Sucinta Ardianto discussed doctors' legal liability towards

¹⁶ Eldbert Christanto Anaya Marbun, 'MENGENAL KEPASTIAN HUKUM DAN PERLINDUNGAN HUKUM TERHADAP INVESTASI DI INDONESIA MELALUI LEMBAGA PERIZINAN ONLINE SINGLE SUBMISSION (OSS)', *DHARMASISYA Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia*, 1.4 (2021).

¹⁷ Muhammad Nur Fikri Abdillah, Salma Nur Rochmah Setya Wardah, and Indah Nur Cahyani, 'ETIKA PROFESI HUKUM NOTARIS DITINJAU DARI PEMIKIRAN TIGA NILAI DASAR HUKUM GUSTAV RADBRUCH', *Jurnal Ilmiah Nusantara (JINU)*, 1.4 (2024).

¹⁸ Muklis Al'anam, 'Teori Keadilan Perspektif Gustav Radbruch: Hubungan Moral Dan Hukum', 2025.

¹⁹ E Fernando M Manullang, 'Misinterpretasi Ide Gustav Radbruch Mengenai Doktrin Filosofis Tentang Validitas Dalam Pembentukan Undang-Undang', *Undang: Jurnal Hukum*, 5.2 (2022), 453–80.

²⁰ Lis Diana Ningsih and Dede Kania, 'Pertanggungjawaban Pidana Terhadap Tindakan Malpraktik Medis', *JIMU: Jurnal Ilmiah Multidisipliner*, 4.01 (2025), 2037–48.

²¹ Adinda Eka Ramadhani, 'Perlindungan Hukum Terhadap Dokter Dalam Memberikan Pelayanan Kesehatan Bagi Pasien Yang Menolak

patients in the operating theatre.²² Rizka Amelia Azis et al., discusses legal liability for the refusal of patients in the emergency department: an analysis based on the health act, the medical practice act and hospital regulations.²³ Elya Blandina Ginting, et al., discussed a legal and ethical analysis of doctors' rights and duties in public health emergencies in hospitals.²⁴ Anna Veronica Pont discussed a legal and ethical analysis of doctors' rights and duties in public health emergencies in hospitals.²⁵ Yohana and Andryawan focused on discussing the legal relationship between doctors and patients in

Tindakan Medis Yang Mengakibatkan Kematian', *Syntax Admiration*, 5.7 (2024).

²² Sucinta Ardianto, 'Pertanggungjawaban Hukum Dokter Terhadap Pasien Di Instalasi Kamar Bedah', *Majelis: Jurnal Hukum Indonesia*, 1.3 (2024).

²³ Rizka Amelia Azis, Wasis Susetio, and Rafi Rajendra Dwinanto, 'PERTANGGUNGJAWABAN HUKUM ATAS PENOLAKAN PASIEN DI INSTALASI GAWAT DARURAT: ANALISIS BERDASARKAN UU KESEHATAN, UU PRAKTIK KEDOKTERAN, DAN PERATURAN RUMAH SAKIT', *Lex Jurnalica*, 22.2 (2025).

²⁴ Elya Blandina Ginting, Muhammad Nasser, and Anis Retnowati, 'Analisis Hukum Dan Etika Terhadap Hak Dan Kewajiban Dokter Dalam Situasi Darurat Kesehatan Masyarakat Di Rumah Sakit', *JIIHHP*, 5.6 (2025).

²⁵ Anna Veronica Pont, 'Analisis Hukum Tentang Kewajiban Dokter Dalam Mengungkapkan Informasi Medis Kepada Pasien', *Jurnal Kolaboratif Sains*, 8.3 (2025), 1391–98.

medical treatment during emergencies.²⁶ Gunawan Widjaja et al., focused on discussing the obligations of healthcare professionals in obtaining informed consent: a literature review on ethics and law.²⁷ Widyana Beta Arthanti discussed the principle of autonomy in medical practice in Indonesia: a review of ethics and laws.²⁸ Eko Pujiyono discussed criminal liability for violations of patient autonomy.²⁹ Achmad Rizaldi Umam discussed patients' right to autonomy in giving consent to medical procedures based on the therapeutic relationship.³⁰

Unlike previous studies, this study specifically focuses on A brief review of Gustav Radbruch's theory on the regulation of doctors' duties and patients' right to autonomy. Based on this novelty, the results of this study contribute to the development of health law,

²⁶ Andryawan Yohana, 'HUBUNGAN HUKUM ANTARA DOKTER DAN PASIEN DALAM PENANGANAN MEDIS PADA SITUASI KEGAWATDARURATAN'.

²⁷ I Iksal, R A Hayani, and A Aslan, 'Strengthening Character Education as a Response to the Challenges of the Times', *Indonesian Journal of Education (INJOE)*, 2024 <<http://felifa.net/index.php/INJOE/article/view/233>>.

²⁸ Widyana Beta Arthanti, 'Implementasi Otonomi Dalam Praktik Kedokteran Di Indonesia: Tinjauan Etik Dan Hukum: The Principle of Autonomy in Medical Practice in Indonesia: A Review of Ethics and Laws', *Jurnal Hukum Dan Etika Kesehatan*, 2025, 174–87.

²⁹ Eko Pujiyono, 'TANGGUNG JAWAB HUKUM PIDANA PELANGGARAN OTONOMI PASIEN', *Jurnal Hukum Dan Etika Kesehatan*, 2.1 (2022).

³⁰ Achmad Rizaldi Umam, 'Hak Otonomi Pasien Dalam Menentukan Persetujuan Tindakan Kedokteran Berdasarkan Transaksi Terapeutik', *Jurist-Diction*, 5.5 (2022).

particularly by strengthening legal protections for patients without neglecting physicians' professional obligations, based on legal certainty, utility, and justice.

Among the gaps identified in this study and in previous studies cited in the literature review is the "theoretical gap"—namely, that the previously mentioned studies did not fully address the regulation of physicians' duties and patients' rights to autonomy, particularly regarding the acceptance or refusal of medical procedures, within the framework of Gustav Radbruch's theoretical framework, namely legal certainty, utility, and justice. It is this discrepancy that is considered the theoretical gap addressed by this study.³¹

The novelty of this study lies in the application of Gustav Radbruch's tripartite legal values—legal certainty, utility, and justice as an analytical framework to reassess the balance between physicians' legal obligations and patients' autonomy rights in accepting or refusing medical treatment. This study develops an integrative legal perspective that has not been comprehensively explored in previous research, which generally examined these issues separately and without a systematic Radbruchian analysis.

B. Methods

This study employed normative legal research. Normative legal research is conducted through the examination of library materials or secondary data with the objective of identifying legal rules, legal principles, and legal doctrines in order to address the legal issues

³¹ Christimulia Purnama Trimurti and others, *METODE PENELITIAN Pendekatan Kuantitatif Dan Kualitatif*, ed. by Hartini, 1st edn (Klaten: Penerbit Lakeisha, 2025), p. 125 <[http://eprint.stiwww.ac.id/2724/3/e-book Metode Penelitian %28Pendekatan Kuantitatif dan Kualitatif%29.pdf](http://eprint.stiwww.ac.id/2724/3/e-book%28Pendekatan Kuantitatif dan Kualitatif%29.pdf)>.

under investigation..³² The study adopted a policy and doctrinal approach.³³ In this study, the authors analysed the legal provisions relevant to the research subject by employing a conceptual approach to examine the legal concepts related to the object of the study, thereby identifying relevant legal arguments. In addition, a statutory approach was adopted to examine the legislation governing the legal issues under investigation.³⁴ The legal materials comprised primary legal materials, consisting of statutory regulations and the medical code of ethics; secondary legal materials, comprising books and scholarly journal articles; and tertiary legal materials, which served as supporting references. The legal materials were collected through a library-based research approach and subsequently analysed qualitatively using the grammatical method of legal interpretation to ascertain the textual meaning of legal norms, together with the systematic method of legal interpretation to examine the interrelationship among statutory regulations. Through these interpretative techniques, the study sought to provide answers to the legal issues under investigation.³⁵

C. Results and Discussion

1. Gustav Radbruch's Three Fundamental Legal Values as a Theoretical Framework for Legal Analysis

³² Sri Mamudji Soerjono Soekanto, 'Penelitian Hukum Normatif: Suatu Tinjauan Singkat', in *Jakarta: Rajawali Pers*, 2015, p. 13.

³³ Daniel Bodansky, Harro Dirk Asselt, and Harro van Asselt, *The Art and Craft of International Environmental Law* (Oxford University Press, 2024).

³⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2021).

³⁵ *Ibid* *hal.* 89

Gustav Radbruch maintained that the ideal conception of law must always rest upon these three fundamental pillars, with justice serving as the primary determinant, while legal certainty and legal utility remain indispensable complementary values. He emphasised that, in practice, a sound legal system should not derive its legitimacy solely from formal legal validity; rather, it must continually be evaluated according to its capacity to realise justice and to serve the interests of society. In Radbruch's view, law derives its meaning from its function of serving the very idea of law, which is understood as the embodiment of a balanced relationship among the three fundamental legal values of justice, legal certainty, and legal utility.³⁶

According to Gustav Radbruch, where a conflict arises between legal certainty and justice, justice must be accorded the highest priority.³⁷

According to Gustav Radbruch, justice is sufficiently realised when like cases are treated alike. For Radbruch, justice encompasses several dimensions:

a. Justice as a personal quality or virtue. Subjective justice, regarded as secondary justice, refers to an individual's attitude, perspective, and conviction directed towards the realisation of objective justice, which constitutes the primary form of justice.

b. The sources of justice. Justice derives from both positive law and the *Rechtsidee* (the idea of law).

³⁶ Wijaya and Hasibuan.

³⁷ Wijaya and Hasibuan.

c. The essence of justice. The fundamental essence of justice lies in equality.³⁸ Among these three fundamental values, justice occupies the highest position. Nevertheless, this does not imply that the other two values may be disregarded. A sound legal system is one that harmonises justice, legal certainty, and legal utility in order to promote the welfare and prosperity of society. According to Radbruch, legal certainty refers to a condition in which the law functions as a body of rules that must be observed. The law is entrusted with the task of establishing legal certainty because its fundamental purpose is to maintain order within society. Legal certainty therefore constitutes an indispensable characteristic of the law, particularly in relation to written legal norms.³⁹

Legal theory constitutes an essential branch of legal scholarship because it provides a means of understanding and explaining the development of law within society. A theory may be understood as an opinion or perspective on a particular subject developed through a specific mode of analysis. Accordingly, theory is often regarded as an intellectual endeavour involving the systematic consideration of various arguments and the formulation of conclusions based on reasoned conviction.

In the development of legal theory, classical approaches to the study of law were generally based on a single analytical perspective. For example, normative law adopted a positivist approach, empirical law relied on sociological and anthropological approaches, while ethical law was examined exclusively through the lens of values and morality. Consequently, these approaches tended to produce

³⁸ Dino Rizka Afdhali and Taufiqurrohman Syahuri, 'Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum', *Collegium Studiosum Journal*, 6.2 (2023), 555–61.

³⁹ Siti Halilah and Mhd Fakhurrahman Arif, 'Asas Kepastian Hukum Menurut Para Ahli', *Siyasah: Jurnal Hukum Tata Negara*, 4.II (2021).

analyses that were relatively narrow and one-dimensional. The subsequent evolution of modern legal thought integrated these three classical perspectives—normative law, empirical law, and ethical law—into a unified analytical framework. Gustav Radbruch subsequently conceptualised this integrated approach as the three fundamental values of law, namely justice (the philosophical dimension), legal certainty (the juridical dimension), and legal utility (the sociological dimension).⁴⁰

According to Radbruch, law is not merely concerned with legal certainty or formal compliance; it must also embody justice and promote the welfare of society. He rejected unquestioning obedience to unjust laws and emphasised that morality constitutes an indispensable element in determining the legitimacy of law.⁴¹

Gustav Radbruch maintained that the ideal conception of law must always rest upon these three fundamental pillars, with justice serving as the primary determinant, while legal certainty and legal utility remain indispensable complementary values. He emphasised that, in practice, a sound legal system should not be binding solely by virtue of its formal legal validity; rather, it must continually be assessed in terms of its capacity to realise justice and to serve the interests of society. As Radbruch argued, “law is a reality endowed with meaning in order to serve the very idea of law itself,” where the idea of law is understood as the embodiment of a balanced relationship among these three fundamental legal values.⁴²

In the practice of law enforcement, members of the public are not always satisfied and, in some instances, perceive that the Indonesian legal system has failed to deliver justice. More critically,

⁴⁰ Afdhali and Syahuri.

⁴¹ Wijaya and Hasibuan.

⁴² Wijaya and Hasibuan.

the law is often regarded as favouring particular groups that possess advantages in various respects, including economic and political influence. This situation indicates that the implementation of the law has not yet provided a satisfactory sense of justice for society or for those subject to the law, a condition that stands in clear contradiction to the fundamental objectives of an ideal legal system.⁴³

According to Gustav Radbruch, every legal system must embody three fundamental legal values:

1. **The principle of legal certainty (*Rechtssicherheit*)**, which is grounded in the juridical dimension of the law.
2. **The principle of justice (*Gerechtigkeit*)**, which is founded upon the philosophical dimension of the law, whereby justice is understood as the equal entitlement of all individuals before the courts.
3. **The principle of legal utility (*Zweckmässigkeit* or *Doelmatigheid*)**, which reflects the law's capacity to achieve practical benefit and serve the interests of society.⁴⁴

In principle, the objectives of the law can be achieved only when an ideal legal framework incorporates the principles of legal certainty, justice, and legal utility as a coherent and inseparable whole. These three values are closely interrelated and mutually reinforcing. They subsequently serve as the guiding principles governing the conduct of legal subjects, reflecting the very purpose for which the law is enacted.⁴⁵

⁴³ Afdhali and Syahuri.

⁴⁴ Astuti and Daud.

⁴⁵ Moh Bagus, Ahmad Khubby Ali Rohmat, and Helga Nurmila Sari, 'Derivasi Konsep Hak Asasi Manusia Terhadap Penyetaraan Posisi Anak Melalui Pendekatan Affirmative Action', *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam*, 24.1 (2021), 59–84; Nuraid Fitrihabib, Rafikah

Every legal system is understood as an endeavour to realise the very idea of law. This idea encompasses justice, together with the complementary values of legal utility and legal certainty. Justice is generally understood as the pursuit of equality. However, achieving this objective is not straightforward, since equality exists only within the context of legal relationships rather than as an absolute substantive condition. For this reason, Gustav Radbruch considered it necessary to introduce another essential element of law to complement the ideal of justice, namely legal utility. Legal utility is understood as the capacity of the law to accommodate the diverse needs and interests of different parties. This objective can only be achieved in a relative sense because individuals and groups inevitably hold differing perspectives that cannot always be reconciled, potentially resulting in persistent disagreement. Accordingly, Radbruch proposed a third essential element of law, namely legal certainty.⁴⁶

Radbruch argued that where a conflict arises between legal certainty and justice, justice should take precedence as the highest priority.⁴⁷

The importance of legal certainty constitutes an integral and inseparable element of the fundamental enforcement of the law.

Rafikah, and Ardian Kurniawan, 'Kepastian Hukum, Kemanfaatan Dan Keadilan Pemidanaan Kejahatan Asal Usul Perkawinan: Analisis Putusan No. 387/Pid. B/2021/PN. Jmb', *Al-Jinâyah: Jurnal Hukum Pidana Islam*, 7.2 (2021), 484–509.

⁴⁶ Manullang.

⁴⁷ Wijaya and Hasibuan.

Without legal certainty, there can be no effective legal protection for those seeking justice.⁴⁸

According to Gustav Radbruch, legal certainty is a product of law, or more specifically, of legislation. Based on this view, positive law governing human interests within society must be observed and enforced, even where its application may be perceived as falling short of achieving justice.⁴⁹

Nevertheless, in essence, legal certainty constitutes the primary objective of the law. Social order is closely associated with legal certainty, as order itself lies at the core of legal certainty. Legal certainty requires the establishment of a coherent legal framework through legislation enacted by competent and duly authorised authorities. Consequently, such legal norms possess juridical validity capable of ensuring that the law functions as a binding set of rules that must be observed.⁵⁰

Legal certainty provides assurance for those seeking justice against arbitrary actions by law enforcement authorities, who may at times exercise their powers in an excessively authoritarian manner while performing their official duties. The existence of legal certainty enables individuals to understand clearly their rights and obligations under the law. Without legal certainty, individuals cannot determine what conduct is required of them, whether their actions are lawful or unlawful, or whether such actions are prohibited by law. Legal certainty can be realised through the formulation of clear, coherent, and well-structured legal norms

⁴⁸ Mario Julyano and Aditya Yuli Sulistyawan, 'Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum', *Crepido*, 1.1 (2019), 13–22; Fitrihabi, Rafikah, and Kurniawan.

⁴⁹ Astuti and Daud.

⁵⁰ Astuti and Daud.

within legislation, thereby ensuring their consistent application. In other words, legal certainty requires clarity regarding the applicable legal rules, the legal subjects and objects concerned, as well as the corresponding legal sanctions. Nevertheless, legal certainty should not necessarily be regarded as an absolute value that must prevail under all circumstances; rather, it should be understood as a legal instrument to be applied in accordance with particular situations and conditions, while taking into account the principles of utility and efficiency.⁵¹

The principle of legal certainty constitutes a guarantee that the law must be implemented properly and consistently. The primary objective of law is to ensure legal certainty. In the absence of legal certainty, the law loses both its identity and its normative significance; without such identity, it can no longer function as a guiding framework governing the conduct of individuals. The existence of legal certainty within a state necessitates the establishment of a legal framework through legislation enacted by the government.⁵²

Legal certainty, as one of the fundamental objectives of law, constitutes an essential component in the realisation of justice. The consistent enforcement of the law in relation to a particular act, regardless of the identity or status of the person concerned, represents the true manifestation of legal certainty. Where legal certainty exists, individuals are able to predict the legal consequences of particular courses of conduct. Accordingly, legal certainty is

⁵¹ Afdhali and Syahuri.

⁵² Astuti and Daud.

indispensable for the effective implementation of the principle of equality before the law.⁵³

2. Regulatory Imbalances Between Physicians' Duties and Patient Autonomy: A Gustav Radbruchian Analysis

Gustav Radbruch's legal theory identifies legal certainty, justice, and legal utility as the three fundamental pillars that must be realised in a balanced manner within every legal system. Nevertheless, these three elements have not yet been optimally accommodated within the regulatory framework governing physicians' obligations and patients' autonomy rights. This issue warrants careful examination because the physician–patient relationship extends beyond legal considerations to encompass the protection of the fundamental rights to life and human safety.

Patients' autonomy constitutes a fundamental human right requiring that every medical intervention be undertaken on the basis of the patient's informed consent. In this context, patients have the right to accept or refuse particular medical interventions in accordance with their beliefs, values, or personal considerations. Conversely, physicians are likewise entitled to legal protection, provided that they perform their professional duties in accordance with professional standards, standards of medical care, and the medical code of ethics.

The problem arises when patients' autonomy rights come into direct conflict with physicians' professional duty to preserve patients' lives. One of the most common manifestations of this conflict is a patient's refusal to undergo a medical intervention that the physician considers essential. In such circumstances, physicians

⁵³ Mutia Evi Kristhy and others, 'The Role of Judges in Realizing the Three Basic Legal Values Reviewed from Gustav Radbruch's View', *Journal of Political And Legal Sovereignty*, 1.3 (2023), 88–92.

are placed in a dilemma between respecting the patient's decision and fulfilling their professional obligation to provide the medical treatment that they consider to be in the patient's best interests.⁵⁴

One example frequently cited is the refusal of a blood transfusion on religious grounds. If a physician proceeds with the medical intervention without the patient's consent, such conduct may be regarded as a violation of the patient's autonomy rights. Conversely, if the physician respects the patient's refusal and the patient's condition subsequently deteriorates or results in death, the physician may still face legal action initiated by the patient or the patient's family. This situation illustrates the existence of a normative tension between the protection of patients' autonomy rights and the physician's duty to preserve life.

A similar issue also arises in emergency circumstances. In healthcare practice, physicians are often required to undertake immediate medical intervention without first obtaining the consent of the patient or the patient's family in order to save the patient's life. From a normative perspective, such intervention is permitted under Article 275 of Law Number 17 of 2023 on Health. Nevertheless, in practice, cases continue to arise in which emergency medical interventions performed by physicians become the subject of legal claims on the grounds that they were undertaken without the consent of the patient or the patient's family.

From the perspective of normative law, physicians in such circumstances have, in principle, fulfilled their legal duty to provide emergency medical assistance, such that informed consent is no longer a prerequisite for the provision of treatment. Nevertheless, in practice, physicians may still face legal claims if the medical

⁵⁴ Bahder Johan Nasution, 'HUKUM KESEHATAN PERTANGGUNGJAWABAN DOKTER', in *PT. RINEKA CIPTA, Jakarta*, 2017, p. 98.

intervention proves unsuccessful or results in the patient's death. Under such circumstances, physicians are frequently confronted with allegations of medical negligence as well as civil claims based on unlawful acts.

Legally, patients or their families have the right to report conduct that is suspected of violating the law, and law enforcement authorities may pursue such reports provided that they comply with the applicable legal procedures. However, the fundamental issue lies in the absence of clearly defined legal parameters governing emergency circumstances within the existing statutory framework. This lack of clarity creates scope for divergent interpretations, which may ultimately give rise to legal disputes between physicians and patients.

On the other hand, Article 293 of Law Number 17 of 2023 on Health reinforces the principle of patient autonomy by requiring informed consent to be obtained before medical treatment is provided.⁵⁵ This provision reflects a potential normative conflict between physicians' duty to act in the patient's best interests (the best interests principle) and patients' right to refuse the proposed medical treatment.

The consequences of refusing medical treatment affect not only physicians but may also be detrimental to patients themselves. In many cases, the refusal of medical intervention causes the patient's condition to deteriorate, so that when healthcare services are eventually sought, the prognosis for recovery becomes less favourable and more complex medical management is required. Such circumstances not only increase the patient's health risks but also expand the physician's professional responsibilities. Moreover, where a patient subsequently suffers harm or dies, the patient's

⁵⁵ Veronica Komalawati, 'Peranan Informed Consent Dalam Transaksi Terapeutik', in *Bandung: Citra Aditya Bakti*, 2002, p. 55.

family frequently associates the outcome with allegations of medical malpractice.

In the context of legal liability, physicians may be subject to civil claims pursuant to Articles 1365, 1366, and 1367 of the *Burgerlijk Wetboek* (BW) concerning unlawful acts (*onrechtmatige daad*). In addition, they may also incur criminal liability under Article 474(3) of the New Indonesian Criminal Code, which governs negligence resulting in death.

When analysed through the lens of Gustav Radbruch's theory, these issues reveal deficiencies in all three fundamental values of law. First, from the perspective of legal certainty, the lack of clear legal parameters defining emergency circumstances reflects a regulatory weakness. For example, Article 1(3) of Minister of Health Regulation Number 47 of 2018 continues to employ the phrases "life-threatening" and "requiring immediate intervention" without providing more operational criteria. As a consequence, these provisions are susceptible to divergent interpretations among healthcare professionals, patients, patients' families, and law enforcement authorities.

Second, from the perspective of justice, the legal relationship between physicians and patients reveals the potential for an imbalance in legal protection. Physicians who have performed life-saving medical interventions in accordance with professional standards may nevertheless face legal claims due to the absence of the patient's consent. Even where a medical intervention successfully saves a patient's life but results in a certain degree of disability, physicians may still be exposed to allegations of negligence. Conversely, from the perspective of patients and their families, concerns regarding the possibility of medical malpractice likewise constitute an important interest that deserves legal protection.

These circumstances indicate the existence of a problem concerning the equality of legal treatment afforded to physicians and patients. According to Radbruch, justice is fundamentally concerned with ensuring equal treatment for every legal subject.⁵⁶ Accordingly, the existing regulatory framework continues to leave room for injustice towards both physicians and patients.

Third, from the perspective of legal utility, the imbalance between physicians' obligations and patients' autonomy rights also reflects deficiencies in achieving the objectives of the law. Radbruch conceptualised legal utility as the capacity of law to accommodate the needs and interests of all parties in a proportionate manner.⁵⁷ Nevertheless, various cases demonstrate that this objective has not yet been fully realised. The deaths of a mother and her unborn child after being refused treatment by several hospitals in Papua,⁵⁸ the refusal of medical treatment for a patient covered by Indonesia's National Health Insurance (BPJS) in Jambi,⁵⁹ and the alleged medical malpractice involving an infant at Paramount Hospital in Makassar⁶⁰ all illustrate that the relationship between patients' rights

⁵⁶ Manullang.

⁵⁷ Manullang.

⁵⁸ 'Ibu Dan Bayi Di Kandungan Meninggal Usai Ditolak Empat Rumah Sakit – "Inilah Bobrok Pelayanan Kesehatan Di Papua"', *BBC NEWS*, 2025 <<https://www.bbc.com/indonesia/articles/cr7lr0vrvjo>>.

⁵⁹ 'Ombudsman Soroti Kasus Penolakan Pasien BPJS Di Jambi: Edukasi Masyarakat Jadi Kunci', *Ombudsman*, 2025 <<https://ombudsman.go.id/perwakilan/news/r/pwksiaran--ombudsman-soroti-kasus-penolakan-pasien-bpjs-di-jambi-edukasi-masyarakat-jadi-kunci>>.

⁶⁰ Sumarni, 'Ibu Ngamuk Bawa Massa Geruduk RS Yang Diduga Malpraktik Pada Bayinya, Tuntut Ganti Rugi Rp500 Juta', *Suara.Com*,

and physicians' obligations continues to expose one of the parties to potential harm. These circumstances indicate that the objective of legal utility within the existing regulatory framework has not yet been achieved optimally.

Nevertheless, among the three fundamental values of law advanced by Gustav Radbruch, justice occupies the most fundamental position. In the context of the legal framework governing physicians' obligations and patients' autonomy rights, the unequal legal position of the two parties has the potential to produce adverse consequences for both physicians and patients. Therefore, the legal provisions governing informed consent, emergency circumstances, and the limits of physicians' legal liability should be formulated more clearly and balanced more appropriately in order to realise legal certainty, justice, and legal utility simultaneously.

D. Conclusion

The regulation governing physicians' obligations and patients' autonomy rights under Law Number 17 of 2023 on Health continues to present normative issues that give rise to legal uncertainty, injustice, and diminished legal utility. The conflict between physicians' obligation to provide medical assistance for the purpose of safeguarding patients' lives and patients' right to accept or refuse medical treatment reflects a regulatory tension that has not yet been adequately harmonised. This situation becomes increasingly complex when medical interventions are performed in emergency circumstances, while the legal parameters defining such emergencies remain insufficiently formulated in a clear and

2026<<https://www.suara.com/entertainment/2026/03/09/131936/ibu-ngamuk-bawa-massa-geruduk-rs-yang-diduga-malpraktik-pada-bayinya-tuntut-ganti-rugi-rp500-juta>>.

operational manner, thereby creating room for multiple interpretations and potential legal disputes.

From the perspective of Gustav Radbruch's theory of the three fundamental values of law, the regulatory framework governing the physician–patient relationship demonstrates inconsistencies in terms of legal certainty, justice, and legal utility. The absence of a clear legal definition of emergency circumstances weakens legal certainty, while the possibility that physicians may still incur legal liability despite having fulfilled their duty to preserve patients' lives indicates that a balanced framework of legal protection for both physicians and patients has not yet been achieved. At the same time, the lack of coherence between physicians' professional obligations and patients' autonomy rights has the potential to diminish legal utility by causing adverse consequences for both parties.

Accordingly, regulatory reconstruction is required to establish a more proportionate and equitable framework that simultaneously safeguards physicians' legal protection and respects patients' autonomy rights. Harmonising the legal norms governing informed consent, emergency circumstances, and the limits of physicians' legal liability constitutes an urgent necessity for developing a healthcare legal system that not only ensures legal certainty but also realises substantive justice and balanced legal utility for all parties involved.

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