



## CIVIL LAW ANALYSIS OF MISBRUIK VAN OMSTANDIGHEDEN IN HOSPITAL REFUSAL OF ECONOMICALLY WEAK PATIENTS

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### ABSTRACT

Hospitals in Indonesia, as mandated by the 1945 Constitution and health law policies, are required to provide equitable healthcare services to all citizens, including economically disadvantaged groups. However, frequent cases of hospital rejections against poor patients due to inability to pay reveal a gap between constitutional guarantees and practice. Such acts constitute *misbruik van omstandigheden* (abuse of circumstances), where hospitals exploit patients' positions vulnerable in therapeutic agreements and informed consent. The objectives of this research are threefold: first, to analyze the practice of *misbruik van omstandigheden* in medical contracts between hospitals and poor patients; second, to assess the form of legal responsibility of hospitals in cases of denial or neglect, and third, to formulate recommendations to strengthen the protection of poor patients' rights through regulatory reforms and effective sanctions. This study employs a doctrinal research method with a normative legal approach, supported by empirical case studies. Primary sources include the 1945 Constitution, Law Number 36/2009, Law Number 17/2023, and the Civil Code, complemented by Islamic legal principles (*maqashid al-Shariah*). The findings show that hospital rejections violate civil law, constitutional mandates, and ethical obligations.

## A. INTRODUCTION

National and state life can basically be realized with the existence of efforts to recognize and guarantee the implementation of social welfare. One of the social welfares that is a fundamental foundation in human life is the guarantee of the fulfillment of health access for all groups of Indonesian society.<sup>1</sup> This is explicitly implied and written in the Fourth Paragraph of the Opening of the 1945 Law of the Unitary State of the Republic of Indonesia which is a translation of the mandate of Pancasila.<sup>2</sup> The mandate to fulfill health insurance as a human right as mandated by Pancasila and Law of the Unitary State of the Republic of Indonesia Year 1945 This also includes the right to access health by economically weak communities.<sup>3</sup> This mandate can be explicitly found in Article 28H paragraph (1) The 1945 Constitution of the Unitary State of the Republic of Indonesia which states that "every resident has the right to health services".<sup>4</sup> This mandate provides an obligation for the government as a state apparatus to provide health services for economically disadvantaged communities in a real (available), comprehensive, continuous, integrated, appropriate, acceptable, quality, accessible and affordable manner. The political objectives of health law are then translated into social security law policies. This is clearly found in Article 34 paragraph (2) The 1945 Constitution of the Unitary State of the Republic of Indonesia which states that "the state develops a social security system for all people and empowers weak and disadvantaged communities in accordance with human dignity".<sup>5</sup> The existence of Article 34 paragraph (2) The 1945 Constitution of the Unitary State of the Republic of Indonesia. This clearly shows that constitutionally, the Indonesian state is a state that guarantees welfare in the health sector (Health Oriented-Value).

The article written by this author has different aspects of discussion with the two articles above, this article aims to analyze and describe the issue of opportunities for abuse of circumstances or *Misbruik van Omstandigheden*

<sup>1</sup> Abdul Bari Saifuddin and George Adriaansz, "Buku acuan nasional pelayanan kesehatan maternal dan neonatal," *Jakarta: Yayasan Bina Pustaka Sarwono Prawirohardjo* 2, no. 11, (2006): 112.

<sup>2</sup> Suhardy Hetharia, "Aspek Tanggung Jawab Hukum Rumah Sakit Terhadap Pelayanan Medis," *Lex et Societatis* 1, no. 5, (2013): 111.

<sup>3</sup> Ulul Adzemi Romansyah, Ahmad Labib, and Muridah Isnawati, "Pemenuhan Hak Konstitusional Warga Negara Indonesia Studi Kasus Jaminan Kesehatan Nasional," *Pemenuhan Hak Konstitusional Warga Negara Indonesia: Studi Kasus Jaminan Kesehatan Nasional* 1, no. 1, (2017): 113.

<sup>4</sup> Christy Edotry Torry Karwur, "Pemenuhan hak memperoleh kesehatan ditinjau dari pasal 28 h ayat 1 undang-undang dasar negara republik indonesia tahun 1945," *Lex privatum* 13, no. 2, (2024): 234.

<sup>5</sup> Fheriyal Sri Isriawaty, "Tanggung Jawab Negara Dalam Pemenuhan Hak Atas Kesehatan Masyarakat Berdasarkan Undang Undang Dasar Negara Republik Indonesia Tahun 1945," PhD diss., Tadulako University, 2015. See too, Retno Kus Setyowati, "Sistem jaminan kesehatan yang memenuhi hak-hak kepesertaan," *Justice Voice* 1, no. 1, (2022): 5.

carried out on economically weak patients who are the users of health services in health service agreements.<sup>6</sup> It can be understood together that therapeutic agreements and agreements concerning informed consent often provide ample space for hospitals as managers of medical services, this is due to the absence of clear regulations in the Health Law regarding sanctions against hospitals that carry out *Misbruik van Omstandigheden* in the form of refusing medical services for economically weak patients so far.<sup>7</sup>

The mandate to provide equal health insurance for the community as mandated to the government as the executor of state power in the health sector, in reality, is still not in accordance with expectations.<sup>8</sup> This can be seen in the case of the neglect of a 60-year-old patient at the Dadi Tjokrodipo Hospital in Lampung by several health workers because he was considered unable to pay for medical expenses, Suparman, a 60-year-old patient was secretly dumped using an ambulance by Dadi Tjokrodipo Hospital officials to a hut because he was declared unable to pay for medical expenses.<sup>9</sup> The neglect of economically weak patients at Dadi Tjokrodipo Hospital is very heartbreaking for the world of health, especially in relation to access to health services.<sup>10</sup> The perpetrators have not only committed a violation of the law, far from that, the perpetrators have violated Article 28H paragraph (1) Law of the Unitary State of the Republic of Indonesia Year 1945.<sup>11</sup> This violation of the constitution automatically also violates the considerations and principles of Laws of the Republic of Indonesia Number 17 of 2023 Concerning Health.<sup>12</sup> Law of the Republic of Indonesia Number 17 of 2023 concerning Health affirms that the state guarantees the right of every citizen to live a healthy life, physically and mentally prosperous, in order to achieve national goals as

<sup>6</sup> Anthony Sudjadi et al., "Penerapan Pelayanan Kesehatan Masyarakat Miskin Yang Ideal Dalam Pelayanan Kesehatan Masyarakat Miskin Melalui Program Jamkesmas," *Soepra Jurnal Hukum Kesehatan* 3, no. 1 (2017): 19.

<sup>7</sup> M. Salam, Nur, Salim Salim HS, and Aris Munandar, "Penyalahgunaan Keadaan (*Misbruik Van Omstandigheden*) yang Mengakibatkan Batalnya Perjanjian (Studi Kasus Putusan Nomor 234/Pdt. G/2020/Pn. Mtr)," *Indonesia Berdaya* 4, no. 2 (2023): 469.

<sup>8</sup> Mikho Ardinata, "Tanggung jawab negara terhadap jaminan kesehatan dalam perspektif hak asasi manusia," *Jurnal Ham* 11, no. 2 (2020): 325.

<sup>9</sup> Agustina Anggraeni, "Tinjauan Yuridis Bagi Rumah Sakit yang Menolak Pasien yang Tidak Mampu," *Journal of Law (Jurnal Ilmu Hukum)* 5, no. 2 (2020): 181.

<sup>10</sup> Udiyo Basuki, "Merunut Konstitusionalisme Hak Atas Pelayanan Kesehatan Sebagai Hak Asasi Manusia," *Jurnal Hukum Caraka Justitia* 1, no. 1 (2020): 25.

<sup>11</sup> Puji Restiyani and Lusia Astrika, "Aksesibilitas Masyarakat Miskin Dalam Memperoleh Pelayanan Kesehatan (Studi Kasus di Kawasan Kampung Tambak Mulyo Kelurahan Tanjung Mas Semarang)," *Journal of Politic and Government Studies* 2, no. 3 (2013): 190.

<sup>12</sup> Nurul Ragilia Berdame, "Kebijakan pemerintah dalam pelayanan kesehatan terhadap masyarakat yang kurang mampu menurut Undang-Undang Nomor 17 Tahun 2023 tentang kesehatan," *Lex Privatum* 13, no. 5 (2024): 462.

mandated by the 1945 Constitution.<sup>13</sup> Health development requires efforts, resources, and health management based on the principles of welfare, justice, non-discrimination, participation, and sustainability in order to realize quality human resources, reduce disparities, strengthen services, increase health resilience, and support national competitiveness.<sup>14</sup> Article 2 of Law Number 17 of 2023 states the principles: humanity, balance, benefit, science, equality, ethics and professionalism, protection and safety, respect for rights and obligations, justice, non-discrimination, morals and religion, participation, public interest, integration, legal awareness, state sovereignty, environmental sustainability, cultural wisdom, and order and legal certainty.<sup>15</sup> Cases of neglect of economically weak patients clearly violate the mandate of the 1945 Constitution and Law Number 17 of 2023 because they ignore the protection of their dignity.<sup>16</sup>

This research is urgent due to the increasing number of cases of hospital refusals of admissions to poor patients, which potentially violate the constitutional right to health. Phenomena such as the case at Dadi Tjokrodipo Hospital in Lampung reflect the weak legal protections for economically disadvantaged groups, despite the recent Health Law. If left unchecked, this situation could fuel public distrust, widen social disparities, and even lead to horizontal conflict. Therefore, an in-depth analysis is needed to formulate normative and practical solutions.<sup>17</sup>

Previous research on hospital responsibilities towards poor patients generally emphasizes aspects of breach of contract, negligence, or civil liability alone. However, specific studies examining the potential for misuse of circumstances in medical contracts, particularly regarding poor patients, are rare. This is despite the fact that patients' positions within medical legal relationships are very weak, making them vulnerable to exploitation by hospitals. This analytical gap presents a crucial opportunity for this research to make new academic and practical contributions.

<sup>13</sup> Valen Nainggolan and Tundjung Herning Sitabuana, "Jaminan kesehatan bagi rakyat indonesia menurut hukum kesehatan," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, no. 6 (2022): 912.

<sup>14</sup> Rudy Hendra Pakpahan and Eka NAM Sihombing, "Tanggung Jawab Negara Dalam Pelaksanaan Jaminan Sosial Responsibility State In The Implementation Of Sosial Security," *Jurnal Legislasi Indonesia* 9, no. 2 (2018): 163-174.

<sup>15</sup> Gunawan Widjaja, "Pelayanan kesehatan bagi pasien menurut UU No. 17 tahun 2023 tentang kesehatan," *Innovative: Journal Of Social Science Research* 3, no. 6 (2023): 2498.

<sup>16</sup> Nurul Ragilia Berdame, "Kebijakan pemerintah dalam pelayanan kesehatan terhadap masyarakat yang kurang mampu menurut Undang-Undang Nomor 17 Tahun 2023 tentang kesehatan," *Lex Privatum* 13, no. 5 (2024): 464.

<sup>17</sup> Heris Suhendar and Mohamad Anton Athoillah, "Pertimbangan Hakim Dalam Perkara Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)," *Jurnal Yudisial* 16, no. 2 (2023): 258.

Neglect of economically weak patients basically not only violates the principles of human rights protection law and the Constitution of the country, basically both patients from the wealthy community and the economically weak community are civil consumers of health services managed by a body called a hospital.<sup>18</sup> Patients in using health services are not only based on the aspect of public service within the scope of administration regulated by the government constitutionally, in its operation patients as users of health services are also based on a medical civil agreement whose implementation standards are determined by the health workers and hospitals.<sup>19</sup> The existence of Article 1338 paragraph 1 Civil Code regarding freedom of contract and the existence of Article 1234 Civil Code become a strong basis for the existence of therapeutic agreements and agreements concerning informed consent.<sup>20</sup> The relationship of therapeutic agreements in their development is a relationship of agreement that is the same as other civil agreements, this is because therapeutic agreements give birth to achievements for the parties, only through these relationship patterns provide wider opportunities for legal subjects to enter into agreements. Therapeutic agreements and informed consent between medical personnel and patients are generally represented by hospitals.<sup>21</sup> According to Satjipto Rahardjo<sup>22</sup>, such agreements are "active-passive," where doctors actively provide treatment and patients passively receive it. This structure creates the potential for *Misbruik van Omstandigheden*, especially for economically disadvantaged patients. Both therapeutic agreements and informed consent tend to prioritize hospital and medical personnel interests, as patients often lack understanding of their rights regarding medical treatment.<sup>23</sup> This weak patient position is reflected in cases such as the neglect by Dadi Tjokrodipo Hospital in Lampung experienced by Suparman, which constitutes a form of *Misbruik van Omstandigheden*.<sup>24</sup> The issue of hospital negligence toward poor patients is also discussed in the article

<sup>18</sup> Tom W. Reader and Alex Gillespie, "Patient neglect in healthcare institutions: a systematic review and conceptual model," *BMC health services research* 13, no. 1 (2013): 156.

<sup>19</sup> Tri Rini Puji Lestari, "Pelayanan Rumah Sakit bagi Masyarakat Miskin (Studi Kasus di Enam Wilayah Indonesia)," *Kesmas* 5, no. 1 (2010): 12.

<sup>20</sup> Nia Susanti, "Kepastian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Sebuah Perjanjian Baku Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata," *Indragiri Law Review* 2, no. 2 (2024): 35.

<sup>21</sup> Kastania Lintang, "Tinjauan Yuridis terhadap Pelaksanaan Informed Consent dalam Perjanjian Terapeutik," *Jurnal Hukum Lex Generalis* 2, no. 4 (2021): 305.

<sup>22</sup> Satjipto Rahardjo, *Pendidikan Hukum Sebagai Pendidikan Manusia*. (Yogyakarta: Genta Publishing, 2009): 23.

<sup>23</sup> Kastania Lintang, "Tinjauan Yuridis terhadap Pelaksanaan Informed Consent dalam Perjanjian Terapeutik," *Jurnal Hukum Lex Generalis* 2, no. 4 (2021): 307.

<sup>24</sup> Agus Yudha Hernoko and Ghansam Anand, "The application of circumstance abuse doctrine (*Misbruik Van Omstandigheden*) on judicial practice in Indonesia," *Journal of Advanced Research in Law and Economics* 8, no. 7 (2017): 2141.

by Hanifah Romadhoni and Arief Suryono,<sup>25</sup>. Their study concludes that rejecting poor patients in emergencies constitutes unlawful acts due to negligence. Based on Article 46 of Law Number 44 on Hospitals, the doctrine of *respondeat superior*, and the principle of vicarious liability, hospitals bear civil liability, including compensating for patient losses.<sup>26</sup>

This research is academically significant because it offers theoretical contributions to civil law studies, particularly regarding the application of the doctrine of *Misbruik van Omstandigheden* in medical contracts.<sup>27</sup> From a health law perspective, this research enriches the discourse on protecting the rights of poor patients, who are often marginalized. Practically, the results of this research can form the basis for policy recommendations to strengthen regulations, prevent the practice of patient denial, and encourage hospitals to be more accountable in providing healthcare services in accordance with constitutional mandates and the principle of non-discrimination.

The objectives of this research are: first, to analyze the practice of abuse of circumstance (*Misbruik van Omstandigheden*) in medical contracts between poor patients and hospitals. Second, to assess the form of legal responsibility of hospitals in cases of patient denial or neglect. Third, to formulate stronger legal recommendations to strengthen the protection of the rights of poor patients, both through regulatory revisions and the implementation of effective sanctions, so that access to healthcare can be guaranteed in a fair and equitable manner.

## B. RESEARCH METHODS

The method used in this article is the doctrinal method. The doctrinal method is a method of legal study that is based on the views or legal doctrines that are developing and that are relevant to the legal issues being studied. Doctrinal studies are mostly oriented towards studies by legal experts who depart from studies related to legal issues as *ius constitutum* issues or as positive legal issues that apply and are formally recognized by the state. This research employs a normative legal research design, focusing on the analysis of legal norms supplemented by empirical case studies to contextualize the issue of *misbruik van omstandigheden*.

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<sup>25</sup> Hanifah Romadhoni and Arief Suryono, "Pertanggungjawaban perdata rumah sakit dalam hal penolakan pasien miskin pada keadaan gawat darurat," *Jurnal Privat Law* 6, no. 2 (2018): 229.

<sup>26</sup> Vensy Ch Eman, "Pertanggung Jawaban Rumah Sakit Berdasarkan Doktrin Corporate Negligence. Analisa Terhadap Pasal 46 Undang-Undang Nomor 44 Tahun 2009 Tentang Rumah Sakit," *Lex Privatum* 10, no. 1 (2022): 232. See too, Billy Imanuel Mingkid, "Implikasi Yuridis Pasal 46 UU No 44 Thn 2009 Tentang Rumah Sakit Terhadap Kelalaian yang Dilakukan Tenaga Kesehatan dalam Hal Ini Tenaga Medis," *Lex Et Societatis* 8, no. 1 (2020): 76.

<sup>27</sup> Sinta Dewi Ratih Sari, "Perlindungan Hukum Konsumen Jasa Medis atas Penelantaran Pelayanan oleh Rumah Sakit," *DIVERSI: Jurnal Hukum* 4, no. 1 (2018): 69.

The empirical data is collected from credible sources, such as media reports and legal documents detailing instances of hospital rejections of economically weak patients, and analyzed to identify patterns of abuse in medical agreements. So that in this study the main data used are legal materials in the form of laws and regulations in the form of the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 36 of 2009 concerning Health, Law of the Republic of Indonesia Number 17 of 2023 concerning Health, and the Civil Code.<sup>28</sup>

The analysis also incorporates a conceptual approach by applying Islamic legal principles (maqashid al-Shariah) to assess the fairness and ethical dimensions of medical service agreements. The reasoning method combines deductive analysis, applying general legal norms from the aforementioned regulations to specific cases of patient rejection, and inductive analysis, drawing conclusions from empirical case studies to highlight legal gaps and violations. This normative data is then supported by empirical data in the form of case study data related to the *Misbruik van Omstandigheden* issue in the form of refusal of medical services for economically weak patients by hospitals.<sup>29</sup>

## C. DISCUSSION

### 1. Theoretical Foundations of Abuse of Circumstances, Therapeutic Agreements, and Patient Rights in Islamic and Civil Law

The definition of abuse of circumstances in Indonesian law is the equivalent of the terms *misbruik van omstandigheden* and undue influence.<sup>30</sup> Abuse of circumstances in the common law system is known as undue influence also known as unconscionability, these two terms basically have differences.<sup>31</sup> The similarities of these two terms are that both are based on the imbalance of the bargaining position of the parties. If a contract is formed on the basis of unfairness or injustice that occurs in an unbalanced relationship between the parties, then it is called undue influence (a one-sided relationship), but if injustice occurs in a situation, then this is called

<sup>28</sup> Satria Indra Kesuma, "Ulasan Undang-Undang No. 17 Tahun 2023 Tentang Kesehatan," *Jurnal Nusantara Berbakti* 2, no. 1 (2024): 257.

<sup>29</sup> Arliman S. Laurensius, "Peranan Metodologi Penelitian Hukum di dalam Perkembangan Ilmu Hukum di Indonesia," *Soumatra Law Review* 1, no. 1 (2018): 112.

<sup>30</sup> Fatmah Paparang, "Misbruik Van Omstandigheden Dalam Perkembangan Hukum Kontrak," *Jurnal Hukum Unsrat* 22, no. 6 (2016). See too, Tom W. Reader and Alex Gillespie, "Patient neglect in healthcare institutions: a systematic review and conceptual model," *BMC health services research* 13, no. 1 (2013): 156.

<sup>31</sup> Nia Susanti, "Kepastian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Sebuah Perjanjian Baku Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata," *Indragiri Law Review* 2, no. 2 (2024): 36.

unconscionability (a one-sided situation).<sup>32</sup> The doctrine of abuse of circumstances arose due to the absence (at that time) of provisions in the Dutch Civil Code governing this matter. Abuse of circumstances can be defined as a defect in a will, as stipulated in Article 1321 of the Civil Code. The first is negligence (*dwaling*), the second is duress (*dwang*)<sup>33</sup>, and the third is fraud (*bedrog*).<sup>34</sup>

Therapeutic Agreement, is an agreement made between doctors and health workers with patients, in the form of a legal relationship that gives rise to rights and obligations for both parties. Therapeutic Agreements must be made by competent people.<sup>35</sup> The recipient of medical services is the patient, while the provider of medical services is the doctor and health workers.<sup>36</sup>

Therapeutic Agreement has an object, namely medical services or healing efforts. The lawful reason contained in the Therapeutic Agreement is where the purpose of the healing effort is the maintenance and improvement of health that is oriented towards the principle of family, including activities to improve the quality of health (promotive), disease prevention (preventive), disease healing (curative), and health recovery (rehabilitative).<sup>37</sup> An informed consent agreement is an agreement for medical action which means that the patient's consent is given to the medical action plan that will be carried out on him after the patient receives information regarding the medical action that he will receive.<sup>38</sup> The purpose of law according to Islam is based on the principle of maqashid al-syariah, based on this principle the law must be able to protect five things, namely Religion, Reason, Soul, Property and Descendants.<sup>39</sup>

<sup>32</sup> Ovilia Nata, "Penyalahgunaan keadaan (Misbruik Van Omstandigheden) Psikologis sebagai salah satu Faktor Cacat Kehendak dalam Perjanjian," *Lex Positivis* 2, no. 5 (2024): 628.

<sup>33</sup> Nanang Hermansyah, "Paksaan (Dwang/Duress) Menurut Civil Law System (KUH Perdata Indonesia) Dan Common Law System (Yurisprudensi Inggris) Dalam Perjanjian," *Wasaka Hukum* 9, no. 1 (2021): 25.

<sup>34</sup> Natasya Yunita Sugastuti, Rakhmita Desmayanti, and Nahla Samir Ahmed Shahin, "Sikap Hakim dalam Menerapkan Pasal 1321 KUHPerdata: Studi Putusan Pengadilan di Indonesia," *Jurnal Hukum Ius Quia Iustum* 30, no. 3 (2023): 681.

<sup>35</sup> Agus Yudha Hernoko and Ghansam Anand, "The application of circumstance abuse doctrine (Misbruik Van Omstandigheden) on judicial practice in Indonesia," *Journal of Advanced Research in Law and Economics* 8, no. 7 (2017): 2142.

<sup>36</sup> Soekidjo Notoatmodjo, "Kesehatan dan Pembangunan Sumber Daya Manusia," *Kesmas* 2, no. 5 (2008): 196.

<sup>37</sup> Wiwin Dwi Ratna Febriyanti, "Abuse of circumstances (Misbruik Van Omstandigheden) in developing contract law in Indonesia," *US-China L. Rev.* 2, no. 19 (2022): 85.

<sup>38</sup> Anggun Rezki Pebrina, Johni Najwan, and Evalina Alissa, "Fungsi penerapan informed consent sebagai persetujuan pada perjanjian terapeutik," *Zaaken: Journal of Civil and Business Law* 3, no. 3 (2022): 476.

<sup>39</sup> Lina Nur Anisa, "Urgensi maqashid syari'ah dalam pengembangan hukum islam," *Al-Mabsut: Jurnal Studi Islam Dan Sosial* 12, no. 1 (2018): 122. See too, Sri Endah Wahyuningsih, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Islam Dan Pembaharuan Hukum Indonesia*, (Semarang: UNDIP, 2013): 48.



Health as a critical aspect of preserving the soul, is a trust that must be safeguarded, and medical service agreements should reflect fairness and mutual benefit to prevent exploitation, such as *misbruik van omstandigheden* (abuse of circumstances).<sup>40</sup> Islamic law condemns practices like hospital rejections of economically weak patients, as these violate the principle of justice (*adl*), which aligns with the civil law prohibition of exploiting imbalanced bargaining positions.<sup>41</sup> For instance, rejecting patients due to inability to pay contradicts the Islamic principle of *maslahah* (public benefit), which requires medical actions to prioritize patient welfare, especially for vulnerable communities.<sup>42</sup> Islamic law provides comprehensive guidance on maintaining health and regulating patient-provider relationships. The principle of *maslahah* mandates that medical decisions maximize positive outcomes for patients, prohibiting hospitals from prioritizing profit over care, a practice that mirrors *misbruik van omstandigheden* in civil law. In emergency cases, Islamic law permits medical intervention without prior consent to save lives, reflecting the priority of preserving the soul.<sup>43</sup> Moreover, Islamic law advocates mediation and arbitration to resolve disputes between patients and medical personnel, ensuring equitable solutions that prevent prolonged conflicts and protect patient rights.<sup>44</sup>

With proper application, these principles can help create a more effective and harmonious health care system that respects and protects the rights of all parties involved.<sup>45</sup> The principle of benefit emphasizes that every medical action must be based on consideration of the greatest benefit to the patient. This means that medical decisions must consider the greatest positive impact that can be obtained by the patient, both in the short and long term.<sup>46</sup> The implementation of these principles in health practice is seen in situations such as emergency treatment where medical actions are carried out to save the patient's life without waiting for consent, as well as maintaining the

<sup>40</sup> Abdul-Rahman Al-Sheha, *Human rights in Islam and common misconceptions* (Riyadh: Islam House, 2012): 24.

<sup>41</sup> Wael B Hallaq, "Kamali, Muhammad Hashim, *Principles of Islamic Jurisprudence*, revised edition (Cambridge: Islamic Texts society, 1991): 417.

<sup>42</sup> Natasya Yunita Sugiasuti, Rakhmita Desmayanti, and Nahla Samir Ahmed Shahin, "Sikap Hakim dalam Menerapkan Pasal 1321 KUHPerdara: Studi Putusan Pengadilan di Indonesia," *Jurnal Hukum Ius Quia Iustum* 30, no. 3 (2023): 683.

<sup>43</sup> Ratna Dwi Wulandari, Agung Dwi Laksono, Rofingatul Mubasyiroh, Rika Rachmalina, Mara Ipa, and Nikmatur Rohmah. "Hospital utilization among urban poor in Indonesia in 2018: is government-run insurance effective?." *BMC Public Health* 23, no. 1 (2023): 93.

<sup>44</sup> Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu* (Damascus: Dar al-Fikr, 1997): 712.

<sup>45</sup> Ulul Adzemi Romansyah, Ahmad Labib, and Muridah Isnawati, "Pemenuhan Hak Konstitusional Warga Negara Indonesia Studi Kasus Jaminan Kesehatan Nasional," *Pemenuhan Hak Konstitusional Warga Negara Indonesia: Studi Kasus Jaminan Kesehatan Nasional* 1, no. 1 (2017): 115.

<sup>46</sup> Asep Hendradiana, and Gunarto Gunarto, "The Legal Renewal of Malpractices by Medical Personnel Based on Restorative Justice," *Jurnal Hukum* 40, no. 1: 78.

confidentiality of the patient's medical information. Islamic law also provides a mechanism for resolving disputes between patients and medical personnel through mediation and arbitration. This approach aims to achieve justice and mutual agreement, avoid prolonged conflict and ensure that the rights of all parties are respected. By implementing the principles of Islamic law, the health care system can become more effective, just, and harmonious. This study shows that a deep understanding of the principles of Islamic law can help medical practitioners, lawyers, and policy makers in developing policies and practices that are in accordance with Islamic values, which ultimately improves the quality of health care and the welfare of society.<sup>47</sup>

## **2. Legal Review Regarding Misbruik van Omstandigheden in Cases of Refusal of Patients with Low Economic Income by Hospitals**

One way of guaranteeing social welfare is to provide adequate medical services for economically disadvantaged communities. This idea is clearly translated through Article 34 paragraph (2) Law of the Unitary State of the Republic of Indonesia Year 1945 related to the social security implementation system; this is then operationalized through Law Number 40 of 2004 regarding the National Social Security System which was later amended by Law Number 11 of 2022.<sup>48</sup> Law of the Republic of Indonesia Number 6 of 2023 Concerning the Determination of Government Regulation In lieu of Law Number 2 of 2022 Concerning Job Creation Becoming Law. The narrative related to the correlation between *staat* fundamental norm and *formeel geset* in a series of analogies of health insurance politics for the poor shows how the position of the economically weak community is also protected by the state and the constitution and health law politics in terms of the right to obtain good medical services.<sup>49</sup>

This constitutional position becomes vague due to the fact that the implementation of the medical service use agreement is no longer inspired by the mandate of the constitution and Pancasila. This is proven by the fact that therapeutic agreements and agreements concerning informed consent are only based on Article 1338 paragraph 1 KUHPerdata related to freedom of contract, in its development it is known that patients do not have sufficient understanding regarding the medical service facilities that they should obtain,

<sup>47</sup> Reni Agustina Harahap et al., "Literatur Review Hubungan Hukum Antara Pasien dan Tenaga Medis dalam Pelayanan Kesehatan dalam Perspektif Hukum Islam," *Jurnal Kolaboratif Sains* 7, no. 9 (2024): 3642.

<sup>48</sup> Aria Yuditia, Yusup Hidayat, and Suparji Achmad, "Pelaksanaan Jaminan Kesehatan Nasional Oleh Bpjs Berdasarkan Undang-Undang No. 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional," *Jurnal Magister Ilmu Hukum* 6, no. 1 (2021): 51.

<sup>49</sup> Sopa, Rini Fatma Kartika, Nurhadi Nurhadi, Dina Febriani Darmansyah, Taufiqurokhman, and Ma'mun Murod, "Social Security Programs in Islamic Law: A Comparative Study of Fatwa Institutions on Indonesia's Health Insurance," *Jurnal Hukum* 40, no. 1 (2024): 189.

Medical actions and facilities are actions that can only be understood by medical personnel and hospitals, economically weak patients who do not have knowledge about medical science in reality do not understand their rights in a medical service agreement.<sup>50</sup> This can clearly be said to be undue influence or misbruik van omstandigheden or abuse of circumstances or biased circumstances in an agreement.<sup>51</sup>

**Table:** Cases of Rejection of Economically Weak Patients by Hospitals

No	Case	Case Chronology
1	The Case of Bambang Sutrisno	Bambang Sutrisno was a 50-year-old low-income citizen who was rejected by the Ibnu Sina Gresik Regional Hospital, due to the rejection, Bambang who was dying died. This case occurred on May 13, 2009.
2	The Case of Suryani	Suryani, 44, is a lymph node cancer patient. Suryani was rejected by Dharmais Hospital, West Jakarta. The hospital argued that Suryani only had a Certificate of Inability to Pay (SKTM). This case occurred on October 15, 2011.
3	The Case of Dera Nur Anggraini	Dera was a person who had a sore throat, due to her illness Dera was taken by her parents to get medical treatment because her condition was getting worse, but 10 hospitals where Dera was taken to get medical services refused her, and in the end due to the rejection Dera died because she did not get medical treatment. This case occurred on February 13, 2013.

The various cases above clearly show how the hospital is only oriented towards economic profit, medical services for low-income patients are only oriented towards the commercialization of health, this results in the loss of access to medical services for low-income communities. A research article written by Wulandari<sup>52</sup> explains the correlation between economic capacity and the level of public health services. The article published in the BMC Public Health journal explains that low-income communities have fundamental

<sup>50</sup> Muh Amin Dali, Warsito Kasim, and Rabia Ajunu, "Aspek Hukum Informed Consent Dan Perjanjian Terapeutik," *Akademika* 8, no. 2 (2019): 98.

<sup>51</sup> Okezone. "Ini Deretan Kasus Penolakan Warga Miskin oleh Rumah Sakit," *Okezone.com*. February 19, 2013. Retrieved in July 24, 2025 from <https://news.okezone.com/read/2013/02/19/500/764146/ini-deretan-kasus-penolakan-warga-miskin-oleh-rumah-sakit>. See too, Hanifah Romadhoni and Arief Suryono, "Pertanggungjawaban perdata rumah sakit," 230.

<sup>52</sup> Ratna Dwi Wulandari, Agung Dwi Laksono, Rofingatul Mubasyiroh, Rika Rachmalina, Mara Ipa, and Nikmatur Rohmah. "Hospital utilization among urban poor in Indonesia in 2018: is government-run insurance effective?." *BMC Public Health* 23, no. 1 (2023): 95.

problems in obtaining their right to life, one of these fundamental problems is access to good medical services. Expensive medical services have made low-income communities untouched by adequate health services, this makes low-income communities in Indonesia live in poor health and malnutrition, this is made worse by access to food, air, and clean water which is difficult to reach due to lack of financial capacity.

This clearly shows how hospitals as health institutions in this country have committed misdirection and fraud, because they have eliminated the right to proper medical services for economically weak communities which are protected by Article 28H paragraph (1) Law of the Unitary State of the Republic of Indonesia Year 1945 which is then operationalized in therapeutic agreements and agreements concerning informed consent. Such a situation is clearly a *misbruik van omstandigheden*. This can be analyzed from the aspect of the principle of agreement, in civil law the refusal for economically weak patients has made the therapeutic agreement and the agreement concerning informed consent made by the hospital contradict the principle of balance in the agreement.<sup>53</sup>

The principle of balance is a principle in Indonesian Contract Law which is a continuation of the principle of equality which requires a balance of rights and obligations between the parties in the agreement, in a medical service agreement between a hospital and economically weak patients it should not be determined unilaterally by the hospital so that the agreement tends to benefit the hospital, this refusal for economically weak patients shows how the medical service agreement for economically weak patients who should have fair access to medical services is flawed, this results in medical services becoming an unlawful act because in a state of discrimination for economically weak patients, such a situation is clearly far from the principle of balance in medical service agreements.<sup>54</sup>

In a medical service agreement, the hospital and economically weak patients should be equal considering that economically weak patients are financed by a health insurance institution as mandated by Article 34 paragraph (2) Law of the Unitary State of the Republic of Indonesia Year Tahun 1945. In reality, the principle of civil balance cannot be reflected when looking at the civil status of economically weak patients in terms of health service agreements today. Such a situation is also clearly contrary to the requirements

<sup>53</sup> Muhammad Ikhsan, Hilda Muliana, and Sabda Wahab, "Penyelenggaraan sistem jaminan sosial nasional oleh badan penyelenggara jaminan sosial," *Sol Justicia* 4, no. 2 (2021): 148.

<sup>54</sup> Rina Arum Prastyanti et al., "Consumer legal protection for patients and the quality of health services in hospitals," *Open Access Macedonian Journal of Medical Sciences* 11, no. E (2023): 201.

for the validity of an agreement as regulated in Article 1320 KUHPerdata, especially the conditions related to a lawful cause or *geoorloofde oorzaak*.<sup>55</sup>

Article 1337 of the Civil Code states that a cause is prohibited if the law prohibits it or if it is contrary to public order or good morals, therefore, what is meant by a legitimate cause is a cause that the law does not prohibit, public order or morals.<sup>56</sup> The relationship between the patient and the doctor regarding medical services is used as a promised object, both parties, both the party receiving medical services or the doctor, want something that is lawful, because the doctor in healing and helping the party receiving the medical services uses the insight and knowledge that has been obtained, the patient must also act lawfully, namely by hoping for health, thus the conditions in Article 1320 KUHPerdata fulfillment can be implemented. Therapeutic transactions are defined as an activity in which there is an effort to implement the implementation of medical practice in the form of providing health services based on the skills and expertise of the doctor. The fact that the rejection of economically weak patients is an act of *misbruik van omstandigheden* by the hospital, clearly shows that therapeutic agreements and agreements concerning informed consent as a commitment to health services for economically weak communities have violated *geoorloofde oorzaak* as one of the requirements for the validity of civil agreements.

Law Number 17 of 2023 on Health further reinforces the state's obligation to provide non-discriminatory healthcare services.<sup>57</sup> Article 2 of this law emphasizes principles of humanity, equality, and non-discrimination, explicitly mandating that health services be accessible to all, including economically weak communities. However, the law lacks specific provisions for sanctions against hospitals that reject patients based on economic status, creating a regulatory gap that enables *misbruik van omstandigheden*. For instance, Article 48 of Law Number 17/2023 requires hospitals to provide emergency care without prepayment, yet enforcement remains weak, as evidenced by the cases above. This gap is compounded by the commercialization of healthcare, where hospitals prioritize profit over constitutional and statutory obligations, a trend corroborated by research indicating that low-income communities face significant barriers to accessing adequate medical services.

<sup>55</sup> Agus Yudha Hernoko and Ghansam Anand, "The application of circumstance abuse doctrine (*Misbruik Van Omstandigheden*) on judicial practice in Indonesia," *Journal of Advanced Research in Law and Economics* 8, no. 7 (2017): 2145.

<sup>56</sup> Wiwik Afifah and Deasy N. Paruntu, "Perlindungan Hukum Hak Kesehatan Warga Negara Berdasarkan Undang-Undang Nomor 24 Tahun 2011 Tentang Badan Penyelenggara Jaminan Sosial," *Mimbar Keadilan* 150 (2015): 169. See too, Valen Nainggolan and Tundjung Herning Sitabuana, "Jaminan kesehatan bagi rakyat," 912.

<sup>57</sup> Asrina Wijayanti, "Overview and Analysis of Health Law Number 17 of 2023," *Enigma in Law* 1, no. 1 (2023): 19.

A study by Wulandari<sup>58</sup> highlights the correlation between economic capacity and access to health services, noting that expensive medical care exacerbates health disparities among low-income communities in Indonesia. Data from Social Health Security Administration (*Badan Penyelenggara Jaminan Sosial Kesehatan*/BPJS) 2022 annual report further reveals that 12% of registered participants, primarily from low-income groups, faced delays or rejections in accessing hospital services due to administrative or financial barriers.<sup>59</sup> These findings underscore how hospitals exploit the ignorance of economically weak patients regarding their rights under therapeutic agreements and informed consent, a clear manifestation of *misbruik van omstandigheden*.<sup>60</sup>

### 3. Addressing Hospital Rejections through Civil and Islamic Legal Frameworks

The Islamic legal principle of *maqashid al-Shariah*, discussed in the previous section, complements civil law by emphasizing justice (*adl*) and public benefit (*maslahah*) in medical agreements.<sup>61</sup> Rejecting economically weak patients violates these principles, as it prioritizes profit over patient welfare, contradicting both Islamic ethics and the civil law requirement of a lawful cause. This convergence of Islamic and civil law frameworks highlights the need for a holistic approach to address hospital rejections.<sup>62</sup>

To mitigate *misbruik van omstandigheden* in healthcare, several legal solutions are proposed. First, Law Number 17/2023 should be amended to include specific sanctions, such as fines or license revocation, for hospitals that reject economically weak patients without valid medical reasons.<sup>63</sup> Second, the government should strengthen oversight through regular audits by the Ministry of Health and BPJS Kesehatan to ensure compliance with non-discrimination mandates. Third, public legal education programs should be implemented to

<sup>58</sup> Ratna Dwi Wulandari, Agung Dwi Laksono, Rofingatul Mubasyiroh, Rika Rachmalina, Mara Ipa, and Nikmatur Rohmah. "Hospital utilization among urban poor in Indonesia in 2018: is government-run insurance effective?." *BMC Public Health* 23, no. 1 (2023): 97.

<sup>59</sup> BPJS Kesehatan. "*Laporan Tahunan 2022*." *BPJS Kesehatan*, Augst 23, 2023. Retrieved in June 24, 2025 from <https://www.bpjs-kesehatan.go.id>. See too, Ghofar Shidiq, "Teori maqashid al-Syariah dalam hukum Islam," *Majalah Ilmiah Sultan Agung* 44, no. 118 (2009): 120.

<sup>60</sup> Brigitta Diffania and Wiwin Yulianingsih, "Juridical review of abuse of condition (Misbruik Van Omstandigheden) as reason for cancellation of a debt agreement," *Josar (Journal of Students Academic Research)* 7, no. 2 (2022): 481.

<sup>61</sup> Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem dalam Hukum Islam)," *Jurnal Al Himayah* 2, no. 1 (2018): 114. See too, Wael B Hallaq, "Principles of Islamic Jurisprudence" 417.

<sup>62</sup> Muhammad Zaid Anshari, "Tujuan Hukum: Perspektif Hukum Barat dan Hukum Islam," *Tabayyanu: Journal Of Islamic Law* 1, no. 01 (2024): 7.

<sup>63</sup> Satria Indra Kesuma, "Ulasan Undang-Undang No. 17 Tahun 2023 Tentang Kesehatan," *Jurnal Nusantara Berbakti* 2, no. 1 (2024): 255. See too, Ani Purwanti, "Peningkatan Akses Layanan Kesehatan bagi Masyarakat Miskin," *Jurnal Hukum Kesehatan* 8, no. 2 (2022): 145.

inform economically weak patients of their rights under therapeutic agreements and health insurance schemes, reducing their vulnerability to exploitation.<sup>64</sup> Finally, adopting Islamic dispute resolution mechanisms, such as mediation, can provide an equitable and efficient means to resolve conflicts between patients and hospitals, as suggested by Wahbah al-Zuhayli.<sup>65</sup> These solutions align with the constitutional mandate under Article 34(2) and the ethical principles of *maqashid al-Shariah*, fostering a healthcare system that upholds justice and equality.<sup>66</sup>

Hospital rejections of economically weak patients constitute *misbruik van omstandigheden* by exploiting their vulnerable position, violating the principles of balance and lawful cause under Articles 1320 and 1337 of the Civil Code. The regulatory gap in Law Number 17/2023, coupled with weak enforcement, enables such practices to persist.<sup>67</sup> By integrating civil law, constitutional mandates, and Islamic principles, this study advocates for stricter regulations, enhanced oversight, and public education to ensure equitable healthcare access for all Indonesians, particularly the economically disadvantaged.

#### D. CONCLUSION

This study concludes that hospital rejections of economically weak patients constitute *misbruik van omstandigheden* (abuse of circumstances), as they exploit the vulnerable position of patients who lack knowledge of their medical rights, violating the principle of balance in therapeutic agreements and informed consent. These practices contravene civil law requirements under Articles 1320 and 1337 of the Civil Code, which mandate a lawful cause and fairness in agreements, as well as constitutional guarantees under Articles 28H(1) and 34(2) of the 1945 Constitution, which ensure equitable healthcare access. The integration of Islamic legal principles, particularly *maqashid al-Shariah*, further reinforces that such rejections contradict the ethical obligation to prioritize patient welfare and justice. Cases like those of Bambang Sutrisno, Suryani, and Dera Nur Anggraini highlight how hospitals prioritize profit over patient care, undermining both legal and ethical frameworks.

The findings have significant implications for healthcare policy, emphasizing the need for stricter regulations to prevent discriminatory

<sup>64</sup> Luthfi Hidayat, "Edukasi Hukum sebagai Instrumen Perlindungan Pasien," *Jurnal Hukum dan Keadilan* 10, no. 1 (2021): 89.

<sup>65</sup> Ali, H. Zainuddin. *Hukum Islam: Pengantar Ilmu Hukum Islam di Indonesia* (Jakarta: Sinar Grafika, 2022): 24.

<sup>66</sup> Muhyidin, "Maqashid Al-Syari'ah (Tujuan-Tujuan Hukum Islam) Sebagai Pondasi Dasar Pengembangan Hukum," *Gema Keadilan* 6, no. 1 (2019): 24.

<sup>67</sup> Satria Indra Kesuma, "Ulasan Undang-Undang No. 17 Tahun 2023 Tentang Kesehatan," *Jurnal Nusantara Berbakti* 2, no. 1 (2024): 255. See too, Ani Purwanti, "Peningkatan Akses Layanan Kesehatan bagi Masyarakat Miskin," *Jurnal Hukum Kesehatan* 8, no. 2 (2022): 147.

practices and ensure equitable access for economically weak communities. However, this study is limited by its reliance on a small number of case studies and limited empirical data, which may not fully capture the extent of hospital rejections nationwide. Future research should explore quantitative data, such as national statistics on patient rejections, and investigate the effectiveness of existing health insurance mechanisms like BPJS Kesehatan in addressing these issues. Additionally, studies could examine the role of public legal education in empowering patients and the potential for integrating Islamic dispute resolution mechanisms, such as mediation, to resolve conflicts between hospitals and patients, fostering a more just and accessible healthcare system.

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