

## **PRESUMED CONSENT TO HIGH-RISK MEDICAL ACTIONS IN EMERGENCIES: PERSPECTIVE OF LAW NUMBER 17 OF 2023**

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### **Abstract**

Patients must provide informed consent before medical procedures are carried out in ordinary situations, but this does not apply in emergency situations and presumed consent is used instead. Doctors are often faced with situations that require high-risk medical procedures for emergency patients. The concept of presumed consent for this action is not recognized under Law Number 17 of 2023 concerning Health. The aim of the research is to analyze the role of presumed consent in the perspective of this law for high-risk medical procedures in emergency cases

emergency. This research uses a normative juridical legal research type, namely library legal research, with a statutory approach and a conceptual approach. The results of the analysis show that presumed consent for high-risk medical procedures in emergency situations is not clearly regulated in Law Number 17 of 2023. However, doctors can still rely on several other articles in this law, including Article 293 paragraph (10) which emphasizes the best interests of patients, Article 275 paragraph (1) which requires doctors to provide assistance in emergency cases, and Article 273 paragraph (1) which provides legal protection to doctors who act according to standards. Apart from that, Article 275 paragraph (1) also exempts doctors from claims for compensation in emergency cases, providing legal security for doctors to act quickly to save the patient's life without any doubt.

**Keywords :** *Presumed consent; High risk actions; Emergency case*

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### **INTRODUCTION**

Patients need medical intervention from doctors not only when experiencing illness, but also when they are healthy as a health promotion and prevention measure, as well as health consultations. Trust which is the basis of the relationship between doctor and patient is a key element. Without this trust, the treatment process can be hampered. It fosters a solid therapeutic relationship between doctor and patient, where the patient's trust in the doctor is the main foundation. This is what encourages patients to give consent to medical procedures (informed consent), which marks their approval of the proposed medical intervention (Ikhsan, 2022:1201).

The interaction between doctors and patients is a practice rooted in history. Traditionally, doctors are seen as providing care to those who need it. Initially, the legal dynamic between doctor and patient was based on a vertical paternalistic model, similar to the relationship between parent and child, with the assumption that "the doctor knows best." In this model, doctors are considered to have more knowledge and ability to deal with patient illnesses, placing them in a more dominant position. However, over time, this pattern shifted to become more egalitarian, leading to horizontal contractual relationships based on mutual participation and cooperation (Purba, 2021:309). This change in relationship patterns then also changes the patient to become more critical and no longer permissive, which has the potential to trigger conflict.

Doctors need to be prepared to face legal proceedings if the intervention carried out does not meet the expectations of the patient or their family, especially if the intervention results in death, disability or harm to the patient. These disputes often stem from the patient's perception that they have been victims of malpractice. As a result, the patient or their family may report the incident to the police and sue the doctor for assuming that the doctor acted recklessly. In court, doctors must defend medical procedures carried out based on applicable standards and taking into account the patient's best interests. Doctors need to present evidence to support their decisions in providing medical care. Medical expert witnesses may also be called to provide their professional opinion about the medical procedures performed.

Article 273 paragraph (1) of Law Number 17 of 2023 concerning Health states that medical personnel have the right to legal protection as long as they carry out their duties in accordance with the standards set by the profession, including service standards, operational procedures, professional ethics, as well as paying attention to the health needs of patients. The purpose of this law is to protect patients, improve the quality of health care, and provide legal clarity for the public as well as the medical profession, including doctors and dentists. There is an inherent obligation for physicians to provide quality care to their patients, which defines the interaction between the two. Traditionally, this relationship is often characterized by imbalance due to significant differences in social status and educational level, with many interactions tending to be paternalistic (Setiawan et al., 2018: 100).

Doctors often encounter situations where patients in emergencies require complex and risky medical procedures. This action involves the use of sophisticated equipment to treat life-threatening conditions, contains significant risks associated with treatment, and can result in harm or dangerous side effects from the drugs used (Imani Lifesaver Indonesia, 2023:1). Meanwhile, Article 293 paragraph (5) of Law Number 17 of 2023 concerning Health mandates that written consent must be obtained first before carrying out invasive procedures or actions that involve high risks.

This condition often becomes a dilemma for doctors in emergency situations. On the one hand, doctors, based on their knowledge, are required to immediately carry out high-risk medical procedures to save their patients' lives, but on the other hand, they are haunted by the fear of lawsuits from the patient/patient's family because of the risk of death that could arise from these actions. Meanwhile, in an emergency situation, based on Article 275 paragraph (1) of Law Number 17 of 2023 concerning Health, it is mandatory for medical and health personnel who practice in health service facilities to provide first aid assistance to patients experiencing emergency conditions.

The application of presumed consent or implied/tacit consent in emergency cases is important because in these situations, patients are often unable to give direct consent to medical actions needed to save lives. In emergencies, time is precious and the existence of a formal process for obtaining informed consent can hinder rapid access to necessary medical services. With presumed consent, doctors and medical personnel can quickly take actions deemed necessary based on the assumption that the patient will give consent if they are conscious and able to give consent. However, it remains important to consider the drawbacks and ensure that these applications are carried out in good faith and within the limits established by law and medical ethics.

On August 8 2023, the government passed Law Number 17 of 2023 concerning Health. This legislation not only aims to fulfill the mandate of the 1945 Constitution of the Republic of Indonesia but also aims to adapt to the evolution of the health sector and lessons learned from the Covid-19 pandemic, which demands transformation in the Indonesian health system. The success of this transformation depends on regulatory changes that are designed to guarantee people's rights, produce effective regulations, and can be implemented successfully (Andrianto, 2023: 1). Law Number 17 of 2023 concerning Health has officially replaced Law Number 29 of 2004 relating to Medical Practice and Law Number 36 of 2009 which regulates Health. When new regulations are implemented, doctors do not always respond positively and may even feel threatened, because these regulations are seen as binding on their scientific freedom and have the potential to create conflict when providing health services to the community (Iswandari, 2017: 20). In this regard, it would be interesting to study the perspective of the new Health Law on the problems that occur in high-risk medical procedures in emergency cases.

## **METHOD**

This research uses a normative juridical legal research type, namely library legal research, with a statutory approach and a conceptual approach. The reason for using this research method is to help doctors understand and apply legal principles and standards in the context of high-risk medical procedures in emergency cases.

## **RESULTS AND DISCUSSION**

In standard situations, informed consent is an essential prerequisite required before undertaking a medical procedure. The concept of informed consent was developed to change the dynamic between doctors and patients from a paternalistic relationship to an agreement-based partnership. The essence of informed consent is a treatment agreement entered into between a doctor and a patient, which is based on the patient's health condition (Sosiawan et al., 2023: 2). This can be realized in two forms, namely implied consent (considered to

have been given without being stated explicitly) and expressed consent (stated by the patient to the doctor either verbally or in writing). Through informed consent, doctors have assurance that the patient has understood the information provided, which serves to reduce the possibility of misunderstandings and strengthen patient compliance with the recommended medical procedure plan (Kasiman et al., 2023: 2).

In Law Number 17 of 2023 concerning Health, there are explicit provisions regarding the requirement to obtain informed consent, as regulated in:

1. Article 274 sub-paragraph b, which confirms the doctor's obligation to obtain informed consent from the patient or family before carrying out medical treatment;
2. Article 293 paragraph (1), which states that every medical action carried out individually by a doctor must be preceded by obtaining consent from the patient.
3. Article 293 paragraph (5) emphasizes that before carrying out high-risk medical procedures, written informed consent must be obtained.

Apart from fulfilling regulations, having informed consent is very important because it is a form of legal protection for doctors, prevention of malpractice, proof of trust in the doctor-patient relationship and respect for the patient's right to autonomy.

Consent to medical procedures, known as informed consent, is a critical aspect for both patients and doctors. Therefore, doctors are required to provide informed consent to patients before carrying out medical procedures. This is vital to avoid possible legal complaints from patients. If doctors do not obtain legal approval for their actions, they can face legal problems, whether in the realm of criminal, civil or professional discipline (Hajar, 2020: 793). The absence of informed consent can lead to accusations of wrongful medical practice, especially if there is harm or action that affects the patient's physical condition. In order to be able to file a lawsuit for lack of informed consent, several legal components must be fulfilled, namely (1) there is a doctor's duty to obtain informed consent; (2) the task is not fulfilled without valid legal reasons; (3) harm occurs to patients; and (4) there is a direct link between failure to fulfill informed consent and the harm experienced by the patient (Suntama, 2017, p. 92). If a doctor performs a procedure without informed consent and no harm or physical intervention occurs, this is not necessarily a violation of the law. However, if the doctor does not obtain informed consent and continues to carry out actions that result in the patient experiencing harm (unnecessary costs, pain, or loss of income), even though the patient ultimately recovers, the doctor can still be held responsible for the loss.

However, in an emergency situation a patient often loses competence. This is because the patient is in a state of decreased consciousness to the point of being unconscious. In such conditions, patients experience an inability to understand information, an inability to communicate decisions and an inability to make rational decisions. Therefore, he will lose the right to accept or refuse medical treatment. This provision is also explained in Article 4 paragraph (3) of Law Number 17 of 2023 concerning Health, where it is stated that an individual's right to approve or refuse some or all medical procedures does not apply to people who are unconscious or in a medical emergency. In the event of a patient losing competency, physicians often must rely on decisions made on the basis of what they believe to be the patient's best interests, or seek the consent of a legal guardian or family member as time permits.

Apart from the patient's incompetent condition, other problems that are actually often encountered by doctors in emergency situations related to providing informed consent are:

1. There is not enough time to obtain informed consent because life-threatening emergencies occur suddenly and quickly, for example cases of total airway obstruction that cause the patient to be unable to breathe at all;
2. There is no family responsible (the patient's status is unclear), for example the case of a homeless person who was found unconscious due to severe head trauma on the side of the road;
3. The responsible family exists, but is not in the hospital and cannot be contacted in various ways by doctors when an emergency occurs, for example in the case of an emergency for a patient in hospital which occurs in the early hours of the morning while the family is sleeping at home
4. There are responsible families, but they cannot/do not dare to give informed consent because they are in a confused state and cannot think clearly, for example after being given complete information about the risks of the action, the family becomes increasingly confused/afraid of the possible consequences.

To deal with such situations, doctors do not need to hesitate to immediately take medical action if necessary. Medical actions carried out by doctors receive protection based on Law Number 17 of 2023 concerning Health, in accordance with the following articles:

1. Article 80 paragraph (3) states that in a medical emergency, medical procedures may be carried out without requiring prior approval.
2. Article 293 paragraph (9) emphasizes that if the patient does not have the capacity to give consent and is facing a life-threatening condition without a guardian who can ask for consent, then consent for the medical procedure is not required.

In an emergency situation, it is very possible that doctors are required by the situation to carry out high-risk medical procedures as quickly as possible in an effort to save lives. In this stressful situation, doctors are required to remain clear-headed in deciding the best medical action for their patient. The definition of a high risk medical procedure is given in Article 1 point 5 of the Regulation of the Minister of Health of the Republic of Indonesia Number 290 of 2008 concerning Approval of Medical Procedures. In this regulation, medical procedures that are considered to have a high risk are procedures that have the possibility, within a certain level of probability, of causing death or disability in the patient. This medical procedure has a relatively large chance of causing serious complications or unwanted effects. The probability of a risk occurring is often associated with a complicated procedure, the patient's already poor condition, a potential reaction to the medication administered or the possibility of an uncertain outcome.

As an example of a high-risk medical procedure here is tracheal intubation (the process of inserting a thin tube from the mouth into the airway). Tracheal intubation is a very important procedure and is commonly performed in the intensive care unit (ICU). This procedure protects the patient's airway and at the same time, if a breathing machine is connected, it can treat respiratory failure which is a common problem in critical patients and is associated with various complications including death. (Khan et al., 2020: 1) A study shows that up to 28% Critical patients undergoing tracheal intubation may experience life-threatening complications such as severe drops in blood oxygen levels or blood pressure that alternates suddenly up and down and 2.7% of complications are cardiac arrest (Russoto et al., 2021: 1165).

Every medical procedure that carries the potential for significant harm must obtain official written approval from the party who has the authority to provide such permission. In this context, 'deserving' may refer to the patient or their family members; However, there are times when the owner of this right is not clearly defined (Wirabrata & Darma, 2018: 294). Meanwhile, Article 293 paragraph (5) of Law Number 17 of 2023 concerning Health emphasizes that written informed consent must be obtained before carrying out high-risk medical procedures. In normal situations, there will be enough time for doctors to obtain informed consent. And even though the medical procedure to be carried out is high risk, the doctor has enough time to prepare everything. Very different conditions occur in emergency cases which also require high-risk medical treatment. Often there is not enough time for doctors to prepare. If the longer the action is delayed simply because there is no consent, it has the potential to make the patient's condition even worse, the risk of complications becoming greater and ultimately the patient not being saved.

The doctor's hesitation to take immediate action can be used as a basis for the patient's family to blame the doctor because it seems as if the patient was not immediately helped. Likewise, if a doctor dares without delay to carry out a high-risk medical procedure, it turns out that this action actually accelerates the patient's death. Doctors are in a dilemma due to the patient's family not understanding the situation. Then, the doctor faced a lawsuit from the patient's family. Doctors can be sued on the basis of medical negligence or neglect that resulted in the patient's death. The doctor will be forced to undergo a complex and lengthy legal process.

Article 440 paragraph (2) of Law Number 17 concerning Health clearly states that every doctor who makes a mistake that results in the death of a patient can be sentenced to imprisonment or a fine for stalking the doctor on one side. Negligence occurs because doctors do not work according to professional standards, standard operational procedures and medical protocols that they should comply with. This is in accordance with what applies in the principles of criminal law, which is called the *gebod* principle (necessity), which means the necessity or obligation for someone to carry out an action. And if someone does not carry out their obligations, it is equivalent to having committed an unlawful act, the consequences of which could be subject to criminal sanctions (Syah, 2019: 57).



Meanwhile, on the other hand, doctors are faced with Article 438 paragraph (1) of Law Number 17 of 2023 which states that there is a threat of imprisonment or fines for doctors who do not provide first aid in emergency situations. Doctors have a moral, ethical and professional obligation to act according to the standards of providing assistance to emergency patients on the basis of humanity. In a medical context, the principle of prohibition or 'verbod' refers to actions that should not be performed on a patient, based on universal medical standards. If this prohibited action is still carried out by medical personnel, then the action can be classified as a form of violence and is no longer malpractice (Syah, 2019: 54).

In facing such a dilemma, doctors can first adhere to Article 293 paragraph (10) of Law Number 17 of 2023 concerning Health which states that medical procedures are carried out based on the patient's best interests which are decided by the doctor providing services to the patient. This is in line with the principle in the world of medicine "agroti salus lex suprema" (patient safety is the highest law) (Mannas, 2021: 91). This is a principle of medical ethics that asserts that the interests and welfare of the patient are the most important factors in medical decision making. Doctors are required to act in the patient's best interests, which means taking actions that will protect the patient's life. This principle emphasizes that a doctor's moral obligation is to maintain patient safety as a priority, even above formal laws or procedural rules.

Doctors must always remember their obligations as stated in Article 275 paragraph (1) of the Health Law Number 17 of 2021 which emphasizes that medical and health professionals who practice in health service facilities must provide initial emergency assistance to patients who are experiencing critical conditions. . From an ethical perspective, this is in line with Article 13 of the Indonesian Medical Code of Ethics which also states the obligation of doctors to provide emergency assistance as a humanitarian duty. Meanwhile, from a professionalism perspective, the act of providing assistance is the professional responsibility of a doctor who has the expertise and competence to deal with such situations.

Doctors must also adhere to Article 273 paragraph (1) of Law Number 17 of 2023 which emphasizes that medical personnel have the right to legal protection while carrying out their practice in accordance with professional standards, professional services, applicable operating procedures, professional ethics, and paying attention to health needs. from the patient. This needs to be done because professional standards, professional service standards and standard medical operational procedures determine the minimum quality of medical services that must be provided. If a doctor has carried out his duties in accordance with these standards, he can defend himself by saying that he has carried out his duties in accordance with practices recognized and accepted by his colleagues. Compliance with these standards will enable physicians to use their professional judgment in emergency situations, with a sound basis for making prompt and appropriate decisions. Ignoring professional standards, operational procedures and ethics can lead to issues of medical malpractice, especially if this results in damage to the patient's health or death (Yahya, 2020: 129).

Article 80 paragraph (3) and Article 293 paragraph (9) of Law Number 17 of 2023 concerning Health agree in principle that to save a patient's life in an emergency situation, informed consent is not required. Thus, there are exceptions to the application of informed consent in emergency situations. Doctors are still obliged to provide assistance even if the patient is unconscious and unable to give consent to the action. This is known as presumed consent (Puspitasari et al., 2019: 96). The two articles mentioned above are the legal basis for what in the medical world is called implied or tacit consent or also presumed consent.

*Presumed consent* are generally looser than explicit agreements and are commonly practiced. In a medical context, presumed consent or implied consent is an agreement given by the patient implicitly, without an explicit statement. The doctor caught the signal for this statement from the patient's attitude and actions (Wahyudi & Anissa, 2020: 66). Presumed consent is generally used when a doctor or medical professional proposes treatment or tests that are minimally invasive or less risky. For example, if a patient holds out his hand for a blood draw or rolls up his sleeve for a vaccination, these actions may be considered implied consent to the proposed treatment or test.

*Presumed consent* can be the answer in emergency cases of patients who require urgent high-risk medical procedures, but it is not possible to provide explicit consent. In conditions such as loss of consciousness or inability to communicate, patients are unable to express consent or refusal to necessary medical procedures. Therefore, doctors are faced with the need to act quickly to save lives or prevent further damage. In this context, medical law and ethics recognize that implicit or assumed consent is required as a basis for medical action. This approach assumes that patients will consent to medical procedures necessary to save their lives or preserve

their health in emergency situations, given the absence of the ability to provide explicit consent. Implementing presumed consent is crucial to ensure that doctors can provide appropriate medical services without delay, which in many cases, can be the difference between life and death.

*Doctrine of necessity* can be used as a basis for carrying out high-risk medical procedures armed with presumed consent in emergency cases. The Black's Law Dictionary defines the word "necessity" as a controlling force; irresistible compulsion; power or encouragement that is so great that it does not recognize behavioral choices. (Arora, 2018, p. 1) The principles of natural justice are the basic legal parameters that are always considered when a court wants to make a decision. However, there are

an exception to one of the principles of natural justice, namely the rule against bias or partiality, which is known as the doctrine of necessity. This doctrine allows legal authority to function as follows (1) taking certain actions that must be done at certain times, where such actions are not usually considered to fall within the scope of the law in common law situations; and (2) activate and apply the doctrine of necessity only in circumstances where there is no determining authority who can make a decision regarding a case (Gayatri, 2022,: 1).

In the context of a medical emergency where the doctor does not have written consent (informed consent) from the patient, the application of the doctrine of necessity can be analyzed as follows:

1. Medical procedures that must be performed by doctors in emergency situations are usually excluded from standard procedures that require informed consent because they are essential to save lives or prevent serious health damage.
2. *Doctrine of necessity* applied because in emergencies, there is often no time or possibility to obtain informed consent. This situation justifies the doctor to act immediately without such approval.
3. In circumstances where allowing someone to die because of the absence of informed consent is considered more moral and ethical than violating standard procedures, then actions that normally require consent will be carried out.

In addition, most of the rules known as "Good Samaritan" provide legal protection to people who help voluntarily without any strings attached. According to this rule, we are expected to be more open to being helpers who truly want to help others who are in trouble, without having to be afraid of legal risks resulting from these helping actions. (West & Varacallo, 2022: 1) This theory can be applied to regulations that protect doctors who provide medical assistance in emergency situations without being haunted by fear of legal action from the patient/patient's family because they only have presumed consent. The aim of applying this principle is to ensure that patients receive help when they are in a position where they really need it and that the help is carried out with good intentions.

When a patient who is unable to make his own decision faces a medical emergency and there is no official representative who can give permission, the doctor has a moral responsibility to take the best action for the patient based on presumed consent. The ethical principles of "duty of care" and "primum non nocere" (first of all, do no harm) are very important in emergency cases without informed consent. "Duty of care" requires health workers to provide adequate care (Momodu & TIA, 2019: 56). Meanwhile "primum non nocere" emphasizes the importance of not causing injury or more severe damage (Kuswardhani, 2020: 298). Actions taken must consider the balance between potential benefits and possible risks. The goal is to provide the greatest benefit while minimizing the possibility of harm to the patient. Actions taken must also only be actions that are truly important and cannot be postponed, such as resuscitation or emergency surgery to save lives.

However, even though it is permissible to carry out medical procedures on the basis of presumed consent, doctors based on Article 293 paragraph (11) of Law Number 17 of 2023 emphasize that these actions must be immediately informed to the patient after the patient is competent or a representative is present. This is very important to do for several reasons, namely (1) as respect for the patient's autonomy to remain involved in making decisions about themselves; (2) as an effort to create transparency in the relationship between doctors and their patients; (3) As an effort to build honest and open communication to foster patient/family trust in doctors; (4) As an effort to fulfill the principles of medical ethics where doctors have an obligation to clearly inform the patient's condition, the therapy given and also the patient's hope for recovery; (5) As an effort to fulfill the doctor's legal obligations; and (6) As an effort to prevent legal conflicts/legal disputes that occur due to misunderstandings resulting from the absence of informed consent.

The application of presumed consent in emergency cases has several weaknesses that need to be considered, including (1) Ambiguity: In emergency situations, it is sometimes difficult to determine whether a patient's actions can be considered as implied consent or not. This can cause uncertainty in determining whether the medical action taken is in accordance with the patient's wishes; (2) Uncertainty: In some cases, even if the patient provides implied consent, there may be uncertainty regarding the extent to which the patient will agree to the medical action taken. This can raise ethical and legal questions regarding whether the medical action taken is truly in accordance with the patient's wishes; (3) Potential for Abuse: Implementing presumed consent can open up opportunities for abuse by medical parties. In emergency situations, there is a risk that doctors or medical personnel may make decisions that are not in line with the patient's interests or wishes; (4) Legal Responsibility: Although there are exceptions to the application of informed consent in emergency situations, doctors and medical personnel still have a legal responsibility to act in good faith and in accordance with applicable medical standards. If there are allegations of negligence or misuse, they can still be held legally responsible. There can be legal conflicts if the patient or his family opposes actions taken without explicit consent, especially if the results do not meet expectations; and (5) Difficulty in proof: Implicit consent is difficult to prove in court because there is no documentation or explicit statement from the patient giving consent.

Good documentation of medical procedures becomes very important when doctors carry out medical procedures on the basis of presumed consent. This is emphasized by Law Number 17 of 2023 concerning Health in the following articles:

1. Article 274 letter d states that doctors make and keep notes and/or documents regarding examinations, care and actions carried out.
2. Article 300 paragraph (1) states that in carrying out public health efforts, doctors are obliged to keep health service records.

Even in Article 4 paragraph (2) of the Minister of Health Regulation Number 290/Menkes/Per/III/2008 concerning Approval of Medical Procedures, it is more clearly and specifically stated that it is mandatory for doctors to record every medical action they carry out on patients without consent in the record. medical.

Documentation carried out in medical records clearly and in detail is the main evidence of high-risk medical procedures that have been carried out and the reasons underlying these actions. In the case of a lawsuit, based on Article 13 paragraph (1) letter c of Minister of Health Regulation No.269/Menkes/Per/III/2008 concerning Medical Records, these records can be key evidence to prove that the actions taken are in accordance with professional standards and standard operational procedures. Medical records contain factual details about a case, which are confirmed through post mortem et

*repertoire*, because it functions as evidence in the legal process. Evidence process

aims to reveal the truth of the case in question. In the courtroom, presentation of evidence is the most crucial procedure. Patients have the right to see notes made by doctors regarding their medical conditions. For doctors, medical records are documentation that shows their diligent and detailed efforts to cure the patient. The existence of complete medical records also shows the seriousness and good intentions of doctors in providing care, which influences their position in the legal context (Chintia, 2020: 9).

It is also important to recognize that the ethical issues related to presumed consent in emergencies are complex and can be viewed from various angles. On the one hand, arguments in favor of the use of presumed consent focus on the interests of patient health and safety. In emergency situations, prompt and timely medical action can be the key to saving lives or preventing further damage. In some cases, a quick decision is required and it is not possible to obtain direct consent from the patient. However, on the other hand, the concept of presumed consent can be considered contrary to the principle of patient autonomy. Patient autonomy, namely the right of patients to make decisions about their medical care, is an important foundation in medical ethics. In situations where consent is assumed, there is a risk that the decisions made may not be in accordance with the patient's wishes or values, even in emergency situations. Therefore, it is important for health and legal systems to consider the balance between public health interests and individual rights. There may need to be clear mechanisms to ensure that decisions taken in emergency cases are based on the patient's best interests and take into account ethical values such as autonomy and justice.

Article 275 paragraph (1) of Law Number 17 of 2023 concerning Health states that doctors who provide health services in the context of life-saving measures for patients in emergency situations are exempt from

claims for compensation. If an analysis is carried out on this article, it is an appreciation for the doctor's hard work and legal protection. This is based on the fact that in carrying out their duties, doctors will always adhere to 2 ethical principles, namely:

1. The ethical principle of "beneficence" is that medical actions carried out by doctors in emergency situations are solely in the best interests of the patient, even in stressful conditions and limited time. The high-risk medical action taken must be strictly proportional to the severity of the situation experienced by the patient (appropriate indication). Doctors have a leading understanding of what is most beneficial to patients, according to the principle of medical ethics known as beneficence. This principle emphasizes the importance of actions that are oriented towards the patient's profit or welfare. From a legal perspective, interactions between doctors and patients are defined as a therapeutic transaction, which places the patient's health as the main priority (Mannas, 2018: 173).
2. The ethical principle of "non-maleficence" is a moral rule that prohibits actions that could worsen a patient's condition (JA, 2020: 20). In this way, the medical actions that doctors carry out cause minimal harm to the patient. High-risk medical procedures carried out by doctors must be carried out carefully so that the impact of patient death as a direct risk from these actions can be reduced and even eliminated. Overall, in the context of medical emergencies, nonmaleficence demands a balance between prompt action and careful consideration of the potential harm of that action.

In addition, in law there is also the principle of "Actus non facit reum nisi mens sit rea" where an action is not an offense unless it is carried out with guilty intent (Singh, 2022: 23). This principle is a Latin legal principle based on the idea that physical actions (actus) do not turn into illegal actions, unless there is an element of mental error (mens rea), namely evil intent or mental error behind the action (dolus eventualis). This principle can be implemented in high-risk procedures by doctors in emergency cases. The doctor does not have malicious intentions to cause the patient's death, even though the high-risk medical procedures he performs can result in the patient's death directly. On the other hand, doctors always act in good faith with the main aim of saving their patients' lives based on the ethical principles of beneficence and non-maleficence.

### CONCLUSION

Law Number 17 of 2023 concerning Health in Indonesia recognizes the concept of presumed consent in emergency situations, where doctors are allowed to carry out medical procedures without the patient's explicit consent if the patient's condition makes it impossible to give consent or there is no family who can be contacted. This is stated in Article 80 paragraph (3) and Article 293 paragraph (9). Even though high-risk medical procedures in emergencies have not been explicitly regulated, doctors can still rely on several other articles in this law, including Article 293 paragraph (10) which emphasizes the patient's best interests, Article 275 paragraph (1) which requires doctors to provide assistance in emergency cases, and Article 273 paragraph (1) which provides legal protection to doctors who act according to standards. Apart from that, Article 275 paragraph (1) also exempts doctors from claims for compensation in emergency cases, providing legal security for doctors to act quickly to save the patient's life without any doubt.

### BIBLIOGRAPHY

#### *Legislation:*

Law Number 17 of 2023 concerning Health

Minister of Health Regulation No. 269/Menkes/Per/III/2008 concerning Medical Records  
Minister of Health Regulation Number 290/Menkes/Per/III/2008 concerning Approval of Medical Procedures

#### *Book :*

Mannas, Y.A. (2021). Legal Protection for Doctors: Application of the Principle of Balance as One of the Efforts Towards Reforming the National Health Law. Rajagrafindo Perkasa.

Sjahdeni, SR (2020). Health Law on Medical Personnel Malpractice Law Volume 2. IPB Press.

Shah, MI (2019). Medical Malpractice Lawsuits. Bhuna Popular Science.

Yahya, MJ (2020). Delegation of Authority & Legal Protection for Medical Actions to Health Workers in the Context of State Administrative Law. Refika Aditama.

#### *Journal:*

Chintia, D. (2020). The Role of Medical Records as Evidence in Resolving Medical Disputes between Doctors and Patients. Juristic Journal, 1(1), 9.



- Hajar, M.E. (2020). Doctors' Criminal Liability for Negligence in Providing Medical Services and the Urgency of Informed Consent. *Kertha Village Journal*, 10(9), 793.
- Ikhsan, IS (2022). The Urgency of Informed Consent as a Prevention of Criminal Acts by Doctors. *Journal of Law and Notary Affairs*, 6(2), 1201.
- Iswandari, HD (2017). Doctors' Perceptions of Lawsuits. *Journal of Health Science and Technology*, 8(1), 20.
- JA, S. (2020). Study of the Application of Doctor Ethics in Providing Health Services in the Covid-19 Pandemic Era. *Journal of Law and Economic Development*, 8(2), 20.
- Kasiman, Azhari, AF, & Rizka. (2023). The Role of Informed Consent in the Legal Protection of Doctors in Health Services. *SOEPRA Journal of Health Law*, 9(1), 2.
- Khan, H.Z., Sasaa, MAZ., & Mohammadi, M. (2020). Mortality Related to Intubation in Adult General ICUs: A Systematic Review and Meta-Analysis. *Arch Neurosci*, 7(3), 1.
- Kuswardhani, RAT (2020). Law and medical ethics in geriatric patients: Current perspectives and a literature review. *Bali Medical Journal*, 9(1), 298.
- Mannas, Y.A. (2018). Legal Relationship between Doctors and Patients and Responsibilities of Doctors in the Implementation of Health Services. *Journal of Legal Aspirations*, 6(1), 173.
- Momodu, D., & TIA, O. (2019). Medical Duty of Care: A Medico-Legal Analysis of Medical Negligence in Nigeria. *American International Journal of Contemporary Research*, 9(1), 56.
- Purba, GP (2021). Doctor's Responsibilities towards Patients Viewed from the Civil Law Aspect. *Rectum Journal*, 3(2), 309.
- Puspitasari, RA, Isharyanto, & Purwadi, H. (2019). Juridical Review of Presumed Consent as the Right of Patients in Emergency Conditions. *Journal of Health Policy and Management*, 4(2), 96.
- Russoto, V., Myatra, N.S., Laffey, J.G., & Tassitro, E. (2021). Intubations Practices and Adverse Peri-intubation Events in Critically Ill Patients from 29 Countries. *Journal of the American Medical Association*, 325(12).
- Setiawan, H., PAG, DO, & Sugiharta, N. (2018). Violation of the Code of Medical Ethics in Cases of Unilateral Removal of a Patient's Ovaries. *Jurisprudence*, 5(2), 100.
- Singh, H. (2022). Analyzing the Requirement of Strict Liability in Criminal Law. *Asian Journal of Multidisciplinary Research & Reviews*, 3(5), 23.
- Sosiawan, A., Sushanty, VR, Wahjuningrum, DA, & Setiawan, F. (2023). A Case Study of Informed Consent in Indonesian Law Number 29, 2004. *Dental Journal*, 56(1), 2.
- Suntama, W. (2017). Study of Informed Consent (Approval of Medical Actions) according to Law No. 36 of 2009 concerning Health. *Lex Privatum*, 5(5), 92.
- Shah, MI (2019). Medical Malpractice Lawsuits. *Bhuana Popular Science*.
- Wahyudi, & Anissa, D. (2020). Analysis of Informed Consent on the Legal Protection of Health Workers in the Bandung City Regional General Hospital. *Res Nullius Law Journal*, 2(1), 66.
- West, B., & Varacallo, M. (2022). *Good Samaritans Law*. National Library of Medicine. <https://www.ncbi.nlm.nih.gov/books/NBK542176/>
- Wirabrata, IGM, & Darma, IMW (2018). Juridical Review of Informed Consent in Legal Protection for Patients and Doctors. *Journal of Legal Analysts*, 1(2), 294.

*Website:*

- Andrianto, W. (2023, September). A Note for the Health Act. *Hukumonline.com*. <https://www.Hukumonline.com/berita/a/secarik-note-untuk-health-law-lt64fe8593cfb16/>
- Arora, M. (2018). Doctrine of Necessity : Sec 81 Indian Penal Code. *Criminal Law Research & Review*, 1. <https://crlreview.wordpress.com/2018/08/19/doctrine-of-necessity-sec-81-indian-penal-code/>
- Gayatri, RS (2022). All about The Doctrine of Necessity. *IPLeaders*. <https://blog.ipleaders.in/all-about-the-doctrine-of-necessity/>
- Imani Lifesaver Indonesia. (2023). High Risk Services and High Risk Patients. *Imani Care*. <https://imanicareindonesia.or.id/bisnis-dan-pendidikan/pejalan-resiko-tinggi-dan-patient-resiko-tinggi/>