Research Horizon

ISSN: 2808-0696 (p), 2807-9531 (e)

Research Horizon
Volume: 05
Issue: 04
Year: 2025
Page: 1599-1610

Citation:
Putri, J., Bihar, S., & Jamaludin, A. (2025). Legal aspects of informed consent for patients requiring emergency treatment. *Research Horizon*, *5*(4), 1599-1610.

Article History:
Received: July 6, 2025
Revised: August 13, 2025
Accepted: August 19, 2025
Online since: August 30, 2025

Legal Aspects of Informed Consent for Patients Requiring Emergency Treatment

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Abstract

In the medical field, doctors are required to have a permit before performing medical procedures. However, doctors often encounter patients in emergency situations who cannot give consent and are not accompanied by family. This study aims to examine the implementation of informed consent in Indonesia to identify challenges and possible solutions. Through a literature review, this study uses a normative legal approach. Therefore, Law Number 17 of 2023, Article 293(9) exempts doctors from the obligation to obtain medical consent in emergencies. The result shows According to Article 275 paragraphs (1) and (2), doctors are also legally protected from payment demands after providing first aid to save lives or prevent disability. Because they offer an agreement on efforts and are exempt from legal responsibility if the patient's goal is to be helped, doctors should not hesitate to act quickly in emergencies. This study found that Law Number 17 of 2023 provides doctors with legal protection to act without consent in emergencies, thereby reducing the risk of legal liability. The conclusion is that clear guidelines and ongoing legal education for medical personnel are essential to ensure safe and legal emergency care.

Keywords

Emergency, Health Law, Informed Consent, Law Number 17 of 2023, Medical Ethics.

1. Introduction

Health is one of the fundamental human rights protected by the 1945 Constitution of the Republic of Indonesia, reflecting the government's concrete commitment to implementing the principles of a state based on the rule of law. This provision is clarified in Article 28 H paragraph (1) of the 1945 Constitution (Bahasuan & Bambang, 2021). According to Law No. 17 of 2023 concerning Health, health is an integral part of human rights and is crucial for achieving national goals, as reflected in the Pancasila and the Preamble to the 1945 Constitution. Achieving ideal health for everyone requires an active role from leaders and the people, beginning with personal desires, such as adopting a healthy lifestyle and complying with regulations to prevent the risk of accidents. This foundational belief fosters the encouragement of patients to provide informed consent to medical procedures (Pakendek, 2010; Russotto et al., 2021).

Based on the provisions of Article 293 paragraph (1) of Law Number 17 of 2023 concerning Health, every medical procedure must be preceded by patient consent. However, in urgent situations, medical personnel often encounter situations requiring immediate medical attention to prevent life or disability (Kristiawan, 2021; Zulkarnain & Hoesein, 2024). When the public is unaware of the law and there are no family members available to consent to procedures, doctors are placed in a difficult position when making medical decisions. Doctors are cautious to avoid potential lawsuits from patients, as they are expected to commit to ensuring the patient or their family achieves optimal therapeutic outcomes. Legally, the relationship between a doctor and a patient is considered a form of agreement, known as a therapeutic contract. This agreement creates rights and obligations for both parties, particularly regarding medical procedures, thus establishing a legal relationship between them.

An agreement or contract between a doctor and a patient can be established in two ways: verbally or in writing. The written form of this agreement is commonly known as informed consent (Damayanti et al., 2023; Atriani & Yulianto, 2023). Informed consent is a legal and ethical requirement in medical practice, where the patient or their immediate family approves a specific medical procedure after receiving a comprehensive explanation from the doctor. This explanation must cover the nature of the medical problem, the proposed procedure, its purpose, potential risks, alternative treatments, and the expected outcomes. Informed consent must be given voluntarily, without coercion, and with complete understanding of the information provided (Iskandar, 2019; Sherliyanah & Asmuni, 2023).

Whether delivered verbally or in writing, informed consent is mandatory for all medical actions that carry potential risks, particularly for surgeries, invasive interventions, and other high-risk procedures (Rizka et al., 2023; Venia et al., 2024). Written consent is typically preferred for its evidentiary value in legal and ethical accountability. Informed consent aims to respect the autonomy and rights of the patient, ensuring that they are actively involved in decisions about their health. Doctors must communicate clearly and thoroughly, enabling patients to make informed decisions regarding their treatment (Amri et al., 2020; Baroto & Mangesti, 2023). This process also protects medical personnel from legal disputes stemming from uninformed or misunderstood procedures.

However, there are not many legal studies that specifically highlight the aspect of informed consent in emergencies that do not allow for direct consent from the patient or their family. Every surgical procedure must comply with the norms of the medical profession, including professional attitudes, knowledge, and skills, to ensure the patient's right to healthcare is fulfilled. Accidents, negligence, or other errors committed by medical personnel can cause distress to patients and lead to legal action. Therefore, physicians must practice medicine by relevant operational

guidelines and professional standards. Whenever a medical procedure is performed, physicians are expected to inform the patient and their family about the illness being treated, the life-saving measures taken, and the potential risks associated with it. This study aims to examine the legal aspects of informed consent in patients requiring emergency treatment.

2. Literature Review

Informed consent serves as a fundamental pillar in medical ethics and legal practice, emphasizing respect for patient autonomy and the protection of their rights. In Indonesia, the right to health is constitutionally guaranteed under Article 28H paragraph (1) of the 1945 Constitution, which ensures every citizen's entitlement to physical and spiritual well-being, including access to quality health services (Bahasuan & Bambang, 2021). This constitutional mandate is further reinforced by Law Number 17 of 2023 concerning Health, which positions health as an inseparable human right and underscores the collective responsibility of government and society to achieve optimal health outcomes (Wicaksana & Budhisulistyawati, 2019). Article 293 paragraph (1) of the law mandates that all medical procedures require patient consent, establishing a therapeutic contract that outlines mutual rights and obligations between doctors and patients (Damayanti et al., 2024). This legal framework ensures that patients are actively involved in decisions about their treatment, balancing autonomy with the ethical responsibilities of healthcare providers.

The therapeutic contract, as a legal relationship, not only protects patient rights but also provides a shield for medical personnel against potential litigation (Muhaimin, 2020). Recent studies highlight the evolving nature of Indonesia's health law, particularly in standardizing protocols to ensure legal protections for healthcare providers during medical procedures (Anailyka et al., 2025). However, the application of these regulations in complex scenarios, such as emergencies, remains underexplored, raising questions about their practical feasibility. The emphasis on legal clarity and standardized procedures is critical to ensuring that informed consent aligns with both ethical principles and Indonesia's commitment to a rule-of-law state (Suharto et al., 2020). This framework sets the stage for further exploration of how informed consent operates under urgent medical conditions, where time constraints and patient conditions challenge standard procedures.

In emergency medical situations, obtaining informed consent becomes a significant challenge due to the urgency of life-saving interventions and the frequent absence of family members or the patient's ability to consent (Rahim & Hutabarat, 2016). Law Number 17 of 2023, specifically Article 293(9), provides an exemption for doctors, allowing them to perform procedures without prior consent in life-threatening emergencies to prevent death or disability (Republic of Indonesia, 2023). This provision is rooted in the doctrine of necessity, which prioritizes immediate action over procedural formalities. However, doctors often face ethical dilemmas when balancing the need for swift action with the risk of legal repercussions, particularly when families later question the interventions (Zulkarnain & Hoesein, 2024). Cultural factors, such as low health literacy or societal mistrust in medical procedures, further complicate the application of informed consent in Indonesia, necessitating culturally sensitive approaches (Nurvidyaning et al., 2025).

The concept of presumed consent, where doctors assume a patient would agree to life-saving measures, is legally supported but not without limitations (Mavroudis et al., 2020). Ambiguities in defining what constitutes an "emergency" can lead to hesitation among medical personnel, fearing malpractice claims (Rizka et al., 2023). Recent studies emphasize the importance of clear guidelines and standardized protocols to prevent misuse of presumed consent and ensure ethical compliance (Lakoro et al., 2025). Additionally, the lack of documentation in emergency settings

can pose legal risks, as hospitals must balance rapid decision-making with the need for transparent records (Anailyka et al., 2025). These challenges underscore the necessity for ongoing training and robust legal frameworks to enable doctors to navigate the complexities of emergency care while upholding patient rights.

Despite the comprehensive legal framework provided by Law Number 17 of 2023, research on informed consent in emergency medical contexts remains limited, particularly in Indonesia (Damayanti et al., 2024). Most studies focus on normative aspects, such as legal protections for doctors, but lack empirical data on how hospitals implement consent procedures in urgent situations (Arini et al., 2021). For example, there is little exploration of how medical personnel navigate scenarios where patients or families are unaware of emergency protocols, which can lead to mistrust or legal disputes (Suharto et al., 2020). This gap is particularly evident in the absence of studies examining the practical challenges faced by doctors, such as time constraints or the emotional burden of making decisions without consent (Baroto & Mangesti, 2023). Incorporating empirical research could provide valuable insights into how hospitals operationalize legal exemptions and enhance patient-doctor communication during emergencies.

Furthermore, the literature lacks comparative analyses with international practices, such as those in the Netherlands or the United Kingdom, where presumed consent is well-established and supported by clear guidelines (Russotto et al., 2021). Socio-cultural factors, including low public health literacy and cultural attitudes toward medical authority, significantly influence consent practices in Indonesia but are underexplored (Nurvidyaning et al., 2025). Recent studies have called for legal reforms to clarify ambiguities in defining emergency conditions and to strengthen documentation standards, thereby ensuring protection for both patients and healthcare providers (Lakoro et al., 2025). These gaps highlight the need for interdisciplinary research that integrates empirical data, cross-jurisdictional perspectives, and sociocultural analyses to enhance the feasibility of informed consent in emergencies, while aligning with ethical standards and patient rights.

3. Methods

The method used in this research is normative legal research, which is generally used to examine legal norms, doctrines, and principles through the analysis of legal materials. This approach is particularly suitable for exploring legal issues related to informed consent for emergency medical procedures, as stipulated in Law Number 17 of 2023 concerning Health. Normative legal research relies on secondary data, including legal documents, scientific literature, and other authoritative sources, to understand legal norms and their application in specific contexts.

This research uses both a legislative and a conceptual approach. The legislative approach is applied by reviewing relevant laws and regulations governing the obligations and legal protections for medical personnel. For example, Article 293(9) of Law Number 17 of 2023 stipulates that in emergencies, doctors are exempt from the obligation to obtain prior medical consent from the patient or their family. Furthermore, Article 275 paragraphs (1) and (2) offer legal protection for doctors who provide life-saving assistance or prevent disability, thereby exempting them from compensation claims. These legal provisions recognize the urgency and ethical imperative to perform immediate medical intervention without delay.

A conceptual approach is used to explore legal doctrines such as "*inspanningverbintenis*" (effort-based obligation), which implies that physicians are obligated to use their best professional efforts without being legally bound to ensure successful treatment. This concept serves as the basis for protecting medical personnel from legal consequences when the outcome of emergency measures does not meet the expectations of the patient or family.

This research was conducted systematically through a comprehensive literature review, involving primary legal materials, such as laws, government regulations, and court decisions, as well as secondary legal materials, including academic articles, legal commentaries, and expert opinions. This methodological framework enables a critical and holistic analysis of the legal protection mechanisms provided to medical personnel in emergency contexts, while also identifying legal gaps and practical challenges in implementing informed consent regulations.

4. Results

4.1. Definition, Types, and Functions of Informed Consent

Consent generally refers to consent, or more specifically, authorization. Therefore, consent or permission obtained from a doctor performing a medical procedure by their approved client is known as informed consent. Physical examinations, medication administration, injections, birth aid, anesthesia, surgery, and additional care in case of difficulties are examples of these actions. The phrase "informed" indicates that the patient has received sufficient explanation or knowledge before consent is given. In other words, informed consent is the patient's (or approved family member's) permission to undergo medical surgery after the doctor has thoroughly explained it to them. One of the patient's legally protected rights is the provision of clear information. As a result, Consent After Explanation is another name for information-based consent (Dewi et al., 2021).

After getting complete information about the medical procedure to be performed, the patient or their immediate family members can give informed consent. Informed consent, which can be given orally or in writing, is a prerequisite for any medical procedure. The doctor's information regarding the condition and the medical procedure in question must be the basis for this approval. For specific medical procedures, such as invasive surgeries or other high-risk operations, informed consent is crucial.

In medical procedures, there are two types of consent: a) Implied Consent (consent that is considered to have been given), which usually occurs in everyday situations where the doctor can infer the patient's consent from nonverbal cues or gestures. Implied consent also applies in emergencies, where the doctor must immediately perform medical action in the absence of the patient's family's presence and without the patient's ability to provide consent. Doctors are free to use their judgment to determine the appropriate course of action in such situations. b) An openly expressed consent, also known as an express consent, which may be communicated orally or in writing (McCullough et al., 2007). Patients are advised to provide written consent for invasive or high-risk medical treatment; This is known in hospitals as a surgical consent letter.

Supporting the right to individual autonomy, protecting patients and subjects of medical procedures, avoiding fraud or coercion, motivating medical staff to assess their professional practice, and encouraging informed decision-making are just some of the important roles that informed consent plays. Furthermore, informed consent contributes to the promotion of community involvement in both monitoring the application of biomedical research and upholding the values of autonomy as a component of societal norms. Informed Consent is separated into three categories based on the type of activity or objective: therapy, diagnostics, and research (where patients are invited to participate as research subjects) (Hall et al., 2012).

Informed consent is intended to protect patients from medical procedures performed without their knowledge or consent. Furthermore, informed consent legally protects clinicians from unexpected side effects, such as the risk of continued treatment despite the doctor's best efforts, caution, and adherence to protocols.

4.2. Legal Basis of Informed Consent in Medical Services

The interaction between the medical team and the client is often considered a type of medical consent. While "therapy" usually refers to direct treatment, the term "therapeutic" in this context has a broader meaning. Aspects of health services, including treatment (curative), preventive, health promotion (promotive), and rehabilitation (rehabilitative), are all covered in the therapeutic agreement (Maleka et al., 2008). To achieve a shared medical goal, doctors and patients play complementary roles in this interaction. An agreement (consensual agreement) about the medical services to be provided becomes the basis of engagement (*verbintenis*), which is legally defined as the interaction between patient and doctor. Because it requires consent that is given based on mutual trust and understanding between the patient and the doctor, informed consent is a component of this interaction.

According to Muhammad (2021), three steps in the procedure lead to the receipt and signing of the medical procedure approval form: a) The patient visits a medical facility or doctor's office. The presence of this patient can be interpreted as indirect consent, or implicit consent, to conduct an initial examination. b) The second phase begins when the patient sits in front of the doctor, who then begins the medical interview and enters the data in the patient's medical file. At this point, the doctor and the patient have established a professional relationship. c) The third step is when the doctor initiates a physical examination, which may involve additional supporting tests. After data collection, the doctor makes a diagnosis and outlines the course of therapy, including necessary medical procedures, while providing the patient with adequate explanations.

According to some experts, written consent is only required for specific medical procedures. The following medical procedures require written consent, according to Mancini M.R. and Gale A.T. a) primary and minor surgeries that involve inserting instruments into the body through natural body incisions or holes; b) any medical procedure involving anesthesia; c) non-operative actions that contain more than minor risks or that have the potential to alter the structure of the body; d) medical therapy using cobalt rays or X-rays; e) electric shock therapy; f) experimental medical measures; and g) any action that in the opinion of medical personnel requires a special explanation to the patient before it is carried out (Rizka et al., 2023).

Although life-saving measures take precedence over informed consent, informed consent is still considered important in case of emergency. The primary goal in life-threatening situations is to save lives, and the provision of emergency medical care should not be impeded by informed consent. In these situations, doctors often lack the time necessary to thoroughly explain the problem to the patient, allowing them to make an informed choice. Furthermore, doctors cannot always wait for the patient's family to arrive. Based on the necessity doctrine, doctors are still allowed to take necessary action even if the family is present but refuses medical treatment (Savulescu & Schuklenk, 2017). However, if such medical procedures injure a patient or compromise the integrity of their bodies, a lack of informed consent can increase the likelihood of malpractice charges. Lack of informed consent is considered reckless in many legal systems worldwide. The level of doctors' inaccuracy is considered more serious in some situations, as this can be considered a deliberate act.

Intentional malpractice includes, for example: a) when a doctor performs medical treatment despite the patient's expressly refusing it; b) when a doctor deliberately misinforms about the dangers of a medical procedure; c) when the doctor covers up the dangers of a medical procedure; and d) when informed consent is obtained for a procedure that is significantly different from the actual action performed by the doctor.

After getting complete information about the medical or dental procedure to be performed, the patient or close family member can give consent for the medical

procedure. There are two main procedures involved in this agreement: a) Explanatory process. At this stage, the patient or his family should get complete information about the medical procedure from the doctor who performed it. The purpose of this explanation is to ensure that the patient or family can understand the medical procedure and use it as a basis for making decisions. Therefore, granting permission for medical surgery is essentially a two-way dialogue between the patient and the doctor. b) Decision-Making Process. Understanding the information obtained leads to a "yes" or "no" response, which is the result of a decision. Humans are inherently motivated to make the right choices, even if the choices can be wrong or right. The information provided previously must also be correct for the decision to be correct. Therefore, the quality of the explanations presented has a significant impact on the patient's decision to accept or reject medical surgery.

5. Discussion

In emergency situations where a patient's life is at risk and no family member is available to provide consent, medical procedures may be carried out without prior approval. This is permitted under Article 4 of the Minister of Health Regulation, grounded in the doctrine of necessity, which emphasizes that doctors are obliged to act to save lives (Rizka, et al, 2023). This is known as presumed consent a legal fiction that assumes unconscious patients would consent under the same conditions as a conscious person (Muhaimin, 2020; Sidi, 2020).

Not all medical actions are operative, but those involving physical interventions like anesthesia or incisions can be classified as criminal acts under Article 351 of the Criminal Code if performed without consent. However, if such actions are based on medical indications, a clear purpose, and proper standards, they are not considered abuse (Ramadhan et al., 2021). This reflects the legal nature of the therapeutic relationship between doctor and patient, where the agreement is one of effort (*inspanningverbintenis*), not guaranteed results (*resultaatverbintenis*), provided that the doctor acts professionally and follows proper procedures (Baroto et al., 2023).

Despite these protections, challenges often arise in emergencies, including the absence of family members, insufficient time for informed consent, and the patient's inability to make rational decisions due to unconsciousness or distress (Mavroudis et al., 2020; Budiman, 2025). Article 80(3), Article 275(1)(2), and Article 293(9) of Law Number17 of 2023 provide legal support allowing doctors to proceed with urgent actions without consent when it is not feasible to obtain it (Dzulhizza et al., 2023).

Delays due to the lack of written consent may worsen a patient's condition, increase risks, or result in death (Filia, 2019). However, if outcomes are unfavorable, doctors may still face legal claims from families unaware of the patient's illness or medical urgency (Damayanti et al., 2023). Article 440 (2) of the Health Law stipulates criminal penalties for doctors whose negligence results in death. Meanwhile, Article 438(1) penalizes doctors who fail to provide emergency assistance. These provisions align with the order (*gebod*) principle in criminal law, emphasizing the legal obligation to act (Faqih, 2022).

Doctors must prioritize patient safety Article 293(10) and are entitled to legal protection under Article 273(1) of Law Number 17 of 2023 if they act according to SOPs, professional standards, and ethics (Bazzano et al., 2021; Baroto et al., 2023). Medical decisions in emergencies must therefore be made swiftly and responsibly, with professional discretion grounded in proper guidelines. Assumed consent is recognized in Article 80(3) and Article 293(9), allowing doctors to perform lifesaving procedures even when the patient is unconscious and unable to consent (Mavroudis et al., 2020). Once the patient regains consciousness or a representative is present, Article 293(11) obligates the doctor to explain the condition, procedure, and possible outcomes to maintain ethical transparency and trust (Wardani & Fakih, 2018).

Presumed consent, although useful in emergencies, poses limitations. These include ambiguities in interpreting patient behavior, doubts about actual agreement, risks of abuse, and difficulties in proving legality due to the absence of documentation. Although the law removes the need for consent in specific emergencies, doctors must still act in good faith and follow SOPs to avoid allegations of negligence or misconduct (Mustikasari, 2021; Yussy, 2021). This study concludes that doctors have a strong legal basis to act in emergencies without consent, provided they comply with standard operating procedures. Consequently, medical personnel must understand ethical and legal boundaries to protect themselves from potential prosecution.

The results underscore the need for robust practical protocols and legal reforms to ensure that informed consent is both ethically sound and operationally feasible in emergency medical contexts. In practice, hospitals should implement standardized, easily understood consent procedures that balance patient autonomy with the urgency of life-saving interventions. From a legal reform perspective, more straightforward statutory guidelines are necessary to delineate consent requirements in emergency situations, reduce ambiguity in liability protection for medical personnel, and harmonize Indonesia's health law with international best practices on patient rights.

6. Conclusion

This study concludes that Law Number 17 of 2023 concerning Health provides a clear legal framework that permits medical personnel to carry out medical procedures without patient consent in emergencies, particularly when the patient is unconscious or no family member can be reached. Article 80(3) and Article 293(9) emphasize that assumed consent (also known as presumed consent) is valid under certain conditions, enabling physicians to prioritize patient safety without legal hindrance. However, all actions must be aligned with the patient's best interest, as stated in Article 293(10), and remain by medical protocols and professional standards.

Practically, this legal protection allows doctors to act swiftly in life-threatening situations without fear of legal repercussions, provided the procedures are medically justified and well-documented. Theoretically, this confirms the Indonesian legal system's commitment to balancing patient autonomy with the ethical imperative of saving lives, aligning with humanitarian principles and the doctrine of necessity. However, this study is limited to a normative legal analysis and does not include empirical findings regarding how hospitals implement these provisions in practice. It also does not explore comparative perspectives with international regulations on emergency consent. Future research could focus on how these legal provisions are interpreted and applied by medical institutions in Indonesia, as well as whether medical personnel fully understand the boundaries of their legal responsibilities during emergencies. Cross-jurisdictional comparisons with countries that adopt similar presumed consent doctrines, such as the Netherlands or the United Kingdom, could further enrich the theoretical discourse on emergency medical ethics and legal accountability.

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Acknowledgment
We gratefully acknowledge the contributions of individuals who supported the completion of this article.

Funding Information
This research did not receive any funding.

Conflict of Interest Statement
The authors declare that there is no conflict of interest.

Ethical Approval and Originality Statement
Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

Data Disclosure Statement
The data that support the findings of this study are available from the corresponding author upon reasonable request.

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