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Informed Consent as Legal Protection for Health Workers against Malpractice Claims under Law No 17 of 2023 on Health

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Abstract

Health workers accused of malpractice often rely on informed consent as their first line of defence, yet most Indonesian studies of consent still rest on the Health Law of 2009 and the Medical Practice Law of 2004, both repealed by Law No 17 of 2023 on Health. This normative study asks how the 2023 Law protects health workers in emergencies, how far informed consent protects them in ordinary care, and what role consent plays in the therapeutic agreement. It uses statutory and conceptual approaches to the 2023 Law, Government Regulation No 28 of 2024, the Civil Code and the Criminal Code, and to the literature on consent. The Law requires consent for every individual health service, permits oral or written consent and dispenses with it in an emergency only when the patient lacks capacity and no one can consent on the patient's behalf, in which case the worker must act in the patient's best interests. Consent is a condition for the therapeutic agreement to arise, but it protects the worker only if the information was adequate and the service met professional standards; it is no defence to negligence or to euthanasia, which remains a crime. The new disciplinary council adds procedural protection. Standard consent forms for high-risk and emergency care, rules for proxy consent and training in disclosure are recommended.

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Keywords

Consent; Malpractice; Protection; Health; Disclosure; Autonomy

Introduction

Informed consent is the approval of a medical action given by a patient, or by the closest family, after a complete explanation of the action to be performed.[1] It rests on respect for the patient's autonomy and personal integrity:[2] the patient's permission is valid only if given freely and rationally after information that the patient has understood.[3] Indonesian law first defined it in a ministerial regulation of 1989,[4] and the Medical Practice Law of 2004 required consent for every medical or dental action.[5] Law No 17 of 2023 on Health repealed that Law and the Health Law of 2009,[6] and now requires consent for every individual health service performed by medical and health workers.[7]

As patients become more critical, a failure to recover is increasingly read as a failure of the doctor, and malpractice complaints have risen. In law the doctor–patient relationship is a therapeutic agreement that creates rights and duties for both sides,[8] and malpractice is the failure to use the skill ordinarily used for patients in similar circumstances. When a patient is harmed, the first questions are whether consent was obtained, whether professional standards were met and whether standard operating procedures were followed.[9] Earlier Indonesian studies have treated consent as protection for both patient and doctor,[10] as an expression of patient autonomy[11] and as the basis of a doctor's legal protection in health services,[12] but almost all were written under the repealed Laws. The 2023 Law changed the rules on emergencies, on consent for patients who lack capacity and on the handling of complaints, and its gap on high-risk emergency action has already been noted.[13]

This article restates the role of informed consent as legal protection under the law now in force. It asks three questions: (1) how are medical and health workers protected when they treat in an emergency; (2) how far does informed consent protect them in ordinary care; and (3) what role does consent play in the therapeutic

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[1] Minister of Health Regulation No 290/MENKES/PER/III/2008 on Consent to Medical Action (Indonesia), art 1.

[2] Ruth R Faden & Tom L Beauchamp, *A History and Theory of Informed Consent* (New York: Oxford University Press, 1986).

[3] J Guwandi, *Tanya-Jawab: Persetujuan Tindakan Medik (Informed Consent)* (Jakarta: Fakultas Kedokteran Universitas Indonesia, 2023).

[4] Minister of Health Regulation No 585/MENKES/PER/IX/1989 on Consent to Medical Action (Indonesia).

[5] Law No 29 of 2004 on Medical Practice (Indonesia), art 45.

[6] Law No 17 of 2023 on Health (Indonesia), art 454.

[7] *Ibid*, art 293(1).

[8] A Priyadi, "Kontrak Terapeutik/Perjanjian antara Dokter dengan Pasien" (2020) 2:1 *Jurnal Medika Komunikasi Pendidikan Pancasila dan Kewarganegaraan*.

[9] N Gustina, F Fauziah & RS Agustina, "Pemberian Informed Consent dalam Hal Perlindungan Hukum terhadap Tenaga Kesehatan" (2022) 2:1 *Jurnal Riset Ilmu Hukum* 78.

[10] IM Wirabrata & IW Darma, "Tinjauan Yuridis Informed Consent dalam Perlindungan Hukum bagi Pasien dan Dokter" (2018) 1:2 *Jurnal Analisis Hukum* 272.

[11] D Felenditi, "Penegakan Otonomi Pasien melalui Persetujuan Tindakan Medis (Informed Consent)" (2009) 1:1 *Jurnal Biomedik* 29.

[12] Kasiman, Aidul Fitriciada Azhari & Rizka, "The Role of Informed Consent against Doctor's Legal Protection in Health Services" (2023) 9:1 *SOEPRA Jurnal Hukum Kesehatan* 1, DOI: <10.24167/sjhk.v9i1.8715>.

[13] Wisnu Baroto & Yovita Arie Mangesti, "Presumed Consent atas Tindakan Medis Berisiko Tinggi pada Kegawatdaruratan: Perspektif Undang-Undang Nomor 17 Tahun 2023" (2023) 3:2 *Jurnal Hukum dan Etika Kesehatan* 67.

agreement? Its purpose is to identify what a health worker must do, under the 2023 Law, for consent to protect against a malpractice claim.

Research Method

This is normative (doctrinal) legal research using statutory and conceptual approaches; it is not a systematic review. The primary legal materials are Law No 17 of 2023 on Health, Government Regulation No 28 of 2024, the Civil Code, the Criminal Code and the 2023 Criminal Code, together with the repealed Laws and the ministerial regulations of 1989 and 2008 for comparison, and Constitutional Court Decision No 161/PUU-XXIII/2025 on the disciplinary council. The secondary materials are books and journal articles on informed consent, medical ethics and health law. Each rule on consent (its scope, form, content, the emergency exception, consent for patients lacking capacity, refusal and disciplinary procedure) was compared under the old and new law, and the protection it gives was assessed against the doctrinal elements of valid consent. The analysis is qualitative.

Results and Discussion

Consent and Protection in Emergencies

The 2023 Law states the emergency rule once and narrowly. Consent may be given orally or in writing,[14] and it must be obtained before any invasive or high-risk action.[15] Where the patient lacks capacity and needs emergency treatment, but there is no one from whom consent can be obtained, consent is not required,[16] and the action must be taken in the patient's best interests.[17] The rule is therefore not that consent is dispensed with in every emergency, as the earlier regulation was often read, but that it is dispensed with only when three conditions meet: incapacity, urgency and the absence of anyone who can consent. Under the 2008 regulation, by contrast, consent was not needed to save life or prevent disability, and the doctor had to record the decision and explain it as soon as the patient regained consciousness or to the nearest family.[18] That duty to record and explain remains good practice, and the medical record is the worker's main evidence that the conditions were met.

[14] Law No 17 of 2023, *supra* note 6, art 293(4).
[15] *Ibid*, art 293(5).
[16] *Ibid*, art 293(9).
[17] *Ibid*, art 293(10).
[18] Regulation No 290 of 2008, *supra* note 1, art 4.

Two further points follow. First, where no statutory exception applies, the civil law supplies a basis for acting on another's behalf: voluntary management of another's affairs (zaakwaarneming) arises not from consent but from the circumstances,[19] and it explains why a worker who delays in order to wait for consent may be blamed for the delay. Second, implied consent by conduct, as when a patient holds out an arm for an injection, is valid for routine, low-risk care, but it cannot replace explicit consent for invasive or high-risk action, which the Law requires in advance and which the 2008 regulation required in writing.[20] The Law does not say expressly how a high-risk action may proceed in an emergency when a family member is present but undecided; this is the gap Baroto and Mangesti identify,[21] and it should be filled by the implementing rules.

The Role of Informed Consent as Legal Protection

Consent protects the worker only as part of a wider standard. The 2023 Law gives medical and health workers a right to legal protection as long as they act in accordance with professional standards, professional service standards, standard operating procedures and professional ethics, and with the health needs of the patient.[22] Preventive protection thus lies in following standards and procedures; consent shows that the patient accepted the risks that were explained, but it does not cover harm caused by negligence. Consent also protects the patient, who can understand the condition and the proposed action before agreeing to it.[23] In criminal law, consent forms part of the justification for an intervention that would otherwise be an injury, but only within the bounds of medical indication and proper performance.[24]

The 2023 Law also changed the procedure for complaints. The Medical Discipline Honour Council of the 2004 Law has been replaced by a disciplinary council formed by the Ministry of Health,[25] whose organisation and procedure are set out in the implementing regulation.[26] A medical or health worker suspected of an unlawful act in practice can be subjected to criminal proceedings, and a civil claim can proceed, only after a recommendation from that council.[27] A challenge to the civil

[19] Kitab Undang-Undang Hukum Perdata [Civil Code] (Indonesia), art 1354.
[20] Regulation No 290 of 2008, *supra* note 1, art 3(1).
[21] Baroto & Mangesti, *supra* note 13.
[22] Law No 17 of 2023, *supra* note 6, art 273(1).
[23] Kasiman, Azhari & Rizka, *supra* note 12.
[24] "Informed Consent di Bidang Medis sebagai Alasan Penghapus Pidana", *Hukumonline*, online: <https://www.hukumonline.com/berita/a/informed-consent-di-bidang-medis-sebagai-alasan-penghapus-pidana-lt665d4fe866ac7/>.
[25] Law No 17 of 2023, *supra* note 6, art 304.
[26] Government Regulation No 28 of 2024 on the Implementing Regulations of Law No 17 of 2023 on Health (Indonesia), arts 712–720.
[27] Law No 17 of 2023, *supra* note 6, art 308.

part of this requirement was declared inadmissible for lack of standing, so the rule stands.[28] For the worker, the recommendation stage is a substantial procedural protection: the question whether consent was properly obtained is first examined by professional peers. This article does not analyse disciplinary or court decisions applying these rules; no such decisions were examined, and the protection is assessed from the rules themselves.

Informed Consent in the Therapeutic Agreement

Informed consent expresses the cooperation between doctor and patient on which the therapeutic agreement rests, and fulfils the principle of consensualism in contract law.[29] It is a condition for the agreement to arise, but not by itself a condition of its validity: Article 1320 of the Civil Code also requires capacity, a certain object and a lawful cause,[30] and consent given by mistake, under coercion or by fraud is not valid.[31] Consent in a therapeutic agreement is centred on the patient's will rather than on negotiation between two parties: the doctor proposes and explains, the patient decides. Because the doctor knows more, the patient is the vulnerable party, and the content of the explanation therefore carries the weight of the agreement.

Elements of Informed Consent and Related Doctrines

Valid consent has four elements.[32] Competence: the patient must be able to understand the procedure and weigh its risks and benefits; a child, a person with a mental disorder or an unconscious patient is not competent, and consent is then given by a representative. Disclosure: the patient must be told at least the diagnosis, the indication, the action and its purpose, its risks and complications, and the alternatives, as the 2023 Law requires.[33] Comprehension: the information must be understood, not merely delivered. Voluntariness: consent obtained by threatening to withdraw treatment, or by offering a benefit unconnected with care, is not free. Studies of proxy consent show how strongly a relative's decision depends on the relationship to the patient and the expected benefit,[34] which is why rules on who may consent for an incompetent patient matter.

A competent patient may also refuse treatment after being informed (informed refusal), including resuscitation; Indonesian law has no specific statute on do-not-

[28] Constitutional Court of the Republic of Indonesia, Decision No 161/PUU-XXIII/2025 (16 October 2025).
[29] Priyadi, *supra* note 8.
[30] Civil Code, *supra* note 19, art 1320.
[31] *Ibid*, art 1321.
[32] Tom L Beauchamp & James F Childress, *Principles of Biomedical Ethics*, 8th ed (New York: Oxford University Press, 2019).
[33] Law No 17 of 2023, *supra* note 6, art 293.
[34] Rania Mahafzah, Karem H Alzoubi & Omar F Khabour, "The Attitudes of Relatives of ICU Patients toward Informed Consent for Clinical Research" (2020) *Critical Care Research and Practice*, DOI: <10.1155/2020/2760168>.

resuscitate orders, and their legal basis rests on the right to refuse.[35] Refusal must be distinguished from euthanasia, which Indonesian law does regulate: the Criminal Code punishes taking another person's life at that person's express and earnest request,[36] and the 2023 Criminal Code, in force from 2 January 2026, keeps the offence.[37] A request for death is therefore never a consent that protects a worker. The general grounds that exclude punishment, such as acting under a statutory provision or a lawful official order, apply to health workers as to anyone,[38] while doctrines drawn from common law, such as volenti non fit injuria or contributory negligence, are not part of Indonesian statute law and can at most inform how a court assesses the patient's own conduct. What protects the worker in Indonesian law is the combination of adequate disclosure, valid consent and treatment that meets professional standards.

Conclusion

Under Law No 17 of 2023, informed consent protects medical and health workers only together with professional standards and standard operating procedures. In an emergency, consent is dispensed with only when the patient lacks capacity and no one can consent on the patient's behalf, and the worker must then act in the patient's best interests and record why. In ordinary care, consent shows that the patient accepted the risks that were explained; it is no defence to negligence, and a request for death is never a valid consent. Consent is a condition for the therapeutic agreement to arise, and its value depends on the adequacy of the information given. The disciplinary council's recommendation now stands between the worker and criminal or civil proceedings. Health facilities should adopt standard written consent forms for invasive and high-risk action and for emergencies, rules on who may consent for patients who lack capacity, and training in disclosure; the implementing rules should settle how high-risk action may proceed in an emergency. The study is doctrinal, relies on a limited body of mainly Indonesian literature and does not analyse disciplinary or court decisions under the new Law, which future research should do.

Ethics and Data Availability

[35] G Adriana, "Do Not Resuscitation dalam Sistem Hukum di Indonesia" (2021) 1:5 *Cerdika: Jurnal Ilmiah Indonesia* 515.
[36] Kitab Undang-Undang Hukum Pidana [Criminal Code], as enacted by Law No 1 of 1946 (Indonesia), art 344.
[37] Law No 1 of 2023 on the Criminal Code (Indonesia), art 461.
[38] Criminal Code, *supra* note 36, arts 48–51.

This normative legal research did not involve human participants or personal data, so ethical approval was not required. All legal materials used are publicly available.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

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