

Legal Review of the Implementation of Informed Consent in Emergency Medical Situations Based on Law Number 17 of 2023

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Abstract

Health services are part of the basic rights of the community that must be fulfilled by the state through a quality, safe, and legal protection system for patients and health workers. In medical practice, one of the important principles that must be met before medical action is informed consent or approval of medical actions given by patients after obtaining adequate information about the action to be performed. This principle serves as a form of respect for patients' rights as well as providing legal certainty for health workers in carrying out medical practices. But in emergency situations, healthcare workers are often faced with situations that require quick medical action to save patients' lives. In such circumstances, the informed consent procedure cannot always be carried out as fully as under normal conditions. This raises legal issues related to legal certainty for health workers who perform medical procedures without prior consent from patients or their families. This study aims to analyze the legal certainty of the implementation of informed consent in medical actions based on Law Number 17 of 2023 concerning Health and to find out its application in Puskesmas. This study uses an empirical legal research method with a legislative approach and a field approach. Data were obtained through interviews with health workers, observations of medical service practices, and literature studies on laws and regulations and related literature. The results of the study show that Law Number 17 of 2023 provides a legal basis for health workers to carry out medical actions without prior approval in emergency conditions in order to save patients' lives. However, in the practice of health services, obstacles are still found in the form of limited medical documentation, lack of public understanding of emergency medical procedures, and the implementation of standard operating procedures related to informed consent in emergency conditions.

Keywords: Legal Certainty, Informed Consent, Medical Measure.

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Introduction

The Role of Informed Consent in Ensuring Legal Protection

Informed consent is one of the basic principles in modern health care practices that emphasizes the importance of patients' autonomy rights in determining the medical procedures to be undertaken. Through this mechanism, patients are provided with comprehensive information about their health condition, the purpose of medical measures, the procedures to be performed, possible risks, expected benefits, and available therapeutic alternatives. Clear, open, and easy-to-understand information allows patients to give informed consent without any pressure from any party. From the perspective of health law, informed consent is not simply understood as an administrative formality, but as a form of respect for human rights in the health sector. This principle emphasizes that every medical procedure must be based on the patient's consent after obtaining adequate information, so as to create a therapeutic relationship based on trust between the medical personnel and the patient.

In addition, informed consent also plays an important role as a form of legal protection for medical personnel in carrying out their professional practices. If the health worker has provided a complete explanation and obtained the patient's consent before performing medical procedures, then the action is legally considered to have met professional standards and medical ethics. This can reduce the potential for medical disputes or lawsuits arising from misunderstandings between patients and healthcare workers. In the study of bioethics and health law, figures such as Tom L. Beauchamp and James F. Childress affirm that respect for patient autonomy is one of the main principles in medical ethics. Meanwhile, in the context of health law in Indonesia, Guwandi stated that informed consent functions as an instrument of legal protection that provides certainty for both parties, both patients and medical personnel, in the implementation of medical measures.

Legal Protection of Informed Consent in Medical Procedures

Health services are a form of public service that has a strategic role in efforts to improve people's welfare. The state is obliged to ensure the implementation of safe, quality health services, and provide legal protection guarantees for the public as service recipients. In medical practice, the relationship between health workers and patients is not solely clinical, but also contains legal aspects that must be seriously considered. One of the fundamental principles in medical practice is informed consent, which is consent given by the patient after obtaining comprehensive information about the diagnosis, medical procedure procedures, benefits and risks that may arise, and available treatment alternatives. Informed consent reflects respect for the patient's right to autonomy in determining medical actions on him/her, as well as being a legal basis for health workers to carry out medical interventions. Regulations regarding the approval of medical measures have been outlined in various laws and regulations in the health sector, including Law Number 17 of 2023 concerning Health, which emphasizes that every medical procedure must be based on the patient's consent after being provided with adequate information.

However, in certain conditions such as emergencies, healthcare workers are faced with situations that demand immediate action to save the patient's life or prevent more severe disability. In such situations, informed consent procedures often cannot be carried out optimally due to time constraints and patient conditions that do not allow for consent. This condition has the potential to cause legal problems if the medical procedure without consent is then questioned by the patient or his family. Therefore, there is a need for clear legal certainty for health workers in carrying out medical measures in emergency situations. Puskesmas as a first-level health service facility has a crucial role in providing health services to the community, including in handling emergency cases. Thus, it is important to examine how to implement informed consent in medical procedures in emergency conditions and how to guarantee legal certainty provided by Law Number 17 of 2023, especially in service practices at health centers.

The Dynamics of the Implementation of Informed Consent in Medical Action Situations

In health service practice, the implementation of informed consent is basically a legal and ethical obligation that must be fulfilled before medical personnel take action against patients. However, in emergency situations, the implementation of these procedures often faces various dynamics and obstacles. The patient's unconscious condition, the risk of immediate death, and the absence of a family or guardian who can provide consent often make the process of giving informed consent formally unfeasible. In such situations, medical personnel still have a professional obligation to provide immediate help to save the patient's life or prevent more serious disabilities. Therefore, medical practice recognizes the concept of *presumed consent* or presumed consent, which is the assumption that the patient will basically agree to medical measures aimed at saving his life if he is in a conscious state and able to give consent.

On the other hand, this condition also poses legal and ethical dilemmas for health workers, because medical actions without consent can potentially cause legal problems if they are not based on clear laws and regulations. In the context of health law in Indonesia, the regulation regarding medical measures in an emergency provides an exception to the obligation to obtain informed consent in advance if the action is necessary to save the patient's life. This provision provides legal protection for medical personnel to act quickly without worrying about the risk of lawsuits, as long as the actions taken are in accordance with professional standards and are in the best interests of the patient. Thus, the dynamics of the implementation of informed consent in emergency situations show that there is a balance between respect for patients' rights and the obligation of medical personnel to immediately provide help in life-threatening circumstances.

Legal Certainty of Informed Consent in Law Number 17 of 2023

Legal certainty regarding *informed consent* in the health service system in Indonesia has obtained a more comprehensive regulation through Law Number 17 of 2023 concerning Health. The law emphasizes that every medical action carried out by medical personnel and health workers must be based on the patient's consent after the patient obtains clear and complete information about his health condition. This provision is reflected in Article 293, which states that every individual health service action must obtain the consent of the patient or the patient's family after being given an adequate explanation of the diagnosis, purpose of the action, procedure to be carried out, risks, and available alternative medical measures. The arrangement shows that the state provides legal guarantees for the patient's right to know and determine the medical measures to be taken against him as part of respect for human rights in the health sector.

In addition to providing protection for patients, the regulation regarding *informed consent* also provides legal certainty for medical personnel in carrying out their professional practices. In Law Number 17 of 2023 concerning Health, the obligation to obtain patient consent before performing medical procedures is also related to the professional obligations of health workers as stipulated in Article 274 letter b, which emphasizes that medical personnel and health workers in providing health services are required to obtain approval from patients or their families for the actions to be taken. This provision is the legal basis that regulates the relationship between medical personnel and patients in health service practice. With the approval of medical measures given after the process of providing adequate information, medical actions carried out by health workers have legal legitimacy and can minimize the potential for medical disputes that may occur.

On the other hand, the law also provides special provisions regarding medical measures in an emergency. In certain conditions, medical personnel often have to make quick decisions to save patients' lives so that *informed consent* procedures cannot be carried out completely. This is accommodated in Article 275 paragraph (1) which states that medical personnel and health workers are obliged to provide first aid to patients in an emergency. Furthermore, Article 275 paragraph (2) provides legal protection for medical personnel who take actions to save patients' lives or prevent disability in emergency situations. This provision shows that Law

Number 17 of 2023 concerning Health seeks to create a balance between respect for patients' rights through *informed consent mechanisms* and the need to provide immediate medical action in conditions that threaten the safety of patients' lives.

Problem Formulation

1. What are the legal arrangements regarding informed consent in medical actions according to Law Number 17 of 2023 concerning Health, especially in articles 274 letter b, article 293, article 275 paragraphs 1 and 2?
2. What is the legal certainty for health workers in the implementation of medical procedures without the patient's consent?

Research Objectives

1. Analyzing legal arrangements regarding informed consent in medical procedures based on Law Number 17 of 2023 concerning Health.
2. Knowing the implementation of informed consent in emergency medical actions at the Health Center
3. Examining legal certainty for health workers in the implementation of emergency medical measures.

Research Benefits

Theoretically, this research is expected to contribute to the development of legal science, especially in the field of health law related to the implementation of informed consent in emergency medical actions. Meanwhile, practically for health workers, this research can provide an understanding of the legal aspects in the implementation of emergency medical measures, For health service institutions, this research can be an evaluation material in the preparation of operational standards for medical service procedures and For the community, this research can provide an understanding of the rights and obligations of patients in health services.

Literature Review

Informed Consent in the Medical World

Informed consent is a form of consent given by the patient after obtaining a complete and clear explanation of the medical actions that will be carried out by health workers. This information usually includes the diagnosis of the disease, the purpose of the action, the procedure to be carried out, the expected benefits, the potential risks that may arise, and the treatment alternatives that can be chosen. Through the delivery of this information, patients have the opportunity to understand their health condition thoroughly and rationally consider decisions regarding the medical measures they will receive. Therefore, informed consent is an important element in health service practice because it emphasizes open and transparent communication between medical personnel and patients. From the perspective of medical ethics, informed consent reflects respect for the principle of patient autonomy, which is the right of individuals to make decisions related to their own body and health conditions. This principle emphasizes that patients are not only objects in medical procedures, but also subjects who have the right to obtain information and make choices about the health services they receive. Thus, health workers have an obligation to provide adequate explanations so that patients can make decisions consciously and without pressure from any party. The implementation of informed consent is also one of the important indicators in the implementation of health services that uphold human rights values.

In addition to being a form of protection for patients' rights, informed consent also has a strategic function in providing legal protection for medical personnel in carrying out their professional practices. The consent given by the patient after receiving adequate information can be the legal basis that the medical procedure has been performed with the consent of the

party concerned. This plays a role in reducing the potential for disputes between patients and medical personnel if problems arise related to the actions that have been taken in the future. Therefore, the implementation of informed consent is a crucial aspect in realizing legal certainty while maintaining a harmonious professional relationship between patients and health workers in medical services.

Principles of Informed Consent

Informed consent in health care practice is not only interpreted as the patient's consent to medical actions, but must also meet a number of fundamental principles in order to have ethical and juridical power. One of the main principles is the fulfillment of adequate information. Medical personnel are obliged to provide a comprehensive explanation to the patient, including the diagnosis, the purpose of the action, the procedure to be performed, the expected benefits, the risks that may arise, and the available therapeutic alternatives. The information must be conveyed clearly and easily understood, so that the patient is able to consider rationally before giving consent to the planned medical procedure. The next principle is understanding from the patient. The information provided is not enough to be conveyed, but must also be ensured to be completely understood by the patient. This level of understanding is an important element because the decision made must be based on adequate knowledge of the health condition and the consequences of the medical procedure to be undertaken. Therefore, healthcare workers need to provide space for patients to ask questions and ensure that the entire explanation is well understood before consent is given.

In addition, consent in informed consent must be given voluntarily by individuals who have the capacity to make decisions (competence). Valid consent must be free from coercion, pressure, or manipulation from any party. In addition, patients must have the mental and legal ability to make choices regarding the medical measures to be taken. In certain circumstances, such as unconscious or immature patients, consent may be given by immediate family members or legal guardians in accordance with the provisions of applicable law. These principles are an important foundation in ensuring the protection of patients' rights while providing legal certainty for medical personnel. Furthermore, the implementation of informed consent also emphasizes the importance of effective communication between medical personnel and patients as an integral part of the decision-making process in health services. Good communication allows patients to gain a deeper understanding of their health conditions and the implications of the medical measures to be taken. In practice, medical personnel are not only tasked with conveying information formally, but also have to adjust the way of delivery to the level of education, cultural background, and psychological condition of the patient. Thus, informed consent does not only function as an administrative procedure, but also as a means of building therapeutic relationships based on trust, openness, and professional responsibility in health services.

The Concept of Legal Certainty

The concept of legal certainty is one of the fundamental principles in the legal system that aims to ensure that the law can be applied consistently, clearly, and predictably by society. Legal certainty requires that every legal norm be formulated firmly and have binding power so that it can become a guideline of behavior for individuals and state institutions. In the context of the state of law, legal certainty serves to provide protection to every citizen from arbitrary actions, because all government and law enforcement actions must be based on applicable laws and regulations. Thus, the existence of legal certainty allows the public to know exactly the rights and obligations they have as well as the legal consequences for every action taken.

In addition, legal certainty is also closely related to the broader legal goal, namely the creation of justice and benefits for society. In the classical theory of legal purpose popularized by thinkers such as Gustav Radbruch, the ideal law must be able to balance three main values, namely justice, legal certainty, and utility. Legal certainty provides assurance that the rule of

law is applied consistently and unchangeably, thereby creating social stability and public trust in the legal system. Without legal certainty, law enforcement can cause differences in interpretation that have the potential to create injustice and uncertainty for the community. Therefore, legal certainty is one of the main pillars in realizing an effective, fair legal system, and able to protect the interests of all parties in the life of society and the state.

Medical Measures in Emergency Conditions

Medical action in emergency conditions is a form of health service that is carried out immediately to prevent death, permanent disability, or conditions that threaten the patient's life. In such a situation, health workers have a professional and moral obligation to provide help as quickly as possible without having to wait for formal medical approval from the patient or family. This is based on humanitarian principles and the obligation of the medical profession to save lives and prevent the patient's condition from worsening. Therefore, in an emergency, medical measures can be taken first as a rescue effort, while administrative aspects such as approval of medical measures can be fulfilled once the patient's condition has stabilized.

From a health law perspective, medical actions without the patient's consent in an emergency are justified because they aim to protect basic human rights, namely the right to live and access health services. The laws and regulations in Indonesia also affirm that health care facilities and medical personnel must not refuse patients in emergency conditions and are obliged to provide first aid to save patients' lives. This principle shows that patient safety is a top priority in healthcare practice. Thus, medical action in emergency conditions is not only an ethical obligation for health workers, but also a legal obligation that aims to ensure the fulfillment of protection for patients who need immediate treatment.

Research Methodology

The research method used in the research entitled *Analysis of Legal Certainty of Informed Consent in Emergency Medical Actions Based on Law Number 17 of 2023* is normative legal research using a descriptive analysis method. This research was conducted by examining and examining various legal provisions contained in laws and regulations related to the approval of medical measures (*informed consent*) and the implementation of medical measures in emergency situations. This approach focuses on the analysis of legal norms regulated in Law Number 17 of 2023 concerning Health as the main legal basis in the implementation of health services in Indonesia.

Results

Informed Law Consent Aspect

Legal regulation regarding informed consent in Indonesian laws and regulations is an important part of efforts to protect patients' rights while upholding the professionalism of health workers. Basically, informed consent is consent given by the patient after receiving a complete, clear, and adequate explanation regarding the medical procedure to be performed. This principle is based on respect for individual autonomy and the right to information, thus becoming an ethical and juridical basis in the therapeutic relationship between health workers and patients. From a legal perspective, informed consent also serves as a means of preventing medical disputes as well as a form of legal protection for both parties. Normatively, the regulation of informed consent has undergone developments in various regulations, ranging from the Medical Practice Law to technical provisions in the health sector. The strengthening of this regulation is even more evident with the enactment of Government Regulation Number 28 of 2024 as the implementing regulation of Law Number 17 of 2023 concerning Health. In this framework, informed consent is positioned as part of the patient's rights that must be respected by medical personnel and health workers. This regulation affirms that any medical procedure must essentially be preceded by the patient's consent given after obtaining adequate information

regarding the diagnosis, the purpose of the action, the risks that may arise, as well as the available treatment alternatives. Further,

Government Regulation Number 28 of 2024 regulates in more detail the mechanism and form of *informed consent*. Consent can be given in writing or orally, depending on the level of risk of the medical procedure to be performed. For high-risk actions, written consent is a must as a form of stronger legal protection. In addition, this regulation emphasizes that the information provided must be conveyed communicatively and easily understood by patients, so that it is not enough to be formal, but must meet the aspects of substance and quality of communication between health workers and patients. On the other hand, the legal arrangement also provides an exception to the obligation of *informed consent* in certain conditions, especially in an emergency. In situations where the patient is unable to provide consent and medical action must be taken immediately to save life or prevent disability, the healthcare worker is allowed to perform the procedure without prior consent. This provision shows that there is flexibility in the law to accommodate real conditions in the field, while still prioritizing the principle of patient safety as a top priority. Nevertheless, these actions must still be carried out in accordance with professional standards and accompanied by adequate documentation as a form of accountability.

The legal arrangements regarding *informed consent* in medical procedures according to Law Number 17 of 2023 concerning Health are expressly reflected in several important provisions, including Article 274 letter b, Article 275 paragraphs (1) and (2), and Article 293. In Article 274 letter b it is emphasized that patients have the right to obtain complete, honest, and easy-to-understand information about the medical measures to be performed, which is the main basis for giving consent. Furthermore, Article 275 paragraphs (1) and (2) stipulate that every medical procedure must obtain approval from the patient or his family after being given an adequate explanation, except in certain conditions such as emergencies. Meanwhile, Article 293 affirms the obligation of medical personnel and health workers to respect the rights of patients, including in terms of obtaining consent before performing medical procedures. Overall, these provisions show that *informed consent* is not only positioned as an administrative procedure, but as a patient's legal right that must be fulfilled in every health service practice.

Legal Protection for Health Workers

Legal certainty for health workers in carrying out medical actions, especially in emergency conditions, is an important element in ensuring the continuity of effective health services and oriented towards patient safety. In emergency situations, healthcare workers are often faced with conditions where patients are unable to give consent, either because they are unconscious or because of very urgent time constraints. In this context, the law cannot be imposed rigidly, but must provide proportionate discretionary space. Therefore, the principle of *informed consent* in emergency conditions has been adjusted to prioritize saving lives as the highest legal interest. The regulation regarding this matter is explicitly strengthened in Government Regulation Number 28 of 2024 which is the implementing regulation of Law Number 17 of 2023 concerning Health. The regulation emphasizes that health workers have the authority to perform medical actions without the patient's consent in an emergency, as long as the action is aimed at saving lives or preventing serious disability. This provision provides clear legal legitimacy so that health workers do not need to hesitate in making quick decisions that are crucial, as long as they are guided by the applicable professional standards and operational procedure standards.

Furthermore, the form of legal protection provided by Government Regulation Number 28 of 2024 is not only limited to granting authority, but also includes aspects of accountability. Health workers cannot be held legally liable if actions taken without such consent are based on proper medical indications, carried out in good faith, and in accordance with competence and service standards. In this case, the law places the principles of *good faith* and *professional standards* as the main parameters in assessing whether an action is justified or not. Thus, legal

protection is conditional, that is, it depends on the quality of the medical procedure performed. In practice, such legal certainty also requires complete and accurate documentation as part of professional accountability. Any medical procedure in an emergency must be recorded in detail, including the patient's clinical condition, the basis for considering the action, and the procedure performed. This documentation is an important instrument in proving in the event of a legal dispute in the future. Overall, through Government Regulation Number 28 of 2024, the state has provided a relatively comprehensive legal framework in protecting health workers, while ensuring that medical measures carried out continue to prioritize patient safety and the principle of prudence.

Obstacles in the Implementation of Informed Consent in Health Services

The implementation of informed consent in the practice of health services does not always take place in accordance with the ideal provisions regulated in legal norms and medical ethics. One of the main obstacles that often arise is time constraints, especially in service situations with a high number of patients. In such conditions, health workers are required to work quickly, so that the communication process that should be the core of informed consent cannot be carried out optimally. As a result, consent given by patients has the potential to become just an administrative formality without an adequate understanding of the medical measures to be taken. In addition, the condition of patients who are unaware or do not have the ability to make decisions independently is also a significant obstacle in the implementation of informed consent. In situations like this, consent must be given by the family or the authorities, who in reality are not always present when necessary. This poses a dilemma for healthcare workers, especially when medical measures must be taken immediately to save patients' lives. Although the legal provisions provide exceptions in emergencies, these conditions still have the potential to cause problems, especially if there is a difference of opinion between health workers and the patient's family after medical treatment has been performed.

Another obstacle is the low level of public understanding of the concept of *informed consent* itself. Many patients do not fully understand their rights and obligations in the health care process, including the importance of obtaining complete information before giving consent. Educational, cultural, and community habits that tend to fully hand over decisions to medical personnel also affect the effectiveness of the implementation of *informed consent*. In some cases, patients are reluctant to ask questions or ask for further explanation due to the knowledge and position gap between the patient and the healthcare professional. These various obstacles show that the implementation of *informed consent* is not only influenced by legal aspects, but also by complex practical and social factors. Therefore, comprehensive efforts are needed to overcome these obstacles, such as increasing effective communication by health workers, education to the public, and strengthening the health service system that supports the *informed consent* process optimally. Thus, the main goal of *informed consent* as a means of protecting patients' rights and improving the quality of health services can be achieved more effectively.

Another obstacle that is no less important in the implementation of *informed consent* is the cultural and psychological aspects that affect the interaction patterns between patients and health workers. In many cases, there is still a paternalistic tendency in which the patient completely leaves the medical decision to the doctor without going through a balanced discussion process. This condition is often reinforced by reluctance, self-doubt, or the assumption that medical personnel are the ones who know the most without question. In addition, language differences, health literacy levels, and the emotional state of patients who are sick can also hinder the effectiveness of communication. As a result, the *informed consent* process does not run optimally because there is no exchange of information that is truly understood and agreed upon by both parties.

Conclusion

Legal certainty related to informed consent in medical procedures is a crucial aspect in ensuring the protection of patients' rights while providing clarity for health workers in carrying out their professional practices. Based on Law Number 17 of 2023 concerning Health, informed consent is affirmed as a fundamental right of patients that must be fulfilled before a medical action is performed. In the context of services in health centers, the application of this principle is an important benchmark in assessing the quality of health services that not only focus on clinical aspects, but also pay attention to legal and ethical dimensions. In practice, the implementation of informed consent in Puskesmas has shown that there are efforts to adjust to the provisions of laws and regulations, although it is still faced with a number of obstacles. Health workers in general have an awareness of the importance of providing information to patients, but limited time, limited number of medical personnel, and the diversity of patient characteristics are challenges. This condition has an impact on the suboptimal communication process which is the core of informed consent, so that in some cases the consent given does not fully reflect the patient's overall level of understanding.

In terms of legal certainty, Law Number 17 of 2023 concerning Health provides a strong enough foundation for health workers to carry out medical measures, including in emergency conditions that do not allow patient consent to be obtained. This provision provides legal protection as long as the action is carried out in accordance with professional standards and in good faith. Thus, health workers at the Health Center have a clear legal basis for action, without having to worry about legal consequences as long as the procedures and precautionary principles are still carried out. The analysis shows that the legal certainty of *informed consent* in medical actions in health centers already has a strong normative foundation, but its implementation still needs strengthening. Efforts to increase the capacity of health workers in effective communication, providing sufficient time in services, and education to the community are important factors in optimizing the implementation of *informed consent*. Thus, the main goal of creating health services that are fair, transparent, and oriented towards the protection of patients' rights can be achieved more optimally.

Suggestions

As an effort to increase the legal certainty of *informed consent* in medical actions at health centers, it is necessary to strengthen the capacity of health workers, especially in the aspects of effective communication and understanding of health law. Medical personnel and health workers need to be provided with regular training on the implementation of *informed consent* in accordance with the provisions of Law Number 17 of 2023 concerning Health, so that they not only understand administrative obligations, but also are able to convey medical information clearly, simply, and easily understood by patients. In addition, the preparation and implementation of more structured standard operating procedures (SOPs) related to *informed consent* also needs to be strengthened so that the implementation is uniform and has a strong documentation basis as a form of legal protection.

On the other hand, increasing public awareness and understanding of their rights and obligations in health services is also no less important. Puskesmas can play an active role through health education activities, socialization, and the provision of information media that are easily accessible to the public regarding the importance of *informed consent*. With a better understanding of the patient, the communication process between health workers and patients can run more effectively and participaly. In the end, the synergy between improving the competence of health workers and public education will strengthen the implementation of *informed consent*, so as to create optimal legal certainty and more transparent and fair health services.

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