

Presumed Consent for High-Risk Medical Actions in Emergency Situations: A Review 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 instead is *Presumed consent*. Doctors are often faced with situations that require high-risk medical procedures for emergency patients. *Presumed consent* concept This action is not recognized based on 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 analysis results show that *Presumed consent* regarding high-risk medical procedures in emergency situations is not yet 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 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.

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

1. INTRODUCTION

Patients not only need medical treatment when they are sick, but also when they are healthy for health promotion and prevention purposes, including consultations. The foundation of the doctor-patient relationship is trust, which is essential to the effectiveness of treatment. Without trust, treatment can be hindered, building a strong therapeutic relationship based on the patient's trust in the doctor. This trust is important so that patients are willing to give informed consent to the recommended medical action (Ikhsan, 2022:1201). The relationship between doctor and patient is a historic practice that was originally paternalistic, where the doctor was seen as having superior knowledge about the patient's illness. However, this relationship has developed into a more egalitarian one, encouraging joint participation (Purba, 2021:309). These dynamics change as patients become more critical, increasing the potential for conflict. Doctors are faced with legal risks if medical actions taken do not meet patient expectations or end in negative results, triggering malpractice charges. In such situations, doctors must defend their actions based on accepted medical standards, often with the help of expert witnesses.

Chapter 273

(1) Medical Personnel and Health Workers in carrying out practice entitled:

- a. get protection law throughout carry out duties in accordance with professional standards, standard service profession, standard procedure operational, and ethics profession, as well as need Health Patient;
- b. get information which complete and correct from patient or his family;
- c. get salary/wages, rewards service, and allowance performance which worthy in accordance with provision regulation legislation;

- d. get protection on safety, Health work, and security;
- e. get guarantee health and guarantee employment in accordance with regulatory provisions legislation;
- f. get protection on treatment which not in accordance with human dignity, moral, decency, as well as value social culture;
- g. get award in accordance with provision regulation legislation;
- h. get the opportunity to develop self through developing competence, knowledge, And career in field his professionalism;
- i. reject desire Patient or party other which contradictory with standard profession, standard services, standard operating procedures, code of ethics, or provision regulation legislation; and
- j. get right other in accordance with provision regulation legislation.

Law Number 17 of 2023 concerning Health (Article 273 paragraph (1)) provides legal protection to medical personnel who act in accordance with professional standards, emphasizing the importance of quality care and legal clarity for both parties (Setiawan et al., 2018: 100) . In emergency situations, complex medical procedures are often necessary, with significant risks involved. Article 293 paragraph (5) requires written consent for high-risk procedures, while Article 275 paragraph (1) mandates first aid assistance in emergencies, creating an ethical and legal dilemma for doctors. *Presumed consent* becomes important in emergency situations, allowing quick action without formal approval to save lives. However, this implementation must be done with caution, respecting ethical and legal boundaries. Law Number 17 of 2023, which was promulgated on 8 August 2023, aims to meet public health needs and adapt lessons learned from the Covid-19 pandemic, replacing previous laws and challenging doctors to adapt to regulatory changes affecting medical practice (Andrianto, 2023: 1; Iswandari, 2017: 20). This opens up a discussion about how this new law affects the handling of high-risk medical procedures in emergencies.

2. METHODOLOGY

This study adopts a normative juridical legal research methodology, which focuses on reviewing legal literature. Through legislative and conceptual approaches, this research aims to explore and analyze legal regulations and relevant theoretical concepts. The choice of this method was motivated by the need to provide comprehensive guidance for medical practitioners, especially doctors, in understanding and implementing the applicable legal framework. This is important, especially in situations that require making high-risk medical decisions in an emergency. By understanding the legal fundamentals and principles governing medical practice, physicians can be better prepared to deal with complex situations, while ensuring that the actions taken are in line with legal requirements and professional ethics. This research not only serves as a source of information but also as a practical guide that supports doctors in making ethical and legal decisions in critical conditions.

3. RESULTS AND DISCUSSION

In standard medical practice, providing informed consent is a fundamental step that must be taken before starting any medical procedure. The concept of informed consent was designed as an effort to redefine the relationship between doctors and patients, changing from a relationship dominated by the doctor's paternalistic views to a partnership relationship based on mutual agreement. The essence of informed consent lies in the formation of a medical treatment agreement between the doctor and the patient, which is based on the patient's in-depth understanding of his own health condition (Sosiawan et al., 2023: 2). This consent can appear in two main formats: implied consent, which is an agreement that is assumed to exist even though it is not explicitly spoken or written, and expressed consent, which is expressed directly by the patient, either through speech or writing. Informed consent ensures that patients have been provided with all relevant information and understand the options before they agree to proceed with the recommended procedure. This is very important to reduce the risk of misunderstanding between patients and doctors, as well as to increase patient compliance with the treatment plan that has been determined together (Kasiman et al., 2023: 2). Thus, informed consent not only serves as a protective mechanism for patients, but also as a communication tool that strengthens the relationship of trust between doctor and patient, allowing for more effective collaboration in the healing process. This emphasizes the importance of transparency and open dialogue in medical practice, ensuring that health decisions are made with the full understanding and consent of the patient, which in turn supports the principles of patient autonomy and respect for their rights.

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; " obtaining consent from the patient or his family*

for the action to be given."

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. "*Every individual health service action carried out by medical personnel and health workers must receive approval. "*
3. Article 293 paragraph (5) emphasizes that before carrying out high-risk medical procedures, written informed consent must be obtained. "*Written approval as intended in paragraph (4) must be obtained before carrying out actions that are invasive and/or contain high risks . "*

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 to the patient; 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.

In emergency situations, it often happens that the patient is unable to give consent due to loss of consciousness or competence. This condition is caused by a decrease in consciousness, which can reach the level of complete unconsciousness, so that the patient is unable to understand information, convey decisions, or make choices based on rational considerations. As a result, they cannot exercise their right to accept or refuse medical treatment. In accordance with Article 4 paragraph (3) of Law Number 17 of 2023 concerning Health, in circumstances like this, an individual's right to agree to or refuse certain medical procedures cannot be applied to those who are unconscious or facing a medical emergency. In circumstances where the patient lacks the ability to make a decision, the physician must usually make the decision based on what he believes is in the patient's best interests. If possible, the doctor can also seek consent from the patient's guardian or closest family as a substitute for direct consent from the patient himself. 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 a situation, 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. "*(3) In the event that a person with a mental disorder is deemed incompetent and the party providing approval for the action as intended in paragraph (2) is not available, medical treatment intended to overcome the emergency condition can be given without 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. "*(9) In the event that the patient's condition as referred to in paragraph (6) is incompetent and requires emergency treatment, but there is no party who can be asked for approval,*

approval of the action 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).

Any medical procedure that carries the potential for significant risk must obtain official and written approval from the individual who has the right to provide it, which can be the patient himself or a legal family member. Sometimes, the holder of this right is not always clearly defined, according to Wirabrata & Darma (2018: 294). Furthermore, Law Number 17 of 2023 concerning Health, specifically Article 293 paragraph (5), makes it clear that informed consent in written form is an absolute requirement before carrying out medical procedures that involve high risks. Under normal conditions, physicians usually have sufficient time to obtain informed consent from patients. Even though the procedure is risky, adequate preparation can still be done. The situation becomes different when facing an emergency, where high-risk medical procedures must be carried out immediately. In a scenario like this, time constraints can prevent doctors from obtaining approval, and any delay can worsen the patient's condition, increase the risk of complications, and potentially even cause death. The doctor's unpreparedness to act quickly can be a reason for the patient's family to accuse the doctor of being responsible for delays in treatment. On the other hand, if a doctor acts immediately in carrying out a high-risk medical procedure without delay, and if the action turns out to accelerate the patient's death, the doctor could be in a dilemma. Misunderstandings by the patient's family regarding the situation can result in lawsuits against the doctor for alleged medical negligence or neglect that caused the patient's death. Law Number 17 concerning Health, specifically Article 440 paragraph (2), explicitly states that doctors who commit negligence that results in the patient's death can face criminal sanctions or fines. This negligence occurred because the doctor did not act in accordance with professional standards, operational procedures and medical protocols that should be followed, in accordance with the *gebod* principle in criminal law, which requires a person to act in accordance with his obligations (Syah, 2019: 57).

On the other hand, doctors also face legal risks based on Article 438 paragraph (1) of Law Number 17 of 2023, which provides sanctions for doctors who fail to provide first aid in emergency situations. This emphasizes doctors' moral, ethical and professional obligations to provide assistance based on human values, in accordance with universal medical principles that prohibit certain actions that could be considered violence rather than malpractice (Syah, 2019: 54). In facing this dilemma, doctors can refer to Article 293 paragraph (10) of Law Number 17 of 2023, which emphasizes that medical actions must be carried out based on the best interests of the patient, in accordance with the principle of "*agroti salus lex suprema*" which places patient safety as law. highest (Mannas, 2021: 91). This principle emphasizes the importance of prioritizing patient welfare in medical decision making. Doctors are expected to act in the best interests of patients, taking steps that make protecting patient safety a top priority. In addition, Article 275 paragraph (1) of Health Law Number 17 of 2023 emphasizes the obligation of health workers to provide emergency assistance to patients in critical condition, which is in line with doctors' ethical and professional obligations to provide assistance as part of their responsibilities. This commitment is strengthened by Article 13 of the Indonesian Medical Code of Ethics which emphasizes the humanitarian duties of doctors in providing emergency assistance. "*(1) Medical Personnel and Health Personnel who practice at Health Service Facilities are obliged to provide first aid to Patients in Emergency situations and/or disasters.*"

Finally, Article 273 paragraph (1) of Law Number 17 of 2023, provides legal protection to medical personnel who act in accordance with professional standards, operational procedures and professional ethics,

indicating the importance of complying with these standards to defend medical actions taken in situations emergency. Doctors who adhere to these standards can use their professional expertise to make quick and correct decisions, ensuring that the actions taken are in the patient's best interests, while protecting themselves from potential malpractice claims (Yahya, 2020: 129). Article 80 paragraph (3) *In the event that a person with a mental disorder is deemed incompetent and the party giving approval for the action as intended in paragraph (2) is not available, medical treatment intended to overcome the emergency condition can be given without approval.* And Article 293 paragraph (9) of Law Number 17 of 2023 concerning Health in principle agrees 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 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 consent 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* generally used when a doctor or medical professional proposes a treatment or test that is 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. Application of *Presumed consent* It is crucial to ensure that doctors can provide appropriate medical services without delays, which in many cases, can be the difference between life and death. *The 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 exceptions 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 *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. *The doctrine of necessity* applies 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* .

Application of *Presumed consent* Emergency cases have several weaknesses that need to be considered, including (1) Ambiguity: In emergency situations, it is sometimes difficult to determine whether the 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: Application of *Presumed consent* can open up opportunities for abuse by medical personnel. 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 based on *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.

Article 4 paragraph (2) of the Minister of Health Regulation Number 290/Menkes/Per/III/2008 concerning Approval of Medical Procedures emphasizes the importance for doctors to record every medical action carried out without the patient's consent in the medical record. This documentation, which must be done carefully and in detail, is the primary evidence of the high-risk medical actions that have been taken and the reasons why. In the context of legal claims, these medical records, in accordance with Article 13 paragraph (1) letter c of Minister of Health Regulation No. 269/Menkes/Per/III/2008, which has been updated with Minister of Health Regulation Number 24 of 2022 concerning Medical Records, play a role as important evidence that shows the doctor's actions are in accordance with professional standards and operational procedures. Medical records contain factual information about the case, which is supported by a post mortem examination, and has a vital function in proving in court. The presentation of evidence is a crucial moment in uncovering the truth of the incident. Patients have the right to access records made by doctors regarding their health conditions. For doctors, medical records are documentation of their thorough efforts in the healing process, showing seriousness and good intentions in providing care, which has an impact on their legal position (Chintia, 2020: 9). The ethical issues regarding *Presumed consent* in emergencies are complex and can be viewed from various perspectives. On the one hand, the arguments in favor of *Presumed consent* center on the benefits for patient health and safety, where medical action carried out quickly and appropriately can be vital in saving lives or preventing further damage. In some situations, a quick decision becomes essential and it is not possible to obtain direct consent from the patient. However, on the other hand, *Presumed consent* can conflict with the principle of patient autonomy, which is their right to make decisions regarding medical treatment. When consent is presumed, there is a risk

that decisions taken will not reflect the patient's wishes or values, even in emergency situations. It is therefore important for the health and legal sectors to seek a balance between public health interests and individual rights, with clear mechanisms to ensure decisions in emergencies prioritize patients' best interests and respect 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 emergency situations and aim to save the patient's life are exempt from claims for compensation. This is seen as recognition of doctors' hard work and provides them with legal protection. In carrying out their duties, doctors are expected to follow two main ethical principles:

1. The ethical principle of "*beneficence*", which underlines that medical actions in emergencies are carried out solely in the best interests of the patient, even under time pressure and challenging conditions. Actions taken should be commensurate with the severity of the situation the patient is facing. Doctors are considered to have the best knowledge about what is most beneficial for the patient, based on the medical ethical principle of *beneficence*, which prioritizes actions for the good or welfare of the patient. From a legal perspective, the relationship between a doctor and a patient is considered a therapeutic transaction that places the patient's health as a priority (Mannas, 2018: 173).
2. The ethical principle of "*non-maleficence*" is a moral rule that prohibits actions that could worsen the patient's condition. Thus, medical procedures carried out by doctors must pose a minimum risk of harm to the patient. High-risk medical procedures must be carried out carefully to minimize the risk of patient death as a direct consequence of the procedure. In the context of a medical emergency, *non-maleficence* demands a balance between a rapid response and careful consideration of the potential harm of the action.

Apart from that, there is also the legal principle "*Actus non facit reum nisi mens sit rea*", which means that an action is not considered a violation unless it is done with guilty intent. This principle asserts that a physical action (*actus*) only becomes illegal if there is an element of mental error (*mens rea*), such as malicious intent or mental error underlying the action (*dolus eventualis*). This principle is relevant in high-risk medical procedures by doctors in emergency situations. Doctors have no malicious intent in causing a patient's death, even though the high-risk actions taken may result in death. On the contrary, doctors always act in good faith, with the main aim of saving the patient's life, based on the ethical principles of *beneficence* and *non-maleficence*.

4. 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 does not allow him 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.

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