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Legal Aspects of Implementing Emergency Obstetric Procedures Without Informed Consent from the Perspective of Protecting Medical Personnel

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Abstract. *The issue of legal protection for medical personnel in performing emergency obstetric procedures without informed consent remains a critical concern in Indonesia's health law system. The lack of regulatory clarity in distinguishing between absolute and relative emergency conditions creates a legal gray zone that places medical personnel in a vulnerable position when acting to save the lives of mothers and fetuses. This study aims to analyze the legal framework governing emergency obstetric procedures without informed consent, identify the legal gaps between norms and practice, and formulate an ideal concept of legal protection for medical personnel. This study employs a normative legal research method using statutory, conceptual, and case approaches. The data used consists of secondary data in the form of primary, secondary, and tertiary legal materials. Data collection was conducted through library research, while data analysis employed descriptive-analytical and prescriptive methods to compare applicable legal provisions against emergency obstetric conditions. The findings indicate that the legal framework for emergency obstetric procedures in Indonesia has a normative foundation through Law Number 17 of 2023 on Health, particularly Articles 273 and 296, which recognize the legitimacy of emergency procedures without informed consent. However, these provisions lack measurable juridical criteria and concrete protection mechanisms. Five systematic dimensions of legal gaps were identifying, encompassing substantive, procedural, capacity, documentation, and enforcement gaps. The ideal concept of legal protection for medical personnel encompasses preventive protection through strengthened regulations based on the doctrine of necessity and presumed consent, as well as repressive protection through the reinforcement of MKDKI, promotion of mediation, and establishment of a legal aid institution for healthcare workers.*

Keywords: *Emergency; Legal; Medical; Obstetrics; Protection.*

1. Introduction

Maternal health is one of the the most fundamental indicators in measure progress something nation, because number death mother (AKI) reflects quality system service health in a way overall. The World Health Organization (WHO) noted that approximately 295,000 women die every year consequence complications pregnancy and childbirth, and some big death the occurs in developing countries including Indonesia. [1]In Indonesia, although number death Mother has trend decline in One decade lastly, number the Still far above the target of *the Sustainable Development Goals* (SDGs) which requires number death mothers under 70 per 100,000 births live in 2030. Data from the Ministry of Health of the Republic of Indonesia shows that number death mother in 2023 still is in the range of 183 per 100,000 births life, a number that describe urgency handling *obstetrics* in a way fast and competent. [2]One of the reason main death who can prevented is delay in giving help medical on condition emergency *obstetrics,* such as bleeding post labor, *eclampsia,* and *sepsis.* These conditions This need response immediate and appropriate medical care, which is often not allows implementation procedure administration in a way complete. Situation this is what then give birth to problem complex law, namely How power medical must act in a way fast in one side, while on the other hand the procedure law want existence *informed consent* before action medical implemented.

Service *Obstetric Neonatal Emergency Comprehensive* (PONEK) is standard required services for House Sick general reference in Indonesia as effort pressing number death mother and baby. In practice In its implementation, the PONEK unit often faced with a situation where the patient come in condition No aware, not accompanied family, or in a state of affairs that is not allows the explanation process is carried out medical in a way adequate before action.[3] Condition to emergency emergency *obstetrics* own different characteristics from disease general others, namely happen in a way suddenly, develop very quickly, and threatened two lives both the mother and the fetus she is carrying. Pressure very tight time in situation This make power medical must take decision clinical in count minutes, even seconds, without luxury wait family or guardian patient give his agreement. Tension between demands urgent clinical with obligation law get *informed consent* this is the crux of the matter the juridical matters discussed in study This.

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[1]*World Health Organization, Maternal Mortality: Levels and Trends 2000 to 2020* (Geneva: WHO Press, 2023), p . 12–15.
[2]Ministry of Health of the Republic of Indonesia, Indonesian Health Profile 2023 (Jakarta: Ministry of Health of the Republic of Indonesia, 2024), pp . 88–91.
[3]Putu Dyana Christasani and Satibi , " Service Study Obstetric Neonatal Emergency Comprehensive Care at Regional General Hospitals," *Journal Pharmaceutical Management and Services* , Vol. 13, No. 2 (2023), pp . 105–113.

Informed consent or agreement action medical is doctrine the law that has been take root strong in system law modern health, at the same time is embodiment from principle autonomy patients covered by the instrument right basic man international and regulation legislation national. Within the framework of Indonesian law, obligations get *informed consent* before action medical arranged in a way firm in Constitution Number 17 of 2023 concerning Health and the Minister of Health Regulations that follow it.[45] More continued, Article 273 paragraph (1) of Law No. 17 of 2023 concerning Health in general firm arrange that power medical and personnel health in operate in practice entitled get protection law throughout carry out task in accordance with standard profession, standard service profession, standard procedure operational and ethical profession as well as need health patients. In addition, the workforce medical personnel are also entitled get complete and honest information from patient or his family, obtained reward decent service, and get protection on safety, health work and security in operate in practice. However Thus, the existing regulations at a time confess existence conditions exception, where action medical emergency can done without wait agreement moreover formerly. The problem is the limits of exceptions the No formulated in a way precision and not accompanied by mechanism protection proportional law for power medical personnel in action in condition emergency. Inability clarity regulations This open gap for lawsuit law to power medical which is actually has act to save life patient.

From the perspective ethics medicine, principles *beneficence* and *non-maleficence* require power medical always prioritize safety the patient above all consideration others, including consideration administrative. However in practice, principles ethics This often clash with legal norms that require completeness procedure agreement as condition legitimacy action medical.[6] Clash between ethics profession and legal norms This create pressure significant psychological for power medical personnel on duty in the emergency unit emergency *Obstetrics.* Research conducted by Rahmawati and Prayitno show that more from 60 percent power medical personnel working in the *obstetrics unit* Once experience dilemma serious ethical- juridical in handle patient emergency emergency, and some from they confess Once postpone action solely Because concern to consequence law.[7] Delay action in condition *obstetrics* emergency, even in count minute even though, can have fatal consequences for Mother and baby. This fact line under how pressing

[4]Muhammad Nasser Al-Amin, " Legal Aspects of Medical Procedures Emergency Without Agreement Patients in Indonesia," *Indonesian Journal of Health Law* , Vol. 5, No. 1 (2023), pp . 22–34.

[5]Constitution Number 17 of 2023 concerning Health, State Gazette of the Republic of Indonesia 2023 Number 105 .

[6]Nadia Rahmawati and Adi Prayitno, " Dilemma Ethical and Legal Treatment of Obstetrics Emergency Without Consent in Indonesia , " *Indonesian Journal of Medical Ethics* , Vol. 7, No. 1 (2024), pp . 45–58.

him need will framework law that is capable align obligation ethical with certainty protection law for power medical.

System law real Indonesian health has give runway beginning for arrangement action medical emergency, as stated in Constitution Number 29 of 2004 concerning Practice Medicine states that that in condition emergency, doctor can do action medical without wait agreement.[8] However, the provisions the No followed with detailed explanation about limitation condition emergency, procedures required documentation, as well mechanism protection concrete law for acting doctor. Law Number 17 of 2023 concerning Health which is update legislation health the latest also not yet give adequate firmness in matter this, and the rules its implementation as stated in Regulation Government Number 28 of 2024 is still leaving Lots unanswered questions answered.[9] *Inconsistencies* and omissions regulations This in a way direct influence level certainty laws enjoyed by power medical in operate his duties, at the same time determine how much Far they can operate obligation professionalism without fear will threat law.

In a way empirical, research international prove that system the law that provides clear protection to power health in handling emergency obstetrics proven produce number death more mother low compared to with a system that does not own framework protection said. Feltner and his colleagues in study systematic review published in The *Lancet Global Health* conclude that guarantee law for power medical obstetrics is one of the factor determinant in success of the reduction program number death mothers in developing countries.[10] On the other hand, a study conducted by Firestone and friends show that threat not quite enough answer laws that do not proportional push power medical For behave *defensive,* which ultimately lower quality and speed response medical in situation emergency.[11] Findings This the more strengthen argument that the framework reform law protection power medical in context obstetrics emergency No only is need law only, but also constitutes investment direct in system health mother and child who are more Good.

Dimensions protection power medical in context action emergency No can separated from framework right basic more human wide, especially right For Work in fair and unjust conditions discriminate. Medical personnel who act within

[8]Constitution Number 29 of 2004 concerning Practice Medicine , State Gazette of the Republic of Indonesia 2004 Number 116 .
[9]Regulation Government Number 28 of 2024 concerning Regulation Implementation Constitution Number 17 of 2023 concerning Health, State Gazette of the Republic of Indonesia 2024 Number 101 .
[10]Lindsey Feltner et al., "Legal Protections for Emergency Obstetric Providers in Low-Resource Settings: A Systematic Review," *The Lancet Global Health* , Vol. 11, no. 4 (2023), p . e518–e526.
[11]Rebecca Firestone, Julie Pleaner, and Scott Radloff, "Medical Liability and Emergency Obstetric Care: Lessons from Sub-Saharan Africa and Southeast Asia," *BMC Pregnancy and Childbirth* , Vol. 23, no. 1 (2023), p . 1–14.

reasonable limits professional and based on good faith Good For save life No should face risk laws that do not proportional, because matter the is form treatment that is not fair that can weaken system health in a way comprehensive.[12] As confirmed in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that" Everyone has the right life prosperous body and soul, located stay, and get environment good and healthy life as well as entitled get service health." [13]National Commission on Violence Against Women in its 2023 report noted that phenomenon criminalization power medical on action obstetrics emergency has cause impact systemic in the form of decrease amount a doctor who is willing specialize in the field obstetrics and gynecology, especially in areas where facilities are the law weak.[14] This in turn make things worse crisis power health in the area remote and widen gap access to service quality *obstetrics* between public urban and rural, which are problem justice fundamental social.

2. Research Methods

Study This is study law normative, namely research conducted with method research material library or secondary data consisting of from material primary law, material law secondary, and materials law tertiary. Soerjono Soekanto and Sri Mamudji stated that study law normative is study the law that is carried out with method research material library or secondary data mere.[15] Choice on type study This based on on consideration that problems studied centered on legal norms, normative emptiness, normative conflict, and incompatibility explanation of related norms with implementation action *obstetrics* emergency without *informed consent* as well as protection law for power the medical officer who carries it out. Peter Mahmud Marzuki emphasized that study law normative is a process for find something rule laws, principles law, as well as doctrines law to answer issue the law faced.[16] With use type study this, researcher make an effort analyze regulation applicable legislation, doctrine law, as well as principles law relevant health information to find comprehensive and systematic answers on problem law in study This is Bambang Sunggono add that study law normative nature prescriptive, meaning study This aim For give argumentation on results research that has been done to answer Correct or wrong, or How should according to law to something

[12]Nur Hidayat Sardini and Riris Katharina, " Regulatory Reform Protection of Medical Personnel in Emergency Measures : A State Administrative Law Perspective ," *Journal Indonesian Legislation* , Vol. 20, No. 3 (2023), pp . 265–281.
[13] Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia
[14]National Commission on Violence Against Women, Report Monitoring of Conditions of Fulfillment of Women's Rights to Reproductive Health Services in Indonesia (Jakarta: National Commission on Violence Against Women, 2023), pp . 33–40.
[15]Soerjono Soekanto and Sri Mamudji, *Normative Legal Research : A Review Brief* (Jakarta: PT RajaGrafindo Persada , 2015), pp . 13–14.
[16]Peter Mahmud Marzuki, *Legal Research* , Edition Revision (Jakarta: Kencana Prenada Media Group, 2016), pp . 55–56.

incident concrete that is being studied.[17] Study This use a number of method the approach applied in a way together to obtain in -depth and comprehensive analysis.

3. Results and Discussion

3.1. Settings Law About Implementation Action Obstetric Emergency Without Informed Consent in System Law Health in Indonesia, in particular Based on Constitution Number 17 of 2023 concerning Health and Regulations Related t Others.

Arrangement law about implementation action *obstetrics* emergency without *informed consent* in system law Indonesian health is one of the problem the most fundamental and at the same time the most complex juridical in practice modern medicine. Framework real Indonesian law has put *informed consent* as right base mandatory patients filled before action medical implemented, as mandated in Constitution Number 17 of 2023 concerning Health. However thus, in reality clinics faced power medical every day, condition emergency *obstetrics* often not give enough time finish procedure agreement formally and completely. Constitution Number 17 of 2023 concerning Health as legislation parent in the field health has arrange right patient on information and consent action medical in a number of the article is of a nature imperative. At the same time, the law also in a manner implicit confess existence conditions exceptions where power medical can act without wait agreement moreover first to save soul patient. The problem is that exception the Not yet formulated with level adequate precision so that cause absence certainty real law in the field. The lack of certainty law this in turn create conditions that are not conducive for power medical take action fast and decisive in situation *obstetrics* emergency. Comprehensive legal review to framework regulations that govern problem This become very urgent remember height number death mothers in Indonesia who still is in the range of 183 per 100,000 births live in 2023. Most of death Mother the indeed can prevented if handling *obstetrics* emergency done in a way appropriate time without obstacle procedural that is not necessary. Therefore that, search and analysis deep to all over device regulations that govern action obstetrics emergency without *informed consent* is steps that are not can postponed again. Analysis This need covers No only Constitution Number 17 of 2023 concerning Health, but also all regulation implementer, standard profession and doctrine relevant laws. With Thus, the picture intact about system arrangement applicable law can reconstructed in a way comprehensive and accurate.[18]

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[17]Bambang Sunggono, *Methodology Legal Research* (Jakarta: PT RajaGrafindo) Persada , 2012), p . 41.

[18]*World Health Organization, Trends in Maternal Mortality 2000–2023* (Geneva: WHO, 2023), pp . 12–15; Ministry of Health of the Republic of Indonesia, *Indonesian Health Profile 2023* (Jakarta: Ministry of Health of the Republic of Indonesia, 2024), p . 98; see also Sri Mulyati and Ari Natalia

Constitution Number 17 of 2023 concerning Health is product legislation health the latest in Indonesia which replaces Constitution Number 36 of 2009 concerning Health and integrating various Constitution sectoral in the field health to in One framework integrated law. Law This consists of over 20 chapters and 458 articles that regulate in a way comprehensive all over aspect system health national, starting from effort health, energy health, facilities service health, up to financing health. In the context of rights and obligations patient, Article 276 of the Law Number 17 of 2023 confirms that everyone has the right get information about health data himself including actions and treatments that have been and those that will received from power medical or power health care provider. More further, Article 277 of the same law arrange that everyone has the right give agreement or reject part or all over action the help that will be given by power medical or power health to the disease he suffered from after get adequate information. However Thus, the Law Number 17 of 2023 also provides runway for exception obligation *informed consent* in situation emergency, as reflected in provisions governing about emergency medical. Article 296 of the law the in a way firm obligatory facility service health give help First to patient in condition emergency rescue life patients and prevention disability moreover first. Terms and conditions the in a way normative give justification for action medical emergency measures taken precede procedure administrative, including procedure *informed consent.* Apart from that, Article 273 paragraph (1) of the Law Number 17 of 2023 provides guarantee protection law for power medical staff who run in practice in accordance with standard profession, standard service profession, standard procedure operational and ethical profession as well as need health patients. However, the provisions protection the nature conditional and not in a way explicit mention situation emergency *obstetrics* as excluded conditions from obligation *informed consent.* Vacancies specific settings this is what it is source main absence certainty the law being faced power medical in handle case *obstetrics* emergency. Various regulation the executor issued based on Constitution this, including Regulation Government Number 28 of 2024, also not yet give complete solution on problem said. With thus, it can concluded that Constitution New Number 17 of 2023 provide foundation partial and necessary normative equipped with more settings detailed and operational.[19]

Probandari, "Maternal *Mortality* Policy Reduction in Maternal Mortality Rate in Indonesian Health Law Perspectives ," *Indonesian Health Law Journal* , Vol. 3, No. 1 (2023), pp . 45–62.

[19]Constitution Number 17 of 2023 concerning Health, Articles 276, 277, 273 paragraph (1), and Article 296; Regulation Government Number 28 of 2024 concerning Regulation Implementation Constitution Number 17 of 2023 concerning Health; see also Febri Handayani , " Health Regulatory Reform in Constitution Number 17 of 2023: Critical Review to Protection of Medical Personnel ," *Udayana Master of Law Journal* , Vol. 12, No. 3 (2023), pp . 540–558; and Ni Putu Niti Suari Giri and I Made Minggu Widyantara, " Legal Protection for Medical Personnel in " Perspectives of the New Health Law," *Acta Comitas : Journal of Notary Law* , Vol. 8, No. 2 (2023), pp . 210–225.

Constitution Number 17 of 2023 concerning Health is product legislation health the latest in Indonesia which replaces Constitution Number 36 of 2009 concerning Health and integrating various Constitution sectoral in the field health to in One framework integrated law.20 Constitution This consists of over 20 chapters and 458 articles that regulate in a way comprehensive all over aspect system health national, starting from effort health, energy health, facilities service health, up to financing health. In the context of rights and obligations patient, Article 276 of the Law Number 17 of 2023 confirms that everyone has the right get information about health data himself including actions and treatments that have been and those that will received from power medical or power health care provider.21 More further, Article 277 of the same law arrange that everyone has the right give agreement or reject part or all over action the help that will be given by power medical or power health to the disease he suffered from after get adequate information.22

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[21]Article 276 of the Law Number 17 of 2023 concerning Health.
[22]Article 277 of the Law Number 17 of 2023 concerning Health.
[23]Article 296 of the Law Number 17 of 2023 concerning Health.
[24]Article 273 paragraph (1) of the Law Number 17 of 2023 concerning Health.
[25]Regulation Government Number 28 of 2024 concerning Regulation Implementation Constitution Number 17 of 2023 concerning Health (State Gazette of the Republic of Indonesia 2024 Number 100).

Regulation of the Minister of Health Number 290 of 2008 concerning Consent to Medical Action is instrument law sectoral which is specific and detailed arrange about *informed consent* in practice medicine in Indonesia, and up to moment This Still valid as reference main in implementation procedure agreement action medical. Article 4 of the Regulation of the Minister of Health Number 290 of 2008 specifically firm arrange that in condition emergency emergency, for save soul patients and or prevent disability No required agreement action medicine, which is exception the most explicit normative in system regulations agreement action medical conditions in Indonesia. Provisions the indeed has give base sufficient law strong for power medical act in situation emergency without wait agreement, however provision the No equipped with criteria measurable operations about What do you mean with' circumstances emergency emergency '. The same regulation also requires existence documentation that records condition emergency that becomes reason No he did procedure agreement standard, which is form accountability important laws in context this. In view Hanafiah and Amir, Article 4 of the Minister of Health Regulation Number 290 of 2008 reflects confession law to the long-known *doctrine of necessity* in law medical international, where the need save life man justify deep action condition normal need agreement moreover before. However Thus, the Minister of Health Regulation Number 290 of 2008 was stipulated based on Constitution Number 29 of 2004 concerning Practice Medicine today has changed partly by law Number 17 of 2023, so that need reviewed return relevance and consistency with regime new law. Adjustment regulation implementer with new law is must juridical up to moment This Not yet fully fulfilled, so that cause overlapping overlap potential normative cause conflict in its implementation. On the other hand, the standard professions established by the Association of Specialist Doctors Indonesian Obstetrics and Gynecology (POGI) also includes provision about handling emergency *obstetrics* that must be harmonized with framework existing regulations. Interaction between regulation legislation, standards profession, and guide clinical this is what forms framework normative complete set action *obstetrics* emergency without *informed consent.* Unfortunately, the framework normative the Not yet integrated in a way systematic to in One instrument comprehensive and easy law applied by power medical conditions in the field. fragmentation regulations This become challenge Serious for effort enforcement certainty law in practice *obstetrics* emergency. Therefore that, is necessary effort harmonization and consolidation comprehensive regulation as part from legal reform health national.26

[26]Regulation of the Minister of Health Number 290 of 2008 concerning Consent to Medical Actions , Article 4; J. Hanafiah and A. Amir, *Medical Ethics and Health Law* , 5th Edition (Jakarta: EGC, 2022), pp . 72–85; see also Agus Santoso, " Harmonization Informed Consent Regulations Post-Health Law 2023," *Journal of Law and Justice* , Vol. 12, No. 2 (2023), pp . 312–335; and Tamara Melinda et al., " *Informed Consent in Obstetric Emergency: A Systematic Review of Legal and Clinical Frameworks* ," *BMC Medical Ethics* , Vol. 24, No. 1 (2023), pp . 1–14.

Constitution Number 29 of 2004 concerning Practice Medicine that is still valid in aspects that are not amended by law Number 17 of 2023 contains provisions important thing to be runway regulations action medical, including in situation emergency. Article 45 of the Law Number 29 of 2004 confirms that every action medicine that will performed by a doctor or doctor tooth to patient must get agreement, which is affirmation principle autonomy patient in framework law positive Indonesia. However, the explanation of Article 45 confess that in condition emergency, doctor can do action medical save soul patient without need wait agreement, which is normative to strengthen exception in Regulation of the Minister of Health Number 290 of 2008. From the perspective theory law, provisions This can understood as embodiment from principle *lex specialis derogatory legion generali,* where the provisions special about emergency medical put aside provision general about obligation get *informed consent.* Provisions of Article 50 of the Law Number 29 of 2004 which provides right to doctor give help emergency also strengthens runway law for action obstetrics emergency without *informed consent.* More further, Article 57 of the same law give right to patient For get service in accordance with need medical demands priority handling clinical above procedure administrative in situation emergency. Code of Ethics Indonesian Medicine as determined by the Council Honor of Medical Ethics the Indonesian Doctors Association also includes principles that affirm obligation doctor prioritize interest rescue soul patient in situation emergency. With Thus, there are consistency between legal norms positive and ethical norms profession in matter priority action rescue soul on obligation procedural. However, consistency normative the Not yet followed with consistency enforcement the law that provides certainty and predictability for power medical in the field. Cases the law that has been happen show that court Not yet own standard uniform application in evaluate legality action obstetrics emergency measures taken without *informed consent.* Gap between the norms above paper with practice enforcement the law is one of the the most critical form of legal gap in system law Indonesian health. Filling gap This need No only legislative reform, but also development capacity adequate judicial system among the judges handling the case dispute medical.27

Regulation Government Number 28 of 2024 concerning Regulation Implementation Constitution Number 17 of 2023 concerning Health is instrument law the latest one that has position strategic in system regulations Indonesian health, because regulation should operationalize provisions in Constitution its parent. Regulations Government the load more settings detailed about standard

[27]Constitution Number 29 of 2004 concerning Practice Medicine , Articles 45, 50, and 57; see also Bahder Johan Nasution, *Health Law: Doctors' Responsibilities* (Jakarta: Rineka Cipta, 2021), pp . 115–140; Yenny Aman et al., " Doctors' Legal Responsibilities in Medical Procedures " Without Informed Consent: A Normative Juridical Study," *Indonesian Journal of Law and Policy Studies* , Vol. 4, No. 1 (2023), pp . 1–18; and Nani Hasanuddin, "Legal Liability of Medical Personnel in Emergency Obstetrics: A Comparative Study," *Journal of Asian and African Studies* , Vol. 58, No. 4 (2023), pp . 620–638.

service health, including provision about organization service emergency emergency that becomes runway operational for action obstetrics emergency. Articles in Regulation Government Number 28 of 2024 which regulates about standard service medical and safety patient in a way No direct give framework normative for implementation action *obstetrics* standardized emergency. However Thus, the Regulation Government Number 28 of 2024 has also not been give explicit and comprehensive arrangements about mechanism protection law for power medical personnel who perform action *obstetrics* emergency without *informed consent.* Informed consent completion arrangement in regulation implementer This reflect Still existence emptiness necessary laws quick filled through instrument more regulations specific and operational. In the study knowledge legislation, vacancy law like This can filled through a number of mechanisms, including through publishing new Minister of Health Regulation which specifically special arrange action *obstetrics* emergency, or through interpretation law enforced by the courts in settlement dispute concrete. Regulation of the Minister of Health Number 47 of 2021 concerning System Hospital administration contains provision about standard emergency unit services emergency that is implicit covers service *obstetrics* emergency, but the settings Still nature general and not Enough specific finish problem *informed consent* in context *obstetrics.* Likewise, the Minister of Health Regulation Number 30 of 2022 concerning National Indicator of Quality of Health Services Practice Independent Doctors and Dentists, Clinics, Community Health Centers, Hospitals, Health Laboratories, and Blood Transfusion Units contain indicator quality that must be filled in service *obstetrics* without give adequate guidance about aspect law action emergency. Overall regulation the form layers mutually reinforcing regulations complete However at a time each other leaving gap in arrangement action *obstetrics* emergency without *informed consent.* Analysis to hierarchy existing regulations show the need A regulations that are specialized and comprehensive arrange aspect law action *obstetrics* emergency as *lex specialis* which provides certainty and protection for all over parties involved. Needs will regulation special the the more urge along with increasing amount dispute medical in the field *obstetrics* that reflects absence certainty law felt by the workforce medical and patient.[28]

Doctrine the law that becomes runway philosophical from action medical emergency without *informed consent* in system Indonesian law is *doctrine of necessity* or condition forced, which is acknowledged Good in law criminal and law civil as reason justifier on deep action normal conditions no permitted. In the

[28]Regulation Government Number 28 of 2024 concerning Regulation Implementation Constitution Number 17 of 2023 concerning Health; Regulation of the Minister of Health Number 47 of 2021 concerning System Hospital Management ; Regulation of the Minister of Health Number 30 of 2022 concerning National Indicators of Health Service Quality; see also Dian Adriawan et al., " Analysis Legal vacuum in Obstetric Procedure Regulation Emergency in Indonesia," *IUS QUIA IUSTUM Law Journal* , Vol. 30, No. 2 (2023), pp . 300–320.

context of law criminal, Article 48 of the Criminal Code arrange about Power force that can become reason eraser criminal for someone who does action in condition forced for greater interests high. The article in a way analogical can applied to the situation power medical personnel who perform action *obstetrics* emergency without *informed consent* to save soul patient, because action the done in condition forced For protect interest more laws important, namely life human beings. In law civil, *doctrine negotiorum gestio* or management the interests of others without commands can also be become base justifier for action *obstetrics* emergency measures taken without agreement patients who do not capable give his approval. Construction integrating law *doctrine of necessity,* principle *presumed consent,* and *doctrine negotiorum gestio* give foundation solid theoretical for legality action obstetrics emergency without *informed consent.* The principle of presumed consent itself assume that everyone who is there in condition emergency considered agree action medically necessary save his soul if his condition No allows giving agreement in a way real. Various the jurisprudence of the Supreme Court of Indonesia has confess implementation doctrines the in dispute medical, although not yet in a way consistent and systematic. Decision Supreme Court Number 2245 K/ Pdt /2020 for example, has apply principles *necessity* as reason justifier for action power medical personnel who perform operation emergency without agreement in threatening conditions soul patients. However, inconsistencies in implementation doctrines mentioned in various level justice show the need more codification clear in regulation legislation. Codification the required for power medical own certainty about limitations laws that protect action emergency them, and so that the judge has clear guidance in evaluate case dispute obstetrics. Accommodation doctrines law the in regulation specific legislation about obstetrics emergency is urgent and strategic legal reform steps. Without clear codification, doctrines the only will become instrument protection that is not can relied on by manpower medical in face threat demands law.29

3.2. Suitability Between Arrangement Normative About *Informed Consent* with Practice Implementation Action *Obstetrics* Emergency in Facility Service Health, As Well How Forms of Legal Gap That Occur in Practice The

Arrangement normative about *informed consent* in Indonesia has experience significant developments since promulgation various regulations in the field health.[30] Constitution Number 17 of 2023 concerning Health is umbrella law the

[29]Criminal Code , Article 48; Civil Code, Articles 1365 and 1239 ; Decision Supreme Court Number 2245 K/ Pdt /2020; see also Veronica Komalawati , *Law and Ethics in Doctor's Practice* (Jakarta: Pustaka Sinar Harapan, 2022), p . 95–112; M. Nasser et al., "Application of Necessity Doctrine in Emergency Obstetric Cases: Legal Analysis from an Indonesian Perspective," *Hasanuddin Law Review* , Vol. 9, no. 1 (2023), p . 55–72; and Christine de Vries et al., "The Necessity Doctrine in Medical Emergency Law: An International Perspective," *European Journal of Health Law* , Vol. 30, no. 2 (2023), p . 150–170.

[30]Fakih, M., & Widyasari , N. (2024). Legal Gaps in Informed Consent Practice in Obstetric Procedures Emergency in Indonesian Hospitals . *Indonesian Journal of Health Law* , 12(1), 45–62.

main one who regulates obligation get agreement action medical before doctor do procedure invasive to patient.[31] Before Constitution said, Minister of Health Regulation Number 290/MENKES/PER/III/2008 concerning Consent to Medical Action has become reference technical implementation *informed consent* at the facility service health throughout Indonesia.[32] Constitution Number 29 of 2004 concerning Practice Medicine, especially Article 45, requires doctor For give complete, clear and accessible information understood patient before get his consent.[33] In a way philosophical, *informed consent* is embodiment from principle autonomy patient who is one of the foundation ethics modern medicine in system service health.[34] World Health Organization (WHO) in guide the latest emphasize that *informed consent* must fulfil element adequate information, understanding patient, capacity patient For deciding, and voluntariness without coercion.[35] Constitution Number 36 of 2009 concerning Health which is now has changed confirm right everyone to accept or reject part or all over action the help that will be given to him. [36]Record data medical obstetrics under study in the period from April 2025 to April 2026 includes 199 cases with various category emergency obstetrics each of which requires taking decision fast related agreement action medical.[37] Complexity arrangement normative This reflect how the seriousness with which the state views protection right patient as part from right basic human beings in the field health.[38] With Thus, the framework normative informed consent in Indonesia actually has Enough comprehensive in level regulations although challenge the biggest lies in the implementation in the field.[39]

In perspective law Indonesian civil law, informed consent is something agreement therapeutic binding between doctor and patient based on provisions of the Civil Code.[40] Violation on obligation get *informed consent* can categorized as actions oppose the law that opens door responsibility answer civil for power the medical

[31]Hidayat, A., & Marlina, E. (2024). Implementation The Doctrine of Informed Consent in Curettage Procedures in Cases of Incomplete Abortion . *Journal of Reproductive Health* , 11(2), 87–103.
[32] Indonesian Medical Association . (2023). *Standards Service Medical Obstetrics and Gynecology* . Jakarta: IDI.
[33]Ministry of Health of the Republic of Indonesia. (2023). *National Guidelines for Health Services Medical Obstetrics and Gynecology* . Jakarta: Ministry of Health of the Republic of Indonesia.
[34]Civil Code (KUHPerdata) , Article 1365 .
[35]Koeswadji, HH (2022 *). Medical Law: Study About Legal Relationships in Which a Doctor is a Party* . Jakarta: Citra Aditya Bakti.
[36] National Commission on Human Rights. (2024). *Report Annual Report on the Right to Health in Indonesia 2023.* Jakarta: National Commission on Human Rights.
[37] Council Indonesian Medicine . (2023). *Indonesian Medical Ethics Guidelines* . Jakarta: KKI.
[38]Mahfud, M., & Santoso, B. (2025). *Health Law in Indonesia: Developments and Challenges* . Yogyakarta: Gadjah Mada University Press.
[39] Supreme Court of the Republic of Indonesia. (2023). Supreme Court Decision No. 1234 K/Pid/2023 concerning Malpractice Medical and Informed Consent. Jakarta: Supreme Court of the Republic of Indonesia.
[40] Disciplinary Honorary Council Indonesian Medical Association (MKDKI). (2024). *Report Annual Complaint Handling Discipline Medicine 2023.* Jakarta: MKDKI.

person concerned.[41] Council Indonesian Medicine in guidelines ethics the latest confirm that agreement action medical No just formality administrative, but rather is reflection respect to dignity and autonomy patient.[42] Special in context *obstetrics,* principles This get dimensions addition Because concerning two subjects law at the same time, namely mother and fetus both own interest necessary laws be noted. [43]Successful data collected show that of 199 total cases *obstetrics,* part big need action invasive like section caesarean section (SC) in 52 cases, curettage in 48 cases, SC ERACS in 30 cases, and delivery spontaneous guided 31 cases.[44] Constitution Number 17 of 2023 concerning Health in general explicit arrange that in condition emergency emergency medical, personnel medical can do necessary actions For save soul patient without must wait agreement written.[45] Decision The Supreme Court in question with dispute malpractice medical consistent set that absence adequate informed *consent* is factor ballast in evaluation not quite enough answer law doctor.[46] Regulation of the Minister of Health Number 4 of 2018 concerning Hospital Obligations require every facility health For own procedure standard in implementation documented informed *consent* with Good.[47] Complexity law This the more real when faced with a situation *obstetrics* emergency where time taking very limited decisions However risk law still there is. [48]Therefore that, deep understanding about implications law *informed consent* is need fundamental for every power medical personnel on duty in the service unit *obstetrics.*[49]

In context law Indonesian health, concept emergency emergency has get confession strict normative through various instrument regulations, where the most up-to-date and comprehensive is Constitution Number 17 of 2023 concerning Health.[50] Constitution This No only arrange obligation facility health

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[41]Nugroho, T., & Puspitasari , D. (2024). Analysis Legal Approval of Medical Action in Condition Emergency Obstetrics . *Journal Legal Studies* , 15(2), 112–128.

[42] Regulation of the Minister of Health of the Republic of Indonesia Number 290/MENKES/PER/III/2008 concerning Consent to Medical Action .

[43] Regulation of the Minister of Health of the Republic of Indonesia Number 3 of 2023 concerning Standard Service Pharmacy in Hospitals.

[44] Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2018 concerning Hospital Obligations and Patient Obligations .

[45] Regulation Government Number 28 of 2024 concerning Regulation Implementation Constitution Number 17 of 2023 concerning Health.

[46] Regulation Government Number 47 of 2021 concerning Implementation Field Hospital .

[47]Pertiwi, R., & Hartono, S. (2025). Legal Protection for Patients in Emergency Cesarean Section : Normative and Empirical Studies . *Journal of Law and Development* , 55(1), 78–95.

[48]Data and Information Center of the Ministry of Health of the Republic of Indonesia. (2024). *Indonesian Health Profile 2023.* Jakarta: Ministry of Health of the Republic of Indonesia.

[49] Rachmat , A. (2024). *Aspects Medicolegal Consent to Medical Procedures on Unconscious Patients in Condition Emergency Obstetrics* . Magazine Medical Forensic and Medicolegal , 31(1), 14–27.

For give help emergency without conditions, but also in a special give protection law for power medical personnel in action in condition those aspects. protection law This is component crucial that during This not enough get attention adequate in regulations previously, so that its existence in Law Number 17 of 2023 marks progress significant normative.[51]

In a way special, as regulations protection law for power health in condition emergency emergency, Article 275 of the Law Number 17 of 2023 concerning Health states that:[52]

The provisions of Article 275 own four implications fundamental law. First, article This in a way firm give immunity law — not just relief — for power medical and personnel health in two conditions special, namely condition emergency and disaster. Second, protection law the nature conditional, with condition absolute that actions taken in accordance standard profession, standard service profession and standards procedure operational. Third, the phrase ' not can sued in a way law ' gives protection of a nature comprehensive, covering realm criminal, civil, and administrative. Fourth, Article 275 functioning at a time as a protective norm and a driving norm for power medical act fast and decisive in situation emergency without overshadowed afraid will sanctions law.[53]

The relevance of Article 275 in context *informed consent* obstetrics very significant emergency. The provisions This in a way normative finish dilemma that has been This faced power medical: what postpone action emergency get *informed consent,* or quick act save life with risk demands law. With the existence of Article 275, labor medical selection save life without wait *informed consent* in condition emergency true get protection explicit law, as long as his actions in accordance standard profession.[54] Protection This need read together with Article 273 paragraph (1) of the Health Law which requires fulfillment standard profession as prerequisite protection, as well as Regulation Government Number 28 of 2024 which operationalizes provisions the in practice.[55]

However Thus, Article 275 does not explain in a way detailed criteria clinically decisive When something condition can categorized as ' state of affairs emergency ' in context *obstetrics.* Filling emptiness definition This handed over to standard professions established by the Association of Specialist Doctors Indonesian

[51]Ministry of Health of the Republic of Indonesia, Standards Service Emergency Obstetrics in Hospitals (Jakarta: Ministry of Health of the Republic of Indonesia, 2008), p . 12.
[52]Article 275 of the Law Number 17 of 2023 concerning Health.
[53]Ibid.
[54]Article 273 paragraph (1) of the Law Number 17 of 2023 concerning Health.
[55]Regulation Government Number 28 of 2024 concerning Regulation Implementation Constitution Number 17 of 2023 concerning Health, State Gazette of the Republic of Indonesia 2024 Number 100 .

Obstetrics and Gynecology (POGI),[56] National Service Guidelines Medicine [57], as well as standard service medical issued Indonesian Doctors Association.[58] Dependence on standards profession For fill in emptiness definition law This create challenge alone in enforcement law, because standard profession can develop along progress knowledge medical and not always easy understood by the authorities enforcer law that is not power medical.

Protection law repressive become mechanism rescue for power medical when they Already too late face demands law consequence action *obstetrics* emergency measures taken without *informed consent.* In the system law Indonesian criminal law, Article 48 of the Criminal Code (KUHP) concerning condition force *(overmacht)* and Article 49 concerning defense forced *(noodweer)* can used as base reason justifier or forgiving for power medical in situation emergency medical. 59In addition, the Law Number 17 of 2023 concerning Health also provides immunity relatively for power health in action in accordance standard profession in condition emergency, which should be interpreted in a way wide by law enforcement law. The Supreme Court in a number of the verdict has apply the Good Samaritan doctrine which provides protection to the party providing help emergency with good faith well, though Not yet there is codification special doctrine This in law positive Indonesia.60 Draft protection law ideal repression requires existence institution independent which is special authorized handle dispute medical, such as Disciplinary Honorary Council Indonesian Medical Association (MKDKI) which must strengthened its functions and authorities. Strengthening the MKDKI is necessary accompanied by with improvement capacity of judges and prosecutors in understand complexity medical, so that the judicial process No solely evaluate action power medical from perspective formal law without understanding substantive about standard medicine. Mediation as alternative settlement dispute medical need promoted in a way more active, remembering character dispute typical medical need approach multidimensional which is not always can met by litigation process conventional insurance not quite enough sue medical Comprehensive *(medical liability insurance)* is also a must become an integral part of system protection repressive, so that power medical No bear Alone burden financial consequence possible lawsuit arise. With Thus, the system protection ideal repressiveness is not only functioning for finish dispute in a way fair, but also

[56]Association of Specialist Doctors Indonesian Obstetrics and Gynecology (POGI), Practice Guide Clinical for Specialist Doctors Obstetrics and Gynecology (Jakarta: POGI, 2022), p . 45.
[57]Ministry of Health of the Republic of Indonesia. (2023). National Guidelines for Health Services Medical Obstetrics and Gynecology . Jakarta: Ministry of Health of the Republic of Indonesia.
[58]Association . (2023). Standards Service Medical Obstetrics and Gynecology . Jakarta: IDI.
[59]Decree of the Minister of Health Number HK.01.07/MENKES/1128/2022 concerning Standard Hospital Accreditation .
[60] Regulation Council Indonesian Medical Regulation Number 44 of 2022 concerning Standard Competencies of Specialist Doctors Obstetrics and Gynecology .

provide effect deterrent to lawsuit that is not based on what can be threaten sustainability practice *obstetrics* emergency in Indonesia.

4. Conclusion

Arrangement law about implementation action *obstetrics* emergency without *informed consent* in system law real Indonesian health has own foundation adequate normative, but Not yet developed optimally to in instrument specific, detailed, and operational regulations. The Law Number 17 of 2023 concerning Health and regulation the implementer, especially Regulation Government Number 28 of 2024, has confess legitimacy action medical emergency through Article 296 which makes it mandatory facility service health give help First without wait procedure administrative, as well as Article 273 paragraph (1) which guarantees protection law for power medically qualified standard profession. However exception from obligation *informed consent* the Not yet formulated with level adequate precision, no accompanied by criteria measurable juridical about condition emergency *obstetrics,* procedure taking standardized decisions, as well as mechanism protection concrete and proportional laws. Fragmentation regulations between Constitution Number 29 of 2004, Regulation of the Minister of Health Number 290 of 2008, standards POGI profession, and regulations implementer other create interconnected layers of norms complete However at a time leaving gap that causes absence certainty law real in the field. Meanwhile study comparative to system comprehensive and explicit laws action medical emergency without *informed consent* proven correlated positive with number death more mother low, so that regulatory reform in Indonesia becomes need urgent that is not can postponed.

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