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Reconceptualizing Presumed Consent in Emergency Health Services: Legal Status and Evidentiary Challenges

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Abstract: Emergency healthcare services often create legal dilemmas because healthcare professionals are obligated to provide immediate life-saving treatment, while high-risk medical procedures generally require prior informed consent. This situation creates legal uncertainty when patients are unconscious or otherwise incapable of providing consent, and no family members or legal representatives are available. Accordingly, this study addresses two research questions: (1) what is the legal status of presumptive consent in emergency healthcare services under Law Number 17 of 2023 on Health, and (2) what is its evidentiary value as a basis for legal protection of healthcare professionals in medical disputes? This study employs a normative legal research method using statutory and conceptual approaches, analyzing primary, secondary, and tertiary legal materials through descriptive-qualitative analysis. The findings reveal that Law Number 17 of 2023 provides an explicit legal basis for applying presumptive consent through Article 80 paragraph (3) and Article 293 paragraph (9) as an exception to the general requirement of informed consent in emergencies. However, its evidentiary value can only be established when medical actions are performed in accordance with professional standards and standard operating procedures, undertaken in good faith for the patient's best interests, and supported by complete and accurate medical records. This study contributes to the academic discourse by developing a legal framework that positions presumptive consent as both a doctrine of legal justification and an evidentiary instrument within Indonesia's health law following the enactment of Law Number 17 of 2023, thereby enriching the literature on legal protection for healthcare professionals in emergency medical services.

Keywords: Conjecture Consent; Health Law; Legal Protection of Doctors; Presumptive Consent; Proof of Health Services.

INTRODUCTION

Informed consent is one of the fundamental principles of modern health law because it reflects respect for patient autonomy, human dignity, and every

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individual's right to determine the medical treatment they will receive.[1] Before performing any medical procedure, particularly those involving significant risks, healthcare professionals are required to provide patients with adequate information regarding the diagnosis, purpose of the procedure, potential benefits, associated risks, alternative treatment options, and the consequences of refusing the proposed intervention.[2] Therefore, *informed consent* serves not only as an administrative requirement but also as a legal and ethical instrument that safeguards patients' rights while providing legal certainty for healthcare professionals.[3]

Nevertheless, the application of the *informed consent* principle becomes particularly challenging in emergency healthcare services.[4] In certain circumstances, patients may be unconscious, lack the legal capacity to provide consent, or suffer from mental conditions that prevent them from making autonomous decisions.[5] At the same time, delays in medical intervention may result in permanent disability or even death. Such situations place healthcare professionals in a legal dilemma between their obligation to provide immediate life-saving treatment (*duty to rescue*) and their duty to obtain informed consent before performing invasive medical procedures.[6]

To address these circumstances, many legal systems recognize the doctrine of *presumptive consent* or *implied consent*, which assumes that a reasonable person would consent to life-saving medical treatment if he or she were capable of expressing such consent. Accordingly, in emergencies, the absence of explicit consent does not automatically render medical treatment unlawful, provided that

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[1] Junia Putri, Syamsul Bihar, and Ahmad Jamaludin, "Legal Aspects of Informed Consent for Patients Requiring Emergency Treatment," *Research Horizon* 5, no. 4 (2025): 1599–1610, https://doi.org/10.54518/rh.5.4.2025.747.

[2] Alexander Carlos, Irsyam Risdawati, and Marice Simarmata, "Legal Review of the Implementation of Informed Consent in Emergency Medical Situations Based on Law Number 17 of 2023," in *Proceedings of International Conference on Islamic Community Studies*, 2025, 6662–6672, https://proceeding.pancabudi.ac.id/index.php/ICIE/article/view/1282.

[3] AMA Journal of Ethics, "How Should Trauma Patients' Informed Consent or Refusal Be Regarded in a Trauma Bay or Other Emergency Settings?," American Medical Association Journal of Ethics, 2018, https://journalofethics.ama-assn.org/article/how-should-trauma-patients-informed-consent-or-refusal-be-regarded-trauma-bay-or-other-emergency/2018-05.

[4] Hajed A Alotaibi and Motaz T Alotaibi, "Organ Transplantation in Saudi Arabia: Psychological Evaluation and Sharia-Legal Framework," *Nusantara: Journal of Law Studies* 5, no. 1 (2026): 770–797, https://doi.org/10.66325/nusantaralaw.v5i1.329.

[5] Sam Boyle and Nikola Stepanov, "Providing Emergency Medical Care without Consent: How the 'Emergency Principle'in Australian Law Protects against Claims of Trespass," *Emergency Medicine Australasia* 33, no. 3 (2021): 575–579, https://doi.org/10.1111/1742-6723.13772.

[6] Anna Veronica Pont et al., "Legal Aspects of Informed Consent in Medical Procedures," *International Journal of Health, Economics, and Social Sciences (IJHESS)* 7, no. 4 (2025): 1944–1948, https://doi.org/10.56338/ijhess.v7i4.8795.

the intervention is undertaken in the patient's best interests, complies with the principle of proportionality, and adheres to applicable professional standards.[7]

In Indonesia, the legal regulation of emergency medical treatment has undergone significant reform following the enactment of Law Number 17 of 2023 concerning Health.[8] Unlike previous legislation, this law explicitly provides exceptions to the obligation of obtaining *informed consent* through Article 80 paragraph (3) and Article 293 paragraph (9), allowing medical treatment to be performed without prior consent under specific emergency circumstances. These provisions demonstrate the legislature's explicit recognition of *presumptive consent* as a legal basis for life-saving medical interventions. Nevertheless, several legal issues remain unresolved, particularly concerning the scope of its application, the legal requirements governing its implementation, and its evidentiary value in disputes involving patients and healthcare professionals.[9]

Previous studies have examined *informed consent* and legal protection in healthcare services; however, they differ in focus from the present study. The first study, conducted by Puspitasari, Isharianto, and Purwadi, analyzed *presumptive consent* as a patient's right in emergency healthcare services.[10] Their findings indicated that *presumptive consent* constitutes an exception to the principle of *informed consent* when patients face life-threatening conditions and are incapable of providing consent. However, the study primarily emphasized the protection of patients' rights and did not examine the legal status of *presumptive consent* as an evidentiary instrument in medical disputes. Furthermore, it was conducted under the regulatory framework that preceded the enactment of Law Number 17 of 2023 concerning Health.

The second study, conducted by Thahir, examined medical crimes from the perspective of patient rights protection and the professional liability of healthcare

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[7] James E Szalados, "The Ethics and Laws Governing Informed Decision-Making in Healthcare: Informed Consent, Refusal, and Discussions Regarding Resuscitation and Life-Sustaining Treatment BT - The Medical-Legal Aspects of Acute Care Medicine: A Resource for Clinicians, Admini," in *The Medical-Legal Aspects of Acute Care Medicine*, ed. James E Szalados (Cham: Springer International Publishing, 2021), 43–73, https://doi.org/10.1007/978-3-030-68570-6_3.

[8] Novita Tandry et al., "Legal Protection for Patients in Medical Practice and Healthcare Services Abstract :," *International Journal of Law, Social Science, and Humanities* 1, no. 2 (2024): 100–110, https://doi.org/10.70193/ijlsh.v1i2.155.

[9] Tamara Damayanti, Hendri Darma Putra, and Happy Yulia Anggraeni, "Informed Consent Pada Kasus Kegawatdaruratan Di Rumah Sakit Berdasarkan Undang-Undang No . 17 Tahun 2023," *UNES Law Review* 7, no. 1 (2024): 246–254, https://doi.org/10.31933/unesrev.v7i1.2260.

[10] Rindy Alief Puspitasari, Isharyanto Isharyanto, and Hari Purwadi, "Juridical Review of Presumed Consent as the Right of Patients in Emergency Conditions," *Journal of Health Policy and Management* 4, no. 2 (2019): 96–104, https://www.thejhpm.com/index.php/thejhpm/article/view/99.

practitioners using a normative legal approach.[11] The study found that legal protection for patients is established through the recognition of patients' rights, including the right to receive adequate information and to provide informed consent for medical treatment. At the same time, the professional liability of healthcare practitioners is determined by the integration of positive law and the medical code of ethics. The study further emphasized that violations of ethical principles, such as respect for patient autonomy and the principle of *non-maleficence*, may give rise to criminal liability for healthcare professionals. Nevertheless, the study primarily focused on the relationship between patient rights, professional ethics, and medical criminal law in general. It did not specifically examine the legal status of *presumptive consent* in emergency healthcare services or its evidentiary value as a basis for legal protection for healthcare professionals.

The third study, conducted by Abdullah,[12] analyzed the application of the principles of *presumed consent* and the *doctrine of necessity* as the legal basis for performing medical treatment without informed consent in emergencies through normative legal research. The findings revealed that *presumed consent* functions as a legal fiction that substitutes for actual consent when patients are incapable of making decisions and delaying medical intervention poses a serious threat to their lives or health. The study further demonstrated that the *doctrine of necessity* provides legal justification for medical treatment without consent, provided that the requirements of a genuine emergency, proportionality of the intervention, and adequate documentation are satisfied. However, the study primarily focused on legal and ethical doctrines as the basis for justifying emergency medical treatment. In contrast, the evidentiary construction of *presumptive consent* as an instrument of legal protection under Law Number 17 of 2023 concerning health has not been comprehensively examined.

Based on the foregoing discussion, the research gap lies in the absence of a comprehensive normative legal analysis examining the relationship between the statutory recognition of *presumptive consent* under Law Number 17 of 2023 concerning health and its evidentiary function in emergency healthcare services. Previous studies have primarily focused on ethical considerations or general legal protection, whereas the evidentiary construction of *presumptive consent* within Indonesia's positive legal system has received limited scholarly attention. Against

[11] Putri Shafarina Thahir and Putri Shafarina Thahir, "Legal Review Of Medical Crime : Patient Protection And Professional Responsibility In," *Audito Comparative Law Journal (ACLJ)* 5, no. 2 (2024): 130–142, https://doi.org/10.22219/aclj.v5i2.33832.

[12] Ikhwanan Sakata Tambi Abdullah, Rommy Hardyansah, and Rafadi Khan Khayru, "Presumed Consent and the Doctrine of Necessity as the Basis for Emergency Medical Treatment Without Informed Consent," *Journal of Social Science Studies* 3, no. 1 (2023): 343–354, https://jos3journals.id/index.php/jos3/article/view/283.

this background, the novelty of this study lies in its analysis of *presumptive consent* from two complementary dimensions. First, it conceptualizes *presumptive consent* as a legal justification that legitimizes medical treatment without prior consent in emergencies under Law Number 17 of 2023 concerning health. Second, it develops the concept of *presumptive consent* as an evidentiary instrument that establishes legal protection for healthcare professionals through the fulfillment of three essential elements: compliance with professional standards and standard operating procedures, the implementation of medical treatment in good faith and in the patient's best interests, and comprehensive medical record documentation.

Based on the foregoing background, this study addresses two research questions: (1) What is the legal status of *presumptive consent* in emergency healthcare services under Law Number 17 of 2023 concerning Health? Moreover, (2) What is its evidentiary value as a basis for providing legal protection to healthcare professionals in resolving healthcare disputes? Accordingly, this study aims to analyze the legal status of *presumptive consent* in emergency healthcare services and to examine its evidentiary value in providing legal protection for healthcare professionals under Law Number 17 of 2023 concerning Health. Theoretically, the study is expected to enrich the development of health law scholarship, particularly regarding the legal construction of *presumptive consent* as both a doctrine of legal justification and an evidentiary instrument. Practically, the findings are expected to serve as a reference for healthcare professionals, hospitals, professional organizations, law enforcement authorities, and policymakers in strengthening legal certainty while ensuring balanced legal protection for both patients and healthcare professionals in emergency healthcare services.

METHOD

This study employs a normative legal research (doctrinal legal research) design using a qualitative approach. This research design was selected because the study aims to analyze the legal construction of *presumptive consent* as both a legal justification for medical treatment and an evidentiary instrument in emergency healthcare services under Law Number 17 of 2023 concerning health. Normative legal research is considered the most appropriate approach because it focuses on legal norms, legal principles, legal doctrines, and the harmonization of statutory regulations to address issues concerning legal certainty and legal protection for healthcare professionals.[13]

[13] Endro Haksara et al., "Reconstruction of Legal Protection for Nurses in the Provision of Hospital Nursing Care Based on Restorative Justice," *NUSANTARA: Journal Of Law Studies* 4, no. 2 (2025): 157–175, https://doi.org/10.5281/zenodo.18357611.

The study adopts two principal approaches, namely the statutory approach and the conceptual approach. The statutory approach is employed to examine the legal provisions governing emergency medical treatment, particularly Law Number 17 of 2023 concerning health and its implementing regulations. Meanwhile, the conceptual approach is used to analyze the development of the doctrines of *presumptive consent* and *informed consent*, the concept of legal protection for healthcare professionals, and theories of evidence developed within the health law literature.

The research data consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 17 of 2023 concerning Health, Minister of Health Regulation Number 290 of 2008 concerning Approval of Medical Procedures, Minister of Health Regulation Number 269 of 2008 concerning Medical Records, and other statutory regulations relevant to emergency healthcare services. Secondary legal materials comprise textbooks on health law, national and international scholarly articles, previous research findings, relevant court decisions, and official publications issued by government institutions and professional healthcare organizations. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other reference sources that facilitate the interpretation of legal concepts employed in this study.

Data were collected through library research by identifying, inventorying, classifying, and reviewing legal materials relevant to the research focus. All documents were selected based on their relevance to the regulation of *presumptive consent*, the legal protection of healthcare professionals, and evidentiary issues in emergency healthcare services. The data were analyzed qualitatively through several stages. The first stage involved the inventory and classification of legal materials according to the hierarchy of statutory regulations and thematic categories. The second stage consisted of legal interpretation using grammatical, systematic, and teleological methods of interpretation to determine the meaning and scope of the legal provisions governing *presumptive consent* under Law Number 17 of 2023 concerning health. The third stage involved normative legal analysis by comparing positive legal provisions with legal doctrines, principles of health law, and previous studies to identify normative consistency, legal gaps, and their legal implications. Finally, conclusions were drawn using deductive legal reasoning, whereby legal arguments were developed based on the relationship among legal norms, doctrines, and theoretical frameworks to answer the research questions concerning the legal status and evidentiary value of *presumptive consent*.

To ensure the credibility and reliability of the research findings, this study employed source triangulation by comparing statutory provisions, legal doctrines, previous studies, and relevant scholarly literature. In addition, source verification was conducted by prioritizing current statutory regulations, peer-reviewed

academic publications, and official references issued by government institutions and professional organizations. The consistency of legal interpretation was further assessed through comparative analysis across multiple legal sources to ensure that the resulting legal arguments were normatively sound, academically robust, and capable of addressing the research objectives.

RESULTS AND DISCUSSION

The Legal Status of *Presumptive Consent* in Emergency Healthcare Services under Law Number 17 of 2023 concerning Health

To address the first research question concerning the legal status of *presumptive consent* in emergency healthcare services under Law Number 17 of 2023 concerning Health, this study first conducted a normative analysis of the statutory provisions governing exceptions to the general requirement of obtaining *informed consent*. The analysis focused on identifying the legal basis, regulatory scope, and juridical implications of the provisions governing the application of *presumptive consent*. The findings demonstrate that Law Number 17 of 2023 establishes a comprehensive normative framework that systematically regulates the legality of medical treatment without prior consent in emergencies, as summarized in Table 1.

Table 1. Legal Regulation of *Presumptive Consent* under Law Number 17 of 2023 concerning Health

Provision	Regulatory Content	Legal Implication
Article 80(3)	Medical treatment may be performed without prior consent in emergencies.	Establishes an exception to the general requirement of obtaining informed consent.
Article 293(9)	Medical treatment may be provided when the patient is incapable of giving consent, and no family member or legal guardian can be contacted.	Provides the statutory basis for the application of presumptive consent.
Article 293(10)	Medical treatment must be carried out in the patient's best interests.	Affirms the principle of good faith as the legal foundation for emergency medical intervention.
Article 293(11)	Healthcare professionals are required to explain to the patient or the patient's family after the medical intervention has been performed.	Ensures accountability and transparency in emergency healthcare services.

Author's Interpretation (2026)

The analysis of Law Number 17 of 2023 concerning Health in Table 1 indicates that the concept of *presumptive consent* has received more explicit statutory recognition than under previous regulatory frameworks. Such recognition is reflected in Article 80(3), which authorizes healthcare professionals to perform medical treatment without prior consent in emergencies. It is further reinforced

by Article 293(9), which permits medical intervention when the patient is incapable of providing consent, and no family member or legal guardian can be reached. These provisions demonstrate that Indonesian positive law no longer regards *presumptive consent* merely as an ethical doctrine in medical practice; rather, it has been incorporated into the statutory framework as a legal norm providing healthcare professionals with a lawful basis for performing life-saving medical interventions under specific emergency circumstances.

These findings indicate a significant paradigm shift in the regulation of healthcare law in Indonesia. Under previous legal regimes, the obligation to obtain *informed consent* was regarded as the primary manifestation of respect for patient autonomy, while exceptions to this requirement were not explicitly formulated. In contrast, Law Number 17 of 2023 accommodates the practical necessities of emergency healthcare services by introducing limited statutory exceptions to the general requirement of obtaining consent. This legislative development reflects the legislature's attempt to balance the protection of patients' rights with the legal obligation of healthcare professionals to provide immediate life-saving treatment when delays may result in death or permanent disability.

From a conceptual perspective, the statutory recognition of *presumptive consent* is consistent with the doctrine developed in international health law, which presumes that a reasonable patient would consent to life-saving medical treatment if they were capable of expressing such consent.[14] Accordingly, the legal legitimacy of emergency medical intervention is derived not from explicit consent but from the legal presumption that the protection of human life constitutes a paramount legal interest that must prevail when a patient is incapable of exercising autonomous decision-making.[15]

The findings of this study reinforce those of Kituuka et al, who argued that *presumptive consent* constitutes an exception to the principle of *informed consent* in emergency medical situations.[16] However, the present study provides a more contemporary perspective by demonstrating that, following the enactment of Law Number 17 of 2023, *presumptive consent* is no longer merely an ethical doctrine or theoretical construct but has acquired explicit statutory legitimacy in Indonesia's positive legal system. Consequently, its application is no longer

[14] Oleh Byelov and Myroslava Bielova, "Right to Medical Autonomy: Refusal of Treatment as an Element of Personal Freedom," *Visegrad Journal on Human Rights*, no. 1 (2026): 15–21, https://doi.org/10.61345/1339-7915.2026.1.2.

[15] Natalia Opolska et al., "Development of Legislation on the Protection of Human Rights in the Field of Occupational Safety and Health," *Nusantara: Journal of Law Studies* 5, no. 1 (2026): 123–146, https://doi.org/10.5281/zenodo.18821048.

[16] Olivia Kituuka et al., "Informed Consent Process for Emergency Surgery: A Scoping Review of Stakeholders' Perspectives, Challenges, Ethical Concepts, and Policies," *SAGE Open Medicine* 11 (2023): 20503121231176664, https://doi.org/10.1177/20503121231176666.

dependent solely upon ethical interpretation by medical professionals but is now grounded in legal norms that are directly binding upon healthcare professionals and healthcare institutions.

These findings also complement the study conducted by Thahir, which emphasized that legal protection in medical practice is primarily established through the recognition of patients' rights, professional responsibility, and compliance with medical ethics. While Thahir focused on the interaction between patient rights, professional ethics, and medical criminal law, the present study demonstrates that the legal protection of healthcare professionals in emergencies also depends upon the statutory recognition of presumptive consent under Law Number 17 of 2023.[17] Consequently, legal protection is no longer derived solely from compliance with informed consent requirements but also from the lawful application of statutory exceptions in genuine emergency circumstances.

From the perspective of Gustav Radbruch's theory of the objectives of law, the regulation of *presumptive consent* reflects the legislature's effort to reconcile the three fundamental objectives of law: legal certainty, justice, and expediency. Under ordinary circumstances, legal certainty is achieved through the obligation to obtain *informed consent* as an expression of respect for patient autonomy. However, in emergencies where the patient's life is under imminent threat, the objectives of justice and expediency assume greater priority because the ultimate purpose of the law is the protection of human life. Consequently, the statutory exception to the requirement of obtaining consent should not be interpreted as a denial of patients' rights but rather as a legal mechanism designed to ensure that life-saving medical interventions can be performed promptly and responsibly.[18]

Furthermore, from the perspective of Roscoe Pound's theory of law as a tool of social engineering, the regulation of *presumptive consent* illustrates the role of law as an instrument for adapting legal norms to evolving societal needs. The increasing complexity of modern healthcare requires legal certainty for healthcare professionals who must make critical clinical decisions within extremely limited timeframes. By providing an explicit legal basis for emergency medical treatment without prior consent, Law Number 17 of 2023 not only protects patients' interests but also creates a legal environment that enables healthcare professionals to fulfill their professional obligations without undue fear of legal

[17] Thahir and Thahir, "Legal Review Of Medical Crime: Patient Protection And Professional Responsibility In Medical Practice."

[18] Martin Borowski, "Gustav Radbruch's Theory of Legal Obligation BT - Theories of Legal Obligation," in *Theories of Legal Obligation.*, ed. Deryck Beyleveld and Stefano Bertea (Cham: Springer International Publishing, 2024), 99–122, https://doi.org/10.1007/978-3-031-54067-7_5.

liability, provided that such medical interventions are carried out professionally, proportionately, and in good faith.[19]

Based on the foregoing analysis, it can be concluded that the legal status of *presumptive consent* under Law Number 17 of 2023 concerning health has evolved from being merely an ethical doctrine in medical practice into a positive legal norm that legitimizes medical treatment without prior consent in emergencies. This statutory recognition constitutes the fundamental basis for legal protection afforded to healthcare professionals. Nevertheless, such protection ultimately depends upon the fulfillment of evidentiary requirements capable of substantiating the lawful application of *presumptive consent* in the event of legal disputes. These evidentiary aspects are examined in the following section.

The Evidentiary Value of *Presumptive Consent* as a Basis for the Legal Protection of Healthcare Professionals

Having established *presumptive consent* as a statutory exception to the general requirement of obtaining *informed consent*, the next issue concerns how *presumptive consent* may be legally sustained when the medical intervention becomes the subject of a legal dispute. From the perspective of the law of evidence, the statutory recognition of *presumptive consent* does not automatically guarantee legal protection for healthcare professionals. Such protection depends upon their ability to demonstrate that the medical intervention complied with the legal requirements prescribed by statutory regulations and professional standards. Accordingly, this study analyzes the elements constituting the evidentiary value of *presumptive consent* under Law Number 17 of 2023 concerning health, as summarized in Table 2.

Table 2. Elements Constituting the Evidentiary Value of *Presumptive Consent*

Element of Proof	Legal Basis	Evidentiary Function
Compliance with professional standards and Standard Operating Procedures (SOPs)	Article 293(9) of Law Number 17 of 2023	Demonstrates that the medical intervention was performed in accordance with accepted medical standards.
Good faith	Article 293(10) of Law Number 17 of 2023	Demonstrates that the intervention was undertaken in the patient's best interests.
Medical record documentation	Article 274(d) of Law Number 17 of 2023 and Minister of Health	Establishes the chronology, medical indications, treatment

[19] Amr Ibn Munir, "A Clash of Interests: Evaluating Roscoe Pound's Theory of Social Engineering," *Pakistan Journal of Law, Analysis and Wisdom* 4 (2023): 54–62, https://papers.ssrn.com/sol3/papers.cfm?abstract_id.

	Regulation Number 269 of 2008	provided, and the legal justification for applying presumptive consent.

Source: Author's Interpretation (2026)

The analysis demonstrates that the evidentiary value of *presumptive consent* is not determined solely by the existence of an emergency. Rather, it constitutes a legal construction established through the cumulative fulfillment of three interrelated elements: compliance with professional standards and standard operating procedures, the performance of medical treatment in good faith and in the patient's best interests, and comprehensive medical record documentation. Since these elements are cumulative, the absence of any one of them may significantly weaken the legal status of *presumptive consent* as a basis for protecting healthcare professionals against legal liability.

The first element concerns compliance with professional standards and standard operating procedures (SOPs). In medical disputes, *presumptive consent* cannot serve as a legal justification where the medical intervention deviates from accepted standards of medical practice. Healthcare professionals must therefore demonstrate that the intervention was supported by clear medical indications, performed within the scope of their professional competence, complied with applicable clinical standards, and followed established emergency treatment procedures. Accordingly, the evidentiary assessment extends beyond establishing the existence of an emergency to determining whether the medical intervention conformed to applicable professional standards. This finding indicates that *presumptive consent* does not constitute a form of legal immunity, but rather a mechanism of legal protection that remains conditional upon the professional conduct of healthcare practitioners.

The second element is good faith, as expressly required by Article 293(10) of Law Number 17 of 2023, which provides that all medical interventions must be performed in the patient's best interests. From an evidentiary perspective, good faith demonstrates that the primary objective of the medical intervention was to preserve the patient's life rather than to benefit the healthcare professional or the healthcare institution. Evidence of good faith may include documented efforts to contact the patient's family before the intervention, the selection of the most proportionate medical procedure under the circumstances, and the absence of any indication of abuse of professional authority. Consequently, this element plays a fundamental role in determining whether the medical intervention complies with the ethical principles of beneficence and non-maleficence, which constitute the ethical foundation of healthcare practice.

The third and most significant element is medical record documentation, which serves as the primary source of evidence in legal disputes. Medical records function not merely as administrative documents but also as authentic evidence documenting the entire clinical decision-making process during emergency

treatment. To possess optimal evidentiary value, medical records should comprehensively document the patient's condition upon admission, the diagnosis and medical indications necessitating emergency treatment, the patient's inability to provide consent, attempts made to contact family members or legal guardians, the medical procedures performed, and the reasons for applying *presumptive consent* pursuant to Law Number 17 of 2023 concerning Health. Comprehensive documentation enables judges and law enforcement authorities to reconstruct the sequence of medical events and determine whether healthcare professionals acted in accordance with applicable legal and professional standards.

The findings of this study extend those of Abdullah,[20] who argued that *presumed consent* and the *doctrine of necessity* provide legal justification for emergency medical treatment without explicit patient consent. Abdullah emphasized that the lawful application of *presumed consent* depends upon the existence of genuine emergency circumstances, the patient's incapacity to provide consent, the proportionality of the medical intervention, and adequate documentation. The present study confirms these findings while further demonstrating that, under Law Number 17 of 2023 concerning Health, adequate documentation should not merely be regarded as an administrative requirement but as an essential evidentiary element that determines whether *presumptive consent* can effectively function as a legal safeguard for healthcare professionals in medical disputes. Accordingly, the evidentiary value of *presumptive consent* is constructed through the integration of professional standards, good faith, and a comprehensive medical record.

These findings also complement the study conducted by Thahir,[21] which emphasized that legal protection in medical practice is fundamentally established through the recognition of patients' rights, adherence to professional ethics, and the professional responsibility of healthcare practitioners. While Thahir primarily examined the interaction between patient rights, medical ethics, and criminal liability, the present study demonstrates that legal protection for healthcare professionals in emergencies also depends upon their ability to establish the evidentiary requirements of *presumptive consent*. Consequently, legal protection is derived not only from compliance with ethical and professional obligations but also from the successful demonstration that statutory requirements governing *presumptive consent* have been fulfilled.

From the perspective of the law of evidence, a legal fact may only be accepted where it is supported by admissible evidence capable of convincing the

[20] Abdullah, Hardyansah, and Khayru, "Presumed Consent and the Doctrine of Necessity as the Basis for Emergency Medical Treatment Without Informed Consent."

[21] Thahir and Thahir, "Legal Review Of Medical Crime: Patient Protection And Professional Responsibility In Medical Practice."

court of the truth of the alleged legal event. Within the context of *presumptive consent*, the mere existence of an emergency is insufficient to justify medical treatment without prior consent. The evidentiary process must demonstrate a coherent relationship among the emergency circumstances, compliance with professional standards, good faith, and comprehensive medical record documentation. Together, these three elements constitute an integrated evidentiary framework that provides the legal basis for protecting healthcare professionals in emergency medical disputes.[22]

The practical implication of these findings is that hospitals and healthcare professionals must do more than understand the statutory provisions governing *presumptive consent*. They must also establish robust documentation systems and effective governance mechanisms for emergency healthcare services that can produce reliable evidence in the event of legal disputes. The development of comprehensive standard operating procedures, improvements in medical record documentation, and continuous training on the legal aspects of emergency healthcare services are therefore essential for strengthening legal certainty while simultaneously enhancing legal protection for both patients and healthcare professionals.

Based on the foregoing analysis, it can be concluded that the evidentiary value of *presumptive consent* is derived from the integration of compliance with professional standards, the performance of medical treatment in good faith, and comprehensive medical record documentation. Collectively, these three elements constitute the legal foundation for protecting healthcare professionals in emergency healthcare disputes while ensuring that the statutory exception to the requirement of *informed consent* is applied responsibly and is not subject to misuse in medical practice.

Legal Implications, Implementation Challenges, and Policy Recommendations for Presumptive Consent

The findings presented in the previous sections demonstrate that presumptive consent has acquired explicit statutory recognition under Law Number 17 of 2023 concerning health and that its legal protection depends upon the fulfillment of specific evidentiary requirements. These findings also reveal that the effectiveness of presumptive consent extends beyond statutory recognition and is closely related to its practical implementation within healthcare institutions. Accordingly, this section synthesizes the legal implications of the findings, identifies the principal implementation challenges, and formulates policy recommendations to strengthen the application of presumptive consent in

[22] Margherita Pallocci et al., "Informed Consent: Legal Obligation or Cornerstone of the Care Relationship?," *International Journal of Environmental Research and Public Health*, 2023, https://doi.org/10.3390/ijerph20032118.

emergency healthcare services. The synthesis of these findings is presented in Table 3.

Table 3. Legal Implications, Implementation Challenges, and Policy Recommendations for the Implementation of Presumptive Consent

Research Findings	Legal Implications	Implementation Challenges	Policy Recommendations
Explicit statutory recognition of presumptive consent under Law No. 17 of 2023	Provides legal certainty for emergency medical intervention	Different interpretations regarding emergency conditions	Issue implementing regulations defining emergency criteria
Presumptive consent requires compliance with professional standards	Strengthens professional accountability	Inconsistent application of SOPs among hospitals	Develop standardized national SOPs for emergency treatment
Good faith constitutes an essential legal requirement	Protects healthcare professionals acting in patients' best interests	Difficulty proving good faith in litigation	Establish clear documentation and post-treatment communication protocols
Medical records constitute the principal evidentiary instrument	Strengthens legal protection in medical disputes	Incomplete or inconsistent medical documentation	Improve medical record management and provide legal documentation training

Source: Author's Analysis (2026)

The findings indicate that the statutory recognition of *presumptive consent* under Law Number 17 of 2023 concerning health represents an important development in strengthening legal certainty for emergency healthcare services. By expressly recognizing exceptions to the general requirement of obtaining *informed consent*, the legislation provides healthcare professionals with a clearer legal framework for performing life-saving medical interventions while maintaining safeguards for patients' rights. This legislative development reflects a more balanced approach to protecting both patient autonomy and the professional responsibilities of healthcare practitioners.

Despite these developments, the implementation of *presumptive consent* continues to face several challenges. The first challenge concerns the burden of

proof borne by healthcare professionals. Although statutory authorization exists, legal protection ultimately depends on healthcare professionals' ability to demonstrate compliance with professional standards, the existence of genuine emergency circumstances, the exercise of good faith, and adequate medical documentation. Consequently, statutory recognition alone is insufficient without effective implementation and evidentiary support.

A second challenge concerns the potential tension between *presumptive consent* and the principle of patient autonomy. Although emergency treatment is undertaken to preserve life, patients or their families may subsequently disagree with the medical intervention on religious, ethical, or personal grounds. This situation highlights the importance of transparency and post-treatment communication as mechanisms for maintaining public trust while reducing the likelihood of future legal disputes.

Another challenge relates to the absence of detailed operational criteria defining emergencies. Differences in interpretation among healthcare professionals and healthcare institutions may lead to inconsistent implementation of *presumptive consent*. Consequently, clearer operational guidance is required to ensure that statutory exceptions are applied consistently and only in circumstances that genuinely justify emergency intervention.

These findings have important practical implications. Hospitals should develop comprehensive standard operating procedures governing the application of *presumptive consent*, including standardized documentation procedures and post-treatment communication mechanisms. Professional organizations should formulate ethical and clinical practice guidelines to ensure uniform interpretation among healthcare practitioners. Furthermore, government authorities should develop implementing regulations that provide clearer criteria regarding emergencies and evidentiary requirements, thereby enhancing legal certainty for both healthcare professionals and patients.

From an academic perspective, this study demonstrates that the effectiveness of *presumptive consent* depends not solely upon statutory recognition but also upon the integration of legal regulation, professional accountability, institutional governance, and evidentiary practice. Accordingly, legal protection for healthcare professionals should be understood as a multidimensional legal construct requiring the interaction of substantive legal norms, professional standards, and procedural evidence rather than merely the existence of statutory authorization.

CONCLUSION

This study concludes that Law Number 17 of 2023 concerning Health has provided a more explicit statutory recognition of *presumptive consent* as the legal basis for performing medical treatment without prior consent in emergencies

through Article 80(3) and Article 293(9). This statutory recognition reflects a paradigm shift in Indonesian health law from an approach that primarily emphasizes the obligation to obtain *informed consent* toward one that also affords legal protection to healthcare professionals in fulfilling their duty to preserve patients' lives. The study further demonstrates that the evidentiary value of *presumptive consent* is not autonomous but depends upon the cumulative fulfillment of three essential elements: compliance with professional standards and standard operating procedures, the performance of medical treatment in good faith and in the patient's best interests, and comprehensive medical record documentation as the principal evidentiary basis in resolving healthcare disputes.

From an academic perspective, this study contributes to the development of health law scholarship by conceptualizing *presumptive consent* not only as a legal justification but also as an evidentiary instrument within Indonesia's health law system following the enactment of Law Number 17 of 2023 concerning Health. This perspective extends previous scholarship, which has generally examined *presumptive consent* from the standpoint of medical ethics or the protection of patients' rights, by demonstrating the interrelationship among statutory regulation, legal protection theory, and evidentiary mechanisms in resolving medical disputes. From a practical perspective, the findings provide useful guidance for policymakers, hospitals, professional organizations, and healthcare practitioners in developing standard operating procedures, strengthening medical record documentation, and formulating implementation guidelines for *presumptive consent* that ensure balanced legal protection for both patients and healthcare professionals.

This study is subject to certain limitations. As a normative legal study, it focuses primarily on analyzing statutory regulations and legal doctrines, without incorporating empirical evidence on the practical implementation of *presumptive consent* in healthcare services or judicial decisions applying the provisions of Law Number 17 of 2023 concerning Health. Accordingly, future research should adopt empirical or socio-legal approaches involving healthcare professionals, hospitals, professional organizations, and law enforcement authorities to evaluate the practical implementation of *presumptive consent*. Furthermore, comparative studies involving jurisdictions that have adopted similar legal doctrines are recommended to identify best practices that may help refine Indonesia's regulatory framework and strengthen legal certainty in emergency healthcare services.

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AUTHOR CONTRIBUTIONS STATEMENT

All authors contributed substantially to the conception and design of the study. The first author was responsible for conceptualization, legal analysis, data collection, interpretation of legal materials, and drafting the manuscript. The co-authors contributed to the development of the research framework, critical revision of the manuscript, interpretation of findings, and final approval of the version submitted for publication. All authors have read and approved the final manuscript and agree to be accountable for all aspects of the work.

AI USAGE STATEMENT

The authors used artificial intelligence (AI)-assisted writing tools solely to improve language quality, grammar, readability, and manuscript organization during the preparation of this article. All legal analyses, interpretations, arguments, conclusions, and final editorial decisions were independently developed, verified, and approved by the authors. The authors assume full responsibility for the accuracy, originality, and integrity of the content presented in this manuscript.

CONFLICT OF INTEREST

The authors declare that there are no financial, professional, institutional, or personal conflicts of interest that could have influenced the research, interpretation of the findings, or publication of this manuscript.

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