



Analysis of the Application of Zaakwarneming for Doctors Who Perform Medical Actions Without Permission

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Abstract: This research analyses the application of the concept of *zaakwarneming* in the medical world, specifically related to medical actions taken by doctors without the consent of patients or their families in emergency conditions. In Indonesian civil law, *zaakwarneming* allows a person to take care of the interests of others without power of attorney with the aim of protecting their interests. In the medical context, the application of this concept can justify the doctor's actions in situations where consent cannot be obtained in a timely manner. However, this action still poses legal and ethical dilemmas, especially in relation to the patient's right to autonomy as well as the doctor's professional responsibility. This research uses a mixed method, namely a quantitative approach through a community survey and a qualitative approach through a literature study. The survey results show that most people understand the importance of informed consent, but there are differences of opinion on whether doctors can act without consent in an emergency. Most respondents also support transparency and better communication between doctors and patients to avoid legal disputes. Legally, unauthorised medical action can have consequences in civil, criminal and administrative aspects. Therefore, clearer regulations are needed regarding the limits and responsibilities of doctors in the application of *zaakwarneming*. A more detailed Standard Operating Procedure (SOP) and public education on patient rights in medical services are expected to reduce the potential for legal disputes and increase legal certainty for medical personnel.

Keywords: Doctor; Licence; Medical; Patient; *Zaakwaarneming*.

Introduction

Indonesia, as a developing country, still faces various problems in the field of health. Health is a fundamental part of human life and is recognized as a human right that must be respected, protected and fulfilled by everyone. This is in line with Article 28H of the 1945 Constitution of the Republic of Indonesia, which affirms that everyone has the right to live in physical and mental prosperity, have a place to live, and obtain health services. In addition, Article 4 of Law Number 36 of 2009 concerning Health also emphasizes that every individual has the right to obtain health services that are guaranteed safety, have good quality standards, and affordable prices in accordance with the ability of the community (Karwur et al., 2024).

However, in practice, health services always face various risks, especially in medical actions performed by health workers on patients. Various health regulations have been drafted in an effort to reduce the likelihood of risks occurring. To prevent risks in medical

actions, an agreement between medical personnel and patients is needed before the procedure is performed (Kasiman et al., 2023). In medical practice, this form of consent is usually known as Informed Consent, which is the consent given by the patient or family after receiving a complete explanation of the medical procedure to be carried out (Elizar et al., 2023).

In certain situations such as emergencies or when the patient is unable to give consent, doctors are often put in a legally and ethically difficult position. This often happens in cases of accidents, disasters, or other emergencies that require quick action to save lives. When the patient is unconscious and there is no family to ask for consent, even though every medical procedure requires consent, doctors must still consider the legal and ethical aspects while carrying out their primary duty, which is to save the patient (Arthanti et al., 2024). One of the relevant legal concepts in this situation is *zaakwarneming*, as stated in Article 1354 of the Civil Code. In the medical world, the actions of doctors who save patients without explicit consent can be categorised as a form of *zaakwarneming*. This principle is the legal basis that allows doctors to make quick decisions in emergency conditions to save patients (Purba, 2022). This concept is applied when doctors perform medical interventions without the permission of the patient or their family, both in urgent situations and other circumstances that require immediate action. This practice is often encountered, especially when the patient is in critical condition and the time to obtain consent is very limited, or no family can be contacted.

A real case example of this occurred at Mitra Sejati General Hospital, which allegedly committed amputation malpractice. A patient named JS was treated for a nail-piercing injury to his toe, with the surgery authorised to be limited to that area. However, without prior notice, the doctor performed amputation up to the calf, which triggered objections from the family because they felt they were not informed or asked for consent. The hospital stated that the amputation was carried out due to a severe infection exacerbated by the patient's extremely high blood sugar level (449 mg/dl), and claimed to have attempted to contact the family but received no response. The family then reported the case to the North Sumatra Police and relevant agencies, including the Ministry of Health and the House of Representatives. The North Sumatra Health Office and the Indonesian Medical Discipline Honour Council (MKDKI) are currently investigating the alleged violation of medical procedures. If proven, the medical personnel involved could be subject to sanctions up to revocation of their licence to practice (Rosa, 2025).

This case reflects the complexity of applying the *zaakwarneming* principle in the medical world. In the law of engagement, *zaakwarneming* is a form of engagement arising from statutory provisions, not from agreements. Since there is no prior agreement between the doctor and the patient or his family, medical treatment in emergency situations falls into this category, so it is not considered a contractual violation, but rather as legal protection of the interests of others (Purba, 2022). Medical action without consent can be justified if done in good faith, for the safety of the patient, and according to professional standards. However, doctors are still at risk of facing lawsuits. Based on Article 1365 of the Civil Code, acts that harm others can be considered as unlawful acts, which can lead to compensation

obligations. In practice, there are verdicts that defend doctors for their emergency actions, but there are also those that find them guilty for not fulfilling legal and ethical procedures (Rahayu et al., 2024).

As in the research conducted by Muhammad Syahri Ramadhan and Adrian Nugraha in an article entitled "Medical Actions of Doctors against Patients without Informed Consent in the Perspective of Progressive Law", this article discusses the importance of informed consent in medical practice in Indonesia, especially in the perspective of progressive law. This research highlights how medical actions without informed consent are often considered contrary to written law, but in emergencies, progressive law can be used as an alternative approach to justify such medical actions. The research method used is normative juridical with a qualitative analysis approach. This article asserts that under certain conditions, such as emergencies, doctors can override informed consent in order to save the patient's life. Although the article provides a strong theoretical basis and in-depth analysis of existing regulations, the discussion tends to be normative without exploration of empirical data on how progressive law is applied in medical practice in Indonesia (Ramadhan & Nugraha, 2021).

Whereas in research conducted by Nanang Widodo, Andika Persada Putera, and Ninis Nugraheni in an article entitled "Emergency Actions by Doctors Due to Accidents in Incompetent Patients and Without Family", this article discusses the ethical and legal aspects of emergency actions by doctors, especially in patients who cannot provide medical consent and are not accompanied by family. This article highlights the importance of legal protection for doctors who make medical decisions in emergency conditions. The research method used is also normative juridical with a descriptive approach. The advantage of this research is its more applicable analysis, by highlighting the need for Standard Operating Procedures (SOPs) and clearer regulations to protect doctors in emergency cases. However, this article still has limitations in discussing empirical aspects, such as how the implementation of the law in various real cases faced by medical personnel (Widodo et al., 2023).

From these two studies, it can be seen that both discuss medical actions in special situations related to informed consent and emergency conditions. However, the first study focuses more on the progressive legal approach in overcoming regulatory barriers related to informed consent, while the second study focuses more on aspects of legal protection for doctors in emergency cases and the need for clear SOPs. Although they have different approaches, they both emphasize that medical actions in emergency situations need to have a strong legal basis as well as protection for medical personnel who act in the interests of patients. This research aims to analyze the application of *zaakwarneming* for doctors who perform medical actions without permission by considering relevant aspects of civil and criminal law, so as to provide greater insight into existing regulations. In addition, this research will also examine the legal impact faced by medical personnel in this case as well as legal solutions that can be applied to provide optimal protection for the community. Thus, the results of this research are expected to contribute to the development of fairer and more realistic policies in the practice of medicine in Indonesia.

Methodology

This research uses a Mix Methode approach, which is a combination of qualitative and quantitative methods to analyze the application of Zaakwarneming for doctors who perform medical actions without permission. The quantitative method in this research uses a questionnaire technique distributed to the general public. The aim is to find out whether people have experienced or faced situations where medical actions are carried out without permission and how people view these conditions. While this qualitative method is applied through literature study and reflection to understand the concept of zaakwarneming in a legal context and its implications for the medical world. Literature study or literature review is used to examine various references such as legal journals, laws and regulations and other sources related to Zaakwarneming. Meanwhile, the reflection method is a method based on the author's experience and knowledge by analyzing cases that have occurred and considering the legal perspective. The data collected is classified into two types, namely primary data and secondary data. Primary data itself is obtained from the results of questionnaires that have been distributed to the public while secondary data is obtained from journals, laws and regulations, and various literature that supports this research.

Result and Discussion

Application of the Concept of Zaakwarneming to Doctors Who Perform Unauthorized Medical Actions in a Legal Perspective

The concept of zaakwarneming originates from Dutch civil law or Burgerlijk Wetboek (BW) which was adopted by the Indonesian legal system. The concept of zaakwaarneming is relevant in medical practice, especially in emergency situations, although it is not limited to the health sector. Zaakwarneming itself, is the voluntary act of a person to take care of the interests of another person, either with or without that person's knowledge, as well as bearing any risks arising. The perpetrator of zaakwaarneming is called zaakwarnemer or gestor, while the person being taken care of is called dominus. In the medical world, this concept arises when the patient cannot give consent, so that the doctor can take medical action in the patient's interest, such as emergency surgery to save the life of a patient who is in an emergency or critical condition (Agelika.S & Gunawan Widjaja, 2022; Aprita & Wulandari, 2023; Nugraha et al., 2023).

Although basically protection and legal certainty must be given to patients and doctors in health practices, as stipulated in Article 45 of Law No. 29 of 2004 concerning Medical Practices. This is also clarified in Articles 2 and 3 of Minister of Health Regulation No. 290/MENKES/PER/III/2008, which requires doctors to obtain the patient's consent prior to medical treatment. This consent can be given orally or in writing, after the patient has first obtained complete information regarding important aspects of medical action, such as the diagnosis and procedures to be performed, the purpose of medical action, alternative actions and their risks, potential risks and complications that can occur and also the prognosis or estimated results of the action provided (Kamilah & Majid, 2021). Consent in medical actions is carried out through a therapeutic agreement, which is an agreement

between a doctor and a patient that authorises the doctor to provide health services according to his expertise. In the Civil Code, this agreement is an innominaat agreement and is subject to the general rules of agreement (Article 1319), with the legal requirements referring to Article 1320: agreement, competence, certain objects, and non-prohibited causes (Rezki Pebrina et al., 2022; Widjaja, 2024). This therapeutic agreement is slightly different from other agreements in that it has special characteristics, where patients are in a weak position because they depend on doctors for medical assistance. To reduce this inequality, the principle of informed consent is applied, namely the patient's right to give consent before the medical action is carried out (Rezki Pebrina et al., 2022).

Informed consent is regulated in Law No. 29/2004, Minister of Health Regulation No. 290/Menkes/Per/III/2008, and the 2008 KKI Medical Action Approval Guidelines. Informed consent is based on the principles of autonomy, beneficence, and non-maleficence, respecting the patient's right to autonomy and integrity. If the patient is unable to give consent, the decision can be transferred to the family or guardian. In life-threatening emergencies, informed consent is not required. Information that should be provided includes: diagnosis, type of treatment, benefits, risks, consequences if the treatment is not performed, alternatives, and costs. (Kumalasari Eri Puji, 2022). In certain circumstances, where the patient is in a critical condition and requires immediate medical action in order to be saved, while the family or guardian cannot give consent because they cannot be contacted or other things, the concept of *zaakwarneming* will apply. Doctors also have the authority to make medical decisions without waiting for further consent by considering the action aimed at saving or preventing the patient's condition from worsening. This principle is based on the doctor's moral and professional responsibility to act in the best interest of the patient in an emergency situation. However, every decision must still be in accordance with predetermined medical ethical standards, applicable laws, and the precautionary principle so as not to cause legal consequences.

However, doctors as *zaakwaarnemer* are not arbitrary and arbitrary in providing *zaakwarneming* assistance. *Zaakwaarneming* has several conditions that must be met in order to be valid. First, the actions taken by *zaakwaarnemer* must be aimed at the interests of others, not their own interests. Second, the management of these interests must be carried out voluntarily on their own consciousness. Third, the action must not stem from an obligation arising from a statutory provision or a specific agreement. Fourth, the management of the interests of others must be carried out in the absence of orders or authorization from the represented party, but on the personal initiative of the *zaakwaarnemer*. Finally, there must be circumstances that objectively justify the action, thus urging the *zaakwaarnemer* to act in the interests of other parties (Setiawan, 2021). In addition, doctors as *zaakwaarnemer* have an obligation to continue managing the patient's interests (*dominus*) until the patient is able to take care of himself, as stipulated in Article 1355 BW. Doctors are also obliged to carry out their duties as well as possible in the interests and safety of patients. In carrying out their duties, doctors have responsibilities similar to ordinary power of attorney holders, namely providing reports on all medical actions that have been carried out, including accountability for the use of medical resources. If the doctor

in his capacity as *zaakwaarnemer* uses the patient's funds or facilities for personal interests, then he is obliged to replace or return the value used, including paying compensation according to applicable regulations (Sony et al., 2024).

In Indonesia itself, the concept of *zaakwarneming* is still a controversy among the public, especially in its application in the medical field. Although this principle aims to act in the interests of others without actual orders or consent, the application of the concept must still consider various aspects including applicable law. In medical practice, a doctor's actions without the consent of the patient or family can pose ethical and legal dilemmas, especially in relation to the patient's right to autonomy and the limits of the doctor's professional responsibility. Some argue that *zaakwarneming* can be used as a legal basis for doctors to take medical action without informed consent, while others assess and argue that this concept must be limited so as not to be abused in the medical world. Therefore, clearer regulations are needed to ensure that the principle of *zaakwarneming* can be applied without contradicting the rights of patients and the applicable laws in Indonesia.

Medical services provided by doctors to patients based on *Zaakwaarneming* have the potential to cause problems, especially if the patient or his family does not agree to the actions taken without his consent. One example that often becomes a dispute is the rejection of medical costs that must be borne by the patient, on the grounds that the action is carried out without prior consent. In addition, doctors can also face lawsuits for alleged negligence that causes disability or worse health effects in patients (Kamilah & Majid, 2021). But as *zaakwaarnemer*, doctors have several rights in carrying out their duties for the benefit of patients (*dominus*). Doctors are entitled to reimbursement of costs that are necessary and beneficial to the patient as well as honorarium for medical services provided. In accordance with the principle of retention rights, doctors can withhold medical records until the treatment costs are repaid (Arrest Hoge Raad December 19, 1948). In addition, doctors have the right to legal protection for medical actions carried out in good faith and according to professional standards. Finally, doctors have the right to refuse service if the patient refuses the necessary procedures or if there is an ethical conflict (Alfi Amaliah, Ardan Wirabuana, 2024).

In addition to the legal and cost aspects, the concerns of the patient's family or guardians are also an important factor in the debate on *zaakwarneming*. Families can feel aggrieved if doctors make unilateral medical decisions without consultation, especially if the patient's condition worsens after the procedure. This can lead to distrust of medical personnel and health institutions. However, doctors also have a responsibility to provide medical services according to applicable standards, including referring patients if they do not have sufficient expertise, as well as providing assistance in emergencies on a humanitarian basis. This is what creates a dilemma between doctors, patients and their families in applying the concept of *zaakwarneming* (Kamilah & Majid, 2021). Based on data from a survey that has been conducted to understand public opinion regarding the application of *zaakwarneming* in unauthorized medical actions by doctors, 100 respondents have provided answers in this research survey. The results of this survey aim to analyze the extent of public understanding regarding medical actions that are performed without the

consent of patients or their families, as well as the legal and ethical implications that accompany them.

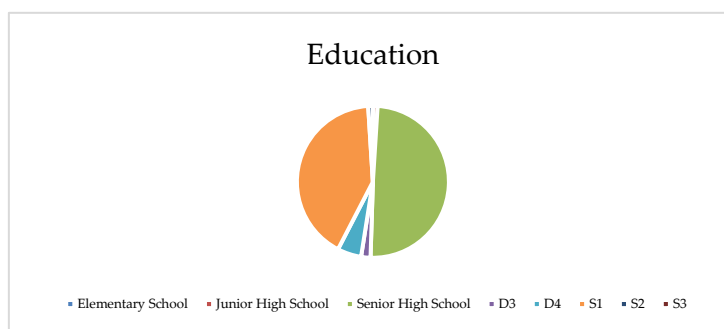


Figure.1 Last education

(Source: Research conducted personally through google form with 100 respondents)

In terms of education, most respondents have a high school education, as many as 49 people or 49.5% (forty nine point five percent). Respondents with S1 education amounted to 41 people (41.4%), followed by D4 as many as 5 people (5.1%), D3 as many as 2 people (2%), SMP as many as 1 person (1%), and S2 as many as 1 person (1%). There were no respondents with elementary or doctoral education.

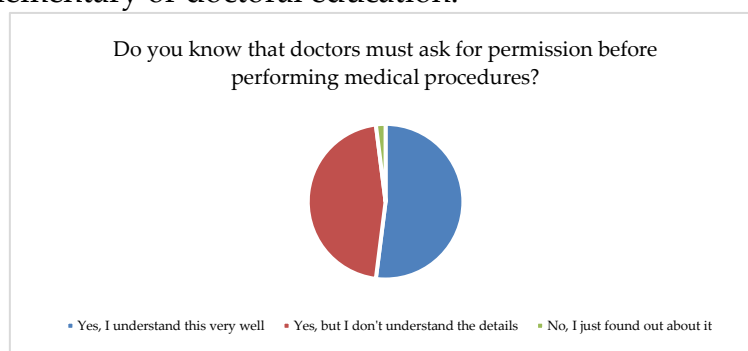


Figure 2. Awareness of medical consent requirements

(Source: Research conducted personally through google form with 100 respondents)

Regarding awareness of the doctor's permission before taking medical action, 52% (fifty-two percent) of respondents or 52 people really understand this, while 46% (forty-six percent) or 46 people know but do not understand the details. Only 2% (two percent) or 2 people only knew that medical actions must ask permission first from the patient or family.

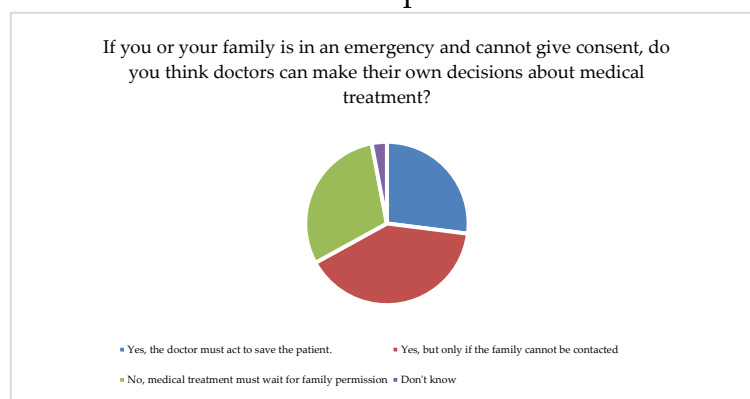


Figure 3. Acceptance of doctor's decision in emergency situations

(Source: Research conducted personally through google form with 100 respondents)

In emergency situations where the patient or family cannot give permission, 40% (forty percent) or 40 people stated that doctors may make their own decisions if the family cannot be contacted. A total of 30% (thirty percent) or 30 people were of the opinion that medical action should wait for the family's permission, while 27% (twenty-seven percent) or 27 people were of the opinion that doctors should act to save the patient. The remaining 3% (three percent) or 3 people did not know.

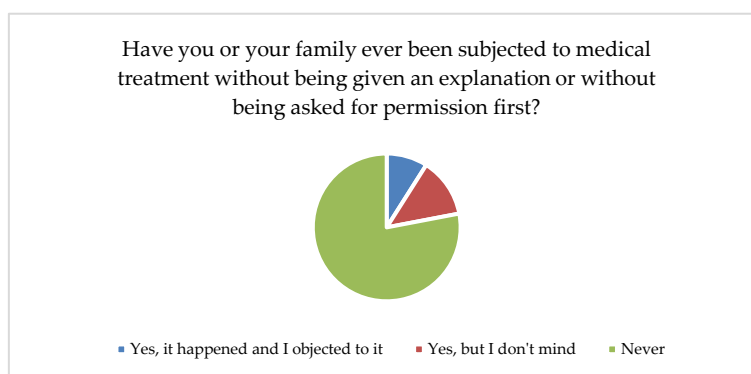


Figure 4. Experience of undergoing medical procedures without explanation or consent
(Source: Research conducted personally through google form with 100 respondents)

A total of 78% (seventy-eight percent) or 78 people stated that the respondents or their families had never experienced medical treatment without prior explanation or permission from the doctor. However, 13% (thirteen percent) or 13 people had experienced medical treatment without permission but the respondents did not object, while 9% (nine percent) or 9 other people objected when experiencing medical treatment without permission and without prior explanation.

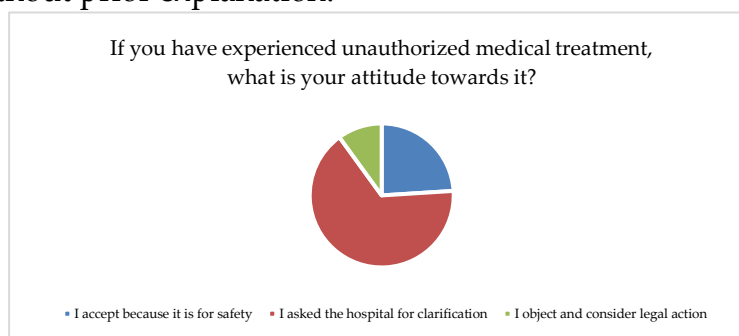


Figure 5. Attitude toward unauthorized medical treatment

(Source: Research conducted personally through google form with 100 respondents)

Among respondents who had experienced unauthorized medical treatment, 66% (sixty-six percent) or 66 people chose to ask and seek clarification from the hospital when experiencing unauthorized medical treatment. Meanwhile, 24% (twenty-four percent) or 24 people accepted because they considered the unauthorized medical treatment was done for safety. Meanwhile, 10% (ten percent) or 10 people objected and considered legal action.

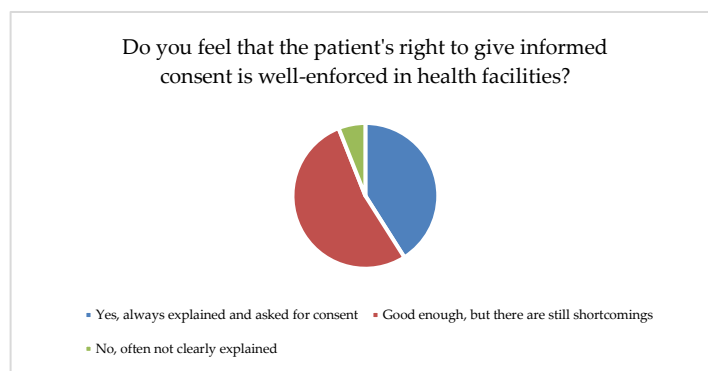


Figure 6. Enforcement of patient's right to consent to medical treatment

(Source: Research conducted personally through google form with 100 respondents)

In terms of enforcing the patient's right to give consent before medical treatment, 53% (fifty-three percent) or 53 people stated that health facilities were good enough but there were still shortcomings. Meanwhile, 41% (forty-one percent) or 41 people considered that patients' rights were always well enforced, and 6% (six percent) or 6 people felt that often the consent was not clearly explained.

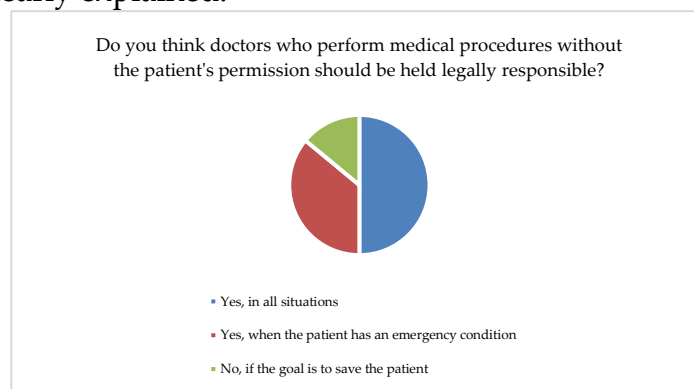


Figure 7. Legal liability of doctors for unauthorized medical treatment

(Source: Research conducted personally through google form with 100 respondents)

Regarding the legal responsibility of doctors who perform medical actions without the patient's permission, 50% (fifty percent) or 50 people argue that doctors should be responsible in all situations. A total of 36% (thirty-six percent) or 36 people argue that doctors should be responsible if the patient's condition is increasingly emergency, while 14% (fourteen percent) or 14 people state that doctors do not need to be responsible if the goal is to save the patient.

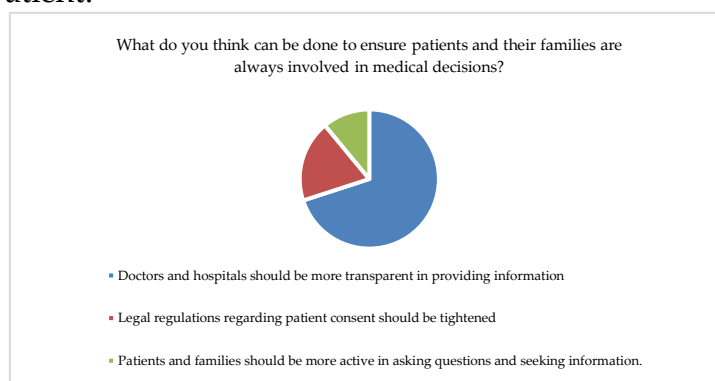


Figure 8. Efforts to involve patients and families in medical decisions

(Source: Research conducted personally through google form with 100 respondents)

To ensure that patients and their families are always involved in medical decisions, 70% (seventy percent) or 70 people suggested that doctors and hospitals should be more transparent in providing information. A total of 19% (nineteen percent) or 19 people thought that legal regulations regarding patient consent should be tightened, while 11% (eleven percent) or 11 people stated that patients and families should be more active in asking questions and seeking information.

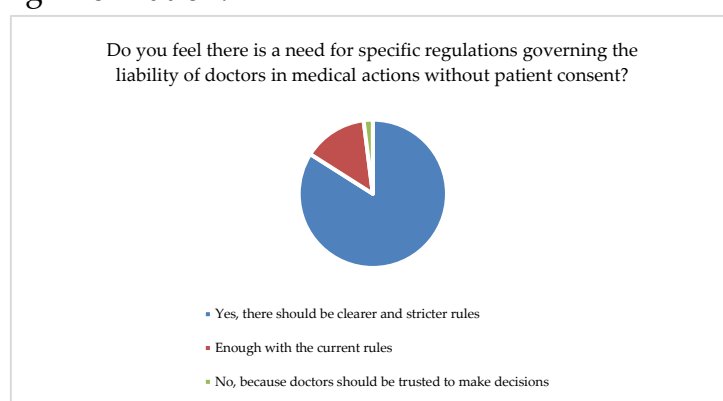


Figure 9. The need for specific regulations on doctors' liability

(Source: Research conducted personally through google form with 100 respondents)

Finally, regarding the need for specific regulations on the responsibility of doctors in medical actions without patient consent, 65% (sixty-five percent) or 65 people stated that clearer and stricter rules are needed. A total of 25% (twenty-five percent) or 25 people felt that the current rules were sufficient, while 10% (ten percent) or 10 people argued that doctors should be trusted in making decisions without the need for additional regulations.

The results show that the public still has mixed views on unauthorized medical treatment. The majority of respondents understand the importance of a doctor's permission before medical treatment is performed, but in emergency situations, there are still differences of opinion on whether doctors can act without family consent. This reflects the need for further education on patient rights and legal procedures governing medical practice in Indonesia. In addition, respondents' experiences with unauthorized medical treatment showed that most had not experienced this, but some had experienced it and objected.

Respondents considered that health facilities have generally implemented the principle of patient consent, although there are still shortcomings in the delivery of information. The majority of the public supports stricter policies to ensure patients' rights are protected, both through clearer regulations and increased medical literacy among the public. Trust in doctors remains high, but people also want clearer accountability mechanisms in cases of unauthorized medical treatment. However, in Indonesia itself, the concept of *zaakwaarneming* is still debated among the public, especially in its application in the medical field. Although this principle aims to act in the interests of others without any actual order or consent, its application must still consider the applicable legal aspects. In medical practice, a doctor's actions without the consent of the patient or family can pose ethical and legal dilemmas, especially in relation to the patient's right to autonomy and the limits of the doctor's professional responsibility. Therefore, more specific regulations are

needed that set limits and legal responsibilities for doctors who perform medical actions without permission, so that the balance between saving patients and protecting legal rights is maintained.

Consequences and Legal Settlements that can arise against Doctors who treat patients without permission based on the Concept of Zaakwarneming

In the medical world, the consent of the patient or his family or what is commonly called informed consent is fundamental before the doctor takes medical action (Dwi Sandry Resky Dzulhizza, Darwis Anatami, 2024). However, in emergency conditions, doctors are often faced with ethical and legal dilemmas when they have to act quickly to save the patient's life without obtaining explicit consent, either from the patient himself or the patient's family (AK Wisnu Baroto SP, 2023). The concept of *zaakwarneming*, which is regulated in Article 1354 of the Civil Code, allows a person to act in the interest of another party without power of attorney, especially in emergencies. In the medical context, the concept of *zaakwarneming* also plays a major role, as doctors can act on the principle of making decisions without the patient's or family's permission in certain situations.

Although the concept of *zaakwarneming* provides a legal basis for doctors to perform medical actions without permission in emergency conditions, its application still has risks and legal consequences that need to be considered. These risks and consequences arise because medical actions without the consent of the patient or their family can have legal consequences in various aspects (Syamsul Bachri, 2024). In general, these legal aspects include civil law, criminal law, as well as administrative law and professional discipline. Risks and Legal Consequences that can arise When a doctor performs unauthorized medical action in an emergency condition, it will affect various aspects (Dongan Butar-Butar, 2024), namely In terms of civil law, patients or their families can file a lawsuit for Unlawful Acts (PMH) if they feel harmed due to medical actions carried out without permission. This is in accordance with Article 1365 of the Civil Code, which states that any act that causes harm to another person is obliged to provide compensation. An example of a case that has occurred is the amputation of a patient's leg without consent at Mitra Sejati General Hospital. In this case, the patient's family sued the doctor on the grounds of violation of patient rights and lack of transparency in the medical procedures carried out. In addition, if the patient suffers a loss as a result of the medical action, the patient or family can sue for compensation. The losses in question include both material aspects, such as additional costs of treatment and care, as well as immaterial aspects, such as psychological trauma and loss of quality of life.

In terms of criminal law, a doctor can be charged with malpractice if his negligence causes injury, disability, or even death of the patient. In accordance with Article 360 of the Criminal Code, a doctor can be convicted if proven to have committed negligence that resulted in someone's injury or death (Alfi Amaliah, Ardan Wirabuana, 2024). If the doctor's actions are considered intentional, then he can be charged with Article 351 of the Criminal Code on persecution resulting in serious injury. In addition, there are also provisions regarding violations of the Health Law, where in accordance with Law No. 36 of 2009

concerning Health and Law No. 29 of 2004 concerning Medical Practice, every medical action must obtain the consent of the patient or his family, except in emergencies. If a doctor violates this provision, he or she may be subject to administrative sanctions, revocation of a license to practice, or even criminal charges if there are elements of gross negligence or intentional harm to the patient.

Meanwhile, from the aspect of administrative law and professional discipline, doctors who are proven to have violated the code of ethics or medical service standards may be subject to sanctions from the Indonesian Medical Discipline Honor Council (MKDKI). These sanctions can be in the form of reprimands, practice restrictions, and revocation of practice licenses. In addition, legal responsibility is not only imposed on individual doctors, but can also involve the hospital as the institution that oversees it. Therefore, the patient's family has the right to file a claim against the hospital if it is deemed negligent in ensuring service procedures are in accordance with applicable medical and legal standards. If proven to have failed to carry out these service standards, the hospital may face legal and administrative sanctions.

To avoid or overcome the risks and legal consequences of medical actions without the patient's consent, there are several steps that can be taken by doctors and hospitals. One of the basic defenses that can be used in emergency situations is the concept of *zaakwarneming*, where the doctor acts on behalf of the patient's interests without prior consent. In this condition, doctors must be able to prove that the actions taken are aimed at saving the patient's life and are in accordance with applicable medical standards. As a form of accountability, supporting evidence such as medical records, consultation results with the medical team, and testimony from other medical personnel can be submitted in court to strengthen the defense. In addition, the implementation of clear Standard Operating Procedures (SOPs) is also an important step in reducing legal risks. Hospitals must have SOPs that specifically regulate medical procedures in emergency conditions, including steps that must be taken before the action is taken (Galih Putra Wijaya, M Catur Rizki, 2025). Good documentation of every procedure carried out, including efforts to contact the patient's family before the action is taken, can be a strong defense tool in the event of a lawsuit in the future.

In addition, increased transparency and education to patients also plays a role in reducing the potential for legal disputes (Prima Ivan Ricky Manurung, Sulyaprilawati Battri Siahaan, 2025). Doctors and hospitals need to be more open in conveying information to patients and their families about possible medical actions that will be taken in an emergency (Sinaga, 2024). Education about patient rights and legal procedures that apply in emergencies can help improve public understanding and reduce misunderstandings that can lead to lawsuits. Furthermore, regulatory reforms are also needed regarding the concept of *zaakwarneming* in the medical world so that its application is clearer and does not conflict with the rights of patients. More specific regulations are needed to ensure that doctors who act in emergency situations are not automatically deemed to have violated the law. Therefore, firmer provisions are needed regarding the limitations of doctors' responsibilities in emergency conditions, so that there is no legal interpretation that can

harm both doctors and patients. With these steps, it is hoped that legal settlements in medical practice can run more fairly, both for medical personnel and patients, and create a more transparent and professional health service system. The application of *zaakwarneming* in the medical world provides a legal basis for doctors to perform medical actions without permission in emergency conditions. However, there are still legal consequences that can arise, both in civil, criminal, and administrative aspects. Therefore, legal settlements must be carried out with an approach that prioritizes patient protection while ensuring that doctors are not caught in legal problems in carrying out their duties. With these various legal provisions, it is hoped that the practice of medicine can run more transparently and accountably, so that the rights of patients are protected and the quality of health services is maintained.

Conclusion

The application of the concept of *zaakwarneming* in the medical world provides a legal basis for doctors to perform medical actions without consent in emergency situations. This concept allows doctors to act in the interests of patients who cannot give consent, such as in an unconscious state or when the family cannot be contacted. Despite its life-saving purpose, its application poses legal and ethical dilemmas, especially regarding the patient's right to autonomy. Legally, unauthorised medical treatment can have civil, criminal and administrative consequences. Civilly, the patient or family can sue on the basis of unlawful acts. Criminally, doctors can be charged with negligence or malpractice. On the administrative side, ethical violations can lead to sanctions by MKDKI. The survey shows that the public understands the importance of medical consent, but there are different views on unauthorised action in emergency conditions. Some are in favour of patient safety, while others want stricter rules. As a solution, clearer regulations on the limits and responsibilities of doctors, more detailed SOPs, and public education on rights and obligations in medical services are needed to minimise potential legal disputes.

References

- Adnan, C., Saraswati, R., & Retnaningsih, C. (2022). Application of Aspects of Consent in Medical Procedures (Informed Consent) As a Form of Consensualism Principle. *SOEPRA : Jurnal Hukum Kesehatan*, 8(2), 234–250. <https://doi.org/10.24167/shk.v8i2.5164>
- Agelika.S, M., & Gunawan Widjaja. (2022). Persetujuan Tindakan Medis : Apa Yang Harus Disampaikan? *Jurnal Medika Utama*, 3(2), 1947–1968. <https://jurnalmedikahutama.com/index.php/JMH/article/view/394>
- AK Wisnu Baroto SP, Y. A. M. (2023). Presumed Consent Atas Tindakan Medis Berisiko Tinggi Pada Kegawatdaruratan : Perspektif Uu Nomor 17 Tahun 2023. *Jurnal Hukum Dan Etika Kesehatan*, 3(2), 67–81. <https://doi.org/10.30649/jhek.v3i2.131>
- Alfi Amaliah, Ardan Wirabuana, D. A. (2024). Perlindungan Hukum Bagi Tenaga Kesehatan Berdasarkan Perjanjian Terapeutik. *Prosiding Masyarakat Hukum Kesehatan Indonesia*, 1(1), 30–42.

- Aprita, S., & Wulandari, M. (2023). *Hukum Perikatan*. Penerbit Kencana.
- Arthanti, W. B., Rusdi, M. S., & Yuliwulandari, R. (2024). *Etika Kedokteran dengan Hukum Kesehatan* (I. Sa'diyah (ed.); Cetakan 1). Thalibul Ilmi Publishing & Education.
- Dongan Butar-Butar, H. Y. (2024). Sanksi Hukum Tindak Pidana Malpraktik Dokter Menurut Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan. *Jurnal Locus Penelitian Dan Pengabdian*, 3(3), 318–329. <https://doi.org/10.58344/locus.v3i4.2568>
- Dwi Sandry Resky Dzulhizza, Darwis Anatami, R. N. (2024). Aspek Yuridis dalam Pertanggungjawaban Hukum Profesi Dokter pada Perspektif Pelayanan Informed Consent Untuk Mewujudkan Perlindungan Hukum. *Jurnal Kajian Ilmiah*, 23(1), 43–50. <https://doi.org/10.31599/ns23rd60>
- Elizar, S. P., Arief, M. T., & Satia, R. A. (2023). Etika Kesehatan Dalam Upaya Persetujuan Tindakan Medis (Inform Consent) Dalam Pelayanan Kesehatan. *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humanioral*, 1(2), 1–17. <https://doi.org/10.11111/nusantara.xxxxxxx>
- Galih Putra Wijaya, M Catur Rizki, S. (2025). Pertanggungjawaban Hukum terhadap Perawat yang Melakukan Tindakan Medis di Luar Kewenangannya. *Jurnal Ilmu Hukum, Sosial Dan Humaniora : Kultura*, 3(1), 272–288.
- Kamilah, A., & Majid, R. (2021). Health Services Controversy in Emergency Conditions Seen Through the Zaakwaarneming Approach. *Journal Atlantic Press*, 592(Iclhr), 315–321. <https://doi.org/10.2991/assehr.k.211112.040>
- Karwur, C. E. T., Lumunon, T. H. ., & Tinangon, E. N. (2024). Pemenuhan Hak Memperoleh Kesehatan Ditinjau dari Pasal 28 H Ayat 1 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. *Jurnal Fakultas Hukum Unsrat Lex Privatum*, 13(02), 1–12.
- Kasiman, Azhar, A. F., & Rizka. (2023). *Tinjauan Hukum Informed Consent Terhadap Perlindungan Hukum Dokter Dalam Pelayanan Kesehatan*. Universitas Muhammadiyah Surakarta.
- Kumalasari Eri Puji. (2022). Informed Consent Dalam Penanganan Pasien Gawat Darurat Di Puskesmas Kota Kediri Wilayah Selatan. *SINAR Jurnal Kebidanan Vol 04 No 1 Maret 2022*, 04(01), 1–8.
- Nugraha, M. A., R.Wicaksana, A., Rafli, M. H., Ferdiansyah, D. G., & Muhammad.S, H. (2023). Perkembangan Zaakwarneming di Indonesia Dan Implementasinya Di Era Digitalisasi. *Dplr*, 10(2), 142–154. <https://ejournal2.undip.ac.id/index.php/dplr/article/view/21058>
- Prima Ivan Ricky Manurung, Sulyaprilawati Battri Siahaan, A. R. M. S. (2025). Persetujuan Tindakan Medis Dalam Anestesiologi dan Perawatan Intensif Tinjauan Teori Hukum dan Hak Pasien. *Jurnal Hukum, Administrasi Publik Dan Negara*, 2(2), 13–25.
- Purba, H. (2022). *Hukum Perikatan dan Perjanjian* (Tarmizi (ed.); Cetakan 1). Sinar Grafika.
- Rahayu, A., Rokhmat, Silitonga, V. D., Nasser, M., & Suswantoro, T. A. (2024). Payung Hukum Terhadap Profesi Dokter Dalam Menghadapi Perselisihan Medis. *Jurnal Cahaya Mandalika*, 3(1), 784–810. <https://doi.org/https://doi.org/10.36312/jcm.v3i1.3687>
- Ramadhan, M. S., & Nugraha, A. (2021). Tindakan Medis Dokter terhadap Pasien Tanpa Informed Consent Dalam Perspektif Hukum Progresif. *Simbur Cahaya*, 28(1), 1–14.

<https://doi.org/10.28946/sc.v28i2.1199>

- Rezki Pebrina, A., Najwan, J., & Alissa, E. (2022). Fungsi Penerapan Informed Consent sebagai Persetujuan pada Perjanjian Terapeutik. *Zaaken: Journal of Civil and Business Law*, 3(3), 468–486. <https://doi.org/10.22437/zaaken.v3i3.18966>
- Rosa, M. C. (2025). *Diduga Malapraktik Amputasi Kaki Pasien Tanpa Izin, RSUD Mitra Sejati: JS Miliki Riwayat Diabetes Mellitus*. Kompas.Com.
- Setiawan, I. K. O. (2021). *Hukum Perikatan*. Sinar Grafika.
- Sinaga, H. (2024). Pengaturan Perlindungan Hukum Bagi Dokter Sesuai Undang-Undang Nomor 17 Tahun 2023. *Jurnal Review Pendidikan Dan Pengajaran*, 7(1), 1125–1130.
- Sony, E., Rahayu, A. H., Yakub, Y., Bertholomeus, Cristison, G., Fitri.Z, Yenny, Sukm, M., Hasibuan, R. F., Yustrisia, L., M, A. N. F., Syahrin, M. A., Sushanty, V. R., Sony, R. U. E., Rahayu, A. H., Yakub, Y., Bertholomeus, G. C., Fitri.Z, Y., Sukma, M., ... Usman, R. (2024). *Hukum Kesehatan* (R. T. A. Bhakti (ed.)). CV Gita Lentera.
- Syamsul Bachri. (2024). Implikasi Hukum Atas Isu Etika Dalam Praktik Kedokteran. *Jurnal Berita Kesehatan*, 17(1), 86–97.
- Widjaja, N. (2024). *Kedudukan Perjanjian Terapeutik dan Informed Consent dalam KUH Perdata*. Hukum Online.
- Widodo, N., Putera, A. P., & Nugraheni, N. (2023). Tindakan Gawat Darurat Oleh Dokter Akibat Kecelakaan Pada Pasien Yang Tidak Kompeten Dan Tanpa Keluarga. *Collegium Studiosum Journal*, 6(1), 350–359. <https://doi.org/https://doi.org/10.56301/csj.v6i1.942>