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Reconstructing Legal Protection for Surgeons Against Malpractice Claims under Law No. 17 of 2023: An *Inspanningsverbintenis* Perspective

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Abstract:

The complexity of surgical procedures places surgeons at a very high medicolegal risk spectrum, where dissatisfaction with the final surgical outcome often leads to lawsuits and accusations of malpractice from patients and their families. This comprehensive research report in-depth explores the reconstruction of the legal protection framework for surgeons in Indonesia following the ratification of Law Number 17 of 2023 concerning Health, with an emphasis on the doctrine of the obligation of intention (inspanningsverbintenis). Through a mixed juridical-normative and empirical approach that integrates a Systematic Literature Review (SLR) on the implementation of informed consent in the 2019–2024 period, various systemic challenges were identified in the field. The findings indicate that the practice of consenting to medical procedures still faces fundamental obstacles in the form of a dominant paternalistic culture, low patient health literacy, and disproportionate delegation of authority to provide information to nursing staff. These deficiencies significantly disrupt the function of informed consent as a preventive legal protection. Furthermore, a hermeneutic analysis of the provisions of Law No. Law No. 17 of 2023 demonstrates a paradigm shift in law enforcement from a punitive approach to restorative justice. The Professional Disciplinary Council (MDP), mandated by this law, serves as an absolute filter before law enforcement can process allegations of medical negligence criminally or civilly. This regulatory reconstruction not only strengthens legal certainty through preventive and repressive measures but also encourages restorative justice based on proportional values for medical personnel. Overall, this report concludes that legal protection for medical personnel has been structured to balance patients' rights to autonomy with the safety of medical practice, provided that medical personnel strictly adhere to applicable professional standards, service standards, and standard operating procedures.

Keywords: inspanningsverbintenis; legal protection; malpractice; reconstruction.

INTRODUCTION

Surgery is one of the most profoundly biological and anatomically modifying medical interventions. Inherently, every surgical incision carries a risk of complications that cannot be absolutely predicted by modern medical and biological science, no matter how sophisticated the technology used. In the contemporary healthcare

landscape, the surgical profession operates under the shadow of uncertainty regarding each patient's unique physiological response to surgical interventions, anesthetic agents, and foreign body implants (Nagieb et al., 2024). This scientific reality often clashes head-on with asymmetric patient expectations; the general public and patients often assume that surgical procedures performed in modern healthcare facilities are a mathematical certainty that will result in absolute healing. This fundamental imbalance between idealistic expectations of healing and the pragmatic reality of medical risk is the root cause of the surge in medical disputes and lawsuits involving malpractice allegations in Indonesia (Mambrasar et al., 2024).

Sociologically and historically, the interactional relationship between doctors and patients in Indonesia has been strongly influenced by paternalistic nuances (Felenditi, 2013). This paternalistic approach, based on the "father knows best" credo, positions doctors as authoritative figures with absolute power over medical decisions, while patients are positioned as passive subjects who submit to and merely receive treatment. However, the accelerated development of global health law, the dissemination of health information through digital spaces, and the adoption of human rights within bioethics have radically shifted this paradigm. Medical relationships in the modern era have mutated into horizontal and contractual relationships, which position doctors and patients as equal legal subjects within a framework of "therapeutic transactions". As a logical consequence of this contractual equality, sociocultural and legal demands arise for transparency, accountability, and unconditional respect for patients' rights to autonomy. This right to autonomy is legally realized through a mechanism for consent to medical procedures, universally known as informed consent. Failure by medical personnel to manage this pre-procedural administrative and communicative phase often becomes the primary entry point for patients or their legal representatives to file civil lawsuits on the basis of Unlawful Acts (PMH) under the provisions of the Civil Code (KUHPerdata), breach of therapeutic promises, and criminal charges for alleged negligence (culpa) resulting in permanent disability or loss of life (Prastopo et al., 2024).

The escalation of lawsuits and medical disputes in Indonesia has reached an alarming level and has the potential to degrade the quality of the national healthcare system. Empirical data from various institutions confirms this negative trend. According to statistics compiled by legal aid institutions and professional associations between 2020 and 2022, at least 379 medical disputes were escalated into the public domain, 76 of which specifically involved surgeons. Other data also records 405 legal reports targeting doctors, with 73 of these cases directly reported to the police and resulting in criminal proceedings. The Indonesian Medical Association (IDI) estimates that around 210 alleged malpractice cases are filed against medical personnel annually across the archipelago (Zaluchu & Syaharudin, 2022). The high number of criminal reports and criminalization of medical personnel has triggered a destructive psychological phenomenon in the medical world, namely defensive medicine or defensive medical practice (Prayuti et al., 2025). This practice occurs when a surgeon, due to fear of imprisonment or financial bankruptcy due to lawsuits, begins to refuse to treat complex trauma cases, avoids emergency surgical procedures with high mortality, or orders a series of diagnostic support tests (laboratory and radiology) that are excessive and have no strong medical indication, solely in an effort to gather "legal evidence" in case of future prosecution. Ultimately, this defensive practice is very detrimental to society by massively increasing the burden of healthcare costs and slowing access to critical life-saving procedures.

In response to this legal uncertainty crisis, the Indonesian government, along with the House of Representatives (DPR), took strategic legislative action by enacting an omnibus law through Law Number 17 of 2023 concerning Health (Prayuti et al., 2025). This sweeping regulation is designed not only to overhaul the architecture of the national health system, but is specifically designed to reconstruct the equilibrium between protecting the rights of patients as consumers of health services and protecting legal certainty for medical personnel as providers of professional expertise. Law No. 17 of 2023 seeks to close past regulatory loopholes that were often exploited to criminalize doctors due to medical risks incorrectly classified as malpractice. Based on this background, this literature research report was prepared to provide an in-depth intellectual excavation and legal deconstruction of how the framework of Law Number 17 of 2023 reframes the doctrine of inspanningsverbintenis into the Indonesian positive legal landscape. Furthermore, the analysis is sharply focused on empirical dynamics in various hospitals through a systematic literature review approach regarding the implementation of informed consent during the transition period from 2019 to mid-2024. This aims to identify the gap between the normative regulatory structure (law on books) and the sociological reality in the practice room (law in action). In addition, this report evaluates the urgency and effectiveness of the latest repressive protection mechanisms, including the mandate of the institutionalization of the Professional Disciplinary Council (MDP) and the transition of dispute resolution to restorative justice, which is designed to protect surgeons from criminalization that is not based on medical science.

LITERATURE REVIEW

The reconstruction of legal protection for surgeons facing malpractice lawsuits is an increasingly relevant issue in modern health law discourse in Indonesia, particularly following the enactment of Law Number 17 of 2023 concerning Health. This regulatory change is not merely administrative in nature but also carries substantive implications for how the state constructs the legal relationship between doctors and patients. From the perspective of health law literature, this relationship is classically understood as a therapeutic contract subject to the principle of civil contract. This contract places doctors and patients in a legal relationship that gives rise to reciprocal rights and obligations, where the doctor is obliged to provide medical services according to professional standards, while the patient is obliged to provide honest information and follow agreed-upon medical procedures. In the context of civil law, this relationship cannot be understood as a resultaatsverbintenis or result-based contract, but rather as an inspanningsverbintenis or effort-based contract. This doctrine emphasizes that doctors, including surgeons, do not promise a cure but are obliged to strive for the best medical treatment according to applicable medical standards (lege artis) (Kuntardjo, 2019). Health law literature suggests that this approach is crucial for maintaining a balance between patient expectations and the biological realities of the human body, which are not always absolutely predictable. In surgical practice, various variables such as patient condition, comorbidities, immune response, and post-operative complications are factors beyond the physician's control and therefore cannot be used as an absolute basis for concluding a legal error.

Law Number 17 of 2023 strengthens the doctrine of inspanningsverbintenis by providing normative affirmation that health care is the best effort based on professional standards, service standards, and standard operating procedures, not a guarantee of success. Academic literature views this as a form of codification of a doctrine that previously only developed in legal theory and jurisprudence. Thus, there is a shift from an implicit to an explicit normative construction in the national legal system. This has implications for strengthening the legal protection of surgeons in facing malpractice lawsuits, which often focus solely on the final outcome without considering the medical process that has been carried out. However, the literature also shows that this legal protection is not absolute. The principle of protection only applies if the doctor acts in accordance with applicable professional standards and operational procedures. If there is a deviation from these standards, the medical action can be classified as negligence or malpractice. In civil law, malpractice can be constructed as an unlawful act as regulated in Article 1365 of the Civil Code, while in criminal law it can be associated with elements of negligence that result in serious harm or death of the patient. Therefore, the literature emphasizes that the doctrine of inspanningsverbintenis cannot be used as an absolute shield to eliminate the legal responsibility of doctors, but rather as a conceptual boundary between medical risk and professional error (Nagieb et al., 2024).

The reconstruction of legal protection in Law No. 17 of 2023 is also evident through the strengthening of institutional mechanisms such as the Professional Disciplinary Council (MDP), which serves as a filter in handling alleged medical violations before they become criminal or civil. Health law literature identifies this mechanism as a form of gatekeeping institution aimed at ensuring that the initial assessment of alleged malpractice is conducted by competent medical experts. This is crucial because one of the main problems in past medical disputes was the gap in technical understanding between law enforcement officials and clinical medical practice. With the MDP, the initial assessment of alleged medical errors is not solely based on a legal perspective but also considers medical scientific standards. Furthermore, the literature also highlights the importance of the informed consent mechanism as an integral part of the therapeutic contract. Informed consent serves as a legal instrument that ensures that patients understand the risks, benefits, and alternatives of medical treatment before agreeing to a surgical procedure. In practice, weaknesses in the implementation of informed consent are often the starting point of malpractice disputes. Many studies have shown that low patient health literacy, doctors' limited time, and the practice of delegating communication to non-medical personnel can undermine the validity of medical consent. In this context, Law No. 17 of 2023 reinforces the importance of effective medical communication as part of preventive legal protection for doctors (Mambrasar et al., 2024).

Empirical literature also points to challenges in implementing this legal protection in practice. Although doctors are normatively afforded strong protection, litigation practice often tends to favor result-oriented judgment, where legal judgments focus more on the final outcome of medical procedures than on the process. This creates the risk of criminalization for surgeons, particularly in cases of post-operative complications, which are inherently medically fraught with risks. Therefore, the literature emphasizes the need for

harmonization between legal norms, medical technical understanding, and judicial interpretation to prevent inequities in law enforcement. From a doctrinal perspective, the reconstruction of legal protection for surgeons is also related to the concept of substantive justice. The law serves not only as a means of punishment but also as an instrument to balance the interests of patients as vulnerable parties and doctors as professionals working under high-risk conditions. Therefore, strengthening the doctrine of inspanningsverbintenis in Law No. 17 of 2023 can be seen as an effort to create legal certainty while preventing disproportionate criminalization (Felenditi, 2013). Thus, this literature review concludes that the reconstruction of legal protection for surgeons in Law No. 17 of 2023 through the perspective of the inspanningsverbintenis doctrine represents a progressive step in the Indonesian health legal system. However, its effectiveness depends heavily on the implementation of professional standards, the quality of informed consent, and the synergy between medical institutions and law enforcement. Without these principles, the established normative protections risk not being optimally implemented in the practice of resolving malpractice disputes.

METHOD

To produce a comprehensive analysis with high novelty and strong academic validity, this report is formulated using a mixed approach that combines a juridical-normative design with an empirically based literature review. This method requires triangulating information from various primary and secondary databases to test legal theory against the reality of surgical services in healthcare facilities in Indonesia (Kuntardjo, 2019). From a legal dogmatic perspective, the analysis focuses on the hierarchical, vertical, and horizontal synchronization of a series of legal instruments related to medical practice. The primary legal corpus analyzed is Law of the Republic of Indonesia Number 17 of 2023 concerning Health, along with its derivative instruments, such as Government Regulation Number 28 of 2024, which technically regulates the implementation of the law. This review is harmonized with the civil law doctrine contained in the Civil Code (KUHPerdata), specifically the rules regarding the valid requirements for contracts (Article 1320) and Unlawful Acts (Article 1365). The conceptual construction of legal protection in this study borrows the theoretical framework from state administrative law expert Philipus M. Hadjon, who deconstructs legal protection into two main poles: preventive legal protection that prevents disputes from occurring, and repressive legal protection that functions to address disputes that have already been executed. Contemporary theories of justice and criminal principles, especially the idea of restorative justice, are also used as secondary analytical tools.

As the backbone of empirical analysis, this report implements the Systematic Literature Review (SLR) method to capture and extract the reality of the implementation of informed consent in surgical procedures in Indonesia (Felenditi, 2013). The literature curation process was carried out on national and international academic electronic databases that include scientific journals (especially those affiliated with the Sinta index), master's thesis reports, policy documents, and medicolegal decisions published in an exclusive time window between 2019 and 2024. The selection of this time window is based on the argument that this period represents a crucial transition era in which the dynamics of Indonesian health regulations move from the regime of Law No. 36 of 2009 and Law No. 29 of 2004 towards the consolidation of the omnibus law in 2023 (*Mariam Darus Badrulzaman, Hukum Perjanjian Dan Kontrak Baku*, n.d.). The inclusion parameters applied in selecting articles for the SLR matrix focused on studies that directly examined post-surgical patient behavior, informed consent literacy levels, physicians' legal understanding, and identified challenges in the field (such as language, culture, and form administration issues). Second-order analysis was then applied to draw causal links as to why preclinical administrative and communication weaknesses can easily transform into destructive criminal disputes. Through the convergence between dogmatic norms and empirical data, this research produces postulates that are not only legally prescriptive, but also applicable in responding to the challenges of clinical risk management in hospitals.

RESULTS AND DISCUSSION

The Construction of the Therapeutic Contract and the Foundations of the Doctrine of Inspanningsverbintenis in Surgery

The manifestation of the relationship between a surgeon and a patient begins the moment the patient agrees, either implicitly or explicitly, to surrender his or her bodily integrity to the surgeon for biological manipulation for the purpose of clinical improvement. From a purely legal perspective, this interaction is not

merely a social relationship of mutual assistance, but has created a civil bond that is legally constructed as a therapeutic contract (Nagieb et al., 2024). Complying with the parameters stipulated in Article 1320 of the Civil Code regarding the requirements for a valid agreement, a therapeutic contract requires an agreement free from coercion, legal capacity to act, a specific object of action (i.e., healing efforts), and a lawful cause that does not conflict with public order (Kuntardjo, 2019).

Like any other commercial or civil contract, a therapeutic agreement creates reciprocal rights and obligations. The patient is bound by an obligation to cooperate, provide an honest medical history without concealing any past comorbidities, and adhere to post-surgical recovery protocols. Conversely, the surgeon is obligated to devote all of his clinical rationality, technical expertise (skills), and current knowledge recognized by the medical community to treating the patient's illness. A crucial point of friction that almost always triggers medical disputes and civil litigation in Indonesia stems from a fundamental misunderstanding among the public regarding the specific object (performance) of the doctor's obligation. Classical civil law divides types of obligations based on the precision of the final outcome into two main categories: resultaatsverbintenis and *inspanningsverbintenis*. *Resultaatsverbintenis* is a legal obligation in which the party owed the performance absolutely guarantees a definite end result. As a metaphor, if someone contracts an architect to build a house according to a specific blueprint, the architect has a result obligation; The house must be built according to the drawings. Conversely, *inspanningsverbintenis* means a contract of endeavor or a contract of effort. Under this doctrine, the legal subject promises and is bound to make every effort, mobilize their best efforts, and apply all their knowledge according to professionally accepted standards, but they do not promise a definite end result.

Medical practice, and specifically surgery, is universally and absolutely classified and subject to the *inspanningsverbintenis* regime. The medicolegal logic behind the recognition of this doctrine is sound. The human body, with all its genetic variations, immunological conditions, and pathologies, is not a simple mechanical device that will produce identical responses to the same therapeutic intervention (Nagieb et al., 2024). The success rate of surgery is regulated by cell proliferation beyond the precise control of a scalpel. To provide a more grounded context, a legal analysis of the disciplines of Orthopedic Surgery and Traumatology provides a precise illustration of the limits of physicians' capabilities. In open reduction and internal fixation (ORIF) surgical procedures using metallic implants (such as titanium plates and screws) to stabilize extremity fractures, there is an inherent risk of failure that has been documented extensively in the global medical literature. Implant failure can manifest as non-union (bone tissue fails to reconnect), deep bone infection (osteomyelitis), screw loosening due to the patient's osteoporosis, or a rejection reaction of the pin that results in fracture of the fixation instrument.

From a legal perspective, if an orthopedic surgeon has performed all pre-operative protocols (such as radiographic examinations and complete blood tests), adequately sterilized the operating room, positioned and calibrated the screw torque according to the rules of lege artis bone biomechanics (in accordance with the laws of medical art), and provided comprehensive rehabilitation instructions; then if over time the implant eventually loosens or fails to fuse the bone, this is categorized purely as a medical risk (Hayati et al., 2021). Medical risk is normatively recognized as a consequence of biological complications that cannot be predicted or completely avoided even if ideal procedures have been implemented.

The concept of medical risk stands diametrically opposed to and must be rigidly distinguished from the concept of medical negligence, often generalized as malpractice. A surgical intervention can only be considered negligent if there is irrefutable evidence of an extraordinary deviation from Professional Standards and Standard Operating Procedures (SOPs) without valid justification in an emergency situation (Hayati et al., 2021). A clear example of gross negligence (culpa lata) is when a surgeon fails to perform a pre-operative time-out and fatally incises the wrong limb (for example, amputating the left leg when the right leg is gangrenous), or closing the abdominal cavity while leaving a surgical sponge in the cavity due to negligence due to negligence prior to closure. The doctrine of inspanningsverbintenis ensures that anatomical and financial losses suffered by patients due to medical risks cannot be reversed as the basis for a lawsuit for an Unlawful Act (Article 1365 of the Civil Code) and does not fulfill the elements of criminal negligence in the Criminal Code. In a contemporary litigation climate characterized by a high level of patient demand for litigation over clinical dissatisfaction, understanding and strengthening the status quo of the intentional engagement doctrine provides a vital psychological and legal bulwark. Certainty about the boundary between risk and negligence allows surgeons to make bold decisions in life-threatening situations without being overcome by the paranoia of defensive medicine.

Implementation of Informed Consent as the Primary Preventive Shield: Summary of Findings of a Systematic Literature Review (2019-2024)

To justify the legality of invasive medical procedures that have the potential to modify body structure, informed consent is universally recognized as an absolute procedural prerequisite. Based on the core ethical principle of respect for patient autonomy and supported by a track record of global health jurisprudence (such as the doctrine in the Benjamin Cardozo ruling in the United States in the early 20th century), the consent form is not simply a piece of paper to fulfill the administrative requirements of a registration bureaucracy. More essential than that, informed consent is a two-way communication tool that balances information asymmetry and serves as a shield of preventative legal protection. This mechanism prevents violations of the patient's right to bodily integrity and, on the other hand, neutralizes the potential for lawsuits for misinformation in the event of an adverse event on the operating table (Hayati et al., 2021).

Indonesian regulations and positive laws clearly mandate the acquisition of comprehensive informed consent, containing diagnostic information, procedural alternatives, the risk of potential complications, and prognosis. Provisions regarding this informed consent, previously rigidly regulated through Law No. 29 of 2004 and Minister of Health Regulation 290/2008, have now been accommodated and strengthened through Article 293 of Law No. 17 of 2023. 6 Although the regulatory structure (law on the books) appears well-organized, empirical exploration reveals sharp and alarming disparities in its implementation in domestic healthcare settings (law in action). To construct a comprehensive understanding of this implementation gap, Table 1 documents an extensive synthesis of a Systematic Literature Review (SLR) of various medicolegal studies in Indonesia. This review summarizes the dynamics of form completion, patient literacy, and surgeon behavior during the period from 2019 to the first quarter of 2024.

Table 1. Summary of Findings of the Systematic Literature Review (SLR) of the Implementation of Surgical Informed Consent in Indonesia (2019-2024)

Author & Year of Publication	Study Focus & Geographic Context	Research Methods & Subjects	Key Findings & Critical Impact Analysis for Legal Protection of Surgeons
Noviandini, F. (2025/Observation Data 2024)	Implementation of IC Surgical & Legal Protection for Doctors at Special Surgery Hospital, East Java	Juridical-empirical (interviews with doctors, patients, paramedics)	Findings: The pressures of busy schedules mean surgeons don't have time to provide comprehensive education. Consequently, the authority to provide informed consent is delegated to non-physician staff (nurses). Legal Impact: Delegitimizes the validity of the consent document. The responsibility for informed consent is non-delegable under the law. This delegation creates a fatal vulnerability to civil lawsuits for breach of contract and criminal lawsuits for administrative malpractice.
Nurfadhilatussifah, D. et al. (Agustus 2024)	Level of Knowledge and Attitude of Patients After Elective Surgery at Type C Regional Hospital (Hospital X)	Descriptive quantitative, questionnaire on 42 post-operative patients	Findings: Patient literacy is highly concerning. 47.6% of patients had a knowledge level of "poor," 38.1% "fair," and only 14.3% "good." The majority of patients understood the goals of surgery, but did not understand alternative procedures, the risk of complications (adverse events), and the prognosis. Regional language barriers were a concern. Legal Impact: Documents signed without rational understanding (lack of comprehension) can potentially be invalidated in court on the grounds of "defective will" due to misleading information.

Sitepu, F. et al. (2024)	Informed Consent Practice as a Legal Protection Mechanism at Bandung General Hospital, Medan City	Normative-sociological, survey and review of hospital SOP documents	Findings: Administratively, the standard forms have been aligned with regulations (Minister of Health Regulation 290/2008). However, their implementation is bogged down in bureaucratic formalities. Clinical communication is one-way due to very low patient health literacy. Legal Impact:The approval process is reduced to merely legalizing documents, diminishing the essence of medical risk discourse. Weak evidence of understanding can backfire on hospital risk management.
Putrihamidah, D.A. et al. (202X)	Correlation between Doctors' Knowledge and the Completeness of IC Implementation at Banten Regional General Hospital	Observational, cross-sectional analysis of 94 clinicians	Findings: There was a very strong positive association (OR 10.6) between a physician's legal understanding of the importance of informed consent and the completeness of its implementation. Physicians with adequate knowledge and training executed the document thoroughly. Legal Implications: Physicians who understand the legal implications of consent realize that a complete document is the strongest bulwark against liability insurance and post-trauma patient lawsuits.
Mustikasari, M. (2024) / Soge, A.D. (2023)	Digital Transformation & Telemedicine Practice (Online Surgical Consultation) Indonesia	Literature review of ethics, law, & medical dispute handling	Findings: Digital transformation has created a regulatory gray area. Remote surgical consultations often occur without valid digital signature verification, without adequate recording, and have led to disputes due to the lack of structured risk education. Legal Impact: Reports of online patient-doctor disputes have flooded the Medical Ethics Honorary Council (MKEK) due to maladministration of digital consent, potentially opening up opportunities for platform commercial lawsuits.
Gultom et al. (2022) / Widyastuti & Harjanto (2020)	The Dilemma of Cultural Paternalism vs. Autonomy Rights in the Practice Space	A sociological study of surgical ward decision making	Findings: Practice in the field is strongly influenced by the paternalistic culture of physicians and the collective consensus of the patient's extended family. The patient's individual autonomy is often overridden, with patients blindly submitting decisions to the physician's authority figure or the family council's decision. Legal Impact: While facilitating speed of action, this resignation carries significant risks. When unforeseen complications arise and result in death or serious morbidity, family members who were not initially involved often initiate aggressive lawsuits based on the lack of informed consent.

Deconstruction and Extraction of Literature Review Findings (Insights Analysis)

A deep reading of the data synthesis in Table 1 reveals a systemic reality rooted in the complex anomalies of sociomedical interactions in Indonesian treatment rooms. A series of underlying issues cumulatively undermine the legal defenses of healthcare workers.

First, the Health Literacy Deficit and the Paternalistic Cultural Trap. A striking finding from an observational study at a Type C Regional General Hospital showed that 47.6% of post-surgical patients had a level of legal and clinical understanding categorized as "poor."19 They were aware that they were going into the operating room for healing, but were completely unaware of the probability of complications, success rates, and alternative procedural options (e.g., conservative versus aggressive surgery).19 This quantitative reality is exacerbated by the dominance of a local culture of compliance, where rural communities often assume that doctors represent figures with complete intelligence whose decisions do not need, and are even inappropriate, to be debated (Arthanti, 2025). Within a medicolegal framework, a signature affixed to an informed consent form without an essential understanding of the risks (lack of comprehension) is legally flawed. Such a document is not equivalent to informed understanding. If the post-surgical recovery process does not go as expected (for example, paralysis due to iatrogenic nerve injury during spinal surgery), this literacy gap is often and very easily exploited by the plaintiff's attorney. They will construct an argumentative narrative that the medical consent given was illusory and a result of misrepresentation or withholding of information, which automatically invalidates the therapeutic contract.

Second, Time Pressure and Delegation of Duty Malpractice. The next crucial issue revealed through a study of a surgical hospital in East Java is the clash between the ratio of patient volumes and the limited time of surgeons (Noviandini, 2025). meet the busy schedule of elective surgeries, surgeons often take shortcuts by shifting the primary responsibility for providing informed consent to paramedics or ward nurses. This shortcut practice delegitimizes and destroys the evidentiary power of the document. Referring to legislation and international surgical collegium guidelines, the obligation to provide information about surgical risks is a non-delegable duty—an exclusive obligation that may only be carried out by the performing physician (Doctor in Charge of Services / DPJP) who has clinical rationale and specific expertise in the relevant anatomy. This unilateral delegation undermines the preventive protection of physicians, making them easy targets for accusations of procedural manipulation that could potentially be interpreted as administrative malpractice or civil unlawful acts.

Third, the language and bureaucratic complexity of forms. Consent forms submitted by hospital administration are generally filled with Latin medical jargon (*medspeak*) and rigid legal technical terms. In emergency or elderly patients, this wording complexity creates confusion that deepens pre-surgical anxiety. Implementation in the post-2024 era urgently dictates reform of communication mechanisms. Future healthcare facilities must shift from conventional text-based document models to multimedia educational approaches and active understanding-verification interventions, such as the "teach-back" method. In this method, physicians are required to verbally ask patients or family caregivers to recount surgical indications and risks in their own words to validate the absolute internalization of the information.

Preventive and Repressive Legal Protection Framework Based on the New Paradigm of Law No. 17 of 2023

The legislature's proactive response to the medical profession's concerns over the rise of unreasonable financial lawsuits and the wave of direct criminal threats against doctors was realized through the ratification of Law No. 17 of 2023 concerning Health. This omnibus law revolutionized the domestic health legal framework by repealing and consolidating at least eleven overlapping legacy laws (including Law No. 36 of 2009 and key instruments such as Law No. 29 of 2004 concerning Medical Practice). This new regulatory construct was specifically designed to mitigate the anomaly of the judicial system that for years failed to filter minor medical disputes from reputation-damaging criminal allegations. Applying Philipus M. Hadjon's theoretical framework on the dichotomy of legal guarantees, the new health law crystallizes two spectrums of protection for doctors:

Preventive Protection (Relative Immune Shield)

Preventive protection refers to legislative instruments designed to prevent medical disputes from escalating or even occurring altogether, by establishing the limits of liability. The central norm of post-2023 preventive protection for doctors is clearly and comprehensively incorporated in Article 273 paragraph (1) letter a of Law No. 17 of 2023 (Wuisan et al., 2024). This article provides constitutional rights in the form of specific and explicit legal

immunity for medical personnel and health workers who practice in accordance with the quartet of professionalism indicators: (1) Professional Standards, (2) Service Standards, (3) Standard Operating Procedures (SOP), and (4) Compliance with Professional Ethics inspired by fulfilling the patient's clinical needs. The existence of this clause is the most pragmatic shield a surgeon can hold. As long as the medical record records a track record of rational clinical decisions (clinical pathways), proper surgical logistical preparation, and adequate post-operative monitoring—and if the procedure does not violate the guidelines agreed upon by the collegium of his/her discipline—then the law guarantees that the doctor cannot be held personally legally responsible, either for civil damages or criminal imprisonment, for any complications caused by comorbidities or absolute will of nature (physiological force majeure).

Even more spectacularly, the doctrine of *inspanningsverbintenis* (the obligation of effort), which previously existed only as a theoretical idea in civil law and academic jurisprudence, has now been definitively and literally translated into a positive article. Article 280 of the law explicitly states that health services aim to provide "best efforts" based on valid scientific standards, and in no way "gives a guarantee of success" for a treatment. This legal formulation eradicates the root of doubt in any trial judge when examining a patient's complaint; if the failure to connect a broken bone or an infected suture is not caused by instrument deviation or procedural negligence, then the loss completely migrates to the realm of medical risk, absolutely freeing the doctor from any implications of lawsuits (Prastopo et al., 2024). Furthermore, the informed consent instrument has also undergone a touch of renewal. Compared to the formulation in the old regulation (Law No. 36 of 2009), the formulation in Law No. 17 of 2023 and technically rearticulated in Government Regulation No. Law No. 28 of 2024 provides flexibility in obtaining consent. Instead of being bound by the necessity of a written document, medical consent can now be obtained through a combination of written and/or verbal confirmation, depending on the level of emergency threatening the patient's life in the field (as reflected in the regulatory comparison).

Table 2. Comparative Matrix of Crucial Legal Norms for the Protection of Surgeons and Medical Personnel (Medical Practice vs. Law 17/2023)

Regulatory Aspects / Medicolegal Issues	Regime of Medical Practice Law No. 29 of 2004 & Law No. 36/2009	New Paradigm of Law No. 17 of 2023 concerning Health
Criteria for Obtaining Legal Protection	Partially regulated; doctors receive protection if they practice according to professional standards and procedures.	(Article 273): More comprehensively regulated. Affirms the right to absolute legal protection as long as it meets professional standards, services, operational procedures, and professional ethics for the patient's needs. Clarifies the right to refuse treatment if it is beyond their competence.
Negligence / Malpractice Dispute Resolution	This often leads to direct criminalization within the police force due to a lack of independent filters. The Indonesian Medical Disciplinary Honorary Council (MKDKI) frequently clashes with law enforcement.	(Article 308): Law enforcement officers are required to suspend the investigation and must first request a recommendation from the Professional Disciplinary Council (MDP) before processing criminal sanctions or civil lawsuits.
Affirmation of the Doctrine of Endeavor (Inspanningsverbintenis)	Implied through the understanding of basic civil law, but not specifically stated as a phrase that frees promises in the body of the medical services article.	(Article 280): It is imperatively emphasized that the implementation of medical obligations is to make the best efforts, and emphasizes the exception clause that "best efforts are not a guarantee of success".
Direction of Conflict Restoration & Case Resolution	A mediation mechanism is recommended, but does not prevent individual patients from taking their doctors to district court for maximum compensation (litigation bias).	(Article 310): Disputes between service providers and patients are mandatory to be resolved through alternative dispute resolution outside the courts, strengthening the direction of Restorative Justice.

The Authority and Function of the Professional Disciplinary Council (MDP) as an Instrument for Filtering Criminalization

Regressive or repressive protection is the procedure used when the threat of a medical dispute has crystallized and escalated into a police report or lawsuit in district court. Under the previous legal system adopted by the Draft Criminal Procedure Code (RUU KUHAP) and the conventional Criminal Code, the police had unlimited autonomous authority (blanket authority) to follow up on public complaints regarding alleged medical abuse without requiring preliminary justification.[12]In the past, if a patient complained of motor deficits or numbness in the lower extremities after a spinal anesthesia block for an orthopedic procedure, he or she could directly go to the police, accusing the surgeon or anesthesiologist of criminal negligence causing serious injury (as defined in Article 360 of the Criminal Code) (Wuisan et al., 2024). The root of the problem of this outdated system is the existence of a biomedical technical understanding deficit (epistemic and cognitive gap) among police investigators, prosecutors, and even judges who examine cases in Indonesia.[11]Law enforcement officials accustomed to a purely criminal perspective often interpret every unsatisfactory surgical complication as empirical evidence of criminal intent (mens rea) or absolute negligence (culpa). This results in prolonged summons of doctors, interrogations that disrupt life-saving surgical schedules, and the creation of an atmosphere of fear that suppresses the independence of clinical services in hospitals, even before an official verdict that the doctor has been proven incompetent (Wuisan et al., 2024).

Law No. 17 of 2023 breaks this tradition of premature criminalization by absolutely institutionalizing the power of the Professional Disciplinary Council (MDP). Articles 304 and 305 of the law mandate the establishment of an independent and autonomous council by the Minister, specifically tasked with injecting medical scientific rationality into the anatomy of medical disputes before they reach general law enforcement officials. All complaints from patients who feel their health rights have been violated must be channeled through the internal ethical and disciplinary oversight channels of this council. A key, highly progressive article that serves as the ultimate repressive protection is Article 308 of Law No. 17 of 2023. This article explicitly states that if medical personnel are suspected of committing an unlawful act, investigators and investigators, whether in criminal or civil lawsuits, are not permitted to take pro-justitia action autonomously. They are legally required and obliged to first request and await expert recommendations from the Professional Disciplinary Council. This normative construction affirms the full applicability of the constitutional law doctrine of lex specialis derogat legi generali (special law overrides general law) to the healthcare profession.

Operationally, a panel of independent members and highly qualified peers (peer review) will conduct a comprehensive investigation. They will review the completeness of medical records, analyze informed consent, reconstruct the surgical incision methodology performed, and then compare the technique with the current gold standard of medical science recommended by the organization or college. The MDP is tasked with precisely categorizing whether the doctor committed gross negligence due to incompetence (culpa lata), a purely intentional act without indication (dolus), or whether the incident was a pure manifestation of the unavoidable nature of medical risk (Wuisan et al., 2024). To minimize delays in justice (justice delayed is justice denied) which are detrimental to patients, the health law formulates a legal timeframe for the Assembly.[1]The panel was given a maximum of 14 working days to complete the audit and formulate a final recommendation. This recommendation ultimately became the conditio sine qua non (absolute requirement) for the police. If the panel's expert findings determine that the surgical specialist's management was fully in line with the lege artis guidelines, the police were required to terminate the criminal investigation by issuing a Letter of Order to Terminate Investigation (SP3) due to the absence of material elements of an "unlawful act." Through this gateway, the classic doctrine of nulla poena sine culpa—there should be no criminal sanctions if there is no form of error that can be proven rationally and scientifically—was successfully re-established to protect the dignity of surgeons in Indonesia.

Restorative Justice and Alternative Dispute Resolution (APS) in Surgical Dispute Cases

The philosophy behind the practice of the medical profession is centered entirely on the morality of beneficence (the principle of doing good for the sake of human safety). Unlike conventional criminal recidivists who deliberately and systematically design criminal scenarios with bad motives and intentions to harm other individuals or seize people's property, a surgeon enters the operating room, injects sedation, and cuts a patient's epidermis solely under one noble mandate: to remove pathology, restore damaged anatomical function, and extend the patient's equilibrium life expectancy.24

Therefore, imprisoning a surgeon for complications that occur without mens rea (inherent criminal intent) is a counterproductive policy towards building the pillars of the nation's human resources health resilience. A punitive criminal justice approach (retributive justice) tends to damage professional reputations, permanently dismantle a specialist's clinical career, and fails to provide pragmatic financial compensation to patient victims. In line with the reform of the global law enforcement paradigm that prioritizes reparation for victims' losses over mere physical punishment of the perpetrator, Law No. Article 310 of Law No. 17 of 2023 stipulates a mandatory transition from litigation-based dispute resolution to settlement based on the doctrine of Restorative Justice.1 The law establishes a rigid hierarchy of conflict resolution mechanisms, whereby medical disputes that give rise to compensation disputes must be resolved at the first level through Alternative Dispute Resolution (APS) methods outside the scope of court jurisdiction, such as through mediation negotiations and conciliation interventions.

In practice, in the surgical ecosystem, when post-surgical complaints arise that require revision, for example, complications of an uninfected suture wound abscess due to gross negligence but requiring corrective reoperation (wound dehiscence), the mediation mechanism provides a space for family discourse. Assisted by an independent third party or a hospital medical committee skilled in the art of mediation, the meeting paves the way for a win-win solution-based peace agreement.31 The results of the peace can include providing corrective interventions without incurring additional surgical costs for the patient, disbursement of medical assistance subsidies, and appropriate and efficient material compensation shared through professional insurance or the health facility institution. This burden itself is often shared with the support of the principle of joint and several institutional responsibilities (vicarious liability), where the hospital shares the burden of compensation for the actions of its workforce, as stipulated in Article 189 of the Health Law, which divides managerial responsibilities (Mambrasar et al., 2024).

For surgeons, the success of this restorative approach is essential because it can distance them from public narratives in court that can stifle career integrity. For hospitals, APS quells the potential for media furor that damages their service brand image. As for patients who are victims, they don't need to be trapped spending tens of millions of rupiah and years of time cycles at the Supreme Court cassation level just to fight for uncertain compensation justice. Although this new health law maintains the fangs of the criminal regulation for serious errors as stipulated in the criminal provisions for negligence in Article 440, which threatens a maximum prison sentence of up to three years if complications result in permanent anatomical defects, and a maximum of five years' imprisonment or a fine of half a billion rupiah if the patient dies, the placement of the restorative justice mechanism as a mandatory pre-litigation instrument is brilliant. This policy affirms the pure functionality of the criminal threat as the doctrine of ultimum remedium (the last resort of the legal system if cooperative solutions fail), and breaks with the outdated culture of using it as primum remedium (an instant weapon to exert pressure and intimidate medical personnel in Indonesia).

The construction of a therapeutic contract in surgical practice is essentially a concrete manifestation of the civil legal relationship that arises from the professional interaction between doctor and patient. This relationship cannot be understood solely as a social relationship or medical ethics, but has developed into a legal bond subject to the principles of contract law in the Civil Code. In this context, a therapeutic contract obtains its validity through the fulfillment of the legal requirements of an agreement as stipulated in Article 1320 of the Civil Code, namely the existence of an agreement between the parties, legal capacity, a specific object in the form of medical efforts, and a lawful cause. By fulfilling these elements, the relationship between surgeon and patient gives rise to legally binding reciprocal rights and obligations, where the patient is obliged to provide honest medical information and comply with post-operative instructions, while the doctor is obliged to provide medical services in accordance with professional standards, standard operating procedures, and the latest developments in medical science. However, in practice, a crucial point that often gives rise to legal disputes lies in misconceptions regarding the nature of the doctor's obligations under the therapeutic contract. The public often assumes that this relationship is a form of result-based agreement (resultsverbintenis), in which the doctor is deemed to guarantee the patient's recovery. Yet, doctrinally, medical practice, particularly surgery, is consistently classified as a contract of effort (inspanningsverbintenis) (Mambrasar et al., 2024). In this contract, the doctor does not promise an

absolute cure, but rather undertakes to exercise all professional skills, scientific knowledge, and due care in accordance with applicable medical standards. This conceptual distinction serves as the primary foundation for determining the limits of a doctor's legal liability when outcomes do not meet a patient's expectations.

The doctrine of inspanningsverbintenis has strong justification both scientifically and medicolegally. The human body is a complex, dynamic biological system with highly individual variation, making the response to medical procedures unpredictable. In surgery, various factors such as patient comorbidities, immunological responses, and the natural healing process of tissues play a significant role beyond the physician's control. Therefore, therapeutic failure cannot be automatically constructed as a form of legal error but must be analyzed based on whether or not there is a deviation from applicable medical professional standards. From a legal perspective, understanding the boundary between medical risk and malpractice is crucial. Medical risk is an inherent consequence of any medical procedure performed according to procedure, while malpractice is a form of gross negligence or professional error that occurs when a physician deviates from standard procedures or acts beyond his or her competence without valid medical justification (Wuisan et al., 2024). In orthopedic surgery, for example, complications such as bone non-union, post-operative infection, or implant failure cannot automatically be categorized as negligence if the entire procedure is performed according to standard practice. Conversely, actions such as performing the wrong surgery or leaving surgical instruments inside the patient constitute gross negligence that can be classified as malpractice.

In this context, the doctrine of inspanningsverbintenis serves as legal protection that provides legal certainty for surgeons. This doctrine asserts that legal responsibility cannot be established solely on the basis of the final outcome, but rather on the process and quality of the medical efforts performed. Therefore, therapeutic failure due to uncontrollable biological factors does not necessarily give rise to civil or criminal liability, as long as the physician has acted in accordance with professional standards. This principle is crucial to prevent excessive criminalization of medical personnel and to maintain clinical courage in making complex and high-risk medical decisions. Furthermore, the therapeutic contract cannot be separated from the informed consent mechanism, a legal instrument that ensures patient consent based on sufficient understanding. Informed consent is not merely an administrative formality but a manifestation of the principle of patient autonomy, which guarantees an individual's right to determine their own destiny. Normatively, informed consent includes information regarding the diagnosis, procedure, risks, treatment alternatives, and prognosis. However, in practice, the implementation of informed consent often faces various challenges, particularly related to limited patient literacy, time pressures in medical services, and paternalistic cultural tendencies in the doctor-patient relationship.

Various studies show that patients' understanding of medical information remains relatively low, particularly regarding risks and alternative treatments. This situation raises legal issues in the event of post-operative complications, as patients may claim that the consent given was not based on a complete understanding. In such situations, the validity of informed consent can be questioned and potentially weaken the doctor's legal position in medical disputes. Therefore, a more effective communication approach, such as the teach-back method, is needed to ensure that patients fully understand the information provided before giving consent. Furthermore, the dynamics of legal relations in medical practice are also influenced by the development of new health regulations, particularly Law Number 17 of 2023 concerning Health. This regulation strengthens the legal position of doctors through explicit recognition of the doctrine of the obligation of care, while also providing legal protection as long as medical procedures are carried out in accordance with professional standards, service standards, and standard operating procedures. Thus, this law emphasizes that medical procedures cannot be judged solely by the final outcome but must be viewed through the professional process involved.

In addition to the preventive aspect, this new regulation also introduces a more structured mechanism for handling medical disputes through the Professional Disciplinary Council (MDP), which serves as a filter before a medical case becomes a criminal or civil matter. This mechanism aims to reduce the premature criminalization of doctors and ensure that any allegations of malpractice are first scientifically tested by medical experts before being legally processed. This approach reflects an effort to harmonize law and medicine in assessing the complexity of medical procedures. The

application of restorative justice principles in resolving medical disputes also demonstrates a paradigm shift from a repressive approach to a corrective and restorative approach. In this context, resolution through mediation or alternative dispute resolution is prioritized to avoid escalating conflicts into litigation. This approach not only provides space for restoring the relationship between doctor and patient but also reduces the burden on the judicial system and provides faster and more effective solutions for all parties. Thus, the construction of a therapeutic contract in surgery is not merely a civil legal relationship but also a complex system that integrates legal, ethical, and medical aspects. The doctrine of inspanningsverbintenis serves as the primary foundation for distinguishing between medical risk and malpractice, while informed consent serves as an instrument of legitimacy for medical actions (Prastopo et al., 2024). Within the modern regulatory framework, legal protection for physicians is strengthened through institutional mechanisms and a restorative justice approach, which overall aim to strike a balance between patient protection and legal certainty for medical personnel.

CONCLUSION

The practice of surgery is fundamentally inseparable from the complex, dynamic, and uncertain nature of human biology. Therefore, every medical intervention carries risks that cannot be fully controlled by medical personnel. In this context, the enactment of Law Number 17 of 2023 concerning Health significantly reforms the legal protection system for physicians, particularly through the strengthening of the doctrine of inspanningsverbintenis, which emphasizes that medical treatment is an obligation based on best efforts, not a guarantee of a cure. This strengthening also places medical practice within a more definitive legal framework and provides protection against potential criminalization not based on scientific medical standards. Furthermore, the establishment of the Professional Disciplinary Council (MDP) and the strengthening of dispute resolution mechanisms through restorative justice create a multi-layered protection system that serves as a filter before a medical case enters the criminal or civil realm. However, the effectiveness of this protection depends heavily on physicians' adherence to professional standards, standard operating procedures, and applicable medical ethics. The study's findings also indicate that a major weakness in surgical practice lies in the implementation of informed consent, primarily due to limited communication, a paternalistic culture, and inappropriate delegation of information. This situation has the potential to undermine the validity of therapeutic contracts and open up legal disputes. Therefore, reforms in medical communication governance are needed through increased patient literacy and the implementation of educational methods such as teach-back to create a balance between legal protection for doctors and patient autonomy in a proportional and equitable manner.

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