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LEGAL PROTECTION FOR PATIENT RIGHTS IN THE THERAPEUTIC RELATIONSHIP: AN ANALYSIS OF SUPREME COURT DECISION NUMBER 1037/PK/PDT/2023

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Abstract: *The relationship between doctors and patients is not one of equal knowledge, because patients are generally laypeople regarding the medical procedures they undergo. This article examines how patient rights within the therapeutic relationship are protected under Law Number 17 of 2023 on Health and the Indonesian Civil Code, and then looks at how they were applied in Supreme Court Decision Number 1037 PK/Pdt/2023, which rejected the judicial review petition of Dr. R. Moestidjab and PT Surabaya Eye Clinic. This normative juridical study uses statutory, conceptual, and case approaches. The findings show that the rights to information, adequate explanation, care in line with professional standards, and consent to treatment can serve as benchmarks for a doctor's propriety and prudence when the elements of an unlawful act under Article 1365 of the Civil Code are assessed. The decision upholds joint and several civil liability for the doctor and the clinic's business entity. The full decision text was not accessed directly, so the analysis of the judges' reasoning remains limited.*
Keywords: *patient rights; therapeutic relationship; unlawful act; informed consent; joint and several liability.*

I. INTRODUCTION

The relationship between a doctor and a patient is built on trust. Patients seek care because they do not know what is happening to their bodies, while doctors are perceived to possess the knowledge required for treatment. This "father knows best" mentality once rendered the doctor-patient relationship paternalistic; however, developments in health law have shifted it toward a contractual relationship in which both parties stand on equal footing.[1] When a medical procedure results in a disability, patients and their families often suffer significant losses. Camellia and Kartika present

[1]Lintang Zandra Camellia dan Adhitya Widya Kartika, "Aspek Keperdataan dalam Upaya Penyelesaian Sengketa Medis antara Pasien dengan Tenaga Medis Berdasarkan Undang-Undang Kesehatan," *Jurnal Hukum & Pembangunan* 54, no. 3 (2024): 574, 578, https://doi.org/10.21143/jhp.vol54.no3.1647.

data showing that complaints regarding alleged medical negligence filed with the Indonesian Medical Disciplinary Council (MKDKI) totaled 221 cases between 2011 and 2016, and 313 cases between 2016 and 2022; meanwhile, according to their research, only 19 medical dispute cases were brought to court between 2012 and 2021.[2] This discrepancy suggests that patients rarely pursue legal action, making those cases that reach the stage of judicial review worthy of closer examination.

The legal framework has also recently changed. Law Number 17 of 2023 concerning Health was enacted on August 8, 2023, and it repeals eleven previous laws, including the Medical Practice Law, the 2009 Health Law, and the Hospital Law.[3] One relevant case is Supreme Court Decision Number 1037 PK/Pdt/2023. According to reports, the decision dated December 18, 2023 rejected the petition for judicial review filed by Dr. R. Moestidjab and PT Surabaya Eye Clinic, and ordered both parties to be jointly and severally liable for the payment of damages to Tatok Poerwanto, a patient who suffered permanent blindness.[4] The amount of material and immaterial damages reported is IDR 1,260,689,917.[5]

Based on this background, this article focuses on two primary issues. First, it examines the regulation of patient rights within the therapeutic relationship as stipulated under Law Number 17 of 2023 concerning Health and the Civil Code specifically regarding the right to information, consent for medical procedures, and legal protection against damages incurred. Second, it analyzes how Supreme Court Decision Number 1037 PK/Pdt/2023 reflects a form of legal protection for patients through civil dispute resolution mechanisms, particularly concerning the determination of liability for physicians and clinics, as well as the awarding of compensation for damages resulting from unlawful acts (tort) in the provision of healthcare services.

The significance of this question extends beyond a single dispute. Health services are delivered in a setting in which one party holds specialised knowledge and the other is exposed to bodily risk, so the law has to do two things at once: it must leave professionals enough room to exercise clinical judgment, and it must give patients enough protection to make that judgment accountable. Where a legal framework

[2] Camellia dan Kartika, "Aspek Keperdataan," 575.

[3] "UU Kesehatan Memperluas Tanggung Jawab Hukum RS," Hukumonline, diakses 11 Oktober 2026, https://www.hukumonline.com/berita/a/uu-kesehatan-memperluas-tanggung-jawab-hukum-rs-lt65bb5055237db.

[4] "MA Tolak PK Kasus Malpraktek, Bejana Law Firm Desak Dokter Moestijab dan Surabaya Eye Clinic Jalankan Putusan," Beritalima, diakses 11 Oktober 2026, https://beritalima.com/ma-tolak-pk-kasus-malpraktek-bejana-law-firm-desak-dokter-moestijab-dan-surabaya-eye-clinic-jalankan-putusan/.

[5] "Ganti Rugi tak Dibayar, Korban Dugaan Malapraktik Ancam Pidanakan Oknum Dokter Mata di Surabaya," VIVA Jatim, diakses 11 Oktober 2026, https://jatim.viva.co.id/kabar/11782-ganti-rugi-tak-dibayar-korban-dugaan-malapraktik-ancam-pidanakan-oknum-dokter-mata-di-surabaya?page=all.

protects only one of these interests, it either encourages defensive medicine or leaves injured patients without a remedy. The enactment of Law 17/2023 therefore invites a fresh look at how the older civil-law doctrines of unlawful acts and joint liability interact with the newer, more detailed statutory language on patient rights and consent.

The article makes three contributions. First, it consolidates the patient rights and professional duties that Law 17/2023 places on the doctor-patient relationship and shows how they relate to the Civil Code. Second, it uses the elements of an unlawful act under Article 1365 as an analytical grid for reading the reported facts of the Tatok Poerwanto case, while stating plainly which facts are established and which are only alleged. Third, it draws practical lessons for doctors, clinics and policymakers on preventive documentation, access to medical records and the enforcement of civil judgments. The article is organised as follows: the research methods are described first, followed by the analysis of patient rights and consent, the therapeutic relationship, the case itself, the elements of an unlawful act, joint liability, compensation, and finally the practical implications and conclusions.

II. RESEARCH METHODS

This research is of a normative-juridical nature, employing three approaches: the statutory approach, the conceptual approach, and the case approach. Primary legal materials consist of Law 17/2023, the Civil Code, and a series of court rulings related to the cases under examination. Secondary legal materials comprise journal articles published in 2024 and 2025. Media reports are utilized to provide supporting information regarding the facts of the cases. Legal materials were collected through library research. Statutory materials were taken from the official legislation database of the Audit Board of the Republic of Indonesia (BPK), and the first-instance judgment was identified through the Supreme Court's decision directory. Secondary materials were selected for their direct relevance to patient rights, informed consent, medical disputes and unlawful acts, and were limited to recent journal articles in order to reflect the post-2023 legal framework. News reports were used only to reconstruct the chronology and the parties' reported positions, and every factual statement drawn from them is presented as a report rather than as an established fact.

The materials were analysed qualitatively and deductively. The statutory provisions and doctrines form the major premise, the reported facts of the case form the minor premise, and the conclusion is drawn by applying the former to the latter. Because the analysis rests partly on reported facts, the findings are framed as assessments of consistency between the reported outcome and the legal framework, not as determinations of what the judges actually reasoned. Two limitations should be stated at the outset. First, the full text of Decision Number 1037 PK/Pdt/2023 and of the

cassation decision was not examined directly, so the article cannot reconstruct the judges' legal considerations. Second, the medical events occurred before Law 17/2023 took effect, which means the Law cannot be treated as the rule that governed the dispute; it is used here as the current statement of patient rights and as a benchmark against which the older practice can be compared.

III. ANALYSIS AND DISCUSSION

a. Patient rights and consent for medical procedures under Law 17/2023

Law 17/2023 outlines patient rights in Article 276. The article states, "Patients have the right to: a. obtain information regarding their own health; b. receive an adequate explanation concerning the healthcare services they receive; c. obtain healthcare services in accordance with medical needs, professional standards, and quality care;" and so forth. Clause (e) of the same article specifies the right to "gain access to information contained within medical records." This article also addresses the right to refuse or consent to medical procedures, the right to seek an opinion from other medical or healthcare professionals, and other rights as provided for by laws and regulations.[6] Camellia and Kartika categorize these rights as an individual's right to self-determination, encompassing the right to privacy regarding personal information, the right to choose one's physician and hospital, the right to refuse medical procedures, and the right to informed consent.[7]

Patient rights go hand in hand with the obligations that medical personnel must fulfill when providing healthcare services. One such obligation is stipulated in Article 274, letter b, of Law Number 17 of 2023 concerning Health, which mandates that medical and healthcare personnel, in the course of their practice, must obtain consent from the patient or their family for any procedure to be performed. This provision underscores that medical interventions are not merely a matter of technical aspects and the professionalism of medical personnel; they must also respect the patient's right to be informed of and to consent to the care or procedures they are to receive.[8] Winarti and Rizka explain that this provision forms the basis for a doctor's obligation to obtain consent before taking action.[9]

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[6]Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 tentang Kesehatan, Lembaran Negara Republik Indonesia Tahun 2023 Nomor 105, Tambahan Lembaran Negara Republik Indonesia Nomor 6887, Pasal 276, https://peraturan.bpk.go.id/Details/258028/uu-no-17-tahun-2023.

[7]Camellia dan Kartika, "Aspek Keperdataan," 579-580.

[8]Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 274 huruf b, https://peraturan.bpk.go.id/Details/258028/uu-no-17-tahun-2023.

[9]Winarti dan Rizka, "Informed Consent sebagai Upaya Perlindungan Hukum bagi Tenaga Kesehatan dalam Kasus Medis Darurat (Studi Kasus di Rumah Sakit Umum Daerah Provinsi Papua Barat)," *SEHATRAKYAT (Jurnal Kesehatan Masyarakat)* 4, no. 2 (2025): 265-266, https://doi.org/10.54259/sehatrakyat.v4i2.4310.

The details regarding this consent are set out in Article 293. Paragraph (1) states, "Every individual healthcare service action performed by medical personnel or healthcare workers must be consented to." Paragraph (2) adds, "The consent referred to in paragraph (1) shall be given after the patient has received an adequate explanation".[10] An adequate explanation includes the diagnosis, indications, the procedure and its objectives, potential risks and complications, alternative interventions along with their respective risks, the risks of not performing the procedure, and the prognosis. For invasive or high-risk procedures, written consent must be obtained before the procedure is carried out.[11]

According to Camellia and Kartika, the provisions regarding consent for medical procedures under the current regulations are more comprehensive than those in previous rules. Prior to 2023, regulations concerning consent for medical procedures were scattered across several different instruments, including the Minister of Health Regulation Number 290/MENKES/PER/III/2008 on Consent for Medical Procedures. Under the former provisions, verbal consent was still permitted for certain medical procedures; however, this form of consent presented challenges in terms of providing evidence should a dispute arise between a patient and a healthcare professional. Consequently, a more comprehensive regulatory framework was necessary to provide legal certainty, as well as to strengthen the protection of patients' rights and clarify the responsibilities of healthcare professionals when performing medical procedures.[12]

Taken together, these provisions give consent three distinct functions. The first is legitimating: consent is what makes an intervention on another person's body lawful, so a procedure performed without it is open to challenge even when it is technically competent. The second is protective of autonomy: the patient, and not the doctor, decides whether a risk is worth taking in light of his or her own circumstances and values. The third is evidentiary: a properly documented explanation and consent allow both sides to reconstruct afterwards what was said, what was understood and what was agreed. The third function is the one most relevant to the dispute examined in this article, because a disagreement about whether a patient was adequately informed can only be resolved on the basis of records. It follows that consent cannot be reduced to a signature on a pre-printed form. Article 293(2) ties consent to the prior receipt of an adequate explanation, and an explanation is adequate only if the patient is able to

[10]Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 293 ayat (1) dan (2), https://peraturan.bpk.go.id/Details/258028/uu-no-17-tahun-2023.

[11]Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 293 ayat (3) dan (5), https://peraturan.bpk.go.id/Details/258028/uu-no-17-tahun-2023; lihat juga Winarti dan Rizka, "Informed Consent," 275.

[12]Camellia dan Kartika, "Aspek Keperdataan," 583, 589.

understand it.[13] In practice this requires the doctor to use language suited to a layperson, to allow time for questions, and to confirm that the information has been understood. A form that lists every conceivable complication in technical terms may satisfy a formal requirement while failing the substantive one. The same reasoning applies where consent is given by a family member, for example because the patient is a minor, is unconscious or lacks capacity: the explanation must still be given, and the person consenting must be able to weigh it. The literature on emergency care shows that these requirements become harder to meet under time pressure, which is why the documentation of the emergency itself matters.[14]

b. The therapeutic relationship and the limits of a physician's liability

The legal relationship between a patient and a medical professional is known as a "therapeutic agreement." Camellia and Kartika classify this as an "inspanningsverbintenis" an obligation of means whereby medical professionals commit to exerting their best possible effort without, however, guaranteeing a cure. Such an obligation may arise either from a contract or by operation of law, in accordance with Article 1233 of the Indonesian Civil Code; a therapeutic agreement is considered an "unnamed" (sui generis) contract that remains subject to both the law of obligations and healthcare law.[15] The conditions for the validity of an agreement in Article 1320 and the principle of binding force in Article 1338 paragraph (1) of the Civil Code also apply to therapeutic agreements.[16]

Since the agreement concerns the provision of effort, a poor final outcome does not automatically imply that the physician is at fault. Hariwibowo and colleagues note that professional negligence is not measured solely by the outcome, but rather by the process of care and adherence to standards.[17] A patient's loss must also stem from professional error, rather than from risks that are inherently associated with a medical procedure. In the author's view, this is where a patient's right to information and medical records becomes relevant, as a patient can only identify a deviation if they are aware of what was done to them.

[13]Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 293, https://peraturan.bpk.go.id/Details/258028/uu-no-17-tahun-2023.

[14]Winarti dan Rizka, "Informed Consent sebagai Upaya Perlindungan Hukum bagi Tenaga Kesehatan dalam Kasus Medis Darurat," *SEHATRAKYAT (Jurnal Kesehatan Masyarakat)* 4, no. 2 (2025), https://doi.org/10.54259/sehatrakyat.v4i2.4310.

[15]Camellia dan Kartika, "Aspek Keperdataan," 582.

[16]Winarti dan Rizka, "Informed Consent," 265.

[17]Fatnan Setyo Hariwibowo, Yani Eka Suryaningsih, dan Silviana Putri Indraswari, "Perbuatan Melawan Hukum Akibat Malpraktik Medis dalam Operasi Usus Buntu (Studi Putusan Mahkamah Agung RI Nomor 42 K/Pdt/2018)," *SOEPRA Jurnal Hukum Kesehatan* 11, no. 2 (2025): 162, https://doi.org/10.24167/shk.v11i2.14204.

The existence of a therapeutic agreement does not by itself determine the cause of action. A patient who alleges that a doctor failed to perform as promised may frame the claim as default under the law of obligations.[18] Alternatively, the patient may frame it as an unlawful act, which does not depend on proving the precise content of the agreement and is the route taken in the decision examined here. The Civil Code also contains a specific rule on bodily injury, under which a person who causes injury or disability intentionally or through lack of care is liable to compensate the victim beyond the cost of treatment.[19] These routes overlap, and the choice between them has practical consequences for what must be proved, which losses can be claimed and who can be sued. In the authors' view, a claim founded on an unlawful act is the more natural vehicle where the dispute concerns the manner in which care was delivered and communicated rather than a specific promise of result.

What the law measures in an obligation of means is the quality of the effort. Professional standards, standard operating procedures and the ethical duties of the profession supply the yardstick, and the question is whether a reasonably careful practitioner of the same field would have acted as the defendant did. This explains why findings of professional bodies such as the Indonesian Medical Disciplinary Council can be influential in civil proceedings, as the comparison with Decision No. 42 K/Pdt/2018 below indicates. It also explains why an unfavourable result, standing alone, proves little: eye surgery, like any surgery, carries risks that can materialise even when every step is performed correctly.

The relationship between inherent risk and consent deserves emphasis. A risk that has been explained, understood and accepted is part of the bargain, and its occurrence does not by itself create liability. Conversely, consent to a procedure is not consent to negligent performance: a patient who accepts the risk of a complication does not accept that the procedure will be carried out below standard. Where a serious complication occurs and the patient was never told it was possible, the analysis changes, because the patient was deprived of the information needed to decide. These two situations, a negligent act and a failure to inform, are conceptually separate, even though a single claim may allege both.

c. Sitting on the case of Decision 1037 PK/Pdt/2023

The following facts are derived from news reports and should be read in conjunction with the notes provided in the methodology section. Tatok Poerwanto visited the Surabaya Eye Clinic for the treatment of a cataract in his left eye; he was attended to by

[18]Kitab Undang-Undang Hukum Perdata, Pasal 1243 (ganti rugi karena tidak dipenuhinya perikatan).

[19]Kitab Undang-Undang Hukum Perdata, Pasal 1371 (ganti rugi atas luka atau cacatnya anggota badan karena kesengajaan atau kurang hati-hati).

Dr. Moestidjab, who recommended that he undergo surgery.[20] This matter reportedly began in 2016, and following the surgery, the patient experienced pain and soreness in their left eye.[21] The patient's legal counsel stated that the left eye has become permanently blind. He further explained that the family only learned the true situation after obtaining a copy of the medical records, which, according to him, documented a torn lens and cataract fragments from the first surgery; he added that the doctor did not meet with the patient following the procedure, instead delegating an assistant to convey the results.[22] All of that is still just one side's account.

According to the case register, the proceedings began with a lawsuit at the Surabaya District Court with the verdict delivered on March 10, 2020 followed by an appeal to the Supreme Court (cassation) and, subsequently, a judicial review.[23] At the cassation level, the Supreme Court granted Tatok's petition via Decision Number 1815 K/Pdt/2021, dated September 29, 2021, which declared that the doctor and the clinic had committed an unlawful act.[24] The petition for judicial review was subsequently rejected by a panel presided over by I Gusti Agung Sumanatha. Outside of the civil litigation, the same doctor was reported to the Surabaya City Police (Polrestabes Surabaya) for alleged negligence resulting in serious bodily injury, as well as for the falsification of documents; however, this matter remains merely a filed report and is not discussed further here.[25] It should be noted that the medical incident in question occurred before Law 17/2023 came into effect. Therefore, this article uses Law 17/2023 as the current framework for patient rights, while acknowledging that this case was adjudicated under the previous legal framework.

The chronology reported in the sources is itself informative. The treatment reportedly began in 2016; the first-instance judgment was delivered on March 10, 2020; the cassation decision is dated September 29, 2021; and the judicial review decision is dated December 18, 2023. On those dates, roughly seven years passed between the

[20]"PK Ditolak MA, Kuasa Hukum Tatok Poerwanto: Tidak Ada Lagi Alasan Upaya Hukum Lainnya Ditunda," Jurnal Pagi, diakses 11 Oktober 2026, https://jurnalpagi.id/pk-ditolak-ma-kuasa-hukum-tatok-poerwanto-tidak-ada-lagi-alasan-upaya-hukum-lainnya-ditunda/.

[21]"MA Tolak PK Dokter Spesialis Mata, Advokat Eduard Rudy: Tidak Ada Alasan Lagi Proses Hukum Lainnya Ditunda," Berita Metro, diakses 11 Oktober 2026, https://beritametro.id/story/ma-tolak-pk-dokter-spesialis-mata-advokat-eduard-rudy-tidak-ada-alasan-lagi-proses-hukum-lainnya-ditunda.

[22]"MA Tolak PK Kasus Malpraktek," Beritalima, https://beritalima.com/ma-tolak-pk-kasus-malpraktek-bejana-law-firm-desak-dokter-moestijab-dan-surabaya-eye-clinic-jalankan-putusan/.

[23]"Putusan PN Surabaya Nomor 415/Pdt.G/2019/PN Sby," Direktori Putusan Mahkamah Agung, https://putusan3.mahkamahagung.go.id/direktori/putusan/0bb7febc4df63d8f0ce8a16a96de8198.html.

[24]"Ir Eduard Rudy Bakal Sita Saham PT Eye Clinic, Paska Menang Tingkat PK," Beritajatim, diakses 11 Oktober 2026, https://beritajatim.com/ir-eduard-rudy-bakal-sita-saham-pt-eye-clinic-paska-menang-tingkat-pk.

[25]"PK Ditolak MA," Jurnal Pagi, https://jurnalpagi.id/pk-ditolak-ma-kuasa-hukum-tatok-poerwanto-tidak-ada-lagi-alasan-upaya-hukum-lainnya-ditunda/.

medical events and the final decision, and nearly four years between the first-instance judgment and the end of the judicial review. Even for a patient who prevails at every stage, the path to a final judgment is therefore long, and the practical value of the remedy is eroded by the time it takes. This delay is relevant to any assessment of whether civil litigation can function as an effective form of legal protection.

d. Patient rights as a benchmark for the elements of an unlawful act

The claim in this case is classified as an unlawful act. Its general legal basis is Article 1365 of the Indonesian Civil Code, which states, "Every act that is unlawful and causes harm to another person obliges the person whose fault caused such harm to provide compensation for it".[26] According to Hariwibowo and his colleagues, the elements consist of an act, the unlawful nature of that act, fault (whether intentional or due to negligence), damage, and a causal link between the act and the damage.[27] The element of "unlawfulness" does not merely mean violating a statute. It also encompasses the infringement of another person's subjective rights, the breach of one's own legal obligations, and conduct that runs counter to the standards of propriety and due care. In the context of healthcare, professional standards and the duty to provide adequate information to patients serve as the benchmarks for such propriety and due care.[28] From this, it is evident how the patient rights set forth in Article 276, along with the obligations stipulated in Articles 274 and 293, function in practice. The right to care in accordance with professional standards provides a benchmark for determining unlawful conduct and fault, while the rights to information, explanations, and medical records offer patients the means to substantiate such claims.

Whether this was indeed what the panel of judges considered in the Tatok case remains uncertain. One can only logically conclude that the declaration of an "unlawful act" implies the panel found the elements of Article 1365 to have been met. Which specific aspect was deemed proven whether it was a deviation from standards, an insufficiency in the explanations provided, or some other factor can only be determined by examining a copy of the judgment. A relevant point of comparison is Supreme Court Decision No. 42 K/Pdt/2018, which concerned a pediatric patient who suffered blindness and paralysis following an appendectomy. According to Hariwibowo et al., the Supreme Court in that case determined that the defendants' actions failed to comply with standard operating procedures (SOPs) and lacked the necessary propriety, diligence, and caution a conclusion the Court reinforced by citing the findings of the Indonesian Medical Disciplinary Council (MKDKI).[29] This comparison

[26]Kitab Undang-Undang Hukum Perdata, Pasal 1365, sebagaimana dikutip dalam Hariwibowo, Suryaningsih, dan Indraswari, "Perbuatan Melawan Hukum," 166-167, https://doi.org/10.24167/shk.v11i2.14204.

[27]Hariwibowo, Suryaningsih, dan Indraswari, "Perbuatan Melawan Hukum," 161, 167.

[28]Hariwibowo, Suryaningsih, dan Indraswari, "Perbuatan Melawan Hukum," 161.

[29]Hariwibowo, Suryaningsih, dan Indraswari, "Perbuatan Melawan Hukum," 165-167.

merely illustrates the reasoning pattern employed by judges in similar cases; it does not constitute proof that the same considerations were applied in the Tatok case. The facts reported in the Tatok case are linked to the fulfillment of patient rights, as previously explained specifically regarding the clarification of who is responsible for communicating the results of medical procedures to patients or their families, as well as the timing and mechanisms for granting access to medical records. Both aspects are significant because they pertain to the right of patients and their families to receive clear, accurate, and transparent information concerning the medical interventions that have been performed.[30] However, since the source is the plaintiff's legal counsel, this connection can only be noted as an allegation that needs to be verified against a copy of the judgment.

Each of the five elements of Article 1365 raises its own evidentiary questions in a medical case. The act is usually identifiable from the medical record, but the record is itself produced by the party whose conduct is in question. Unlawfulness depends on the standard of care, which a court of general jurisdiction cannot determine without medical input. Fault requires a judgment about what a careful practitioner would have done, and may be shown through deviation from procedure or through failure to inform. Damage is easiest to establish where, as here, a permanent loss of vision is alleged. Causation is often the most difficult element, because the patient already had a disease for which treatment was sought, and the defendant may argue that the outcome stems from the underlying condition or from an inherent risk rather than from any error.

The general rule of civil procedure is that whoever asserts a right or an event must prove it.[31] In medical disputes this rule operates against a background of information asymmetry: the patient generally lacks the technical knowledge to identify a deviation, and the evidence that would reveal it is held by the defendant. Two consequences follow. First, the rights to information and to access to medical records are not merely ethical commitments but practical preconditions for proof, because without them the claimant cannot build a case. Second, expert evidence and the findings of professional bodies carry considerable weight, since they translate technical facts into the legal vocabulary of standard and deviation. The authors suggest that courts handling such disputes should treat late, incomplete or inconsistent record-keeping as a circumstance that may weigh against the party that controls the record, although whether and how this was done in the present case cannot be determined without the judgment.

[30]"MA Tolak PK Kasus Malpraktek," Beritalima, https://beritalima.com/ma-tolak-pk-kasus-malpraktek-bejana-law-firm-desak-dokter-moestijab-dan-surabaya-eye-clinic-jalankan-putusan/.

[31]Kitab Undang-Undang Hukum Perdata, Pasal 1865 (beban pembuktian bagi pihak yang mendalilkan suatu hak atau peristiwa).

e. Joint and several liability between a doctor and a clinic business entity

The ruling reportedly holds the doctor and PT Surabaya Eye Clinic jointly and severally liable.[32] In the literature, institutional liability for the actions of medical personnel is linked to Article 1367 of the Civil Code, which concerns liability for the acts of others, given that medical personnel operate under the supervision or assignment of a healthcare facility.[33] Joint and several liability means that a plaintiff may seek damages from the defendants collectively, with the possibility of a right of recourse among the defendants themselves. In the ruling for case 42 K/Pdt/2018, the hospital, the physicians, and the managing business entity were held liable under this same framework.[34]

Article 193 of Law Number 17 of 2023 concerning Health governs the legal liability of hospitals for losses arising from the negligence of healthcare personnel within those institutions. However, in the present case, the defendant is a clinic organized as a limited liability company not a hospital meaning that this provision serves better as a point of comparison rather than as a primary legal basis. Consequently, determining the clinic's liability, as well as any potential joint liability, must be grounded in relevant legal provisions and the judge's reasoning within the court's ruling. Thus, the application of legal liability must take into account the specific type of healthcare facility, the legal relationships between the parties, and the facts established during the trial proceedings.

The Civil Code provides that a person is liable not only for harm caused by his own act but also for harm caused by persons for whom he is responsible.[35] Applied to health services, an organisation that engages a doctor to treat patients under its name, in its premises and with its equipment may be held to answer for the doctor's wrongful acts committed in that capacity. The decisive questions are factual: whether the doctor acted as an employee or as a partner, under whose name and on whose account patients were treated, and whether the act took place within the scope of the assignment. Because these facts are not available to the authors, the discussion remains at the level of principle.

[32]"MA Tolak PK Kasus Malpraktek," Beritalima, https://beritalima.com/ma-tolak-pk-kasus-malpraktek-bejana-law-firm-desak-dokter-moestijab-dan-surabaya-eye-clinic-jalankan-putusan/.

[33]Hariwibowo, Suryaningsih, dan Indraswari, "Perbuatan Melawan Hukum," 163.

[34]Hariwibowo, Suryaningsih, dan Indraswari, "Perbuatan Melawan Hukum," 166, 168.

[35]Kitab Undang-Undang Hukum Perdata, Pasal 1367 (tanggung jawab atas kerugian yang disebabkan perbuatan orang yang berada di bawah tanggungannya).

f. Compensation and avenues for resolution

The reported amount of compensation is IDR 1,260,689,917 for material and immaterial losses.[36] Camellia and Kartika note that Article 58 of Law 36/2009 provides for the right to claim compensation in cases of negligence; however, they observe that Law 17/2023 does not explicitly state this right, leaving patients to rely instead on Articles 1365 and 1366 of the Civil Code.[37] The Tatok case demonstrates that the underlying provision of the Civil Code remains in effect. Law 17/2023 also introduces alternative dispute resolution mechanisms under Article 310, moving beyond the sole reliance on mediation as stipulated in Law 36/2009. Camellia and Kartika observe that mediation is prone to failure when the requested compensation amount is deemed too high by the medical professionals involved.[38] Reports indicate that a similar situation arose during the enforcement phase of the judgment, when the patient's legal counsel stated that the doctors and the clinic offered a settlement amount of less than half of what had been awarded; consequently, the counsel plans to seek the seizure of the company's shares.[39] This statement also comes from a single party, yet it shows that a court victory does not automatically mean recovery for the patient.

The Civil Code frames compensation in terms of costs, losses and interest.[40] Although that provision was drafted for default, it is commonly used as a reference for assessing compensation for unlawful acts as well. In a bodily injury case, costs would include past and future medical expenses, losses would include lost earnings and reduced earning capacity, and the immaterial component would address the non-pecuniary harm. Because Article 1371 expressly allows compensation beyond treatment costs in cases of injury, a court has a clear basis for awarding more than reimbursement of expenses.[41]

A judgment does not enforce itself. In the civil process, a losing party is first given the opportunity to comply voluntarily; if it does not, the winning party may ask the court to issue a summons to comply and, ultimately, to order the seizure and sale of assets. The reports that the defendants offered a settlement well below the awarded sum, and that the claimant is considering the seizure of shares, indicate that the case had entered this phase. The episode shows that the effective protection of patients depends on enforcement as much as on adjudication, and that a judgment which cannot be collected does little to restore the patient.

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[36]"Ganti Rugi tak Dibayar," VIVA Jatim, https://jatim.viva.co.id/kabar/11782-ganti-rugi-tak-dibayar-korban-dugaan-malapraktik-ancam-pidanakan-oknum-dokter-mata-di-surabaya?page=all.

[37]Camellia dan Kartika, "Aspek Keperdataan," 580-581.

[38]Camellia dan Kartika, "Aspek Keperdataan," 585-586.

[39]"Ir Eduard Rudy Bakal Sita Saham," Beritajatim, https://beritajatim.com/ir-eduard-rudy-bakal-sita-saham-pt-eye-clinic-paska-menang-tingkat-pk.

[40]Kitab Undang-Undang Hukum Perdata, Pasal 1246 (biaya, rugi, dan bunga).

[41]Kitab Undang-Undang Hukum Perdata, Pasal 1371 (ganti rugi atas luka atau cacatnya anggota badan karena kesengajaan atau kurang hati-hati).

Based on the distinction between preventive and repressive legal protection as proposed by Camellia and Kartika, preventive protection aims to forestall the violation of patient rights before a dispute arises. This form of protection can be implemented through written consent for medical procedures, the provision of clear information, and the fulfillment of patient rights throughout the healthcare service process. Meanwhile, repressive legal protection is applied after a dispute or violation has occurred for instance, through the resolution of cases in court or the provision of compensation to an aggrieved patient. Thus, both forms of protection complement each other in ensuring legal certainty and safeguarding the rights and interests of patients within the therapeutic relationship.[42] Judgment 1037 PK/Pdt/2023 falls on the repressive side.

g. Mapping patient rights onto the elements of an unlawful act

The preceding sections can be summarised by showing how each right or duty in Law 17/2023 corresponds to a function in a dispute. Table 1 does this. The right in the left-hand column is the substantive protection; the right-hand column describes the role it plays when a court asks whether the elements of Article 1365 are satisfied.[43]

Table 1. Patient rights and duties of medical personnel, and their function in assessing an unlawful act

Right or duty (Law 17/2023)	Content	Function in assessing an unlawful act
Information about one's own health (Art. 276)	Patient is informed of his or her condition	Shows whether the patient could understand the situation and decide; relevant to propriety and to fault
Adequate explanation (Arts. 276, 293(2))	Diagnosis, indications, procedure, risks, alternatives, consequences of refusal and prognosis	Evidence of due care in the process; its absence supports an allegation of unlawful conduct
Care in accordance with professional standards (Art. 276)	Services match medical need, standards and quality	Benchmark for unlawfulness and fault; deviation from standards is the usual basis of a claim
Access to medical records (Art. 276)	Patient may obtain information in the record	Allows the claimant to prove the act and its causal link to the damage
Consent to or refusal of procedures (Arts. 274(b), 293)	Consent given after adequate explanation; written for invasive or high-risk procedures	Makes the intervention lawful and documents the explanation; distinguishes accepted risk from undisclosed risk
Second opinion (Art. 276)	Patient may consult another professional	Lets the patient test the recommendation and obtain independent evidence
Compensation (Civil Code Arts. 1365, 1366)	Remedy for loss caused by wrongful or careless acts	Repressive protection after the violation has occurred

[42]Camellia dan Kartika, "Aspek Keperdataan," 579.
[43]Hariwibowo, Suryaningsih, dan Indraswari, "Perbuatan Melawan Hukum," 161-167.

Two observations follow from the table. First, the rights are cumulative rather than alternative: the right to care in accordance with standards defines what the doctor must do, the right to information and records allows the patient to find out whether that was done, and the right to consent determines what the doctor may do at all. A violation of any one of them can ground a claim, and the strongest cases are those in which several are implicated. Second, the table reveals an asymmetry. The rights that are most directly concerned with proof, namely information, explanation and access to records, are also the rights that depend on the cooperation of the party against whom they will be invoked. This is the structural reason why legislation on patient rights has to be accompanied by procedural mechanisms that make the rights enforceable.

Applying this grid to the reported facts of the Tatok case, the allegations concern three of the rows: the quality of the surgery (care in accordance with standards), the communication of the results after the operation (information and explanation), and the timing of access to the record (access to medical records). Each allegation, if proved, would bear on a different element. A deviation from standards would go to unlawfulness and fault; a failure to inform would go to unlawfulness, and potentially to the lawfulness of the intervention itself; and a delay in disclosure would go to proof rather than to liability. The authors stress, once more, that these are allegations reported by the claimant's counsel and are not findings.

h. Preventive measures for doctors and health facilities

Since the repressive route is slow and costly for all concerned, the preventive dimension of legal protection deserves as much attention as the outcome of the case. The following measures follow from the provisions and the case discussed above. They are offered as suggestions and are not requirements of Law 17/2023, except where the Law itself so provides. First, the explanation of the procedure should be structured and recorded. A written template that tracks the categories in Article 293, completed for the individual patient and not left generic, helps ensure that nothing is omitted, and a note of the patient's questions and the doctor's answers shows that the explanation was a conversation. Patients should be given the opportunity to consider the information and, where the procedure is elective, to seek a second opinion, which Article 276 treats as a right.

Second, responsibility for communicating the outcome of a procedure should be assigned clearly. The report that a procedure's results were conveyed through an assistant rather than by the operating doctor illustrates the risk: whether or not the allegation is accurate, the lack of a clear point of responsibility for post-operative disclosure is a vulnerability. A facility's protocol should state who informs the patient, within what period, and how any unexpected event during the procedure is disclosed and recorded.

i. Policy reflections on legal protection for patients

At the level of policy, the analysis suggests four areas for attention. The first is access to judicial reasoning. A decision's value as a guide to future conduct depends on whether its reasoning can be read, and the limits encountered in this study show how much commentary has to rely on press accounts when the full text is unavailable. Timely publication of full decisions, including decisions at the cassation and judicial review stages, would improve legal certainty and make better scholarship possible. The second is the clarity of the compensation rules. The literature notes that Law 17/2023 does not restate the express right to compensation that appeared in the earlier Health Law, so patients rely on the Civil Code.[44] This works, but it leaves the determination of damages to case-by-case discretion. Guidance on how immaterial loss should be assessed, whether through regulation, court guidelines or the accumulated practice of the courts, would make outcomes more predictable and support settlement.

IV. CONCLUSION

Law 17/2023 grants patients the right to information, adequate explanations, care in accordance with professional standards, the authority to consent to or refuse medical procedures, and access to their medical records—as stipulated in Article 276. This is complemented by the obligations of medical personnel under Article 274 and the provisions regarding consent for medical procedures under Article 293. A therapeutic relationship constitutes an "obligation of means" (an undertaking to provide care), meaning that an adverse outcome does not automatically imply fault; rather, these patient rights serve as a benchmark for determining the level of propriety and due care when assessing the elements of Article 1365 of the Indonesian Civil Code.

Supreme Court Decision Number 1037 PK/Pdt/2023 denied a petition for judicial review and upheld the cassation ruling, which determined that both the physician and the clinic had committed an unlawful act and were jointly and severally liable for the payment of damages. This decision demonstrates that patients may obtain repressive legal protection through civil litigation when their rights are allegedly violated in the context of healthcare services. Nevertheless, an in-depth analysis of the judge's reasoning specifically regarding the substantiation of the elements constituting an unlawful act and the determination of joint liability between the physician and the clinic cannot yet be conducted, as the full text of the decision is not currently accessible. Consequently, any conclusions regarding the legal grounds for this ruling must be limited to the information currently available, pending verification through the complete text of the decision.

[44]Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 276, https://peraturan.bpk.go.id/Details/258028/uu-no-17-tahun-2023.

Future research should include a direct examination of the legal reasoning found in the copy of Judgment 1037 PK/Pdt/2023 as well as the lower court rulings to allow for a detailed, step-by-step analysis of how the elements of Article 1365 are applied. For medical professionals and healthcare facilities, it is essential to consistently maintain written documentation of explanations and informed consent for medical procedures, in accordance with Article 293, as such documentation will serve as evidence in the event of a dispute.

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