

WHEN BEAUTY GOES WRONG: THE HARSH REALITY OF MEDICAL MALPRACTICE IN AESTHETICS

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ABSTRACT

The purpose of this research is to determine a medical personnel action to fulfill the elements of a legal action in beauty malpractice, as well as the legal responsibility of medical personnel in the act of beauty malpractice. The research method employed in this study is normative juridical research. As a data collection technique, library research is used. The data was then analyzed using analytical descriptive methods, which entailed explaining the problem-solving process in detail and in a systematic manner. There is a civil relationship in the form of an agreement that is binding on both parties and gives birth to each party's obligations and rights. A practice permit is required for any doctor who wishes to open or practice in Indonesia. Patients have the right to seek restitution as a result of business actors' and doctors' actions that endanger them. Doctors must accept responsibility for their actions if they perform medical procedures that cause serious injury or death due to negligence.

Keywords: Malpractice, Beauty, Law, Medical

INTRODUCTION

The development of the world of beauty is currently accelerating in a variety of circles (Masputra et al., 2020). The beauty industry serves a purpose in the health sector, such as reconstruction in cases of burns, facial trauma in accidents, congenital defects (congetinal), and others (Dover et al., 2020). As a result, many people seek plastic surgery because they are enticed by the numerous promising advertisements (Pakpahan et al., 2021). Individual health services related to aesthetic health, also known as beauty clinics, are one of the health services that are developing at the moment and are likely to become a way of life for modern society (Garnida, 2020). Skin Care, Beauty Clinic, Esthetic Clinic, Slimming Center, and Beauty Center are among the rapidly expanding beauty service facilities. Men are not only beauty consumers/patients, but they are also health clinic patients (Noor & Rahayu, 2020).

According to Ministry of Industry data, the national cosmetic industry's growth rate increased significantly from 6.35 percent in 2017 to 7.36 percent in the first quarter of 2018.

(Ministry of Industry of the Republic of Indonesia 2018). According to the ZAP Beauty Index Survey with Markplus, Inc., millennial generation women in the age range of 19-23 years dominated beauty clinic consumers in 2018, followed by generation X in the age range of 24-30 years (Kamiluddin, 2020).

In Indonesia, the beauty industry is rapidly expanding. With an annual consumer growth rate of 3 million people, this industry looks promising in the long run (Tannur, 2020). The beauty and personal care industry in Indonesia has grown by an average of 12% over the last decade, with a market value of 33 trillion Rupiah in 2016. Even in 2020, the beauty industry in Indonesia is expected to grow at the fastest rate of any country in the world. Asia's Southeast (Ussakinah, 2018). According to the regulation of Minister of Health No. 9 of 2014, a clinic is an individual health service facility that provides basic and/or specialist medical services, is organized by more than one health worker, and is led by a medical worker. A facial care clinic is a place that offers dermatology services. Dermatology is a branch of medicine that studies the skin, including sweat glands, nails, and hair. Beauty clinics provide beauty health services from doctors who are experts in their fields, particularly skin, face, hair, and nail care. A beauty clinic provides both health and beauty services. Beauty treatments with a doctor should not be taken lightly. Some patients are even victims of cosmetic malpractice, which can result in facial damage, swelling, and burning. When a doctor violates the KODEKI (Indonesian Doctors' Code of Ethics), this is considered beauty malpractice.

The doctor-patient relationship is a mutually beneficial relationship in which the doctor is the service provider and the patient is the consumer. Patients are sick, while doctors are healthy. Shidarta defines the consumer as a person who uses or enjoys goods and/or services in his book Indonesian Consumer Protection Law. However, if malpractice occurs, it does not materialize properly. Patients must, once again, be legally protected. Consumers are defined as *"anyone who uses goods and/or services available in the interests of the community, both for their own interests and those of their families, other people, or other living beings, and are not to be traded"* in article (1) number (2) of law number 8 of 1999 concerning consumer protection. Therefore, this research focuses on the following problems:

1. How does an action by medical personnel fulfill the elements of a legal act in beauty malpractice?
2. What is the legal responsibility of medical personnel in the act of beauty malpractice?

METHOD

Research Method

The research method for normative juridical research involves two problem approaches: the Legislative Approach and the Conceptual Approach. The Legislative Approach is utilized by reviewing all laws and regulations related to the legal issues being investigated. The Conceptual Approach is employed through analyzing the views and doctrines that develop in the science of law to identify ideas that give rise to relevant legal understandings, concepts, and principles as a foundation for building a legal argument in addressing the legal issues faced.

The legal research uses primary legal materials, which are legal materials that have authority, such as constitutional law, statutory law, and case law. Secondary legal materials, which are publications on law that provide an explanation of primary legal materials, are also employed. Finally, tertiary legal materials or non-legal materials, which provide instructions or explanations of primary and secondary legal materials relevant to the research topic, are also utilized.

The normative juridical research methodology involves analyzing legal materials and using legal reasoning to develop legal arguments and solutions to legal issues. This research approach involves identifying legal principles, rules, and concepts and applying them to a particular legal problem or issue. The research method is based on a deductive approach, where legal arguments are developed by analyzing legal principles and applying them to specific cases or situations.

Research Procedure

The research method of normative research is a type of research that aims to identify and evaluate the standards or norms that exist in a particular field. In the case of aesthetic medicine, normative research can be conducted to evaluate the standards and regulations that govern the establishment and operation of beauty clinics. The first step in conducting normative research on aesthetic medicine is to identify the relevant regulations and standards. In this case, the researcher reviewed the Regulation of the Minister of Health number 028/MENKES/PER/I/2011 and the Ministerial Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2014. These regulations outline the requirements for establishing and operating clinics in Indonesia, including beauty clinics.

The next step is to evaluate these regulations to determine their effectiveness in ensuring the safety and quality of care provided by beauty clinics. The researcher assessed whether the regulations adequately address the unique risks and challenges associated with providing aesthetic medical services. For example, the specialized researcher could evaluate whether the regulations require training and qualifications for medical personnel who provide aesthetic treatments or whether they require specific safety protocols for procedures such as liposuction or plastic surgery.

The researcher also evaluated the standards of care that exist within the field of aesthetic medicine. This may involve reviewing guidelines and recommendations from professional organizations such as the International Association for Physicians in Aesthetic Medicine or the American Society for Aesthetic Plastic Surgery. The standards are reflected in the regulations governing beauty clinics in Indonesia and whether they are being adhered to by practitioners.

Finally, the researcher made recommendations for improving the regulations and standards governing beauty clinics in Indonesia. This may involve proposing changes to the existing regulations or developing new guidelines and standards for aesthetic medical practice. The recommendations should be based on a thorough evaluation of the existing regulations and standards and should aim to improve the safety and quality of care provided by beauty clinics.

Overall, the research method of normative juridical research involved a detailed analysis and interpretation of the legal norms and principles that apply to the juridical aspects of a beauty clinic, with a focus on evaluating their effectiveness in providing legal protection for patients.

1. Identification of legal norms and principles: The first step is to identify the legal norms and principles that apply to the issue. These include Law No. 36 of 2009 concerning Health, Law No. 29 of 2004 concerning Medical Practices, and other implementing regulations related to the health sector.
2. Analysis of legal norms and principles: The next step is to analyze legal norms and principles to understand their meaning and scope. This will involve examining the provisions of the laws and regulations and understanding their application to the issue.
3. Interpretation of legal norms and principles: The third step is to interpret legal norms and principles to determine their implications for the issue. This will involve analyzing how the legal norms and principles apply to the facts and circumstances of the issue and determine the legal consequences.

4. Evaluation of legal norms and principles: The final step is to evaluate the legal norms and principles to determine their effectiveness in providing legal protection for patients seeking health care in beauty clinics. This will involve assessing how well the legal norms and principles function and are followed by the community and identifying any gaps or deficiencies in the legal framework.

DISCUSSION

Aesthetic Medicine

According to the Regulation of the Minister of Health number 028/MENKES/PER/I/2011 concerning clinics, it is stated that the clinic is an individual health service facility that provides basic and/or specialist medical services, organized by more than one type of health worker and led by a medical personnel (Ministerial Regulation of the Minister of Health) Health of the Republic of Indonesia Number 9 of 2014 (2014).

A beauty clinic can also be interpreted as a place where patients can seek medical advice for complaints about their appearance, in this case, an unfavorable appearance. A beauty clinic is one that provides dermatology services (Gloria, 2017). Dermatology offers a variety of treatments for skin, hair, scalp, nail, and other diseases (Sari, 2019). The majority of people seek beauty/aesthetic treatments to update or correct anatomical imperfections; however, this motivation may be broader subconsciously. People are becoming more aware of the importance of maintaining one's appearance because it can affect one's self-confidence, not only in young people but also in early childhood, adult parents, and even the elderly (Rieder & Dayan, 2020). Beauty clinics are a type of health promotion service that aims to improve a person's physical performance (Rieder & Dayan, 2020). A beauty clinic is an outpatient health service facility that provides medical services (consultation, examination, treatment, and medical action) to treat various conditions/diseases related to a person's beauty (appearance aesthetics), which is carried out by medical personnel (doctors, dentists), specialist doctors, and specialist dentists) based on their expertise and authority (Gloria, 2017). Beauty clinics are widely advertised to the public, offering services such as removing body toxins (detoxification) with specific tools and materials, plastic surgery to repair the upper and lower eyelids and brows, shaping the cheeks, chin, and nose, face lifts, neck lifts, tattoo removal, tummy tuck, liposuction or liposuction, to enlarge or reduce breasts (Utari et al., 2020).

Types of Beauty Clinics

With a smattering of beauty clinics, there are many different types of facilities in it. Depending on the market segment and type of clinic being established. Beauty clinics are divided into two treatment areas: a special room area for skin health care, particularly facial skin, and a body skin that goes through a treatment process such as facials, full-blooded aura, and body treatments such as restore vitality and fitness as well as the brightness of the body's skin handlers and activities carried out can only be done in a special room (Saragih, 2020). Meanwhile, aside from skin care, such as hair care, make-up, and manicure, pedicure is performed in a single multifunctional area known as the salon area (Hasuri & Anam, 2020).

In general, medical science in the field of aesthetics is divided into two categories: Cosmetic Care and Medical Aesthetics (Cosmetic Care). Injections, among other things (Pakpahan et al., 2021). Plastic Surgery (Plastic Surgery) is a type of treatment that uses surgical techniques and anesthesia to perform procedures such as face lifts, liposuction, nose decapitation, and others (Astanti, 2020). Clinics, according to Minister of Health Regulation Number 9 of 2014, are individual health service facilities that provide basic or specialist

medical services, are organized by more than one type of health worker, and are led by a medical worker (Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2014 2014). A dermatology clinic that provides facial treatments is referred to as a treatment clinic (Gloria, 2017).

Juridical Aspects of a Beauty Clinic

Looking at the number of people who try to beautify themselves, the government makes a policy to provide legal protection with Law No. 36 of 2009 concerning Health, Law No. 29 of 2004 concerning Medical Practices, and other implementing regulations related to the health sector in order to provide a sense of security and certainty for recipients and providers of health services (Pakpahan et al., 2021). Human dignity and rights must be respected by a doctor (Hasuri & Anam, 2020). Every person must be treated as a human being with the right to self-determination. The patient is granted the right to think logically and make his own decisions in this case. Willing, approving, justifying, defending, and leaving the patient for his own sake is what autonomy entails (Utari et al., 2020).

Legal awareness can be used as a metric for determining how effective a law is. A legal rule's validity is determined by how well it functions and is followed by the community. Because consumers are unaware of the UUPK, they do not demand the correct, clear, and honest information that should be obtained through marking (Noor & Rahayu, 2020). The implementation of beauty clinics, which are oriented toward the commercialization of health services, must prioritize the quality of health services in the fields of plastic surgery and beauty care (Kamiluddin, 2020). The legal relationship between a health worker, in this case an expert doctor, surgeon, or cosmetic specialist, and a patient is more than just a medical relationship; there is also a civil relationship in the form of an agreement that is bound and binding on both parties and gives birth to the obligations and rights of each party (Sari, 2019).

Therapeutic agreements are classified as *inspannings verbinten* agreements, and beauty clinics, as health care facilities in the field of beauty, are required to make maximum and serious efforts in healing based on good medical science standards (Utari et al., 2020). The goal of this therapeutic agreement or transaction between doctors and patients is to do something in the form of health efforts (curative) or therapy for healing patients,¹³ or to improve welfare in the health sector (Ussakinah, 2018). Therapeutic transactions between clinics and patients are governed by legal principles outlined in the Civil Code's third book, which govern engagement (Utari et al., 2020). Indeed, the transactional relationship is normatively parallel and balanced, but there is no balance.

The primary focus of consumer protection efforts against doctors' actions, which frequently harm patients. The regulation expressly states that the authority of doctors to perform plastic surgery is not thoroughly regulated. As a result, there are numerous ways for doctors to claim that they are capable of performing plastic surgery. Another issue is that doctors' malpractice can be seen in their actions that are against the law (by default) (Hasuri & Anam, 2020). The standard clause provided to the consumer provides the opportunity for the patient, who does not have the ability to negotiate, to have freedom in the clause. This gives the impression that the plastic surgeon was acquitted. Clauses are also referred to as Informed Consent (Ussakinah, 2018).

Informed consent is made up of two words: "*informed*," which means receiving an explanation or information (information), and "*consent*," which means approval or giving permission, implying an agreement given after receiving information. Article 45 of Law No. 29 of 2004 Concerning Medical Practice is the regulation that becomes the legal basis for the implementation of informed consent (Article 45 of Law No. 29 of 2004 n.d.). According to

Law No. 36 of 2009 concerning Health and Law No. 44 of 2009 concerning Hospitals, informed consent is a process of communication between doctors and patients in which the doctor provides information, which is then accepted by the patient and documented in the Informed consent form. There must be a common language in this communication, and the doctor must explain according to the patient's knowledge to ensure that the information received is correct (Pikoos, 2021).

Article 45 of Law No. 29 of 2004 Concerning Medical Practice becomes the legal basis for the implementation of informed consent. According to Health Law No. 36 of 2009 and Hospital Law No. 44 of 2009, informed consent is a process of communication between doctors and patients in which the doctor provides information, which is then accepted by the patient and documented in the Informed consent form. There must be a common language in this communication, and the doctor must explain according to the patient's knowledge so that the information received is correct.

Medical Personnel Actions that Meet the Elements of Unlawful Acts

Medical intervention does not eliminate the possibility of errors or omissions (Astanti, 2020). Errors or omissions made by health workers while performing their professional duties can be fatal to their patients (Audina, 2020). As a result, legal protection is required for patients seeking health care (Hasuri & Anam, 2020). Doctors, as a profession that provides medical services, are required to adhere to standard operating procedures and medical requirements. Pay attention to their legal and regulatory rights and obligations (Yuniati, 2021). Patients have the right to medical practice services as well as complete and honest information about their health conditions and problems.

According to general theory, medical malpractice (medical malpractice) can be divided into two categories: malpractice from an ethical standpoint (ethical malpractice) and malpractice from a legal standpoint (juridical malpractice) (Garnida, 2020). Civil malpractice occurs when an act of malpractice causes injury or death to someone who is suspected to have been caused by an error, negligence, or violation of the rule of law by a doctor/health worker/hospital (in this case a clinic), and the malpractice act is not subject to criminal or administrative law rules (Ussakinah, 2018). In Indonesia, the Medical Practice Law No. 29 of 2004 does not address the issue of medical malpractice in a clear and firm manner. In addition to the lack of an explicit definition of malpractice, there are no specific rules governing the resolution of medical disputes between patients and doctors/health workers through litigation procedures (trials) in terms of medical practice or health services (Gloria, 2017). In its resolution, every act of violating the doctor's code of ethics will always be related to ethical values. Sometimes disagreements in making an ethical decision are caused by medical actions that are based not only on obligations but also on competing morals. As a result, the role of medical ethics institutions in resolving ethical violations is also required (Astanti, 2020).

The doctor-patient relationship is fundamentally a civil law relationship in which the patient visits the Astanti doctor and the doctor promises to treat or cure the patient's illness (Hasuri & Anam, 2020). Acts that violate the law are generally governed by the Civil Code. The basis for compensating victims of unlawful acts is generally spelled out in the Civil Code. According to Article 1365 of the Civil Code, *"every act that violates the law and causes harm to others obligates the person who caused the loss due to his mistake to compensate the loss."* The above-mentioned Civil Code Article 1365 states unequivocally that any act committed by a person that causes harm to another person must be compensated in proportion to the loss suffered by the person who was harmed (Sari & Handayani, 2018).

If a doctor violates a doctor's medical rights and obligations, the medical community will take action through sessions of the code of ethics and medical discipline councils, one of which is carried out by the MKEK (Medical Code of Ethics Council) (Garnida, 2020). Health (medical) service standards are critical and must be maintained or improved in accordance with applicable service standards so that the community as consumers can feel satisfied with the services provided (Hadi, 2018). Service is essentially an attempt to assist in the preparation of everything that other people require and to provide satisfaction in accordance with the expectations of consumers. Of course, the service itself should not let the patient down (Audina, 2020). Consumer Regulation in Indonesia is governed by Law No. 8 of 1999 on Consumer Protection, which provides consumers with legal protection. Moenadjat Wiraatmadja is an Indonesian plastic surgeon. This progression began. The plastic surgery section has been a separate department since April 1959.

Beginning with advancements to assist patients with cleft lip and palate and burns. Doctors receive continuous training in addition to their knowledge of plastic surgery for a period of 4.5 years. Legal protection for victims of malpractice is specifically regulated in Medical Practice Law No. 29 of 2004. This law aims to maintain the quality of medical services while also providing legal protection for patients. Doctors who perform plastic surgery must have a medical specialist education background, specifically in general surgery, bone surgery, plastic surgery, eyes, skin, and genitals (Tannur, 2020).

Legal Liability of Medical Personnel for Beauty Malpractice

One of the most common components of medical malpractice is negligence. Medical malpractice includes elements of negligence, wrongdoing, violation of professional rules, and intentional acts that cause harm (Garnida, 2020). Thus, malpractice can be defined as a doctor's omission or error in acting when using the skills and knowledge commonly used to treat patients. Medical malpractice issues are frequently resolved through litigation, both criminal and civil. The doctor's responsibility can be subject to criminal, civil, and administrative sanctions in both criminal and civil cases (Sari & Handayani, 2018).

Medical malpractice remains a problem in the health sector, which is not clearly regulated by national law. However, the elements have been stated in Health Law No. 36 of 2009, which includes the enforcement of criminal, administrative, and civil law (Law - Law No. 36 of 2009 n.d.). Medical malpractice, from the standpoint of civil law, is an act against the law that satisfies the provisions of the Civil Code (Hadi, 2018).

Consumers of beauty services can seek compensation for losses incurred during transactions at beauty clinics using a variety of legal remedies, including: Litigation (resolving disputes in general courts) (Hasuri & Anam, 2020). As mediators, the Indonesian Consumers Foundation (YLKI), the Directorate of Consumer Protection at the Industry and Trade Office (Disperindag), and the Consumer Dispute Settlement Agency (BPSK) can pursue non-litigation (out-of-court consumer dispute resolution) (Saragih, 2020). According to the law, every responsibility must have a foundation, which includes things that give rise to a person's legal right to sue others as well as things that give rise to other people's legal obligations to hold others accountable (Gloria, 2017). In terms of legal responsibility, the responsibility here is the doctor's responsibility in relation to his professional duties (Audina, 2020). On the one hand, there will be consequences as a result of this responsibility. A professional will try to respect his profession if he has a lot of responsibilities (Ussakinah, 2018).

Article 36 requires every doctor who wishes to open or practice in Indonesia to obtain a practice permit, and Article 37 refers to a practice permit issued by the competent health

official in the district/city where medical practice will be carried out. And, according to Article 38 paragraph 1, in order to obtain a practice license, a doctor must³⁴: have a doctor's registration certificate or a valid registration certificate as referred to in Article 29, Article 31, and Article 32; have a place of practice; and have a recommendation from a professional organization. Civil legal liability due to default – negligence, negligence, breach of contract, failure to fulfill their contractual obligations Thus, default is a condition in which a doctor (business actor) fails to fulfill or carry out the accomplishments specified in an agreement (Saragih, 2020). Legal protection for Beauty Clinic patients is provided by Consumer Protection Law No. 8 of 1999. Legal remedies for losses suffered by patients can be obtained by mediating between doctors and patients to reach an agreement under the authority of the Consumer Dispute Resolution Agency (Garnida, 2020).

According to Health Law Number 23 of 1992, the most important legal issue to be studied is the extent to which a doctor's actions have legal implications for negligence or errors of the health profession, and what elements are used as indicators or measuring tools, as well as elements that can prove whether there is an error or negligence of the doctor in conducting the diagnosis (Law Number 23 of 1992 nd). Legal protection for patient rights as consumers is governed by Consumer Protection Law No. 8 of 1999, Health Law No. 36 of 2009, and Medical Practice Law No. 29 of 2004. (Hadi, 2018). Patients have the right to seek restitution as a result of business actors' and doctors' actions that endanger them.

In general, Article 360 paragraphs (1) and (2), Article 361 of the Criminal Code, doctors are obliged to take responsibility for their actions if they take medical actions that result in serious injury or death due to their negligence. In addition to accountability in the Criminal Code in Law No.29 of 2004 concerning medical practice, it also includes criminal provisions in Article 75, Article 76 and Article 79. Article 75 paragraph 1 states that every doctor who does not have a registration certificate and intentionally practices medicine will be sentenced to 3 years imprisonment or a maximum fine of Rp. 100,000,000 (one hundred million rupiah) (Garnida, 2020).

CONCLUSION

Aesthetic health or beauty clinics emerge as a result of changes in modern people's lifestyles who want to look more beautiful. As a result, the government must provide legal protection through laws in order to provide a sense of security and, of course, to prevent medical malpractice. In this case, medical malpractice remains a problem in the health sector that has not been adequately addressed by national legislation. However, the elements have been stated in Health Law No. 36 of 2009, which includes the enforcement of criminal, administrative, and civil law. Medical malpractice, from the standpoint of civil law, is an act against the law that satisfies the provisions of the Civil Code.

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Received: 03-May-2023, Manuscript No. JLERI-23-13558; **Editor assigned:** 04-May-2023, Pre QC No. JLERI-23-13558(PQ); **Reviewed:** 19-May-2023, QC No. JLERI-23-13558; **Revised:** 20-June-2023, Manuscript No. JLERI-23-13558(R); **Published:** 30-June-2023