

# Legal Responsibilities of Plastic Surgery Specialists Against Patients' Rights in Health Services

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**ABSTRACT--** *The increasing needs of the community in the field of aesthetics, makes the medical world develop and improve their knowledge and skills in medical services, especially in the aesthetic field. There are times when medical services occur errors/negligence by doctors that cause harm to patients both immaterial and material such as trauma, disability, paralysis or even death. No exception to the medical plastic surgery procedures. The formulation of the problems in this study are (1) How is the Legal Relationship between the Specialists in Plastic Surgery and the Patients? and (2) What is the Legal Responsibility of Plastic Surgery Specialists for Patients' Rights in Health Services? The research approach method used is the doctrinal approach to law. The results of the study show that the legal relationship between the lecturer and the patient is based on Article 1320 of the Civil Code governing the legal requirements of a legal agreement which is stated in a therapeutic agreement. The Legal Responsibilities of Plastic Surgery Specialists Against Patients' Rights in Health Care are three namely civil, criminal, and ethical code.*

**Keywords:** *Legal Responsibility, Plastic Surgery Specialist, patient, Health Services*

## I. INTRODUCTION

The development of the health sector is basically aimed at increasing awareness, willingness and ability to live a healthy life for everyone to realize optimal health degrees as one of the elements of welfare as mandated by the Preamble of the 1945 Constitution of the Republic of Indonesia. Health is the most beautiful gift given by God The Almighty to all creatures in the face of the earth, because if the physical (body) is in a healthy state, then all the desired activities can almost certainly be done.

Today, in general, society places beauty or aesthetics on the priority scale, because one's physical condition is the main focus of an appearance. Physical conditions include body shape that is considered ideal, among others: sharp nose, eyes that are not narrow, large breasts and swollen and all in healthy conditions.

The increasing needs of the community in the field of aesthetics, makes the medical world develop and improve their knowledge and skills in medical services, especially in the field of aesthetics that is related to changing the shape of human organs, which aims to correct or make corrections to physical or unattractive appearance to better. The doctor who performs this action is a Specialist Reconstructive and Aesthetic Plastic Surgery.

The large number of people who use these services and with high costs in their implementation raises many problems, both for doctors who provide services, hospitals that organize services and patients who need these

services. Surgery performed to patients who need services, such as: facelift, rhinoplasty, mammoplasty, blepharoplasty to liposuction, do not necessarily satisfy both parties.

Doctors are required to be professional in carrying out their duties and authorities in medical services. However, not always the medical services provided by doctors in hospitals can produce the results that are desired by all parties. There are times when medical services occur errors/negligence by doctors that cause harm to patients both immaterial and material such as trauma, disability, paralysis or even death. No exception to the medical plastic surgery procedures.

Laws are held not by law, but they must be useful for the people they govern. Then the law is not something that stands independently of the people. Law is the reflection of society (Hamaker). Law is the views, opinions and positions held in a particular society and within a certain period of time. With changing times, the law will also change too. Law is needed for the existence of order in society. With the existence of law, there arises a sense of certainty in human life (Predictability: Roscoe Pound). Humans in the society will know what is permitted and what is prohibited. He will not hesitate anymore in carrying out his actions.[1] Likewise with doctors or other professions run by someone.

In line with a patient who is undergoing medical treatment, a doctor also in carrying out his profession in the medical field, certainly also wants the best and maximum results from every medical action he takes on his patients. But sometimes human desires are also not in line with the reality that exists, it could be desired by a patient undergoing medical treatment and a doctor who runs his profession as a medical staff is inversely proportional to the existing reality, could be due to lack of cooperation from the patient himself (not heed the things the doctor ordered both during the period he underwent medical treatment, or after he underwent medical treatment or commonly known as recovery), or it could even be due to the negligence of the doctor so that he could be categorized as having committed a medical malpractice in the medical field. When doctors commit malpractice, that is when they are confronted by law. Departing from this phenomenon, this paper seeks to conduct a study on "Legal Responsibility of Plastic Surgeons on Patients' Rights in Health Services".

## II. RESEARCH METHOD

The research approach method used is a doctrinal approach to law. This method emphasizes the conception

that law can be seen as a set of laws and regulations that are arranged systematically based on a certain order.[2]

The sequence must have a characteristic, namely the harmonization or synchronization of both vertical synchronization and horizontal synchronization.[3]

Vertical synchronization requires higher legislation. As the main source of a system of laws and regulations referred to as the grundnorm which covers all the laws and regulations arranged in a hierarchical pyramid. Horizontal synchronization is defined as a match between the same level of legislation. There must be no conflict between equal laws and regulations.

### III. FINDINGS AND DISCUSSION

#### 1. *Legal Relationship between Plastic Surgery Specialists and Patients*

Their The legal relationship between doctors and patients has occurred since a long time ago, where doctors as a person who provides treatment for people in need. This relationship is a very personal relationship because it is based on a patient's trust in a doctor called a therapeutic transaction. [4]

A therapeutic transaction is an agreement between a doctor and a patient in the form of a legal relationship that gives birth to the rights and obligations of both parties. The object of this agreement is an effort or therapy to cure the patient. The legal relationship between doctors and patients begins with a pattern of vertical paternalistic relationships such as between fathers and children who depart from the principle of "father knows best" which gives birth to a paternalistic relationship.

Legal relationship arises when a patient contacts a doctor because he feels something he feels is dangerous to his health. The state of psychology gives a warning that he feels sick and in this case the doctor is considered capable of helping and providing assistance. Thus, the position of the doctor is considered higher by the patient and his role is more important than the patient.

Legal relations should be carried out if both parties know their respective rights and obligations, both doctors and patients. Patients' rights in general health services are as follows:[5]

- 1) Patient's right to care;
- 2) Obligation to carry out the advice of doctors or health workers;
- 3) Obligation to fulfill the rules on health;
- 4) Obligation to be honest when problems arise in relation to doctors or health workers;
- 5) Obligations to provide service fees; and
- 6) Keeping the personal secrets of the doctors he knows based on therapeutic agreements that give rise to rights and obligations for the parties, the doctor also has rights and obligations as a profession bearer.

Doctor's right that must be known by himself, namely:

- 1) The right to obtain complete and honest information from patients who will be used for diagnostic and therapeutic purposes;
- 2) The right to service fees or honorarium for services provided to patients;
- 3) The right to good faith from patients or their families in carrying out therapeutic transactions;
- 4) The right to defend oneself against the demands or claims of patients for the health services they provide; and
- 5) Right to obtain approval for medical treatment from patients or their families.

The doctor-patient legal relationship will put the doctor and the patient in alignment, so that everything that is done by the doctor to the patient must involve the patient in determining whether something can or cannot be done on him. One form of alignment in the patient's doctor's legal relationship is through informed consent.

The patient has the right to decide whether to accept or reject part or all of the action plan and treatment that will be carried out by the doctor against him. Law Number 29 Year 2004 Concerning Medical Practices, specifically regulating the Rights and Obligations of Doctors or medical personnel, doctors have the right:

- 1) Obtain legal protection as long as carrying out their duties in accordance with professional standards and operational procedure standards;
- 2) Providing medical services according to professional standards and operational procedure standards;
- 3) Obtain complete and honest information from patients and their families; and
- 4) Receiving service fees.

The legal relationship of the patient's doctor refers to Article 1320 of the Civil Code governing the legal requirements of an agreement or a legal engagement. These conditions include, among others:

- 1) Actors of the agreement must be able to act as legal subjects;
- 2) The agreement between the legal subjects must be on a voluntary basis and without coercion;
- 3) The agreement promises something in the field of health services; and
- 4) The agreement must be for a lawful reason and not contrary to law.

#### 2. *The Legal Responsibility of Plastic Surgery Specialists Against Patients' Rights In Health Services*

Plastic surgery as a series of medical actions carried out by health workers who have expertise and authority for that in certain health facilities, is part of the health effort, which in the Health Act includes the implementation of efforts health carried out through disease healing activities and health recovery. This is based on the provisions in Law Number 36 Year 2009, namely:

- a) Chapter V: Health Efforts, Part ninth: Disease Healing and Health Recovery: Articles 33 and 37;
- b) Chapter V, part one: General; Articles 10 and 11.

Accordingly, all provisions concerning medical treatment and cure of diseases and restoration of health basically apply to medical procedures for plastic surgery, unless there are special provisions that regulate them as a medical action that is specialist in nature. The general provisions in medical procedures that also apply in plastic surgery measures include:

- 1) Informed Consent;
- 2) Medical Records;
- 3) Rights and Obligations of Medical Personnel and Patients.

The authority to carry out complete Plastic Surgery practices, namely Reconstructive Plastic Surgery and Cosmetic Surgery or Aesthetic Surgery, as well as incomplete namely the Aesthetic Surgery section, can only be performed by a Plastic Surgery Specialist, and is stated by a practice permit issued by the Ministry of Health of the Republic of Indonesia after consider recommendations from the Indonesian Association of Plastic Surgeons (PERAPI). General Practitioners and other Specialists are not permitted to undergo Plastic Surgery.

In Plastic Surgery, appearance is a basic factor that is very important for all activities carried out, while Aesthetic surgery performed by other specialist doctors or general practitioners is only part of their professional activities without living up to the philosophy of Plastic Surgery and other impacts. Therefore, if left unchecked, this would be contrary to the development of scientific professionalism and foster a climate of amateurism and adventure. Aesthetic Surgery has never been Emergency Surgery.

In article 37 (1) of Law No. 36 of 2009 concerning Health states that plastic surgery and reconstruction can only be carried out by personnel who have the expertise and authority to do so and are carried out in certain health facilities. Whereas Article 46 (paragraphs 3 and 4) of the draft Government Regulation draft states that plastic surgery performed by medical personnel is in accordance with capability and authority and is carried out at health facilities that meet the requirements. Thus according to the Team Agreement, Health Workers (Plastic Actors) Plastic Surgery are:

- 1) Plastic Surgery Measures can only be carried out by Plastic Surgery Specialists who have obtained licenses from the relevant Government agencies.
- 2) Plastic Surgery is a specialized area of expertise, so all issues relating to this field, both legal and other fields, need to consider the views and opinions of the Plastic Surgery specialist.
- 3) Plastic Surgeon is a doctor who has completed a Plastic Surgery Specialist education at the Faculty of Domestic Medicine or a graduate of the Faculty of Overseas Medicine that has been recognized by the Government after considering the recommendations

given by PERAPI as a professional organization in the field of Plastic Surgery in Indonesia.

- 4) The granting of a permit / authority is regulated by the Ministry of Health after obtaining a recommendation from PERAPI.

According to the Big Indonesian Dictionary (KBBI), responsibility is the obligation to bear everything if anything happens that may be prosecuted, blamed, and sued. In the legal dictionary, responsibility is a must for someone to carry out what is required of him.[6] According to law, responsibility is a result of the consequences of a person's freedom of conduct related to ethics or morals in carrying out an act. [7]

Furthermore, according to the Quarterly Point, liability must have a basis, that is, a matter that causes legal rights for someone to sue another person as well as things that give birth to other people's legal obligations to give an account. [8]

According to Civil Law, the basis of accountability is divided into two types, namely mistakes and risks. Thus, it is known as liability on the basis of mistakes, risk liability or absolute responsibility.

The basic principle of liability on the basis of error implies that a person must be held responsible for making a mistake because it harms others. Conversely, the principle of risk responsibility is that the plaintiff's consumer is no longer required but the defendant's producer is directly responsible as a business risk.

According to Abdulkadir Muhammad, the theory of responsibility in unlawful acts is divided into several theories, namely:[9]

- a) Liability resulting from intentional unlawful acts, the defendant must have committed the act in such a way that is detrimental to the plaintiff or knows that what the defendant will do will result in losses.
- b) Liability due to unlawful acts carried out due to negligence, is based on the concept of errors relating to morals and laws that have been mixed.
- c) Absolute responsibility resulting from acts that violate the law without questioning mistakes, is based on his actions both intentionally or unintentionally, meaning that even though it is not his fault he remains responsible for the losses arising from his actions.

The regulations governing the ethical responsibilities of a doctor are the medical code of ethics and the doctor's oath. The Indonesian Medical Code of Ethics is prepared by considering the International Code of Medical Ethics with the idiomatic foundation of the Pancasila and the structural foundation of the 1945 Constitution. The Indonesian Medical Code of Ethics, hereinafter abbreviated as KODEKI, regulates human relations which includes the general obligations of a doctor, the doctor's relationship with his patients, the obligations of doctors to their colleagues and the obligations of doctors to themselves.

Violation of KODEKI items constitutes a violation of ethics solely and as for violations of ethics as well as

violations of the law. Violations of ethics do not always mean violations of the law, on the contrary violations of the law do not always constitute ethical violations of doctors.

Ethics violations can be divided into:

- 1) Violation of pure ethics, which consists of:
  - a) Withdrawal fees that are not reasonable or attractive fees from family members of doctors and dentists.
  - b) Taking over a patient without his colleague's consent.
  - c) Praise yourself in front of the patient.
  - d) Never attended continuous medical education.
  - e) Doctors neglect their own health.
- 2) Violations Ethicolegal, which consist of:
  - a) Sub-standard medical services.
  - b) Issued a fake certificate.
  - c) Disclosing the doctor's position or job.
  - d) Provocate abortion.
  - e) Sexual harassment

In medical practice, violations of professional discipline are violations of the standards of the medical profession. The responsibilities of the doctor profession are closely related to the professionalism of a doctor. This is related to:

- 1) Education, experience and qualifications  
In carrying out their professional duties, a doctor must have a degree of education in accordance with the field of expertise practiced on the basis of knowledge gained during his education at the Faculty of Medicine as well as his specialization and experience to help sufferers.
- 2) Degree  
Degree of risk of treatment is attempted to the minimum, so that the side effects of treatment are kept to a minimum.
- 3) Maintenance Equipment  
Inspection using maintenance equipment is carried out if the results of external inspection are not obtained accurate results so it is necessary to check using the help of tools.

A doctor's responsibility is a physician's attachment to legal provisions in carrying out his profession. As a reasonable legal subject if in conducting health services, doctors are bound and must be responsible for everything that results from the implementation of their legal position as the bearer of rights and obligations. Thus, responsibility implies a capable state of the burden of liability for everything due to his actions.

According to Law No. 29/2004 on Medical Practice, it states that the Indonesian Medical Disciplinary Honorary Council (MKDKI) receives complaints and has the authority to examine and decide whether or not a mistake was made by a doctor because it violates the application of medical science and applies sanctions.

Based on civil law that involves a patient's lawsuit against a doctor who handles it almost everything, if it can't be said all, is related to claims for compensation.

Therefore, if a doctor is proven to have committed a violation or an act that violates the law, he may be sued to pay compensation.

In criminal law there is a teaching about mistakes, both in the form of intent and negligence. Intentions which are often called malpractice criminals, for example include abortion without medical indications and euthanasia. Violations committed by doctors according to the benchmark of gross negligence or culpa.

#### IV. CONCLUSION

Based on the explanation above, the author can conclude the following:

The legal relationship that occurs between lecturers and patients is based on Article 1320 of the Civil Code which regulates the legal requirements of an agreement or legal agreement which is contained in a therapeutic agreement. The Legal Responsibilities of Plastic Surgery Specialists Against Patients' Rights in Health Care are three namely civil, criminal, and ethical code.

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