

Legal Protection for Aesthetic Doctors in Therapeutic Agreement at Beauty

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ABSTRACT. The development of health and medical sciences makes patients seek solutions for medical action not only for health but to add appearance and aesthetic value through beauty service facilities, namely beauty clinics. In a beauty clinic, there are doctors who provide medical aesthetic services known as aesthetic doctors and patients. Between the aesthetic doctor practitioner and the patient arises a relationship called a therapeutic agreement. In Indonesia, there are no special arrangements regarding medical aesthetic services. The purpose of this research is to examine and analyze the legal protection for aesthetic doctors in therapeutic agreements at beauty clinics in Indonesia in order to determine legal certainty. The method used is a normative juridical method with secondary data taken through library research. The results of the study found that regulations regarding medical aesthetics refer to several regulations regarding related medical services and can be used as a legal basis for medical aesthetics because basically medical aesthetic services are also health care efforts. The regulations of medical aesthetic services are urgently needed for esthetic doctors to be able to practice according to competency and authority standards so that there is no bias between aesthetic general practitioners and dermatologists so they are entitled to legal protection.

Keywords: Aesthetic Doctor, Beauty Clinic, Therapeutic Agreement

1 INTRODUCTION

The development in the field of science, especially in health and medical science, has made patients seek medical solutions not only for health but also beauty and body aesthetics through beauty services, namely beauty clinics. Modern society views that beauty is also an important element of health so that many general practitioners to specialists have provided medical aesthetic services in their practice.

Medical aesthetics services are the same as health services as stipulated in the Health Law covering promotion, preventive, curative, and rehabilitative services (precisely stated in Law Number 36 of 2009 concerning Health Article 47). Medical aesthetics in its scope of services is not limited to facial skin alone but covers the appearance of the self as a whole from hair, face, to body, and delays the aging process (anti-aging). Within the scope of its services, it is still organized in a promotion manner, namely increasing public awareness of the importance of health maintenance, disease

prevention (acne, wrinkles), treatment, and appearance improvement making the existence of medical aesthetics services one of the health needs for the community.

According to the Guidelines for the Implementation of Aesthetic Beauty Clinics, an aesthetic beauty clinic refers to a healthcare facility, either an individual doctor practice or a group practice, that primarily operates on an outpatient basis. These clinics offer medical services such as consultation, examination, treatment, and medical interventions aimed at preventing and addressing various conditions or diseases related to an individual's aesthetic appearance. These services are provided by qualified medical personnel, including doctors, dentists, specialist doctors, and specialist dentists, who perform their duties within the scope of their expertise and authority (2). Based on this description, it can be defined that aesthetic doctors are doctors who provide medical aesthetic services, both in the form of general practitioner and specialty services. In practice, aesthetic doctors in treating patients have the authority to take anamnesis of patients in determining patient complaints and symptoms, determining the implementation and treatment of patients, namely by performing actions according to the competency standards of general aesthetic doctors and genital skin specialists, and prescribing in the form of therapy to patients.

The interaction between patients and doctors establishes a legal association that entails corresponding legal rights and responsibilities for each party involved. The dynamic between healthcare professionals and individuals seeking medical care is sometimes referred to as a therapeutic transaction or therapeutic agreement. This term encapsulates the collaborative and healing-oriented endeavor undertaken by doctors in their interactions with patients. Legally, therapeutic agreements are subject to the provisions in the Health Law, Law Number 29 of 2004 concerning Medical Practice (hereinafter referred to as the Medical Practice Law), and other legal derivatives. Therapeutic agreements between beauty patients and beauty doctors often lead to a conflict, namely between the wishes and expectations of the patient and the maximum efforts of the doctor. With the reason that it does not heal or not as desired, the patient "accuses" the aesthetic doctor of malpractice.

In a therapeutic transaction between a doctor and a patient, conflict can be triggered by an adverse event. Adverse events differ from side effects because adverse events cannot be predicted. Examples include allergic reactions to anaphylactic shock. Patients often perceive adverse events as malpractice.

Data collected by the Indonesian Medical Council shows that in the period 2006-2015, 317 cases were reported as cases of alleged malpractice, 114 were cases of general practitioners, 76 cases were surgeons, 56 cases were obstetricians and gynecologists, and 27 cases were pediatricians. This shows that there are still many cases of alleged malpractice that are even reported to the relevant professional institutions. Of course, this number can increase if cases of patient complaints to alleged malpractice are not reported.

According to Article 50 letter (a) of the Medical Practice Law, doctors and dentists are entitled to legal protection when performing medical practices, provided that they adhere to professional standards and normal operational processes. In a hypothetical scenario, it can be argued that if a medical professional, such as a doctor or dentist,

has provided medical services in compliance with established professional standards and standard operating procedures, they may be shielded from legal prosecution, including administrative, civil, or criminal charges. However, in reality, doctors who have carried out medical practices according to applicable standards can still be prosecuted legally, even going to jail. In the practice of aesthetic doctors, doctors have responsibility for patients, beauty clinics, and pharmaceuticals, namely the prescription of concoction creams and medicines used by patients.

With the rise of patient interest in medical aesthetics services and the number of aesthetic doctors who provide medical aesthetics services as part of medical practice, special arrangements in the field of medical aesthetics are needed to provide legal protection for patients and aesthetic doctors as medical aesthetics practitioners themselves. This can prevent accusations of malpractice against aesthetic doctors so that safe, humane, useful and fair medical aesthetic services are provided.

Based on the background description, the problem formulation in this study is as follows.

- 1. How are medical aesthetic services currently regulated in Indonesia?
- 2. How is the legal protection of aesthetic doctors in therapeutic agreements at beauty clinics in Indonesia today?

2 METHODS

This research is written using normative legal methods with secondary data, namely information from the literature. Researchers use a conceptual analytical approach and empirical results are used as a complement to the law and rely on legal norms as a starting point for solving the legal problems raised and are expected to be able to provide input on what to do as a solution to the problem.

3 DISCUSSION

3.1 Medical Aesthetic Services by Aesthetic Doctors at Beauty Clinics in Indonesia

Medical aesthetics is not a new field of medicine. Medical aesthetic procedures were started as early as 1890 by a French doctor named Jean Jacques Legrand. The world's first medical aesthetics association was founded in 1973 in Paris. Evolving technology and science have made medical aesthetics services safer and non-invasive but can produce results that are immediately visible and the public is becoming more open to these services. Even today, medical aesthetics has given rise to many beauty clinics that are a means to improve quality of life and self-confidence, as well as reaching patients of various ages ranging from teenagers to the elderly. The male gender is also currently open to receiving medical aesthetics services, not only patients of the female gender. According to the Guidelines for the Implementation of Aesthetic Beauty Clinics, an aesthetic beauty clinic refers to a healthcare facility,

either an individual doctor practice or a group practice, that operates on an outpatient basis. These clinics offer medical services such as consultation, examination, treatment, and medical procedures aimed at preventing and addressing various conditions or diseases related to an individual's aesthetic appearance. The provision of these services is carried out by qualified medical personnel, including doctors, dentists, specialist doctors, and specialist dentists, in accordance with their respective areas of expertise and professional authority(2). Aesthetic doctors themselves are doctors who provide medical aesthetic services, which can be divided into two, namely genital skin specialists and general aesthetic doctors. In practice, aesthetic doctors in treating patients have the authority to take anamnesis of patients in determining patient complaints and symptoms, determining the implementation and treatment of patients, namely by performing actions according to the competency standards of general aesthetic doctors and genital skin specialists, and prescribing in the form of therapy to patients.

The goal of medical aesthetic services in beauty clinics is to meet the needs of patients in relation to appearance and self-confidence by addressing complaints, delaying signs of aging, and improving physical appearance in relation to status, work, and social pressure. Reduced physical attractiveness can affect a person's quality of life. Based on research by Vladimir, et al, the group of patients who are most interested in improving their appearance are patients with female gender and age range from 40 to 60 years.

According to Article 51 letter (a) of Law Number 29 of 2004 on Medical Practice, doctors are required to deliver medical services that align with professional standards, standard operating procedures, and the specific medical requirements of their patients. The legal framework pertaining to healthcare is intricately connected, yet lacks a definitive and comprehensive elucidation of the specific medical requirements of patients. If an individual experiences psychological distress and a lack of confidence to the extent that it hinders their ability to lead a socially and economically productive life, this condition falls within the scope of medical necessity as defined by Law Number 36 of 2009 concerning Health, specifically Article 1 Paragraph (1). According to this law, health encompasses the physical, mental, spiritual, and social wellbeing that enables individuals to live a socially and economically fruitful life. In providing medical aesthetic procedures where the aim is to add value to the appearance so that the patient feels confident, the practice of medical aesthetics does not only change the appearance physically but affects the patient from the mental side. From the psychological side, patients change their appearance according to their wishes so that they are not depressed and are able to live a healthy life according to the definition of the Health Law.

An obstacle to medical aesthetics services is that there is an uncertain measure of success. Unlike the measure of healing in general medical services, the measure of success of medical aesthetics procedures can be subjective because it can differ from the patient's point of view. This is different from the measure of healing in a disease, for example in Corona Virus Disease 2019 (COVID-19). Based on Circular Letter Number HK.02.01/MENKES/18/2022, the Ministry of Health outlines the criteria for

COVID-19 Omicron patients who are declared cured by negative PCR examination or CT value> 35 for 2 consecutive times. This states that there is a definite benchark in declaring a patient's recovery, which is also a benchmark for the success of patient therapy, namely recovery. However, in medical aesthetic services, there is no definite therapeutic target so that the measure of success is biased.

According to Minister of Health Regulation Number 9 of 2014, which pertains to clinics, a clinic is defined as a type of health service facility that plays a crucial role in providing accessible, affordable, and high-quality healthcare services with the aim of enhancing public health outcomes.

The term "clinic" is explicitly defined in Article 1 point (1) of the Minister of Health Regulation Number 9 of 2014, which pertains to clinics, as well as in Article 1 point (83) of the Minister of Health Regulation Number 26 of 2018, which pertains to electronic integrated business licensing services in the health sector. However, the term aesthetic beauty clinic is not found in both provisions. Minister of Health Regulation No. 9/2014 only classifies clinics based on the type of service and competence of practicing doctors, namely Primary clinics and Principal clinics. Primary clinics are clinics that provide basic services, both for general and specialty, while principal clinics are clinics that provide specialty or basic and specialty services. In these provisions, it is not certain that beauty clinics are included in the classification of primary / principal clinics, but in its implementation, beauty clinics are classified as primary or principal clinics depending on the competence of the doctors practicing in them. If the doctor practicing in it is a general practitioner who takes aesthetic certification then the beauty clinic is classified as a primary clinic, but if the practicing doctor is a genital skin specialist (Sp. DV-E) then the beauty clinic is classified as a principal clinic. Licensing and requirements for the establishment of both primary and principal beauty clinics must follow the terms and conditions of the applicable primary and principal clinic licenses with basic equipment and medicines so that patients with basic diseases must still be well served.

The term "aesthetic beauty clinic" is referenced in the Aesthetic Beauty Clinic Implementation Guidebook, where it is defined as a healthcare facility (either an individual doctor practice or a doctor group practice) that primarily operates on an outpatient basis. These clinics offer medical services such as consultation, examination, treatment, and medical procedures aimed at preventing and addressing various conditions or diseases related to an individual's aesthetic appearance. The provision of these services is carried out by qualified medical personnel, including doctors, dentists, specialist doctors, and specialist dentists, in accordance with their respective areas of expertise and professional authority. This guideline distinguishes between beauty salons and aesthetic beauty clinics where beauty salons are facilities that provide beauty services performed by non-medical personnel (beauticians) while beauty clinics are facilities that provide beauty services where the implementing and responsible personnel are doctors (medical personnel).

The first beauty clinic in Indonesia was established by Dr. Mochamad Affandi, Sp. KK in 1988(9). Until now, beauty clinics and medical aesthetic services in Indonesia continue to grow. The existence of this development makes the need for an organiza-

tion for general practitioners and specialists who have an interest in the field of medical aesthetics so that the Indonesian Anti- Aging, Wellness, Aesthetics & Regenerative Doctors Association (PERDAWERI) was formed which is a forum for the specialization of aesthetics and anti-aging science under the auspices of the Indonesian Doctors Association (IDI) which was inaugurated at the XXVIII IDI National Conference in Makassar in November 2012(10). Currently, 11 PERDAWERI branches have been formed at the provincial level throughout Indonesia with around 3000 general practitioners and specialists registered as PERDAWERI members. However, along with the development of aesthetic doctors and beauty clinics that provide medical aesthetic services, in Indonesia there is no specific regulation regarding the field of medical aesthetics so that there is no clarity regarding the status of medical aesthetic services in health efforts. As a result of this lack of clarity, there is no special protection for doctors who provide services and patients as recipients of medical aesthetics services.

Efforts have been made by PERDAWERI to establish specific regulations regarding medical aesthetics services. These include efforts to issue the Indonesian Medical Council Regulation on Additional Competence in Aesthetics to the issuance of the Minister of Health Regulation on Aesthetics and Anti-Aging Specialty Clinics. Related to this step, IDI (Indonesian Medical Association) issued a Decree, namely the Decree of the Executive Board of the Indonesian Medical Association No. 02374/PB/A.4/09/2018 concerning the Indonesian Aesthetic Medicine Council dated September 14, 2018 which authorized the establishment of the Indonesian Aesthetic Medicine Council. However, until now the special regulation has not been issued.

3.2 Legal Protection of Medical Practice Law against Contemporary Medical Cases

The definition of medical practice, as stipulated in Article 1 Paragraph (1) of Law Number 29 of 2004 about Medical Practice, pertains to a sequence of actions conducted by physicians or dentists towards patients in the pursuit of healthcare endeavors. The juridical definition of the formulation can be interpreted in various meanings according to the perspective of the definition maker. It's just that in the juridical definition of medical practice in accordance with the Medical Practice Act there are legal consequences. As is known that for criminal offenses that are not contained in the Criminal Code (KUHP), the provisions of the Criminal Code also apply. In criminal offenses in the Medical Practice Act there are qualifications as well as criminal offenses in the Health Law. This can lead to opportunities for different judge interpretations for the same case. Case investigators can also misapply formal law (the Criminal Procedure Code) due to the bias of the case being handled.

Satjipto Rahardjo's opinion that the journey of a law cannot be fully submitted only to the law that is carried out normatively-dogmatically. Follow-up efforts must continue to be made so that the Medical Practice Act can provide justice to health workers and the community as health beneficiaries. The existence of the Draft Law (RUU) on Health in 2023 discusses the transformation of the health sector but has drawn

many pros and cons. Reconstruction of legal protection in the settlement of medical disputes between doctors and patients based on the value of justice and the application of applicable legislation.

The legal protection of doctors in the context of resolving medical disputes between doctors and patients is indeed contained in Article 50 of the Medical Practice Law and Article 57 of the Health Workers Law, but in practice the handling of alleged malpractice cases that fail mediation will be handled by police investigators with procedures based on formal criminal law (KUHAP) as a reference because the Medical Practice Law does not regulate procedural procedures in cases of alleged violations of articles in the Medical Practice Law. This condition allows for conflicts where doctors have carried out medical actions according to medical standards and operational standards, but if the results, as mentioned above, if there are adverse events or things that cannot be predicted and occur until the patient is disabled or even dies, then the principle of res ipsa loquitur is legally processed because it is considered to have committed malpractice. In the Medical Practice Act, it is hoped that there will be a review and reconstruction of the law in order to answer contemporary medical cases. This medical aesthetic service includes contemporary medicine, which is indeed a health service, but if examined further, there are elements that distinguish it. An example is patient expectations. In conventional medicine, patient expectations are limited to healing and restoration of function (curative and rehabilitative as the target of healing). However, in contemporary medicine, the existence of medical aesthetics services, patient expectations can be in the form of added value, namely the aesthetic value of appearance. This is a new addition to health services that were previously promotion, preventive, curative, and rehabilitative. On the failure of the value addition, malpractice classification can still be imposed on the doctor for failing to meet the patient's expectations even though they have made maximum efforts (considering that the engagement that can bind aesthetic doctors and aesthetic patients is inspanning verbintenis and resultaat verbintenis at the same time).

3.3 Legal Protection of Aesthetic Doctors in Beauty Clinics

The relationship between doctors and patients is a relationship based on trust and kinship, although it is a contractual relationship that has the nature of an engagement between doctors and patients so as to cause legal consequences. Service providers are obliged to provide achievements and service recipients are obliged to provide counterprestige. The binding on doctors and patients is inspanning verbintenis, namely doctors are only required to provide maximum efforts in accordance with professional standards.

In the event of a medical dispute, legal channels tend to be chosen because the law has a clear conceptual reference and the therapeutic relationship has legal consequences so that the law has binding force for the parties to carry out their decisions. Legal settlement should be the last resort after other efforts are unsatisfactory.

The Law Number 29 of 2004 on Medical Practice highlights three key aspects pertaining to the execution of the medical profession. These include: 1) The foundation

of medical practice is rooted in scientific principles; 2) Competence is acquired through a structured educational system; and 3) Adherence to a code of ethics is essential. Moreover, within the same legal framework, Article 51 stipulates that each medical practitioner is obligated to deliver healthcare services in alignment with established professional norms and standard protocols. Professional standards are formulated by professional organizations and encompass competency standards and codes of ethics, whereas standard operating procedures are devised by healthcare facilities. Every doctor will obtain legal protection if they have carried out their practice in accordance with the standards referred to above (Article 50). In the doctor competency standards, there are 4 (four) levels of SKDI (Indonesian Doctor Competency Standards) abilities, namely: SKDI 1 doctors must be able to recognize and explain the disease to patients (without providing therapy), SKDI 2 doctors must be able to diagnose and refer, SKDI 3 doctors must be able to diagnose, carry out initial management before being referred (SKDI 3A and 3B), and SKDI 4 namely doctors must diagnose a disease to provide management independently and completely. In SKDI, there is no mention of medical aesthetic services. However, cases related to the face and/or facial skin, several integumentary system problems are mentioned, including itchy skin, dry skin, discolored skin, blisters, and so on. However, only a few cases fall into the SKDI 4 category, namely mild acne vulgaris (mild acne), acne inversa, perioral dermatitis, and miles. When referring to the definition of SKDI 4 above, only these diseases can be treated by general practitioners without the need for referral. In the case of SKDI 3, these include moderate-severe acne vulgaris, vitiligo, melasma, post-inflammatory hyperpigmentation and post-inflammatory hypopigmentation. When referring to the definition of SKDI 3, these diseases must be referred to a specialist in genital skin (dermatology) for further management. The obstacle that occurs is the current medical aesthetic service, namely general practitioners with "aesthetic" services that are not yet in SKDI but serve botox injections, the use of laser devices, to other tools both invasive and other non-invasive tools. We recommend that aesthetic general practitioners always update the knowledge and competence of aesthetic general practitioners which can be obtained through additional competency trainings taught by the relevant collegium and officially published by the professional organization, namely IDI.

According to Law Number 36 of 2014 regarding Health Workers, the government is mandated to assume responsibility for the quality of services provided by health workers. This responsibility encompasses fostering, supervising, and enhancing the competence of health workers through the implementation of activities related to competency certification and health worker registration. The field of medicine is subject to regulation under Law Number 29 of 2004, specifically in Article 1 Paragraph (1). This provision stipulates that the practice of medicine, including the professions of doctors and dentists, must be grounded in scientific knowledge, acquired through a structured educational system, and guided by a code of ethics that prioritizes the well-being of the community. Moreover, Article 3 of the aforementioned legislation, specifically the Medical Practice Law, elucidates that the objective of this regulation is to afford safeguarding measures for patients, enhance and sustain the caliber of medical

services rendered by physicians and dentists, and establish a legal framework that ensures clarity for doctors, dentists, and patients alike. According to Article 28 of the Medical Practice Law, it is mandatory for doctors and dentists in practice to participate in continuing education and training programs offered by professional organizations and approved institutions. The purpose of these programs is to ensure that healthcare professionals stay updated with scientific advancements in line with contemporary standards.

The responsibilities of aesthetic doctors who have links with health facilities where medical aesthetic services are provided, namely in beauty clinics, regarding the special naming of beauty clinics have not been regulated in legislation. In 2007, the Ministry of Health published a Guidebook for the Implementation of Aesthetic Beauty Clinics but this book is only a guideline and not a regulation. The regulations regarding beauty clinics, both in the form of private clinics and main clinics, still follow the regulations for private clinics and main health clinics in general, which refer to Law Number 36 of 2009 concerning Health, Government Regulation Number 47 of 2016 concerning Health Service Facilities, and Minister of Health Regulation Number 9 concerning Clinics. Beauty clinics must fulfill all the requirements of private and main clinics as stated in the clinic laws and regulations including spatial layout, completeness of emergency equipment, and waste management. Failure to comply will result in sanctions ranging from reprimands from the local Health Office to revocation of the clinic's operational license.

While the responsibilities of aesthetic doctors are related to the provision of creams and medical aesthetic products used by patients both in the clinic and taken home (homecare treatment), all forms of provision of pharmaceutical products are regulated in Law Number 36 of 2009 concerning Health, Law Number 36 of 2014 concerning Health Workers, Government Regulation Number 51 of 2009 concerning Pharmaceutical Work, and Regulation of the Head of the Food and Drug Administration Number 24 of 2017 concerning Criteria and Management of Drug Registration. The provision of pharmaceutical products is carried out by pharmacists and pharmaceutical technical personnel and is not the authority of aesthetic doctors. In the registration statement letter for the Practice License (SIP), the doctor also signs a letter of intent not to provide, give or compound drugs except injections and emergency drugs. Doctors are also asked to agree that the procurement of medicines is only through authorized channels or at local pharmacies. This statement must be signed on a stamp duty and attached when applying for a License to Practice (SIP), which if violated will be accounted for by the code of ethics in the IDI professional organization.

4 Conclusions

 At present, the regulatory framework pertaining to medical aesthetics in Indonesia lacks formal legislation. Regulations regarding medical aesthetics refer to several regulations regarding medical services that are related and can be used as a legal basis for medical aesthetics because basically medical aesthetics services are health service efforts in a promotion, preventive, curative, and rehabilitative man-

- ner if the person has medical needs that must be addressed in order to achieve a healthy state as defined by Law Number 36 of 2009.
- 2. The legal safeguard for aesthetic doctors operating in beauty clinics is presently governed by Law Number 29 of 2004 on Medical Practice. This law provides legal protection for doctors who adhere to professional standards and standard operational processes when practicing medicine. Professional standards are formulated by professional organizations and encompass both competency standards and codes of ethics. Conversely, standard operating procedures are developed by healthcare facilities. Nonetheless, the absence of explicit regulations pertaining to medical aesthetics has resulted in an inherent bias in the competency criteria between general aesthetic doctors and specialists focusing on genital skin. In this case, the government has a role and responsibility to create special regulations in the field of medical aesthetics in Indonesia.

Suggestion

- 1. By paying attention to the rapid development of medical aesthetics services and the increasing demand for these services, special arrangements regarding medical aesthetics are needed to provide certainty of legal protection for patients and aesthetic doctors. With this special regulation, the government can impose strict sanctions on aesthetic doctors who carry out medical aesthetic practices without competence and authorities. Facilities for medical aesthetics services can also be regulated according to the needs of beauty clinics. The circulation of tools and medicines must also be monitored and supervised by relevant professional organizations, up to government agencies.
- 2. In drafting the regulation of medical aesthetics, Indonesia can refer to the regulations implemented by Singapore since 2008 and Malaysia since 2016 considering that these countries are similar to Indonesia in Southeast Asia with similar sociocultural conditions and population.
- 3. With the existence of PERDAWERI and the Aesthetic Medicine Council in Indonesia, these institutions can accelerate the establishment of medical aesthetics regulation in Indonesia.

Authors' Contributions

AE participated in the design of the study and drafted the manuscript. J participated in the analysis, conceived the study, and participated in its design and coordination and helped to draft the manuscript. All authors read and approved the final manuscript and agree to be held accountable for the work.

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