

The Factors Making the Law Protection for the Patients of Esthetic Beauty Clinic in Indonesia not fulfilling Citizen's Constitutional Right

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ABSTRACT

Considering Article 28 H of the fourth amendment to the Republic of Indonesia's 1945 Constitution, there is citizen's constitutional right, the right to health and to get healthcare service. Therefore, all healthcare services should fulfill right and obligation of service provider and patient, and medical service standard. Esthetic beauty clinic as a private health service should fulfill it compulsorily. This article studied the factors making the law protection for the patients of esthetic beauty clinic in Indonesia not fulfilling yet the citizen's constitutional right. This study was conducted on stakeholders of esthetic beauty clinic in five provinces in ten cities of Indonesia, using empirical qualitative method. The result of research showed that the factors the law protection for the patients of esthetic beauty clinic in Indonesia not fulfilling yet the citizen's constitutional right.

Keywords: Law protection, Esthetic beauty clinic

INTRODUCTION

Considering Article 28 H of the fourth amendment to the Republic of Indonesia's 1945 Constitution⁽¹⁾, there is citizen's constitutional right, the right to health and to get healthcare service. Trend and standard applying to women today isto have bright white face and thin or slim body. Women become afraid of being apparently old. It is relevant to the finding of study in China, showing *that 80% of Asian consumers consider skin whitening to be the most important property of skincare cosmetics, and more than 50% considers their anti-aging effect to be important*⁽²⁾. It makes investors compete for opening beauty clinic business to bring the wish to follow trend into reality.

In addition to global beauty trend, metrosexual phenomenon with its consumptive behavior now triggers the development of body treatment business

as well⁽³⁾. Metrosexual men are *women-oriented men*⁽³⁾. Furthermore,metrosexual man is described as the man loving not only himself but also the big city's lifestyle he is undertaking on his last leg. Metrosexual men are also depicted as a normal or straight, sensitive, and educated figure but they emphasize more on their feminine side. Kartajaya⁽⁴⁾ suggested the characteristics of metrosexual men: generally living and staying in big cities where it is of course related to the opportunities of accessing to information, having intercourse and lifestyle undertaken clearly affecting their existence; coming fromthe rich class and having much money because they need much money to support the lifestyle they undertake

MATERIALS AND METHOD

The objective of research was to study the factors making the law protection for the patients of esthetic beauty clinic in Indonesia. This study employed empirical qualitative method and sociolegal research. The author collected primary data through observing and interviewing owners, managers, physicians, beauticians, nurses, pharmacists, clients (users) and government institutions.

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FINDINGS AND DISCUSSION

Healthcare Service: The word service in the 5th edition of Online Indonesian Language Big Dictionary (KBBI)⁽⁵⁾ is defined as a way of serving or service, a business of catering to others' need with (monetary) reward; service, the facilities provided in relation to product or service buying and selling. Meanwhile, medical service is defined as the service an individual receives in relation to prevention, diagnosis, and treatment of health disorder.

Considering the national health system, cosmetic service is a part of the first stratum individual health attempt. The Ministry of Health of Republic of Indonesia is actually aware of such condition recalling the problem development and the tendencies of health development in the future and bringing the Ministry of Health's vision into reality, i.e. to create independent community who lives healthily with a mission to make the people healthy.

To achieve the goals above, there should be rearrangement and rebuilding of beauty clinic organization. For that reason, a guideline of beauty clinic organization should be developed in order to be a reference for beauty clinic organizer, government, and related professional organization.

The government obligatorily guarantees "the organization of beauty clinic as an attempt of improving the healthcare service in order to be useful, high-quality, and accountable for, providing a reference in giving operational permission for beauty clinic organization, providing guidance to implement building, supervision, and control over the organization of beauty clinics in province and regency/city, protecting patient/service user and executive staffs including medical workers.

In addition, healthcare service, according to Law Number 36 of 2009 about Health as mentioned in its elaboration, is that providing healthcare service to either individual or community is highly guaranteed in the law achieving healthy. Meanwhile, healthcare service facilities consists of several types as included in Article 30⁽⁶⁾ including Individual Healthcare service.

This individual healthcare service is implemented by physician or health worker practice with both local government and private's help. This individual healthcare service should keep getting permission from the government corresponding to Law Number 36 of 2009 about Health, Public Health Service⁽⁷⁾. The

individual healthcare service, according to Article 30 clause 1, is intended to heal disease and to recover individual and family's health. Meanwhile, public health service is intended to maintain and to improve health and to prevent disease from infecting a group of individual and community. This healthcare service focuses more on helping to save the patient's life than on other interests. The organization of health service is conducted responsibly, safely, in high quality and evenly, and non-discriminatively, in this language (regulation) government is highly responsible for healthcare, according to Law Number 36 of 2009 about Health.

Therefore, returning to the main provider of healthcare service, Law Number 36 of 2009 about Health has confirmed that it is the government that is responsible mostly for the as high as possible health degree for all citizens; the responsibility includes the availability of environment, order, both physical and social healthcare facilities, the evenly and justly distribution of health resource to all people⁽⁸⁾. Health services intended in this study is the one in esthetic beauty clinic, the health service organized by private and or government dealing with body treatment product and service.

The regulation of Esthetic Beauty Clinic organization in Indonesia: The regulation related to Esthetic Beauty Clinic as mentioned in health law includes, among others:

1. Constitution of 1945
2. Law Number 29 of 2004 about Medicine Practice
3. Law Number 25 of 2004 about National Development Planning System.
4. Guideline of Esthetic Beauty Clinic organization from Medical Service Building Directorate General of RI's Ministry of Health in 2007.
5. Law Number 36 of 2009 about Health
6. Law Number 8 of 1999 about Consumer Protection
7. Government Regulation Number 32 of 1996 about Health Workers
8. Presidential Regulation Number 72 of 2012 about National Health System
9. Minister of Health's Regulation 920/MENKES/PER/XII/1986 about Private Health Service Attempt in Medical Area.

10. Minister of Health's Regulation Number 363/Menkes/Per/IV/1998 about Health Equipment Testing and Calibration in Health Service facilities;
11. Minister of Health's Regulation Number 269/Menkes/Per/III/2008 about Medical Record;
12. Minister of Health's Regulation Number 290/Menkes/Per/III/2008 about the Agreement for Medical Action;
13. Minister of Health's Regulation Number 411/Menkes/Per/III/2010 about Clinical Laboratory;
14. Minister of Health's Regulation Number 001 of 2012 about Referral System of Individual Health Service
15. Minister of Health's Regulation Number 36 of 2012 about Medical Secret.
16. Minister of Health's Regulation Number 46 of 2013 about Health Worker Registration
17. Minister of Health's Regulation Number 9 of 2014 about Clinic

Government's Responsibility: The responsibility of government related to esthetic beauty clinic as mentioned in legislations of health sector, particularly the guideline of esthetic beauty clinic organization and the consumer protection law, the state organs authorized in organizing esthetic beauty clinic related to beauty clinic, and the authorized institutions related to beauty clinic.

Health Ministry includes supervising, building, monitoring and evaluation, drug production and cosmetics and equipment used, nuclear power use, drug and cosmetic circulation, halal status of drug and substance used, consumer protection, dispute settlement, and licensing and supervision and building at city/regency level. Meanwhile, the responsibility of esthetic beauty clinic involves fault, risk, product and professional⁽⁹⁾.

Citizen's Constitutional Right in Health Service: The users of esthetic beauty clinics those that should be protected for their constitutional rights called patient or health consumers, because they get health service and product or service in the clinic. The protection of citizen's constitutional right in esthetic beauty clinic's service in Indonesia includes the right to protection guarantee and law certainty corresponding to Articles 28D clause 1 and 28H clause 1 of the 1945 Constitution related to Health Rights and the right to get health service⁽¹⁰⁾.

Thus, the right to health is the right to obtain various facilities, services, products, and other requirements in order to bring the highest health standard into reality and the state should guarantee its availability¹. The right to health has economic and social aspects because this right tries to safeguard individual as much as possible from receiving social and economic injustice related to his/her health⁽¹³⁾. The right to health also has cultural aspect because this right attempts to guarantee the compatibility of available health service to cultural background of each individual.

Law No.36 of 2006 about Health:

1. **Article 4 states that "Everyone is entitled to health":** (Explanation of Article 4: the Right to Health is the right to get health service from health service facility in order to realize the degree of health as high as possible)
2. **Article 5 clause 3:** Everyone is entitled to get safe, high-quality, and affordable health service.
3. **Article 16:** Government is responsible for the just and even availability of health service in order to achieve the maximum degree of health.

Factors Making the Law Protection for Patients of Esthetic Beauty Clinic in Indonesia not fulfilling the Citizen's Constitutional Right: Generally, as suggested by Soerjono Soekanto, there are five factors affecting law enforcement:⁽¹¹⁾ law itself, law enforcement or those creating or applying law, facilities supporting law enforcement, community or environment where the law is enacted, and culture or the product of work, creation, and feeling based on human's willingness in life intercourse.

The factors making the Law Protection Model for Esthetic Beauty Clinic's Users applying today not fulfilling yet the Citizen's Constitutional Right are explained below.

- a. **Substance:** The result of previous studies have reported that substantially, esthetic beauty clinic has been governed specifically in Guideline of Esthetic Clinic Organization issued by Medical Service Building Directorate General of RI's Ministry of Health in 2007 and generally there have been other legislations related to health and consumer protection law and its implementation in regions has been governed with the local government of respective Municipals/Regencies.

The data shows that the regulation is less strong as it is a guideline only, thereby cannot be included

into the legal foundation of local regulation development. The sanction imposed is less resolute, considering the result of study on the Court's verdict on esthetic beauty clinic case. Substantially, the guideline does not mention the severe punishment threat, related to product and service provide to the users.

Some matters have not been governed in guidelines applying today: physician course legalization and beautician standardization and education. The findings show many course organizing institutions and cooperation with the producer of beauty clinic equipment and medical equipment used including among others: health service, health worker, pharmacy industry, health equipment, and health insurance.

Esthetic beauty clinics as one of areas in health world start to compete for improving the quality of service given to their users because in the presence of health globalization using most sophisticated equipments and medicines, they can provide the best result in order to attract the users as many as possible.

1. Minister of Health's Regulation No 1419 of 2005 about the Organization of Physician and Dentist Practices replaced with Minister of Health's Regulation No. 512 of 2007 about Practical Permission and Medicine Practice Implementation.
2. Minister of Health's Regulation No 1184/Menkes/Per/X/2004 about the Security of Household Health Equipments and Supplies replaced with Minister of Health's Regulation No. 1190/Menkes/Per/VII/2010 about the License of Household Health Equipments and Supplies Circulation.

b. Structure

1. There is disharmonization of law protection jurisdiction between RI Minister of Health and BPKN related to predicate and position of beauty clinic user as consumer or patient
2. Less maximal supervision and monitoring conducted by Provincial/Regency/Municipal Health Service Office including the Lisence
3. No regulation issued by Ministry of Education and Culture related to training and education institution and certification and standardization of executive staffs in esthetic beauty clinics.

c. Culture: In consumptive community, women's body is created to be commodity and put amid

the promotion of consumptive product, and it is published through mass media either directly or indirectly. Considering this mass media's perspective, a standard is created that beautiful women are those tall, slim, young, and having good looking, so that Indonesian women follow this trend as well⁽¹²⁾. It of course inspires majority Indonesian women to be the followers of present trend beauty and the investors and esthetic beauty clinic business performers read the opportunity to support this trend.

In consumer society, female body is formed as commodity, and placed at the centre of the consumption. In consumer society, female body, therefore, is a kind of investment according to capitalist ideology. Capitalist ideology bearers such as advertising, billboards, posters and TV fashion reality shows do not only show ideal body image, but also show how to reach and consume those images. From the perspective of these mass media, women are portrait to be tall, slim, young attractive and charming for social approval. These mass media, women are portrait to be tall, slim, young attractive and charming for social approval⁽¹³⁾.

Therefore women are forced to follow the fashion products, which are advertised commodities for beatification of her body. Consequently, body parts of woman (hair, eye, nose, lips, ear, neck, breast, arm, hand, nail, back, waist, belly, legs, feet, skin color) are indispensable for the sustainability of capitalist system. Firstly, portraits all problematic female body images and then to overcome these deficiencies it creates new commodities to preserve its continuity⁽¹⁴⁾.

According to Green the behavior of an individual or society about health is determined by the level of knowledge in which the person has. Furthermore, a person who has fair economic and earnings will likely have a good education and knowledge.⁽⁸⁾ Limited education and socialization about healthy and safe cosmetics conducted by local government and BPOM in region make the people consumptive and selecting beauty clinic less selectively as they can be tempted easily by advertisement or others' persuasion to undertake treatment in esthetic beauty clinic not consistent with standard medical service. The supervision should be conducted over cosmetics before circulation just like that of food and drug as preventive measure to ensure that food and drug circulating have fulfilled the standard and required safety, benefit and quality of product as specified.

CONCLUSION

The factors making the law protection model applying today to the users of esthetic beauty clinics not fulfilling yet the citizens' constitutional right. substance factor in which there is disharmonization of law at central and local levels.

Incomplete and less firm guideline existing presently, some legal foundation no longer prevailing and guideline no longer fulfilling the citizen's constitutional right. structure in which there is disharmonization of structure between ministry of health, ministry of education and culture, and National Consumer Protection Agency (BPKN), BPOM, and Ministry of Trade and Industry related to the status of user as patient or consumer and the use of dangerous chemical tool and material in the product; and finally community culture, in which government and majority stakeholders not prioritizing yet the law protection for the patients.

RECOMMENDATION

- a. Government as leading sector and regulation developer should change the guideline of beauty clinic prevailing today immediately in order to fulfill the citizen's constitutional right
- b. Esthetic beauty clinics should reform and improve their service system by prioritizing not only profit but also law protection for their patients.
- c. Community and stakeholders should improve their understanding on dangerous chemical materials in cosmetics by attending seminar/socialization and educating themselves.

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