

## Reconstruction of Legal Protection for Aesthetic Clinic Patients

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### ABSTRACT

The protection of aesthetic beauty clinic patients is important because of the increasing number and development of beauty clinic businesses, and the emergence of many problems and cases related to its implementation, as a result of implementing actions that are not in accordance with the relevant laws and regulations. This raises the need for protection against health risks arising from losses for services in beauty clinics that are not in accordance with statutory regulations in the field of health law and consumer protection law. The state is obliged to provide protection related to the implementation of constitutional rights to legal protection and the right to health, so that beauty clinic business actors obey all applicable regulations related to its implementation, increasing the responsibility as a business actor towards its consumers. In reality, the phenomenon of this beauty clinic case is like an iceberg, large but not visible on the surface, because the majority of patients from the middle to upper economic class feel ashamed and do not want to bother reporting it, ideally organizing aesthetic beauty clinics is based on applicable laws and regulations. The state must be able to provide legal certainty and protection to aesthetic beauty clinic patients with good regulatory and institutional and risk litigation.

**Keywords:** aesthetics; protection; law; patients; clinics

### INTRODUCTION

In Indonesia, there are more and more facilities that provide various services in the field of beauty / appearance aesthetics. One of the facilities is a beauty salon. In the past, beauty salons generally only provided services for hair cutting and make-up, but now they also provide services that lead to medical procedures and use doctors. Likewise in various print media, there are many advertisements for skin, face, body and hair care services, which are offered by facilities that call themselves Skin Care, Skin Centres, Skin Clinics, Skin Care Centres, Body Care Centres, Beauty Clinics, Aesthetic Clinic, Slimming Centre, Beauty Centre or Beauty Salon and other names, depending on the type of service available and the wishes of the owner / manager, with executors who have a low / secondary education background to those who have a doctor's degree, some even have postgraduate degrees. bachelor and doctoral degrees in the field of beauty / cosmetology.

Based on the results of research conducted in 10 beauty clinics in 5 provinces, the results obtained:

1. Executing personnel for medical services in beauty clinics are doctors who do not have the competence for certain medical actions (performing specialized actions).
2. Limited medical actions are all actions that are medical in the field of beauty (appearance aesthetics) which are not invasive (operative) medical actions. In fact, the types of services at beauty clinics include: facials / facials, whitening injections, acne treatments / treatments, body slimming / firming, chemical peels, microdermabrasion, Jet Peel, Cautery, oxygen therapy, mesotherapy, LAT.
3. Types of equipment that a beauty clinic has.
4. Government agencies that provide operational licenses for beauty clinics differ from one region to another.
5. Use of chemicals, medicines and cosmetic products. Mercury, hydroquinone and their derivatives.
6. Legality of beauty clinic training institutions.
7. Licensing and operational supervision of beauty clinics.
8. The responsibility of the beauty clinic if there are conditions that are not as expected.
9. Pathway for service case resolution in aesthetic beauty clinics.
10. Online service system / online.

Based on the results of this study, it can be concluded that the beauty clinic has organized medical service activities and it is not clear who is responsible for managing it.

Based on the National Health System, cosmetic services are part of the first-tier individual health efforts. The Ministry of Health is well aware of this situation by considering the development of problems and trends in future health development and realizing the vision of the Ministry of Health, which is to create an independent society to live healthy with the mission of making people healthy with the following values:

1. Siding with the people;
2. Be fast and precise;

3. Teamwork;
4. High integrity
5. Transparent and accountability

Health development that can be pro-society today must be directed towards achieving the following goals:

1. Availability of professional / competent and skilled personnel according to the development of science and technology, in numbers that meet the needs.
2. The availability of service facilities that are affordable to all levels of society.
3. The implementation of quality service efforts, including guaranteed safety for patients, officers and the environment. In order to achieve the things mentioned above, it is necessary to organize and foster the implementation of a beauty clinic. For this reason, it is necessary to reconstruct the regulations for the implementation of beauty clinics which will become a strict reference and boundaries for the parties involved in the implementation of beauty clinics, the government and related professional organizations and most importantly the owners, people in charge and staff of aesthetic beauty clinics.

The operation of many aesthetic beauty clinics is no longer in accordance with the objectives of aesthetic beauty clinic guidelines to:

1. The implementation of a beauty clinic is an effort to improve health services that are safe, useful, high quality and accountable.
2. Availability of references in granting operational permits for beauty clinics.
3. Availability of guidelines / references that are stronger and of higher legal standing to carry out guidance, supervision and control of the implementation of aesthetic beauty clinics at the regency / city level.
4. Protect patients / society / service users and their executing staff, especially medical personnel.

In addition, the reconstruction target was not achieved because the implementation of beauty clinics emphasized efforts to improve health and beauty / aesthetic appearance so that safety and health factors were neglected. Health care efforts in aesthetic beauty clinics also exceed the authority which should only cover aspects of rejuvenation and aesthetic appearance medically, now many leads to the practice of plastic surgery.

### METHODS

The existence of a research method in a study but it plays an important role as a tool or tool to explore, trace and find the truth or answer to a problem raised<sup>(1)</sup>. According to Rene Descartes, using the method of a researcher means using scientific reasoning in research<sup>(2)</sup> which according to Sudarto is one of the requirements of a science<sup>(3)</sup>.

This study contains two problem formulations that require appropriate research methods. In order to answer the two formulas, the writer uses Soetandyo Wignjosoebroto's opinion<sup>(4)</sup> regarding the concept of law.

Methods for solving problems as well as answering the first problem formulations. The author uses the second legal concept, namely that law is positive norms in the national legal system of legislation, therefore, this is a doctrinal research. The analysis used in the doctrinal approach is deductive syllogism, which is to reach a conclusion by drawing a major premise to a minor premise. Formulation of the second problem the author uses the concept of the fifth law, namely law is a manifestation of the symbolic meanings of social actors as seen in their interactions. Therefore, the approach used is the socio legal approach, namely that law is not only seen as a set of normative rules or what becomes the text of the Law (law in a books), but sees how the law interacts with society (law in action). Social research methods (non-doctrinal) with an interactional (micro) approach with qualitative analysis or qualitative methods<sup>(1)</sup>.

Research is a scientific activity related to methodological analysis and construction<sup>(5)</sup>, systematic, and consistent<sup>(6)</sup>. Based on the type, this research is included in non-doctrinal legal studies (socio-legal research), because law is conceptualized as a manifestation of the symbolic meanings of social behavior as seen in their interactions. This type of research assumes that the law does not lie in empty space, but is found alongside moral rules with complexity or more or less in the form of certainty. On the other hand, law is also a social phenomenon, which is applied in different societies. Therefore, it cannot be denied that the form of law is a social reality. This research is an empirical study conducted to find theories regarding the process of the occurrence and process of law operation in society.

The type of research in this dissertation is socio-legal research. This type of research is based on the concept of law which is the object of study, as well as the use of other social science perspectives in examining the legal issues raised in this study. Based on the concept of law according to Wignjosoebroto<sup>(4)</sup> and also paying attention to the characteristics of the formulation of the problem raised, the concept of law in this study is not only defined as positive norms in statutory regulations, but also includes institutionalized social behaviour patterns, exists as an empirical social variable, or law as a social variable. objective.

According to Banakar and Travers, socio-legal research is research that uses an interdisciplinary approach, by combining the perspectives of social science and law into a functional approach<sup>(7)</sup>. Sidharta underlines that the process of collaboration and integration of two or more disciplines has been held since the beginning of the research starting from defining, implementing objectives, collecting data to analyzing and drawing conclusions.

In Roscoe Pound's view, this socio-legal research enables and encourages the making of laws, interpreting and applying the rules of law, and for making more valuable the social facts of where the law operates and to which it is applied<sup>(8)</sup>. In other words, to study the problems that have been applied, this research is not only sufficient for the study of relevant norms, doctrines and legal principles, but is also equipped with a more comprehensive context of norms and their enforcement with the help of a scientific approach from a scientific cluster. Other socially relevant<sup>(9)</sup>. The aim is to strengthen efforts to seek the truth, examine the problem more deeply, and also produce a more precise and wise model of legal reform.

As a research that combines normative analysis and other social science approaches, this research is not only descriptive, but also evaluative and prescriptive<sup>(9)</sup>. In addition to explaining clearly, guides and in detail about the phenomenon of health services in aesthetic beauty clinics for children in the community<sup>(10)</sup>, this study also conducts an assessment (assessment) of positive legal norms, along with their correlation with other relevant variables<sup>(11)</sup>, and finding solutions to selected political law issues that clearly combine normative analysis and other relevant social science approaches<sup>(10)</sup>.

The form of research in this study is an evaluative and perspective research, namely to find out, study, and analyse why the current legal protection model for aesthetic beauty clinic patients' needs to be reconstructed and to get suggestions on how the legal protection model for aesthetic beauty clinic patients is based on a constitutional rights perspective. citizen.

The research approach is a way of conducting research<sup>(12)</sup>. As stated by Johnny Ibrahim, the scientific value of a discussion and problem solving of the legal issues under study is highly dependent on the approach options used<sup>(13)</sup>. According to Peter Mahmud Marzuki there are several approaches in legal research, namely the statute approach, the case approach, the historical approach, the comparative approach, and the conceptual approach<sup>(14)</sup>.

## RESULTS AND DISCUSSION

Citizens must obtain legal protection from government actions, there are several reasons, namely First, because in various cases citizens and civil legal entities depend on government decisions and decrees, such as the need for permits required for the operation of a beauty clinic. Therefore, citizens and civil legal entities need legal protection, especially to obtain legal certainty and security guarantees, which are determining factors for the life of the business world. Second, the relationship between the government and citizens does not run in an equal position. Citizens are a weaker party than the government. Third, the various disputes between citizens and the government regarding decisions and decrees, as government instruments that are unilateral in intervening in the lives of citizens. Making decisions and decrees based on free authority (*vrijebevoegdheid*) will open up opportunities for violations of citizens' rights. However, it does not mean that the government is not given legal protection. As stated by Sjachran Basah, legal protection of the state administration itself is carried out against the attitude of its actions properly and correctly according to the law<sup>(15)</sup>.

There are several possibilities for legal protection for people in Indonesia due to government legal action, depending on the legal instruments used by the government when carrying out legal actions. It has been mentioned that the legal instruments that are commonly used are decisions and decrees. Government legal action in the form of issuing a decision is a government action that is included in the category of regulation or government action in the field of legislation. This is because, as stated earlier, that decisions issued by the government are statutory regulations.

The government should ideally be more sensitive to changing times and developments in science and current trends, so that in granting operational permits and administering it prioritizes legal protection for patients, not only the interests of the private sector, in this case beauty clinic administrators. So that legal protection for patients will be maximized. The state needs to be present and control the aesthetic beauty clinic business so that the private providers of this health service are not only oriented to the promotion of their service advertisements without paying attention to patient safety and security, as the statement below:

*We are bombarded with advertisements for any one of thousands of different products, both prescription and over-the-counter, that claim to be able to restore our youthful appearance, banish wrinkles, tone skin, and remove cellulite, among other promises that often sound, and probably are, too good to be true<sup>(16)</sup>.*

Psychosocial factors are a strong determining factor in the practice of beauty services. The demand to appear impeccable and admire others, making this service even more desirable, it is becoming increasingly important to understand the psychological forces that motivate people to seek cosmetic services, and promote successful

results, and to determine if cosmetic surgery leads to psychological benefits. Mental health consultants should be used to screen the minority of prospective patients who may be poorly served and to help patients possibly set realistic psychosocial expectations, which are as important to patient satisfaction as having realistic physical expectations<sup>(17)</sup>.

Protection of aesthetic beauty clinic patients in Indonesia has also increased with the demands and obligations to use halal products. It shows a link in health and beauty care by blending modern settings in an Islamic perspective<sup>(18)</sup> and has a consequence that the state also needs to control the services of products and services in aesthetic beauty clinics so that they do not conflict with the principles of halal, because the majority of Indonesia's population is Muslim.

### **The Urgency of Protecting Citizen's Constitutional Rights in the Implementation of Aesthetic Beauty Clinics**

Law is a means to achieve a shared idealized goal. The ideals of law itself, whether institutionalized through the idea of a rule of law (nomocracy), are intended to improve the general welfare. Even as Indonesia's national ideals were formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia, the aim of the Indonesian nation as a state is to protect the entire Indonesian nation and all Indonesian blood, promote public welfare, educate the nation's life, and participate in implementing orderliness. A world based on freedom, lasting peace and social justice. The rule of law serves as a means to realize and achieve the four goals of the Indonesian state. Thus, the development of the Indonesian state is not trapped in being merely 'rule-driven', but 'mission driven', which is based on the rule of law.

The existence of constitutional protection of human rights with legal guarantees for their demands for enforcement through a fair process. Protection of human rights is widely promoted in order to promote respect and protection of human rights as an important feature of a democratic constitutional state. Since birth, every human being has rights and obligations that are free and basic. The formation of a State and likewise the exercise of the powers of a State must not reduce the meaning or meaning of freedom and human rights. Therefore, the existence of protection and respect for human rights is a very important pillar in any country known as a rule of law. If in a State, human rights are neglected or deliberately violated and the suffering they cause cannot be dealt with fairly, then the country concerned cannot be called a rule of law in the true sense.

The protection and fulfilment of the constitutional rights of citizens must be carried out in accordance with the conditions of various citizens. The reality of Indonesian society shows that there is a difference in the ability to access the protection and fulfilment of the rights granted by the state. The difference in ability is not on the will of a particular group, but because the social structure that develops tends to marginalize it.

Protection and fulfilment of constitutional rights that are carried out without paying attention to the existence of these differences will automatically maintain and even further these differences. In order for every citizen to have the same abilities and to obtain protection and fulfilment of the same constitutional rights, special treatment is required for certain groups. Only with this special treatment can equal treatment be achieved in the protection and fulfilment of the constitutional rights of every citizen. Therefore, the 1945 Constitution of the Republic of Indonesia guarantees this special treatment as the right to obtain equal opportunities and benefits. Article 28H Paragraph (2) states "Everyone has the right to receive special facilities and treatment to get the same opportunities and benefits in order to achieve equality and justice". The duty of the state to fulfil the constitutional rights of citizens, the right to health, the right to guarantee and legal certainty, and the right to legal protection are the constitutional rights of citizens.

*Government's principal obligation is to ensure the health and welfare of its population. It does so through the enactment and enforcement of laws designed to create the conditions necessary for citizens to lead healthy, safe lives. Law can be used as a tool for improving the health of a society by creating public health authorities, defining their powers, and denoting the means by which those powers can be used. In addition, health law focusing on the characteristics that make it different from other areas of law<sup>(19)</sup>.*

More deeply, health rights, legal guarantees and legal protection are human rights in the civil field, which are negative rights which are inherent and fulfilled, so that the state needs to be fully present in its fulfilment.

In the implementation of this aesthetic beauty clinic, the most prominent thing is the right to health, the state must guarantee the fulfilment of constitutional rights to citizens. This is an implementation of the principles of the welfare state, the state intervenes in matters of the welfare of citizens, although in this case there are other parties involved, namely aesthetic beauty clinics.

Aesthetic beauty clinics are at the forefront that must also provide protection and fulfilment of citizens' rights to their users. However, in fact there are rules in informed consent in medical action at beauty clinics which state that if an incident occurs outside the expected conditions, the patient will not prosecute either criminal or

civil. In this condition, the state cannot and does not intervene much, because the decision to carry out medical appointments and actions rests with the patient and the beauty clinic.

The state, in this case the central and local governments, is obliged to do something to fulfil the constitutional rights of citizens in the practice of aesthetic beauty clinics. This can be realized maximally by improving the Context of Implementation and Contend of Implementation of all parties involved in the implementation of aesthetic beauty clinics.

This health service can be adopted from how countries in the European Union really pay attention to services in the health sector, based on the study below:

*The European Union (EU) has expanded, both geographically and in the scope of its actions, to become an important supranational body whose policies affect almost all aspects of the lives of its citizens. This influence extends to health and health services. The EU's formal responsibilities in health and health services are limited in scope, but it has substantial indirect influence on them. The institutions of the EU, its legislative process, and the nature of European law as it affects free movement of the goods, people, and services that affect health or are necessary to deliver health care. The influence of the EU goes far beyond the activities that are most visible to health professionals, such as research funding and public health programs, and involves an extensive body of legislation that affects almost every aspect of health and health care.<sup>(20)</sup>*

In addition, the impact of globalization has increased the needs of citizens, namely body care in beauty clinics. This also has an impact on the increasing need for legal protection and fulfilment of constitutional rights related to its implementation.

Legal protection of aesthetic beauty clinic patients in the perspective of protecting constitutional rights Citizenship is an effort to protect citizens as patients who are seen materially and formally as increasingly important, considering that science and technology are the driving force for the productivity and efficiency of producers of goods or services produced in order to pursue and achieve these two things, ultimately either directly or indirectly, then consumers will feel the impact. For a long time, legal protection for consumers has only been based on the doctrine of caveat emptor, namely an understanding of the need for consumers to always be careful, because business actors are not obliged to show defects, unless requested and must state it. Every transaction that occurs is the result of an agreement between the business actor and the buyer (consumer). Business actors deliver goods and consumers pay. price. Consumers bear their own risk for an item after the principal obligations of each party have been mutually fulfilled<sup>(21)</sup>. The number of losses experienced by patients for beauty clinic services that are mushrooming requires the government to immediately design a reconstruction of a model of legal protection for aesthetic beauty clinic users in the perspective of protecting the constitutional rights of citizens. The existence of the BPSK (Consumer Dispute Resolution Agency) as an order of the Law has not been able to effectively cover the problem of protecting beauty clinic consumers. The limited existence of BPSK and not always in every City / Regency and the funding is borne by the APBD (Regional Revenue and Expenditure Budget) makes it quite difficult for local governments to support the existence and effectiveness of BPSK.

Most of the disadvantaged consumers will leave the service at the clinic beauty, few dare to sue and come directly to ask for harm to the beauty clinic. The data obtained from the website of the Supreme Court are not enough court decisions related to beauty clinics, only around 40 (forty) cases<sup>(22)</sup>. The problems experienced by patients at this beauty clinic are like an iceberg, not appearing on the surface, but in origin very large.

Barriers to civil legal aid access include patients not thinking their concerns were a legal issue, being unaware of how to access legal resources, and perceiving legal assistance will not be helpful. With the exception of one family, most of the families who did access legal support found it ineffective<sup>(23)</sup>.

The reconstruction of this beauty clinic patient protection model is very important and urgent because of this the implementation of a beauty clinic which should be in accordance with the guidelines on the implementation of aesthetic beauty clinic in Indonesia, however, there are many violations that will impact the legal protection of aesthetic beauty clinic patients in the perspective of protecting the constitutional rights of citizens, according to researchers in the field, namely services in beauty clinics which include:

1. Authorized medical personnel;
2. Type of medical service / action;
3. Tools used;
4. Use of chemicals, medicines and cosmetic products;
5. Certification of executive personnel and legality of beauty clinic training institutions;
6. Licensing and operational supervision of beauty clinics;
7. The responsibility of the beauty clinic if there are conditions that are not as expected;
8. Risk litigation.
9. Online service.

10. The bond between doctor and patient.

This condition makes the reconstruction of the legal protection model for aesthetic beauty clinic patients more urgent, due to the increasing number of beauty clinic businesses. The need for consumer protection for aesthetic beauty clinic health services is related to the fulfilment of constitutional rights, namely health rights and consumer protection rights. Even though the need for beauty clinics includes tertiary health needs, it is currently growing rapidly and the need for these beauty clinics is increasing. The government should see this as a good business prospect but also a warning to further increase protection for consumers, especially in times of losses / incidents that consumers do not expect when funding or after getting services at a beauty clinic.

As we know, from big cities to small cities, there are so many beauty clinics. This must be balanced with the guarantee of legal protection for the beauty clinic patients. Consumers in this perspective are citizens, who normatively obtain constitutional rights protection according to the 1945 Constitution of the Republic of Indonesia. Among the most relevant constitutional rights is the provision of Article 28H paragraph (1) which regulates that "Everyone has the right live in physical and spiritual prosperity, have a place to live, and have a good and healthy living environment and are entitled to health services. "

The provisions of the law then emphasize that every individual, family and community have the right to protection of their health, and the state is responsible for regulating the fulfilment of the right to healthy life for its inhabitants, according to the Law No. 36 of 2009 on Health. In this context, the right to health has a broader scope, it does not only concern the right of individuals, but includes all the factors that contribute to a healthy life (healthy self) for individuals, such as environmental issues, nutrition, housing and others. -other. Meanwhile, the right to health and the right to medical services are the rights of patients, which are a more specific part of the right to health<sup>(24)</sup>.

The constitutionality of the right to health can also be linked to the understanding that public health is a pillar of the development of a nation. Health is one of the basic human needs. So important, that it is often said that health is everything, without health everything is meaningless<sup>(25)</sup>.

### CONCLUSION

The protection of aesthetic beauty clinic patients is important because of the increasing number and development of beauty clinic businesses, and the emergence of many problems and cases related to its implementation, as a result of implementing actions that are not in accordance with the relevant laws and regulations. This raises the need for protection against health risks arising from losses for services in beauty clinics that are not in accordance with statutory regulations in the field of health law and patient protection law. The state is obliged to provide protection related to the implementation of constitutional rights to legal protection and the right to health, so that beauty clinic business actors obey all applicable regulations related to its implementation, increasing the responsibility as a business actor towards its consumers.

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