

## AN EVIDENTIARY MANAGEMENT OF MEDICAL ERROR ELEMENTS IN THE FIELD OF BEAUTY AND AESTHETICS

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### ABSTRACT

The development of beauty and aesthetic service practices began with the practice of beauty salons and then developed into a medical action service in the field of beauty and aesthetics. Medical action in the field of beauty and aesthetics is different from medical services in general, in the legal procedures of health services, the patient's desire for beauty and aesthetic actions. That relating to the fulfillment and proof of the elements of guilt in medical crimes has its own characteristics with other criminal cases. It is necessary to regulate the competence of medical personnel who have clinical authority in the field of beauty and aesthetics so that the regulation of this authority provides protection and legal certainty for the community. Furthermore, in the service of medical actions in the field of beauty and aesthetics, legal reforms must also be carried out relating to surgical actions in the field of beauty and aesthetics that can change a person's identity.

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### 1. INTRODUCTION

Health services in the field of beauty and aesthetics are a health facility that provides medical services in the form of consultation, examination, treatment, and medical action to overcome the many conditions related to using the beauty (beauty of appearance) of a person, which is carried out by medical personnel (doctors, dentists, specialist doctors, and specialist dentists) synchronous with their expertise and authority. [1]

Trends and people's needs for aesthetic medical services have increased, this is the background for the growth of the aesthetic industry and business in Indonesia. Almost every big and small city provides beauty clinics that show a variety of beauty services and treatments. [2] Based on data from Statista compiled from databoks.com, it shows that revenue in the field of aesthetics and beauty consisting of self-care, skin care, cosmetics, and fragrances will reach Rp. 111.83 T in 2022.



Figure 1. Data Analysis

In its development, the practice of beauty and aesthetic services began with the practice of beauty salons and then developed into a medical service in the field of beauty and aesthetics. [3] Based on the results of the study, it is known that in the implementation of beauty and aesthetic services, it was found that the implementation of beauty and aesthetic services was medical personnel who did not or did not have expertise in the field of beauty and aesthetics, then the licensing of the implementation of aesthetic beauty clinic services had differences in various regions. [4].

Basically, medical actions are carried out based on the principles of medical science in accordance with the provisions in the law in the health sector. [5] The health law in principle provides an obligation

for everyone to maintain and improve the degree of health, this is a manifestation that health is an element of human rights.[6].

The issue then is how about the authority of medical procedures in the field of beauty and aesthetics, whether it is the clinical authority of a specialist doctor or also a general practitioner. Because basically beauty and aesthetic services are the demands of the times, both women and metrosexual men in order to present themselves perfectly, [7] therefore beauty and aesthetic services are not medical services in the field of treatment caused by a disease but for beauty and aesthetic treatments to merely beautify body parts as a demand of culture and lifestyle.

Starting from the view that health actions in the field of beauty and aesthetics are part of culture and lifestyle in the sense that beauty and aesthetic actions are the wishes of patients submitted to medical personnel to then carry out medical actions in order to beautify the body parts of the patient. The purpose of this action is to fulfill and achieve patient satisfaction for the need for appearance and self-confidence and aging."[8]

Medical action in the field of beauty and aesthetics is different from medical services in general. Medical services in general are with the main objective in terms of curing diseases and restoring public health.[9]

In the legal procedure of health services, the patient's desire for beauty and aesthetic actions is contained in a therapeutic agreement which contains an agreement between the medical staff and the patient and then by the medical staff conveys the rights and obligations of and between the patient and the medical staff,[10] in this case the patient wants an action to beautify the beauty and aesthetics of his body parts and then by the medical staff conveys medical services for the patient's wishes or disebu as informed consent, namely an agreement from the patient or from the patient's family to the exposure.

## **2. METHOD**

This research is normative legal research, or legal research that uses law as a normative foundation. The standard framework in question is with regard to standards, legislation and guidelines, court choices, arrangements, and principles (lessons). This research material consists of secondary data, namely legal regulations in the field of aesthetic beauty related to medical crimes committed by medical personnel.

## **3. RESULTS AND DISCUSSION**

### **Problematics of the Application of the Element of Fault in Medical Crimes**

Evidence in criminal law has an important and vital role in the disclosure of criminal acts. Evidence in criminal law serves as a strong foundation for the public prosecutor in carrying out prosecution. Criminal law evidence is something that is impartial, objective so that judges get information in making decisions."[17]

The proof of the element of guilt in a criminal offense, one of which applies a principle known as *actore-incumbit-probatio*, *actore-non-probante-reus-absolvitur*, which means that basically states that the one who demands or the one who sues is obliged to prove his claim and preferably if it cannot be proven, the one who is sued or demanded must be acquitted."[18]

Regarding the element of guilt or known as *schuld* is a psychological or inner state or description of a person at the time, after or before committing a criminal offense.[19] Proof of the element of guilt has to do with the nature of the objective or subjective unlawful act committed by the perpetrator of the crime. This element of guilt, according to Adami Chazawi, must be viewed with the imposition of aspects of intent and negligence as accompanying elements."[20]

That with regard to the fulfillment and proof of the element of guilt in medical crimes has its own characteristics with other criminal cases, this is in accordance with what was conveyed by Adami Chazawi that in proving the element of guilt must pay attention to the formulation and perspective of a criminal offense."[21]

Based on the comparative data in proving the elements of guilt as described above, it can be drawn a common thread that in proving and fulfilling the elements of guilt for medical crimes are as follows:

- a. The authority to determine the elements of guilt in medical actions is the authority of the Indonesian Medical Discipline Honor Council (MKDI) on the application of medical scientific discipline vide Article 1 (14) of Law No. 29/2004 as part of the objective elements and objective elements of guilt in medical crimes;
- b. The existence of elements of SOP non-compliance such as the delivery of informed consent to the patient or to the patient's family; and

- c. Fulfillment of the competency requirements of medical personnel who carry out health services. In connection with the fulfillment of the competency requirements of medical personnel who carry out health services in the field of beauty and aesthetics, there is another problem, namely with the increasing trend of beauty and aesthetic clinical services, then how is the authority for general practitioners and non-specialist dentists in this field. Answering this issue Erni Yanti argues that for general practitioners and non-specialist dentists should require education and or training in the field of beauty and aesthetics.[23]
- Increasing the competence of doctors through education and or training from professional organizations or from accredited institutions is the mandate of Law 29/2004 in the aim of developing medical science and technology.

### **Problems and Legal Reform of Aesthetic Beauty Medical Practice**

The development of the need for science and technology in the field of medicine is so fast along with the times, the Covid-19 pandemic and climate change. As data released by WHO shows that more than 13 million human deaths occur every year globally." [24]

Restoration and improvement of health is part of improving general welfare in the health sector, improving general welfare is the mandate of the Indonesian constitution in the 1945 Constitution of the Republic of Indonesia. Therefore, the development of technology and science in the field of health and medicine must also be balanced with legal reforms related to health. Between the science of law and medical science must advance hand in hand in order to create an advanced and progressive health law order.

The provisions of health law, especially those relating to medical criminal law and especially the system of proving the elements of specialist error in the field of beauty and aesthetics, the existing regulations generally refer to the provisions of the Criminal Code and Law No. 29 of 2004. As previously described, the system of proving the element of health in medical criminal offenses has its own challenges, especially in the field of beauty and aesthetics. The aspect of medical negligence in the element of fault in medical crimes is associated with aspects of medical risk in medical actions that result in minor, moderate or even death of patients will certainly require a more comprehensive evidentiary system.

Based on this, a tangent can be drawn that the difference between medical risk and medical negligence is in the elements of SOP, prudence and negligence (culpa). SOPs or medical procedures that have been carried out correctly and in accordance with expertise and scientific discipline will in the event that the patient experiences health deterioration, then it is categorized as a medical risk, but if on the contrary it can be categorized as medical negligence.

The fulfillment or not of standard operating procedures (SOP) in handling patients is the main element in determining whether a medical act or action is categorized as negligence or medical risk. To answer this issue, Bahder Johan illustrates that the objective determination of a doctor's action is seen from his attitude in implementing the precautionary aspect and applying his knowledge, competence and experience as well as whether the action in question can be done by his colleagues in the same situation and conditions." [25]

The absence of a strict delimitation in the legislation related to medical risk with medical negligence, in this case the Indonesian Medical Discipline Honor Council (MKDKI) and or the Medical Ethics Honor Council (MKEK) has an important role [26] in providing an assessment of whether an alleged medical crime is medical negligence or medical risk.

The important role of the medical honor council is in line with the consideration of the Constitutional Court Judges in the Constitutional Court Decision No. 82/PUU-XIII/2015, which states that the Constitutional Court's decision is in line with the consideration of the Constitutional Court Judges in the Constitutional Court Decision No. 82/PUU-XIII/2015: 82/PUU-XIII/2015 which basically states that the medical profession is a profession that applies medical science literally when compared to other health professions. [27] Due to the strengthening of the role of the Indonesian Medical Discipline Honor Council (MKDKI) to carry out supervision and enforcement of Indonesian medical discipline.

Then from that in the development of trends in the field of beauty and aesthetics must be legally regulated related to the competence of medical personnel who have clinical authority in the field of beauty and aesthetics so that this authority arrangement provides protection and legal certainty for the community. Furthermore, in the service of medical actions in the field of beauty and aesthetics, legal reforms must also be carried out relating to badan actions in the field of beauty and aesthetics that can change identity and which are contrary to the norms that live and apply in society.

The development of a legal culture for doctors, especially in medical treatment in the field of aesthetic beauty in the fulfillment of informed consent to patients and to the patient's family, informed consent is also a human right (HAM) for patients who determine what actions are approved for themselves. [28] That then informed consent is also a legal tool in anticipating legal sengkata from and between patients and doctors.

#### 4. CONCLUSION

The authority to determine the elements of guilt in medical actions is the authority of the Indonesian Medical Discipline Honor Council (MKDI) on the application of medical scientific discipline vide Article 1 (14) of Law No. 29/2004 as part of the objective elements and objective elements of guilt in medical crimes;

The existence of elements of non-compliance with SOPs such as the delivery of informed consent to the patient or to the patient's family; and

Fulfillment of the competency requirements of medical personnel who carry out health services. The Indonesian Medical Discipline Honor Council (MKDKI) and or the Medical Ethics Honor Council (MKEK) have an important role in providing an assessment of whether an alleged medical crime is medical negligence or medical risk, this is in line with the Constitutional Court Decision No. 82/PUU-xiii/2015: 82/PUU-XIII/2015. It is necessary to regulate the competence of medical personnel who have clinical authority in the field of beauty and aesthetics so that the regulation of this authority provides protection and legal certainty for the community. Furthermore, in the service of medical actions in the field of beauty and aesthetics, legal reforms must also be carried out relating to surgical actions in the field of beauty and aesthetics that can change a person's identity.

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