

## **LEGAL PROTECTION OF THE BEAUTYCIAN DOCTOR PROFESSION IN LEGAL DISPUTE RESOLUTION**

**Nancy Gunawan, Erikson Sihotang, Ni Ketut Wiratny**  
*Universitas Mahendradatta, Indonesia*  
*nancykin@gmail.com, eriksonsihotang1@gmail.com, wiratny@gmail.com*

### **ABSTRACT**

Legislation in Indonesia has provided a lot of legal protection for beautycian doctors in the form of legal protection for the rights of beautycian doctors starting from the 1945 Constitution of the Republic of Indonesia, the Civil Code, the Criminal Code, the -Consumer Protection Law, Medical Practice Law, Health Law, Hospital Law, Health Personnel Law, and supported in Minister of Health Regulation Number 269/Menkes/Per/III/2008 concerning Medical Records, Regulations Minister of Health Number 290/Menkes/Per/III/2008 concerning Approval of Medical Actions, Minister of Health Regulation No. 36 of 2012 concerning Medical Secrets, Supreme Court Regulation no. 1 of 2016 concerning Mediation Procedures in Court. The role of the Indonesian Doctors Association in supporting the beautycian doctor profession in resolving legal disputes is as a mediator in selecting expert witnesses. The Indonesian Doctors Association will help its members who are deemed guilty if according to the Indonesian Doctors Association the doctor has carried out procedures in accordance with their professional duties.

**Keywords:** *Legal Regulations, Beautycian Doctors, and medical dispute resolution*

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### **INTRODUCTION**

The development of the times makes human needs more diverse. Nowadays, human needs are no longer about basic things such as food, work or education. Now appearance is a basic need for society. Not only for women but also for men. Appearance is now a staple that must be given special attention. This can be seen from the number of beauty clinics that have opened practices, and even now beauty clinics are opening branches in various regions. Beauty clinics can grow rapidly, of course, it cannot be separated from people's desire to get a better appearance. At beauty clinics, we are offered to get a clean face so that it looks more attractive. However, most people come to beauty clinics because they have skin problems such as acne, wrinkles on the face or oily skin problems as well as skin pigmentation problems or dark spots.

By looking at the above background, the formulation of the problem can be drawn, among others: first, the legal regulations that regulate the practice of beautycian doctors in Indonesia have provided an adequate foundation to protect the rights of doctors, second, the role of professional institutions or associations in supporting the beautycian doctor profession in resolving legal disputes. This study aims to find out about the adequate foundation to protect the rights of beautycian doctors in practicing medicine and the role of institutions or professional associations in supporting the beautycian doctor profession in resolving legal disputes.

### **METHOD**

The research method used in this study is a normative research method using various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature materials related to an adequate foundation to protect the rights of beautycian doctors in practicing medicine as a source of research materials. Johnny

Ibrahim argues that normative legal research is a form of scientific research aimed at finding the truth based on legal scientific logic reviewed from the normative part, or which is in the form of legal discovery efforts that are adjusted to a particular case (Ibrahim, 2006).

## **RESULTS AND DISCUSSION**

### **A. Legal Regulations Governing the Practice of Beautycian Doctors to Protect the Rights of Doctors in Indonesia**

Medical beautycian is not a new field of medicine. Many modern medical beautycian procedures date back to the 1880s and 1890s. The pioneer of modern medical beautycian was a French doctor endocrinologist named Jean Jacques Legrand. On its initiative, the medical beautycian association was founded in Paris in 1973. Two years later, surgeon Carlo Alberto Bartoletti founded a similar association in Rome, Italy. Soon after, other associations were formed in Belgium and in Spain. In 1978 the four countries formed the international association of medical beautycian based in Paris (Yati, 2020).

Modern medical beautycians today is a development of the pioneering efforts, research, and discovery of individuals from various medical and surgical specialties. Jean Carruthers discovered the remarkable beautycian uses of botulinum toxin (botox) (Prendergast, 2011). The goal of medical beautycians is to achieve patient satisfaction, with respect to their needs related to appearance, addressing complaints and restoring confidence. There are patients who want to delay the signs of aging or to improve their physical appearance due to status, social pressure or work (Gałęba & Marcinkowski, 2015). Diminished physical attractiveness due to aging often leads to a decline in confidence and quality of life, especially among women in the 40-60 age range. This age group of patients is most interested in improving their appearance (Tsepkoenko, 2015).

There are also patients who come because they want to improve their appearance due to suffering permanent injuries, or those who are born with congenital defects. Medical beautycian procedures can be classified as medical procedures because the person who performs the procedure must have medical expertise. However, the benchmark of success in medical beautycian is unique in that it is subjective from the patient's point of view and cannot be measured with certainty. Medical beautycian practitioners not only change the patient's appearance physically but also affect his psychological side, as the person can achieve the desires associated with his appearance.

Medical science is an art and science, alongside technology that is matured in experience. Thus, the way of approaching a disease between one doctor and another can be different, but it must still be based on science that can be accounted for. Based on the above circumstances, a legal theory by the court called the respectable minority rule emerged, that is, a doctor is not considered negligent if he chooses from one of the many recognized methods of treatment. The mistake of doctors choosing alternative medical actions for their patients, then a new theory called error of (in) judgment or can be called medical judgment or medical error, that is, the choice of medical treatment from doctors that have been based on professional standards turns out to be wrong. In addition, there is also another theory, namely *Volenti Non Fit Iniura* or Assumption Of Risk *Volenti Non Fit Iniura* or Assumption of Risk Assumption of Risk is an old doctrine in law that can also be applied to medical law, which is an assumption that has been known in advance about the existence of high medical

risks to patients if a medical action is performed on them. If a full explanation has been made to the patient or family (informed consent), approved, and known if there is a risk that has been previously suspected, then the doctor cannot be held accountable for his medical actions. In addition, this doctrine can also be applied to cases of forced discharge (going home of one's own accord even though the doctor has not given permission), so such a thing exempts doctors and health clinics from lawsuits.

Another doctrine is *Res Ipsa Loquitur* which is directly related to the burden of proof (onus, burden of proof), which is the transfer of the burden of proof from the plaintiff (the patient or his family) to the defendant (medical personnel). For certain negligence that is obvious and obvious, so that it can be known to a layman or according to common knowledge between laymen or the medical profession or both, that the defect, injury, injury or fact is clearly the result of medical negligence and this kind of thing does not require proof from the plaintiff, but the defendant must prove that his action does not fall into the category of negligence or mistake (Mangkey, 2014).

In carrying out their profession, doctors often practice drug dispensing, which is distributing drugs to patients. However, in practice, doctors not only distribute medicines, but also store a number of drugs in their personal practice areas, including by beauty clinic doctors. The use of drugs or creams given by beauty clinic doctors cannot be separated from the supervision of the Drug and Culinary Supervisory Agency (BPOM) which based on the Regulation of the Head of BPOM Number 14 of 2014 has the task of implementing policies in the field of drug and culinary supervision, which includes supervision of therapeutic products, narcotics, psychotropics, addictive substances, traditional medicines, cosmetics, complementary products and supervision of food safety and hazardous substances must have a distribution permit Origin of BPOM (Mardiana, 2018).

This arrangement implies that every doctor must know that the drugs given must be available at BPOM. This rule clearly enforces the principle of legal imagination (*presumptio iures de iure*), which states that "everyone is considered to know the law" since the law was enacted. This is based on one reason, that human beings have interests from birth to death. Every human interest is always threatened by the dangers around him. Human beings need the protection of interests, which are filled with many social rules, such as rules. Because the rules protect the interests of people, they must be obeyed by other people. So that there is enlightenment to comply with the law, so that their own interests are protected.

A form of legal protection that can be applied preventively in these cases where legal protection is provided in the event of a violation, such as the existence of rules that regulate rights and obligations that must be fulfilled. The Food and Drug Supervisory Agency (BPOM) as an institution tasked with supervising in the field of drug and food supervision, one of which is cosmetic products sold by beauty clinics. Beauty doctors have no problems in practicing medicine if they are late in having a Registration Certificate (STR) and a Practice License (SIP). Regarding the use of creams or beauty drugs, that beauty doctors have the obligation to write prescriptions related to creams and beauty drugs, this is in accordance with the Decree of the Executive Board of the Indonesian Doctors Association Number 221/PB/A.4/04/2002 concerning the Implementation of the Indonesian Medical Code of Ethics. Indonesian Doctors' Code of Ethics (KODEKI). In addition, BPOM is

authorized to supervise beauty doctors related to the use of drugs or creams registered with BPOM, this is based on the Regulation of the Head of BPOM Number 14 of 2014.

### **B. The Role of Institutions or Professional Associations in Supporting the Beautician Doctor Profession in Legal Dispute Resolution**

Medical disputes and health disputes are disputes that arise due to the legal relationship between Medical Personnel of Health Workers (TMTK) and patients in an effort to heal. The relationship between Medical Personnel and Patients in health sciences generally takes place as an active-passive biomedical relationship. (Mangkey, 2014) (Wiradharma, 2006) In this relationship, the superiority of Medical Personnel of Health Workers (TMTK) to patients in the field of biomedical sciences is clearly seen, namely there are only active activities on the part of Medical Personnel of Health Workers (TMTK) while patients are passive. The passive attitude of patients is certainly based on a sense of trust in the ability of Health Personnel (TMTK) to heal and treat. However, in medical and health measures, malpractice can occur both administratively, civil and criminal. This is what causes a dispute between Medical Personnel and Patients which is a medical dispute and a health dispute.

Medical dispute resolution can be through professional and non-professional institutions. Non-professions can be resolved outside the court (non-litigation) and in court (litigation). The Medical Ethics Honorary Council (MKEK) is a special assembly for medical personnel, so this applies to the medical community. The legal basis of the Honorary Council of Medical Ethics (MKEK) was formed in 1979 based on Article 16 paragraph (1) of the Bylaws of the Indonesian Doctors Association (IDI). MKEK is an autonomous body in the IDI organization consisting of the Central MKEK, Regional MKEK (at the provincial level) and Branch MKEK (at the Regency/Municipality level).

The Circular Letter of the Minister of Health No. 680 of 2007 is the implementation of Article 29 of the Health Law which contains: In the event that health workers are suspected of negligence in carrying out their profession, the negligence must be resolved first through mediation. When mediation reaches an impasse, the next process is handed over to the authorities. The Indonesian Doctors Association sent a Technical Expert Team (investigation) to help the authorities. It is known that in handling medical dispute cases involving the medical profession, the authorities can ask for help from a professional organization, namely the Indonesian Doctors Association (IDI). The Indonesian Doctors Association participates in resolving medical dispute cases if requested by the authorities. This is because in understanding the problem of the relationship between doctors and patients, it cannot only be seen from the presence of injuries or the death of patients. However, it must be seen in terms of professional discipline or science. The assessment requires the assistance of the Indonesian Doctors Association so that the handling of a medical dispute case can be assessed in terms of material, namely whether there is an error in providing medical examinations to patients. As a professional organization, the Indonesian Doctors Association will provide advocacy to patients if requested. If this case really reaches the court, the Indonesian Doctors Association will also prepare expert witnesses. In this case, the Indonesian Doctors Association can help in terms of choosing a doctor to be an expert witness. In handling alleged violations of health laws related to health workers, it is necessary to coordinate with local investigators by involving related

professional organizations. In the context of the interest of investigation and investigation by the National Police. The Health Office first utilizes and empowers existing Civil Servant Investigators (PPNS) in the health sector in accordance with their respective authorities, especially in matters related to STR, SIP, and Practice Nameplates. To assist in the law enforcement process starting from investigations and investigations to prosecution in court, law enforcement officials, professional organizations in the health sector can be asked for their assistance as expert witnesses according to their respective fields and or experiences (Kristian, 2018) (Pnh Simanjuntak, 2017) (Indonesia, 2004) (Artioko, 2022) (Kesuma, 2024).

## **CONCLUSION**

Legal regulations governing the practice of beautycian doctors in Indonesia have provided an adequate basis to protect the rights of doctors as regulated, among others: the 1945 Constitution of the Republic of Indonesia, the Civil Code, the Criminal Code, the Consumer Protection Law, the Medical Practice Law, the Health Law, the Law on Hospitals, the Health Personnel Law. The Indonesian Doctors Association as a professional organization of natural doctors supports the beautycian doctor profession to resolve legal disputes as a mediator and helps its members who are considered guilty if according to the Indonesian Doctors Association the doctor has carried out procedures in accordance with his professional duties.

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***Research Title***

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