



Law Enforcement of Plastic Surgery Operations Is Based on the Law 17 of 2023 Concerning Health

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Abstract

Those who perform aesthetic plastic surgery, including medical personnel, in this case are doctors who specialize in reconstructive and aesthetic plastic surgery, and the number of aesthetic plastic surgery patients in Indonesia is increasing, but the current law does not specifically regulate aesthetic plastic surgery. The formulation of the problem in this research is (1) Legal Regulations Concerning Plastic Surgery Operations in Law 17 of 2023 Concerning Health (2) A Doctor's Legal Responsibility for Aesthetic Plastic Powder in Law 17 of 2023 concerning Health. Legal regulations regarding aesthetic plastic surgery in Indonesia are still not specifically regulated in statutory regulations. However, this is implied in Article 137 of the Law 17 of 2023 concerning Health. The legal responsibilities of a doctor in carrying out aesthetic plastic surgery that changes facial features include providing good and appropriate surgical services according to medical procedures that have been tested, providing medical information before performing plastic surgery on the face, and being responsible for the failure of a surgery due to the doctor's negligence. If there is a violation, strict sanctions will be given in accordance with those regulated in 137 of the Law 17 of 2023 concerning Health.

Keywords: *Plastic Surgery; Doctor's Responsibility; Regulation*

Introduction

Current world developments marked by advances in science and technology have made it possible for everything to happen and can facilitate human desires to make things happen.¹ One of the sciences that is developing rapidly is medical science in the field of plastic surgery. As a branch of science that is related to human life and health, medical science seeks to carry out various kinds of discoveries and research to improve the quality of human life, and one of the goals of medical science is to restore a person's physical condition so that they can return to functioning in optimal conditions.

In this case, the implementation of plastic surgery cannot be separated from the norms and rules that apply in society. Many people think that plastic surgery is only oriented towards beauty problems, for

¹Yeni Triana, Ferdinand, Lia Martilova, Gandi Haryono. 2023. Legal Responsibilities of Plastic Surgeons in Improving the Beauty of Patients at Beauty Clinics in Pekanbaru City. *Journal of Education and Counseling* Volume 5 Number 1 2023

example lip embroidery, eyebrow embroidery, liposuction and so on. In fact, the scope of plastic surgery is very broad, such as birth defects, genital abnormalities and accidents. As in health law, it is also explained that plastic surgery aims to repair defective parts of the human body through medical surgery. Defects in this case include burns, tears due to accidents and/or other illnesses. Therefore, it is still not explained in health law. Clearly the conditions that allow for plastic surgery

The implementation of medical procedures does not always have to be interpreted as a contractual relationship that is civil in nature, where each party is bound to a health service agreement, that is, one party is required to fulfill its achievements, for example in terms of paying off its health costs, while the other party is required to fulfill its achievements by carrying out health services in accordance with the profession and function as implementer of health services. However, if the doctor's (medical) actions in this case result in an action that could result in damage or disability to the patient as a result of his actions, then the patient can sue the state to carry out an action of a public nature, namely by enforcing existing laws and providing sanctions for the perpetrators of the violations in question.

Various problems often occur in beauty clinic services, ranging from minor complaints such as not getting the results as promised to death. The existing regulations regarding Beauty Clinic services have not yet been regulated in real terms in law, even though this service is very developed. It is said that one of the most crucial problems in the field of cosmetic medicine is the issue of competence because cosmetic medicine involves various scientific disciplines from several areas of medical specialization. The conflict between the patient's desire to look prettier and stay younger and the doctor's obligation to provide maximum service according to competence is a very important thing to do.

Changing the shape by means of surgery is the general definition of plastic surgery, while the definition of plastic surgery according to medical science is the dissection of the tissue or organ to be operated on by moving the tissue or organ from one place to another as material to increase the tissue being operated on.⁵ Plastic surgery not only restores body function, but also helps to renew or improve the patient's body image and self-esteem

Even though there are doctors who specialize in reconstructive and aesthetic plastic surgery, in practice there are still many general practitioners and beauty salons who offer aesthetic plastic surgery services without the care of an expert doctor in that field. It has been proven that in 2018 there were 311 cases of aesthetic plastic surgery errors on the face in Indonesia, including errors that occurred on the nose (119 cases), chin (67 cases), lower lip (54 cases), cheeks (48 cases), upper lip. (11 cases), upper/lower eyelids (12 cases), and many more that were not recorded by PERAPI.

The number of cosmetic operations in hospital plastic surgery departments increased by 49.4% in 2021 compared to 2020, and increased by 29.7% compared to 2019. The number of operations in all disciplines increased by 33.4% in 2021 compared to 2020, and increased by 13.3% compared to 2019. The six most prominent motivations were evaluated separately by type of operation. Although the type of surgery varied, "the desire to look better after the pandemic" was the main reason for undergoing surgery with a percentage of 46.3%. It was also seen that the most significant motivation was "having had previous cosmetic surgery" with approximately 44.2% of the patients having had cosmetic surgery.²

Unfortunately, this data is not supported by national statistical data on patients who undergo aesthetic plastic surgery in Indonesia, even though there are quite a lot of aesthetic plastic surgery patients in Indonesia, one of which is patients who use beauty salon services without being handled directly by a specialist in reconstructive and aesthetic plastic surgery.¹³ This is of course contrary to Article 6 paragraph (2) of the Health Law which states that everyone has the right to obtain safe, quality and affordable health services.

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9886203/>

As stated above, parties who perform aesthetic plastic surgery, including medical personnel, in this case are specialist doctors in reconstructive and aesthetic plastic surgery, and the number of aesthetic plastic surgery patients in Indonesia is increasing, but the current law does not yet specifically regulate surgery. aesthetic plastic, although in Article 137 of the Law 17 of 2023 concerning Health confirms that: Reconstructive and aesthetic plastic surgery can only be carried out by medical personnel who have the expertise and authority. Reconstructive and aesthetic plastic surgery should not conflict with the norms prevailing in society and should not be required to change identity. Provisions regarding the requirements and procedures for reconstructive and aesthetic plastic surgery as intended in paragraph (1) and paragraph (2) are stipulated in a Government Regulation. This results in weak legal protection for every party who performs aesthetic plastic surgery, both medical personnel, in this case, specialist reconstructive and aesthetic plastic surgeons and aesthetic plastic surgery patients. The formulation of the problem in this research is (1) Legal Regulations Concerning Plastic Surgery Operations in Law 17 of 2023 Concerning Health? (2) A Doctor's Legal Responsibility for Aesthetic Plastic Powder in Law 17 of 2023 Concerning Health?

Discussion

1. Legal Regulations Regarding Plastic Surgery Operations in the Law 17 of 2023 concerning Health

Health is one aspect of realizing human rights, with every person having the same right to access health services as this is in line with the ideals of the Indonesian nation and in accordance with the 1945 Constitution of the Republic of Indonesia, both physically and mentally, and social.³ With the development of science and technology in the era of globalization in order to carry out health efforts, the support of health resources is needed, especially health workers who are adequate in terms of quality, quantity and distribution.⁴

As this is regulated in Article 1 Paragraph (7) of Law Number 17 of 2023 concerning Health (Health Law) which states that health workers are professions in the health sector who uphold a professional attitude, with knowledge and skills through special education in order to have authority in Carrying out health efforts is carried out using a comprehensive, integrated and continuous approach to maintenance, health improvement (promotive), disease prevention (preventive), disease healing (curative), and health restoration (rehabilitative), as well as patient care (palliative).

As time goes by, people's needs are not only related to health, but body and skin care has become one of the most popular needs for beautifying oneself.⁵ Influence from outside is the main reason why people carry out beauty treatments, namely the imitation factor of imitating other people, where these people are public figures on social media, these public figures become a big influence on people in carrying out body and skin care.

Plastic surgery can be divided into 2 (two) types, namely reconstructive plastic surgery which aims to improve the function of the body which has abnormalities or certain body parts as well as the appearance of the body which is caused by defects or removal of tumors.⁶ Meanwhile, aesthetic plastic surgery aims to repair body parts that are less than harmonious or perfect according to the wishes of

³Mikho Ardinata. 2020. State Responsibility for Health Insurance from a Human Rights Perspective. JOURNAL OF HUMAN RIGHTS Volume 11, Number 2

⁴ Adilla Tiara Putri Isram, Mohammad Husni Syam, Legal Responsibility for the Criminal Act of Malpractice in Breast Filler Injections Committed by Non-Professional Personnel Based on Law Number 17 of 2023 concerning Health. Bandung Conference Series Vol. 4 No. 1 (2024), Page: 673-680

⁵HIDAYAH, N. (2014). Consumptive Lifestyle of Female Students Using Facial Care at the Surabaya City Beauty Clinic (Study of JP Baudrillard's Simulacra, Simulation and Hyperreality). Paradigm, 2(3).

⁶Janetty. 2021. Study of Verbintenis Inspanning and Verbintenis Results in the Field of Plastic Surgery for Aesthetic Purposes. Legal Spectrum Journal Vol 19, No 2

patients who feel dissatisfied with their physical form, such as an organ or body tissue that is not optimal. "Aesthetic plastic surgery is very much about improving or providing beauty to the patient."

Health services are specialist and/or subspecialist services that prioritize curative, rehabilitative and palliative services without neglecting promotive and preventive services. Health Services are provided by Medical Personnel and Health Personnel in accordance with the competence and authority of advanced Health Service Facilities.

Law Number 17 of 2023 concerning Health does not clearly state the definition or meaning of plastic surgery, but the terms plastic and reconstructive surgery are listed as treatment methods for curing disease and restoring health.

Article 137 of the Law 17 of 2023 concerning Health confirms that:

1. Reconstructive and aesthetic plastic surgery can only be performed by medical personnel who have the expertise and authority.
2. Reconstructive and aesthetic plastic surgery should not conflict with the norms prevailing in society and should not be required to change identity.
3. Provisions regarding the requirements and procedures for reconstructive and aesthetic plastic surgery as intended in paragraph (1) and paragraph (2) are stipulated in a Government Regulation.

Plastic and reconstructive surgery cannot be limited to just treatment, beauty and the like can also be done because that is a person's right. It's just that plastic and reconstructive surgery that changes identity can be criminal when:

1. Done without consent
2. The aim is against the law, that is, it aims to disguise the origin of the appearance in such a way, especially to avoid legal traps.

From the provisions above, it is known that basically plastic and reconstructive surgery is permitted for the purpose of curing disease, restoring health, and for a person's beauty, so there is no problem with this and it is a person's right to make their choice. However, if the plastic and reconstructive surgery is not carried out for the purposes stated above, it is appropriate and should not be carried out by plastic and reconstructive surgery, especially if it changes the identity, such as a total change in the face.

Plastic and reconstructive surgery should not be limited to medical purposes only, as an individual's right to undergo plastic surgery also includes cosmetic and other purposes⁷. However, it is important to remember that plastic and reconstructive surgery that changes a person's identity can be considered a criminal act if performed without consent or with the aim of avoiding punishment. In general, the practice of plastic and reconstructive surgery is permitted for medical, health restoration and beauty purposes, but should be avoided if the aim goes beyond these limits, such as making a drastic change in identity.

Plastic surgery and facial reconstruction performed for the purpose of changing a person's identity so that the action is considered a criminal act is thought to be a violation in terms of professional ethics, security and privacy. Furthermore, this act of change will have an impact on a person's identity as a fundamental right. Through identity-altering plastic surgery, a person can intentionally hide or change

⁷ Nur Hafni Kurniawati, Endang Sri Lestari, Siti Aizatini, Arbert Kristanto. Nur Hafni Kurniawati, Endang Sri Lestari, Siti Aizatini, Arbert Kristanto. TRANSGENDER FROM A HEALTH LAW PERSPECTIVE. *Law Spectrum Journal* Vol 16, No 2 (2019)

their origins, remove traces of the past, or create a false identity. This could lead to fraud, crime, or other legal violations.

In terms of public safety, the ability to drastically change identity through plastic surgery may provide an opportunity for individuals to commit criminal acts without detection. For example, someone who commits a serious crime may use plastic surgery procedures to change his appearance and avoid capture by authorities. In terms of identity authenticity and trustworthiness, a person's physical identity is often used as a way to verify and recognize individuals in various contexts, such as population registration, banking, international travel, and the use of identity in everyday life. If plastic surgery is intentionally used to change identity, this can compromise the integrity of the identification system and create difficulties in verifying a person's authenticity.

All of this must comply with the provisions of Article 137 of the Law 17 of 2023 concerning Health, so that if you violate Article 37 Constitution 17 of 2023 concerning Health then criminal sanctions can be imposed in accordance with Article 433. Every person who performs reconstructive and aesthetic plastic surgery which is contrary to the norms prevailing in society and is intended to change a person's identity as intended in Article 137 paragraph (2) shall be punished by imprisonment for a maximum of 10 (ten) years or a fine of a maximum of Rp. 2,000,000.000.00 (two billion rupiah).

2.A Doctor's Legal Responsibility for Aesthetic Plastic Powder in Law 17 of 2023 concerning Health

To produce subspecialist doctors who have academic and professional skills in providing services in the field of reconstructive and aesthetic plastic surgery, professional education standards are needed for subspecialist doctors in reconstructive and aesthetic plastic surgery. Article 2 of the Indonesian Medical Council Regulation Number 108 of 2022 concerning Professional Education Standards for Reconstructive and Aesthetic Plastic Surgery Subspecialist Doctors confirms that:

1. Professional Education Standards for Reconstructive Plastic and Aesthetic Surgery Subspecialists are prepared based on the National Medical Education Standards.
2. The Professional Education Standards for Reconstructive and Aesthetic Plastic Surgery Subspecialist Doctors as referred to in paragraph (1) contain:
 - a. Competency Standards for Subspecialist Doctors in Reconstructive and Aesthetic Plastic Surgery;
 - b. Content Standards;
 - c. Competency Achievement Process Standards Based on Stage of Professional Education for Reconstructive and Aesthetic Plastic Surgery Subspecialist Doctors;
 - d. Teaching Hospital Standards;
 - e. Medical Education Vehicle Standards;
 - f. Lecturer Standards;
 - g. Educational Personnel Standards;
 - h. Standards for Acceptance of Prospective Students;
 - i. Facilities and Infrastructure Standards;
 - j. Learning Management Standards;
 - k. Financing Standards;
 - l. Standards for Assessment of Reconstructive and Aesthetic Plastic Surgery Subspecialty Doctoral Education Programs;
 - m. Research Standards for Reconstructive and Aesthetic Plastic Surgery Subspecialists;
 - n. Community Service Standards;
 - o. Standards for Collaboration Contracts for Teaching Hospitals and/or Medical Education Institutions with Medical Education Organizing Universities;

- p. Monitoring and Reporting Standards for the Achievement of the Reconstructive and Aesthetic Plastic Surgery Subspecialty Medical Education Program; And
- q. Standard Pattern for Providing Incentives for Students in Reconstructive and Aesthetic Plastic Surgery Subspecialty Medical Education Programs.

3. The Professional Education Standards for Reconstructive Plastic and Aesthetic Surgery Subspecialists approved by the Indonesian Medical Council are listed in the Appendix which is an inseparable part of this Indonesian Medical Council Regulation.

In society's view, the medical profession and other medical personnel are considered very noble and honorable because their medical duties aim to maintain a person's health or cure them from illness, or at least reduce the suffering they experience.⁸ Therefore, although doctors can also make mistakes, ordinary people still think that they cannot make mistakes when carrying out medical duties, and patients believe that doctors will do their best for their recovery. The medical profession is considered very important because it is related to human welfare, and its practitioners are expected to always follow moral and intellectual principles. Being a doctor means serving sick people so they can recover, as well as serving healthy people by preventing disease and improving their health. Therefore, the spirit of service must always be put forward⁹

Responsibility is the obligation to bear responsibility, and to bear losses (if sued) in legal and administrative matters. In English terms, the term responsibility is interpreted in two ways, namely responsibility and liability.¹⁰ The existence of a division of responsibilities, whether responsibility or liability, brings different meanings from a legal perspective. Responsibility is defined as responsibility resulting from one's own actions. Meanwhile, liability is more defined as responsibility caused by one's actions towards other people, so this liability is translated into Indonesian as legal responsibility. Where if someone makes a mistake, negligence and the result of that negligence/mistake causes harm to another person then that person can be held legally responsible, so that the person who suffers loss as a result of that mistake/negligence has the right to sue for compensation.

Liabilities or this legal responsibility also applies to beauty clinic services, so that if the doctor makes a negligence or error in carrying out his medical duties towards the patient, the patient can sue to pay compensation. According to the legal school of thought, if a doctor and a patient have committed themselves, then the doctor is trying to treat the patient as an obligation. The basic obligation of a doctor towards his patient is the doctor's hard work (in spanning) to cure his patient. A doctor's legal responsibility arises because of a basis based on a contract or consent/agreement between the patient and the doctor.¹¹ A doctor's legal responsibility occurs when a patient sues the doctor to pay compensation based on actions that harm the patient. Every legal subject can be subject to legal responsibility, a person can be subject to civil liability based on default, then there must be a contractual relationship or agreement, both verbal and written and the content of the agreement must be a measurable achievement (results agreement) as a criterion for determine default¹² (Supradi, 2013).

Default in health services arises because a doctor's actions in providing medical services are not in accordance with what was agreed. According to R. Subekti, the things that cause non-fulfillment of the contents of the agreement (default) are as follows:

⁸J. Guwandi, *Informed Consent & Informed Refusal*, Publishing House, FKUI Jakarta, 2014

⁹Agus Budianto and Gwendolyn Ingrid Utama, *Aspects of Health Services from a Patient Protection Perspective*, Bandung, Karya Putra Darwati, 2016

¹⁰Anny Isfandyarie, *Legal Responsibilities and Sanctions for Doctors Book I*, Jakarta, Selamat Pustaka, 2016

¹¹Priya Djatmika Yatini, Dhiana Puspitawati Yuliati, *Dispute Settlement In Therapeutic Agreement Protecting Patients*", *International Journal Of Science And Research (IJSR)*, Volume 8 Issue 7, July 2019

¹²Wita Chandrawila Supriadi, *Mandar Maju Medical Law*, Bandung, 2013

- a. Not doing what the agreement says is obligatory to do.
- b. Doing what according to the agreement must be done but being late in carrying it out.
- c. Doing what according to the agreement must be done, but not perfect in implementation and results.
- d. Doing what according to the agreement should not be done.

Likewise, Leenen said that in the world of medicine, a medical action carried out must be in accordance with the standards of the medical profession, and several main elements he put forward were:

- a. Work carefully, carefully and thoroughly;
- b. According to medical sizes;
- c. According to the average ability of doctors from the same medical specialty category;
- d. In a comparable situation;
- e. With means and efforts that meet a reasonable comparison with the concrete objectives of the medical action¹³

Doctors who are deemed to have made mistakes in carrying out their profession can claim their right first to prove that their actions have met the medical professional standards (SPM).¹⁴ If it turns out that the doctor's medical actions are not in accordance with the SPM, then the doctor's actions can only be held accountable according to law. The professional standards for health workers explain that in carrying out their duties, every health worker is obliged to comply with professional standards for health workers. In the official explanation, it is stated that the professional standards for health workers are guidelines that must be used by health workers as a guide in carrying out their profession properly. In relation to SPM and the legal protection that doctors can receive as medical personnel, it is determined in Article 53 of the Health Law, in full it is stated as follows.

- a. Health workers have the right to obtain legal protection in carrying out their duties in accordance with their profession.
- b. In carrying out their duties, health workers are obliged to comply with professional standards and respect patient rights.
- c. For evidentiary purposes, health workers can carry out medical procedures on a person by paying attention to the health and safety of the person concerned.
- d. Provisions regarding professional standards and patient rights as intended in Paragraph (2) are determined by government regulations.

Legal responsibilities that occur related to the implementation of one's profession as a doctor can still be differentiated between:

1. Responsibility for professional provisions contained in the Decree of the Minister of Health of the Republic of Indonesia no. 434/Men.Kes/SK/X/1983 concerning KODEKI;
2. Responsibility for the legal provisions contained in the law, namely the Criminal Code (KUHP) and its procedural law (KUHP), the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, Law Number 36 of 2009 concerning Health and Law Number 29 of 2004 concerning Medical Practice (Isfandyarie, 2006).

Criminal sanctions are given if you violate elements of Articles 359 and 360 of the Criminal Code, which relate to the death of a person or the resulting injuries.¹⁵ Article 359 states, "whoever by mistake causes the death of a person, shall be sentenced to imprisonment for a maximum of five years or

¹³Chrisdiono, Uniques of Medical Law, Protecting Patients and Doctors, Jakarta: Widya Medika, 2016

¹⁴Agus Budiando and Gwendolyn Ingrid Utama, Aspects of Health Services from a Patient Protection Perspective, Bandung, Karya Putra Darwati. 2016

¹⁵Soesilo, R. (1996). Criminal Code (KUHP): As well as complete comments article by article, Bogor: Politera

imprisonment for a maximum of one year". Article 360 regulates, "(1) whoever, through his fault, causes serious injury to a person, shall be sentenced to imprisonment for a maximum of fifteen years or imprisonment for a maximum of one year; (2) whoever, through his fault, causes someone to be injured to such an extent that the person is temporarily ill or unable to carry out his position or work, shall be punished by imprisonment for a maximum of nine months or imprisonment for a maximum of six months or a fine of a maximum of Rp. 4,500.

Acts of negligence or mistakes that result in death, injury or physical and mental harm to a person are considered criminal acts that can be subject to criminal sanctions. This negligence means that there is no element of intent, but it still results in harm to other people. In the context of medical procedures, such negligence is categorized as a criminal act of complaint, which means that there must be a complaint from the party who feels aggrieved or is authorized to do so. If there is no complaint from the injured party, then the authorities cannot take legal action against medical procedures that fall into the category of malpractice.

Regarding side effects, the surgeon himself has prepared several documents related to results and side effects, namely informed consent, risk consent, and also released consent.¹⁶ These documents must be signed by the patient before undergoing surgery, which means that the patient knows the side effects, risks, and results of the surgery that the patient will receive.¹⁷ Doctors who perform plastic surgery themselves assume that plastic surgery or facial reconstruction is not something that is completely medical, but rather an art form. This means it can be done according to the patient's request. Apart from plastic surgery and facial reconstruction, doctors can also perform surgery on the patient's vital organs (genitals). Genital surgery cannot be done just like that. This procedure requires approval from various parties, such as psychiatrists, psychologists, religious experts, population and civil registration services, and andrologists, to obtain permission to perform genital surgery.¹⁸

Conclusion

1. Legal regulations regarding aesthetic plastic surgery in Indonesia are still not specifically regulated in statutory regulations. However, this is implied in Article 137 of the Law 17 of 2023 concerning Health confirms that: Reconstructive and aesthetic plastic surgery can only be carried out by medical personnel who have the expertise and authority. Reconstructive and aesthetic plastic surgery should not conflict with the norms prevailing in society and should not be required to change identity. Provisions regarding the requirements and procedures for reconstructive and aesthetic plastic surgery as intended in paragraph (1) and paragraph (2) are stipulated in a Government Regulation.
2. The legal responsibilities of a doctor in carrying out aesthetic plastic surgery that changes facial features include providing good and appropriate surgical services according to medical procedures that have been tested, providing medical information before performing plastic surgery on the face, and being responsible for the failure of a surgery due to the doctor's negligence. . If there is a violation, strict sanctions will be given in accordance with those regulated in 137 of the Law 17 of 2023 concerning Health

¹⁶Sudrajat, T. & Mardiyanto, A. (2012). "The Right to Maternal and Child Health Services and Protection (Policy Implementation in Banyumas Regency)", *Journal of Legal Dynamics*, Vol.12 No. 2 May 2012, Purwokerto: Faculty of Law, Jenderal Soedirman University

¹⁷Komalawati, V. (2002). *The Role of Informed Consent in Therapeutic Transactions (Consent in the Doctor and Patient Relationship)*, Bandung: Citra Aditya Bakti

¹⁸Legal Responsibility for Aesthetic Plastic Surgery That Changes Facial Features Keizerina Devi Azwar, Arya Tjipta Prananda, Eva Syahfitri Nasution, Putri Rumondang Siagian, Hilbertus Sumplisius M. Wau, & Utary Maharany Barus. *Mercatoria Journal*, 16 (1) June 2023

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