

The Construction of Legal Protection For Aesthetic Patients

Endang Sri Sarastri

Faculty of Law, University of 17 Agustus 1945 Semarang, Indonesia

Abstract

Plastic surgery, primarily aesthetic plastic surgery, is increasingly becoming one of the beauty procedures that is increasingly considered commonplace to be carried out by people in various countries in the world. When viewed from the sociological aspect of this aesthetic operation, it is solely aimed at improving the quality of life and utilizing science and technology, both of which, when linked from a legal perspective in Indonesia, is in line with the formulation contained in Article 28 C paragraph (1) of The 1945 Constitution of the Republic of Indonesia as the state constitution of Indonesia. However, this aesthetic plastic surgery encountered various obstacles; this can be proven from the problems that occurred with Mrs. P and Dr. W, where this case is related to the actions of Doctor W, who performed reconstructive and aesthetic surgery on Mrs. P's nose. For this case, Dr. W was threatened with unlawful acts for the medical actions he took. Therefore, this article will analyze the legal construction in Indonesia that regulates legal protection for plastic surgery patients. This article aims to find out and analyze how legal construction in Indonesia regulates aesthetic plastic surgery. This is indicated to provide an understanding and test whether the medical action of aesthetic plastic surgery can be said to be part of the scope of regulation regarding consumer protection which is accommodated in Law No. 8 of 1999 or not. This research uses normative legal research methods. That is research conducted by examining library materials. The data used is secondary data, which includes primary legal materials in statutory regulations, then also uses secondary legal materials that explain primary legal custody. Construction of Legal Protection for Aesthetic Plastic Surgery consists of laws and regulations relating to the health/medical field that apply in Indonesia and the laws that apply in Indonesia, namely Law no. 29 of 2004 concerning Medical Practice, Law No. 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2014 concerning Health Workers, and the Civil Code: Article 1313; 1319; 1320; 1330; 1333; 1337; 1338 and 1454, so that the provisions governing consumer protection are not included in the scope for medical treatment.

Kata Kunci: *Construction, Legal protection, Aesthetic Patients*

Introduction

Aesthetic plastic surgery is increasingly becoming one of the beauty procedures that is increasingly considered to be commonly carried out by people in various countries globally, including Indonesia.^[1] Such a statement is based on the fact that social media in Indonesia has recently reported many appearance enhancements carried out using aesthetic plastic surgery.^[2] The term plastic surgery in medicine is called “aesthetic plastic surgery” because, in the medical world, the field is included in the specialist in reconstructive and aesthetic plastic surgery.^[3] A doctor carries out aesthetic plastic surgery with particular expertise in Reconstructive

Plastic Surgery Specialist and Aesthetics,^[4] commonly abbreviated as dr.SpBP-RE.

In recent times, many social media have reported improving appearance using plastic surgery. Indeed, plastic surgery is increasingly becoming one of the most common cosmetic procedures to be performed. Actually, what is meant by social media in the medical world, is called “aesthetic plastic surgery” because, in the medical world, this field is included in the specialty of reconstructive and aesthetic plastic surgery. The doctor who performs the medical procedure is called the Reconstructive and Aesthetic Surgeon, abbreviated as dr.SpBP-RE.

The tendency to be beautiful is the natural desire of every woman. However, according to Hamid Reza Salehi, the significant doubts regarding the legality of aesthetic plastic surgery have been removed by considering the purpose of the medical procedure of this type of surgery and also contemporary theories in the authorization of surgery which aims to improve one's appearance so that aesthetic plastic surgery is now legal under the law. However, the law in Islamic countries does not agree with this.

In Indonesia, from the sociological aspect, aesthetic operations to improve the quality of life and utilize science and technology are under Article 28 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia based on Pancasila. Then from a philosophical point of view, the decision to perform aesthetic plastic surgery is a human right following Article 13 of the Republic of Indonesia Law No. 39 of 1999, based on considering how physical and psychological suffering that has been carried so far, it is regarded as the best treatment is aesthetic plastic surgery because it can increase self-confidence.

From the patient's side, they assume that they are service consumers, so they want Laws of the Republic Indonesia no. 8 of 1999 concerning Consumer Protection, also applies to consumers of health services. So that they have the right to comfort, security and safety, this is reinforced by the issuance of the Decree of the Minister of Health of the Republic of Indonesia No: 756/Menkes/SK/VI/2004 concerning Preparations for Trade Liberalization and Services in the field of Health. However, medical procedures for aesthetic plastic surgery include surgery using invasive "anesthesia" where a person's condition is "unpredictable," while the Protection Act applies to goods and services. What is meant by goods here are inanimate objects or non-humans, and what is meant by services are services whose results can be predicted/predicted, while a person's condition cannot be predicted.

Aesthetic plastic surgery was initially a taboo subject to be carried out, primarily if it was related to religious

issues and also the legality of its implementation.^[5] But over time, many women tend to be beautiful (something that is a natural desire of every woman), especially if a woman who has problems on her face, such as burns, will need aesthetic plastic surgery to overcome these problems.^[6] So, Hamid Reza Salehi stated that the legality of implementing aesthetic plastic surgery in Indonesia has now undergone developments that have implications for aesthetic plastic surgery, which is now legal according to Indonesia's legal construction in force.^[7]

In Indonesia, aesthetic plastic surgery, viewed from a sociological perspective, can be said to be a series of efforts to improve the community's quality of life and utilize science and technology.^[8] The development of the quality of life and the use of information technology has a constitutional basis in Article 28 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states, "*Everyone has the right to develop themselves through the fulfillment of their basic needs, the right to education, and to benefit from science and technology, arts and culture to improve the quality of their lives and for the welfare of mankind.*"^[9]

The implementation of aesthetic plastic surgery in practice does not always go according to the desired expectations. In practice, there are many cases of failure of aesthetic plastic surgery caused by several factors, which can be proven from the problems that occurred Mrs. P and dr. W in Bandung. This case is related to the actions of doctor W, who performed reconstructive and aesthetic surgery on Mrs.P's nose. Although, for this case, dr. W was threatened with unlawful acts for the medical actions he took, fortunately in this case, and peace was carried out.

Based on the case above, the patients always assume that they are consumers of services, so they want the Law of the Republic of Indonesia no. 8 of 1999 concerning Consumer Protection and applies to consumers of health services. So that they have the right to comfort, security and safety, this is reinforced by the issuance of the Decree of the Minister of Health of the

Republic of Indonesia No: 756/Menkes/SK/VI/2004 concerning Preparations for Trade Liberalization and Services in the field of Health.^[10] However, medical procedures for aesthetic plastic surgery include surgery using invasive “anesthesia” where a person’s condition is “unpredictable,” while the Protection Act applies to goods and services. What is meant by goods here are inanimate objects or non-humans, and what is meant by services are services whose results can be predicted, while a person’s condition cannot be predicted.^[11]

Based on the problems that arise related to the implementation of aesthetic plastic surgery, the writing in this article will try to discuss and analyze the legal basis for the performance of aesthetic plastic surgery, especially the legality of the law regarding the protection of patients for all actions and practices of this aesthetic plastic surgery.

Research Method

This research uses normative legal research methods. That is research conducted by examining library materials.^[12] The data used is secondary data, which includes primary legal materials in the form of statutory regulations. Also, it uses secondary legal materials that explain primary legal prisoners, for example, research results and works from legal circles, as well as tertiary legal materials in the form of language dictionaries and legal dictionaries. Data collection is carried out using a literature study, namely collecting, reviewing, processing literature, legislation and articles, journals, and scientific works to support the theory. The data obtained were described, then analyzed qualitatively, namely by studying, analyzing, and interpreting the collected data. The results are described in the form of sentences.

Observation and Results

According to the author, in this case, what is meant by construction is an arrangement consisting of several elements into a single unit, which is the main force that can be used to build a particular thing. Thus the Construction of Legal Protection for Aesthetic Plastic

Surgery Patients in this study consists of several legal elements, which are the main forces used to build legal protection for aesthetic plastic surgery patients. So that in this study, several aspects of legal protection are combined into a single unit to create a guideline that provides legal protection for aesthetic plastic surgery patients.

People, especially patients, are now increasingly aware of their rights and obligations as patients in health services. Often critically question the disease, examination, treatment, and medical action that will be carried out. Often they even seek a second opinion. In this case, the patient must be seen as a subject that significantly influences the final service outcome, not just an object. Patient rights must be fulfilled considering that patient satisfaction is one of the barometers of service quality,^[13] while patient dissatisfaction can be the basis of lawsuits.^[14]

According to the author, service quality assurance should be prioritized along with the development of medical technology and the patient’s way of thinking, especially aesthetic plastic surgery patients who demand results from a medical action. However, it must be realized that in the provision of services, health services have differences with other services, namely the existence of patient ignorance or patient ignorance, so that special skills are needed in handling medical actions.^[15] Then there is the supplier-induced demand. In this case, the aesthetic plastic surgery patient does not know what medical action is being taken and how to deal with it if things are not desirable so that the patient does not have bargaining power and choice.^[16] In addition, health care products are not a homogeneous concept, limitations on competence, uncertainty about illness due to the different conditions of each patient, and healthy conditions are human rights.

In this case, providers are dominant in meeting the needs of patients as recipients of health services. So, if the provider recommends health services or medical actions and the types of drugs to be consumed, for example: what kinds of medical activities taken and

what medications and how many doses to take and others, usually the patient will follow suit.

Thus, the Construction of Legal Protection for Aesthetic Plastic Surgery Patients, especially in Indonesia, consists of several pillars of legislation as guidelines for providing legal protection. The laws and regulations are:

1. Civil Code.

The term therapeutic agreement is not known in the Civil Code. Still, the elements in a therapeutic agreement can be categorized as an agreement as mentioned in Article 1313. An agreement is that one person binds himself to one or more other people. At the same time, Article 1319 of the Civil Code reads all agreements, both those that have a particular name, or those that are not known by a specific name, are subject to general rules regarding engagements in general.^[17] In addition, in general, provisions regarding arrangements based on the principle of freedom of contract as regulated in Article 1338. This principle relates to the agreement's content, namely the freedom to determine what is to be agreed upon and with whom the agreement will be carried out legally by the parties is a rule for those who make it.^[18]

A valid agreement is an agreement that fulfills the conditions determined by law. According to Article 1320 of the Civil Code, if it is associated with aesthetic plastic surgery patients, the requirements for a valid agreement are:

a. In this case, there is an agreement (consensus) or will between the parties who agree, in this case, between the patient and dr. SpBP-RE. The agreement in question is an agreement between the patient and dr. SpBP-RE regarding the subject of the agreement.

b. The existence of the ability between the parties (capacity) to agree. People who carry out legal actions are adults, namely 21 (twenty-one) years old or before 21 (twenty-one) years of marriage. As stated in Article 1330 of the Civil Code, people who are incapable of making agreements are people who are not yet adults, people

under guardianship, women who have husbands. They must be represented when carrying out legal actions. Most plastic surgery patients are more than 21 (twenty-one) years old because plastic surgery is usually done to increase self-confidence. Therefore it is generally done by people who have worked a lot who socialize with the community. If they have not reached the age of 21 (twenty-one) years, there must be a representative, while if a married woman and her husband are still present, it must be with the husband's approval, meanwhile for dr. SpBP-RE is clearly more than 21 (twenty-one) years old. It is because to study to become dr. SpBP-RE takes a long time. Children start attending elementary school. Usually, they are more than 6 (six) years old, then the travel time from elementary school to dr. SpBP-RE takes 21 (twenty-one) years or more. Therefore for dr. SpBP-RE is of sufficient age.

c. The existence of a particular thing (object), which is the subject of the agreement, the object of the agreement, and the achievements must be fulfilled. An elucidation in Article 1333 of the Civil Code, what is meant by a particular thing is that the object of the agreement must be specific. Clarity of the principal agreement or entity of the agreement to enable the implementation of rights and obligations. In this case, it is aesthetic plastic surgery, not reconstructive surgery or other surgery. In this aesthetic plastic surgery, because it involves results, it includes the *resultaat verbintennis*. However, because this requires surgery using anesthesia, which is an invasive medical procedure, where the condition of different people/patients cannot be predicted, the agreement also includes *inspanning verbintennis*.^[19]

d. The existence of a legal cause (causa) is the agreement's content that describes the goals to be achieved by the parties agreeing, whether prohibited by law or not, contrary to public order and morality or not following the sound of Article 1337 of the Civil Code. For aesthetic plastic surgery, does it have a purpose as included in the prohibition stated in Article 69 paragraph (2) of the Republic of Indonesia Law Number 36 of 2009, concerning Health, which reads: reconstructive plastic

surgery must not conflict with the norms prevailing in society and not intended to change identity. Changing identity is prohibited because there is a possibility to commit a crime after it.

The first and second conditions are Article 1320 of the Civil Code, personal requirements regarding the subject of the agreement. If the agreement is not fulfilled, it can be cancelled. But if the judge does not ask for cancellation, this agreement remains binding even though it is threatened with the cancellation article, namely Article 1454 of the Civil Code. The third and fourth conditions of Article 1320 of the Civil Code are objective conditions, namely regarding the object of the agreement. If these conditions are not met, the agreement is void, that is, if one of the parties does not fulfill its obligations.^[20]

In this study, in patients with aesthetic plastic surgery, the first requirement is the agreement or will of the parties, namely between the patient and dr. SpBP-RE. Initially, patients with aesthetic plastic surgery came to dr. SpBP-RE to ask for help in fulfilling their wishes, namely in the form of aesthetic plastic surgery, for example, "sharp nose (rhinoplasty)." Then dr. SpBP-RE conducts examinations and interviews, where the patient expresses her/his wishes or desires. Next dr. SpBP-RE explains everything related to the medical action carried out, from preparation, treatment during surgery and after surgery. Legally dr. SpBP-RE guarantees the patient's authority. This is reflected in the talks/interviews and the approval that aesthetic plastic surgery patients will give. Aesthetic plastic surgery patients usually have no medical indications, so the patient concerned can think clearly. If you agree, then between dr. SpBP-RE and the patient agree to agree that the contents follow the parties' wishes. Thus this has fulfilled the legal requirements of the agreement Article 1320 of the Civil Code.^[21]

Furthermore, for the second condition, the therapeutic agreement has an exceptional nature, so that not all provisions of the Civil Code can be applied. Under Article 1 point (7), the Minister of Health of the Republic of Indonesia Number: 290/MENKES/PER/III/2008,

concerning Approval of Medical Actions, it is explained that the patient concerned is an adult patient or not a child or had been married, is not physically disturbed, can communicate naturally, does not experience mental retardation and does not suffer from mental illness, can make independent decisions independently. Who came to dr. SpBP-RE is a competent patient. If the patient is not qualified, then dr. The SpBP-RE can refuse because the aesthetic plastic surgery patient described was a healthy patient with no medical indications, so that medical action could be postponed. According to Bayu Wijanarko, to anticipate this, unwritten legal provisions can be used, namely customary law, which states that someone is considered an adult if he/she is already working.

Based on the therapeutic agreement described above, the basis for medical liability is the default (Article 1234 of the Civil Code) and *onrechtmatige daad* as stated in Article 1365 of the Civil Code. There is a difference between the notion of default (broken promise) and *onrechtmatige daad* (acts against the law).

The definition of default in this study is dr. SpBP-RE did not carry out its obligations, not because of *overmacht* conditions. Dr. SpBP-RE who deviates in the form of breaking a promise or breach of commitment on the therapeutic agreement he made, will be subject to rules or must be held civilly responsible according to Article 1239 of the Civil Code, which essentially reads: Each engagement to do something, or not to do something, if the debtor does not fulfill his obligations, gets a settlement in the responsibility by providing costs, losses and interest. Aesthetic plastic surgery patients who feel aggrieved because they think dr. SpBP-RE does not perform its contractual obligations. It can file a claim on the grounds of default and demands material and immaterial compensation for the losses it suffers. It's different when dr. SpBP-RE resulted in harm to the patient. It turned out to be an unlawful act as regulated in Articles 1370 and 1371 of the Civil Code, then dr. SpBP-RE is responsible for repaying the patient even though there is no contractual relationship.

According to civil law, a person can be considered to be in default if he does not do what he can do.

- a) Too late to do what was promised to be done.
- b) Carry out what was promised, but not as expected.
- c) Do something that, according to the agreement, should not be done.

Meanwhile, the elements that can be used as the basis for filing a lawsuit against the law are as follows:

- a) there is an unlawful act
- b) there is a loss
- c) there is a causal relationship between illegal actions and losses
- d) there is an error

In the world of medicine, a doctor can be declared to have made a mistake and must pay compensation if there is a close relationship between the losses caused by the errors made by the doctor. In determining a doctor's error, it must refer to professional standards. So that in the implementation of medical practice, acts against the law can be identified with the actions of doctors that are contrary to or not following professional standards that apply to professional development in the field of medicine.

2. Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice.

Following Article 1 point (1) of this Law, what is meant by Medical Practice is a series of activities carried out by doctors and dentists for patients in carrying out health efforts. Then in Article 3, it is stated that the regulation of medical practice aims to provide protection to patients, maintain and improve the quality of medical services provided by doctors, also provide legal certainty to both doctors, patients, and the public. In this article, the purpose of the regulation of medical practice is apparent.

In receiving health services during the implementation of medical practice, the following articles relating to patient protection are:

a) Article 44 states that doctors and dentists carrying out medical practice must comply with medical and dental service standards.

b) Article 45 states that every medical or dental action performed by a doctor or dentist on a patient must obtain approval. The approval is given after the patient has received a complete explanation regarding matters such as the diagnosis and procedure for medical action, the purpose of the medical action taken, alternative actions. Risks and complications that may occur as well as the prognosis of the action taken. In addition, article 45 also states that consent can be given orally or in writing. Any high-risk activity must be approved in writing. As explained above, what is meant by high risk is surgery related to anesthesia because the patient's physical condition is different and unpredictable. A Ministerial Regulation regulates provisions regarding the procedure for the approval of such medical/dental procedures.

Furthermore, according to Article 45 of the Republic of Indonesia Law Number 29 of 2004, concerning Medical Practice, Minister of Health Regulation Number 290/MenKes/Per/III/2008 and the 2008 KKI Medical Action Approval Manual, Informed Consent is approval for medical action given by the patient or the family after receiving a complete explanation of the medical action to be carried out. Meanwhile, other laws and regulations that are in line with informed consent are Article 37 of the Law of the Republic of Indonesia Number 44 of 2009, concerning Hospitals, which reads:

(1). Every medical action carried out in a hospital must obtain the consent of the patient or his family.

(2). The provisions regarding the approval of the medical action are carried out following the requirements of the legislation.

So basically, informed consent ^[22] explains until

the patient understands the medical action and the medical risks carried out on him. Informed Consent is more emphasized on the obligation to provide correct information. A new agreement is valid if it has been signed and agreed upon by both parties. The agreement can be cancelled if the information provided is incorrect.

Terms of valid informed consent:

1. Disclosure of information.
2. Patient competence in giving consent.
3. Voluntary, and there is no element of compulsion.
4. The doctor explains in a language that is easy for the patient to understand.
5. The patient understands what the doctor is explaining.

Several rules must be considered in the preparation and provision of informed consent so that the law of this engagement is not legally flawed, including:

1. Not beguiling (*fraud*)
2. Not trying to force (*force*)
3. Do not create fear (*fear*)

From criminal law, absolute informed consent must be fulfilled not to be included in Article 351 of the Criminal Code concerning persecution. An invasive action (e.g., surgery, radiology) carried out by a medical service provider without permission from the patient. The medical service provider can be prosecuted for committing a criminal act of persecution. In Article 52, patients in receiving services in medical practice have the following rights:

- get a complete explanation of the medical action that will be carried out. In terms of aesthetic plastic surgery, the relation in this research is to explain the advantages and risks that arise as a result of the operation.

- ask another doctor's opinion, in this case, regarding the surgery to be performed.

- get services according to medical needs, in this case. There is a possibility that the doctor will order other medical actions, which have absolutely nothing to do with the surgery to be performed by the patient, for example, rhinoplasty, the patient is asked for an x-ray, even though this is not something to do with rhinoplasty.

- refuse medical action, since aesthetic plastic surgery is performed on patients who usually do not have medical indications, then if there are things that are considered unsuitable for both the patient and dr. SpBP-RE, then one or both parties can refuse.

- get medical records, which is vital for further medical action if things are not desirable.

In Article 53, patients in receiving services in medical practice have obligations, among others:

- provide complete and honest information about their health problems. In this study, aesthetic plastic surgery patients came to dr.SpBP-RE to change specific body organs according to her wishes. What is expressed is that the desire is not the disease. However, the patient must inform the condition she has suffered (comorbid) so that medical action can be carried out with extra care.

- comply with applicable regulations in health care facilities. In this case, the patient must comply with the rules that apply in health care facilities or hospitals, namely during their stay in the hospital, both before and during post-operative care.

- comply with the doctor's advice and instructions. These instructions are given by dr.SpBP-RE both before surgery, during surgery (if using local anesthetic), and after surgery or post-surgery. Especially in this study, according to the authors, are post-operatively, where the patient is not under intensive supervision by dr. SpBP-RE, because the patient has been discharged from the health care facility (hospital) where the aesthetic plastic surgery was performed.

- provide compensation for services received. In this case, both dr.SpBP-RE services and hospitalization costs as long as the patient stays at the health care facility where the person concerned is being treated.

This Law, apart from regulating the rights and obligations of patients, also protects users of doctor or dentist services to complain about losses due to negligence or errors on doctors or dentists in carrying out their profession to the Chairperson of the Indonesian Medical Disciplinary Board. This is regulated in Chapter VII, Article 66 number (1).

3. Law of the Republic of Indonesia Number 36 of 2009, concerning Health.

In this Law, some provisions protect patients. The article is Article 56:

(1). the patient has the right to refuse the doctor's action after receiving and understanding the complete explanation of the information.

(2). this right does not apply if the patient suffers from an infectious disease, the patient is unconscious, or the patient is suffering from.

4. Law of the Republic of Indonesia Number 44 of 2009, concerning Hospital.

The Law of the Republic of Indonesia regarding Hospitals can be related to patient protection, namely in the following articles:

I. Article 29

Number (1) reads that every hospital has an obligation to:

a. provide correct information about hospital services to the community.

b. provide safe, quality, anti-discriminatory, and effective health services by prioritizing the interests of patients following hospital service standards.

c. provide emergency services to patients according to their service capabilities.

d. provide facilities and services for the poor and underprivileged.

e. carry out social functions, including service facilities for indigent patients, emergency services without asking for a down payment, free ambulances, social services in humanitarian missions.

f. maintain service quality standards in serving patients.

g. maintain medical records.

h. provide accurate, clear, honest information about the rights and obligations of patients.

i. respect and protect patient rights.

II. Article 32

Every patient has the right to:

a. obtain information about hospital rules and regulations.

b. obtain information on the patient's rights and obligations.

c. obtain humane, fair, honest services without discrimination.

d. obtain quality health services following professional standards and standard operating procedures.

e. obtain effective and efficient services to avoid physical and material losses.

f. complain about the quality of service received.

g. choose a doctor and treatment class according to the wishes and hospital regulations.

h. ask for consultation with other doctors, both inside and outside the hospital.

i. get privacy about the confidentiality of his illness.

j. get complete information related to his health

condition.

k. approve and refuse medical actions taken by health workers.

l. accompanied by family in critical condition.

m. worship according to their religion.

n. gain security and safety while in hospital.

o. submit suggestions and improvements to hospital treatment.

p. reject spiritual guidance that is not following their faith.

q. complain about hospital services that do not meet service standards to the media.

III. Article 37 :

(1) Every medical action carried out in a hospital must obtain the patient's consent or his family.

IV. Article 38 :

(1). Every hospital must keep medical secrets.

(2). Medical secrets may only be disclosed for the benefit of patients and law enforcement officers.

V. Article 43 :

(1). Hospitals are required to apply patient safety standards.

(2). Patient safety standards are reported through incident reports, analyze and determine problem-solving to reduce the number of unexpected events.

VI. Article 60 :

Provincial Hospital Supervisory Board, among others, has the task of supervising and maintaining the rights and obligations of patients.

5. Law of the Republic of Indonesia Number 36 of 2014, concerning Health Worker.

Articles related to patient protection are:

I. Article 68 :

This law relates to patient protection. It reads as follows:

(1). Every individual health service activity carried out by a health worker must obtain approval.

(2). The consent is given after getting a proper and sufficient explanation.

(3). The description shall at least include:

a. service action procedures

b. the purpose of the service action performed

c. the alternative course of action

d. possible risks and complications

e. the prognosis for the action taken

(4). The consent is given orally or in writing.

(5). Every action of a health worker that contains a high risk must be provided with a written agreement signed by the person who has the right to consent.

(6). A Ministerial Regulation regulates the provisions of this procedure.

II. Article 77 :

Every Health Service Recipient who is harmed due to the error or negligence of a Health Worker can request compensation following the provisions of the legislation. Legal protection for Health Service Recipients or other Patients in this Law is as stated in the criminal conditions on:

I. Article 84 :

(1). Health workers who commit gross negligence resulting in serious injury to the Health Service Recipient shall be punished with imprisonment for a maximum of 3 (three) years.

(2). If his negligence causes death, the sentence is a

maximum of 5 (five) years.

II. Article 85 :

(1). Health workers who practice not having a Registration Certificate are fined a maximum of one hundred million rupiahs.

(2). Foreign Health Workers without a Temporary Registration Certificate fined a maximum of one hundred million rupiahs.

III. Article 86 :

(1). Health workers who do not have a Practice License are fined a maximum of one hundred million rupiahs.

(2). Foreign Health Workers without a Temporary Practice License are fined a maximum of one hundred million rupiahs.

6. Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

The two objectives in this Law are:

1. Empower consumers in their relationship with business owners (public/private), goods, and services.
2. Develop an honest and responsible attitude of business owners.

Some parties argue that this Law is also a provision that regulates patient protection. They consider that the basis of the condition in Article 1 number (2) states: every person who uses goods and/or services available in the community, both for the benefit of themselves, their families, other people, and living creatures. The final consumer is the final consumer in the form of goods, such as medicines, food, tools, or other objects, including services provided by people, such as building construction services, Environmental Impact Analysis making services, doctor/dentist, insurance services, etc. From this understanding, patients can be categorized as consumers. It can be seen that patients are included as users of services available in the community.

In a therapeutic transaction, the engagement is *inspanning verbintenis*, meaning that it is not based on the result but is based on earnest effort. In this case, the doctor or hospital is not required to provide the patient's desired outcome because, for the patient's recovery, many things are influential and are factors beyond the reach of the doctor's ability, namely: the patient's physical condition, age, body resistance, drug quality, level of illness, patient compliance, health care facilities.

Furthermore, according to Article 1, number (3) of the Consumer Protection Act, a business actor is any individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia that conducting business activities in various economic fields. Thus, doctors/health workers include business actors in the area of health services.

Several parties are still debating this explanation. To find out whether the profession of a doctor or health worker or health service facility is a business owner or not, several provisions of the applicable laws and regulations must be considered. Those provisions are:

a. Law of the Republic of Indonesia Number 36 of 2009, concerning Health.

"Health Worker" is any person who devotes himself to the health sector and has the knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts.

b. Law of the Republic of Indonesia Number 29 of 2004, concerning Medical Practice.

"Patient" is any person who consults on his health problem to obtain the necessary health services, either directly or indirectly, from a doctor or dentist.

c. Law of the Republic of Indonesia Number 36 of 2014, concerning Health Worker.

States that a "Health Worker" is any person who devotes himself to the health sector and has the

knowledge and/or skills through education in the health sector, which for certain types requires the authority to carry out health efforts, and “Health Service Recipients” are anyone who conducts health consultations to obtain the necessary health services, either directly or indirectly, to health workers.

d. Law of the Republic of Indonesia Number 44 of 2009, concerning Hospital.

States that a “Hospital” is a health service institution that provides complete individual health services that provide outpatient, inpatient, and emergency services. Meanwhile, a “patient” is any person who consults on his health problems to obtain the necessary health services, either directly or indirectly, at the hospital.

The rights and obligations of health service providers for doctors/health workers/hospitals according to the Law of the Republic of Indonesia Number 36 of 2009, regarding health as explained earlier that their right is to obtain legal protection in carrying out their duties following their profession. At the same time, the obligation is to comply with professional standards and respect patients’ rights. Then for patients, their rights are: receive clear information, give consent, medical secrets, ask for opinions from other doctors, while their obligations are: following information and procedures instructions, having good intentions, paying agreed fees, and complying with applicable provisions in health care facilities.

Thus, in this study, the relationship between dr. SpBP-RE with Aesthetic Plastic Surgery Patients based on trust because it was the patient who came to dr. SpBP-RE, so that there is a therapeutic agreement that requires a result (*resultaat verbintennis*), but due to patient endurance (age, physical condition, level of medical action taken, patient compliance, quality of drugs, and available health care facilities), it is difficult to predict, doctors can only try to achieve the maximum possible results (*inspanning verbintennis*). Then, the relationship between Hospitals or Health Service Facilities with Aesthetic Plastic Surgery Patients follows the treatment agreement; namely, the Hospital provides treatment

rooms, nurses, and dr.SpBP-RE personnel for medical action.

Furthermore, the relationship between dr. SpBP-RE with the Hospital is in providing health services. Hospitals need dr. SpBP-RE as its medical personnel, so that the Hospital is civilly responsible for all activities carried out by its health workers. This is under Article 1367 of the Civil Code, namely “That employers and those who appoint other people for their affairs are responsible for losses issued by their servants or subordinates in carrying out the work for which these people are used.” Therefore, if the patient is not satisfied because of what happened at the hospital, the patient can sue and sue and hold the hospital accountable, then the hospital chief will determine who is at fault.

e. Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

As has been explained above regarding what is called a consumer and what is called a business owner, according to the WTO (World Trade Organization) or GATS (General Agreement on Trade Services), the professions of doctors and dentists are as follows:

- * Health Sector:
 - Hospital Services
 - Other Human Health Services
 - Other
- * Business Services Sector:
 - Professional Services
 - Medical and Dental Services
 - Physiotherapist
 - Nurse and Midwife

The Black Law Dictionary also states that: Business (business activities in various economic fields) includes employment occupation, profession, or commercial activity engaged in/or gain or livelihood (all activities to

earn profit/livelihood).

In addition, the Decree of the Minister of Health of the Republic of Indonesia Number: 756/MENKES/SK/VI/2004 concerning Preparations for the Liberalization of Trade and Services in the Health Sector is a business. So that the position of health service providers and consumers of health services is the same: they both have rights and obligations.

Several parties, namely, have debated the things mentioned above:

1. Parties argue that the patient's position is as a "customer of health services." In contrast, doctors/health workers/health service facilities (hospitals) are "business actors in the field of health services," as described above.

2. Parties who argue that the therapeutic relationship/agreement is an engagement relationship of a unique nature so that in the event of a dispute between the "provider/provider" of health services and the "recipient" of health services, each party is subject to the legal provisions governing it. Especially in the research, according to the author's opinion, because this medical procedure has "targeted results" as stated before, the agreement includes *resultaat verbintennis*, while since everyone's endurance is different, dr.SpBP-RE strives for the maximum possible results, where the agreement consists of *inspanning verbintennis*. Therefore, this engagement is subject to both, namely *inspanning* & *resultaat verbintenis*.

Apart from these differences of opinion, the author believes a conflict or dispute between dr. SpBP-RE/health service providers with their patients, conflict resolution, can be done in 2 (two) ways, namely: litigation method (through the judicial process) and non-litigation method (out of court). To file this lawsuit, the plaintiff must be able to prove 4 (four) criteria, namely:

- there is a duty of care, where the doctor, in this case, dr. SpBP-RE is obliged to provide the best possible care to patients as a medical contract. Dr. SpBP-RE promises to try to take the best possible medical action

for the patient. Then the patient will comply with the instructions and treatment given by dr. SpBP-RE as well as possible.

- there is a breach of duty, where dr. SpBP-RE does not perform its proper obligations, while the form of the violation is an error/error in medical action such as misdiagnosis, interpretation of supporting examination results, medication errors. Meanwhile, a violation in the form of negligence is not doing things that should be done according to good medical practice standards.

- There is an injury to the patient in the form of physical, mental, to the heaviest, death.

- there is a direct causal relationship between the occurrence of violations in the form of errors/errors/omissions with physical disabilities suffered by the patient, even to death.

According to the author, since aesthetic plastic surgery patients are "healthy" or not sick patients, this medical action does not have to be done immediately. So to realize the medical activity, both parties need to think again. Dr.SpBP-RE must explain all the risks and complications that may occur, while if the patient disagrees, the operation can be cancelled.

Conclusion

Construction of Legal Protection for Aesthetic Plastic Surgery consists of laws and regulations relating to the health/medical field that apply in Indonesia and the laws that apply in Indonesia, namely:

1. Law Number 29 of 2004, concerning Medical Practice.
2. Law Number 36 of 2009, concerning Health.
3. Law Number 44 of 2009, concerning Hospital.
4. Law Number 36 of 2014, concerning Health Worker.
5. Civil Code: Article 1313; 1319; 1320; 1330; 1333; 1337; 1338; and 1454

To avoid things that are not desirable, make a special agreement that is complete and clear in detail, including mentioning the risks and complications that may occur. So that if one or both parties do not agree, it can be cancelled.

Ethical Clearance : Not applicable

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Conflict of Interest : Nil

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