

Causes of Post Surgery Disputes between Plastic Reconstructive and Aesthetic Surgeons with Patients

Endang Sri Sarastri¹, Liliana Tedjosaputro², M.C. Inge Hartini³

¹Student Doctoral of Law at Universitas 17 Agustus 1945, Semarang, Indonesia, ²Professor, Faculty of Law / Universitas 17 Agustus 1945, Semarang, Indonesia, ³Lecturer, Faculty of Law / Universitas 17 Agustus 1945, Semarang, Indonesia

Abstract

Advances in science and technology and the ability, skills, and soul of the art of Plastic Reconstructive and Aesthetic Surgeons can change human organs according to the patient's wishes to improve one's appearance to become more beautiful or handsome. Aesthetic plastic surgery is not performed to treat physical disabilities, in contrast to reconstructive plastic surgery, which aims to treat physical disabilities. However, misunderstandings or failures can occur because Plastic Reconstructive and Aesthetic Surgeons are also human, so it does not give satisfaction to the results expected by the patient. Not infrequently, the misunderstanding peaked, resulting in a dispute between the doctor of Plastic Reconstructive and Aesthetic Surgeons with the patient. This research method is normative juridical research empirical. The research specification in this study is descriptive-analytical. Research conducted using secondary data sources that include primary legal materials in norms, basic rules, laws, and regulations. The results of this study explain that Plastic Reconstructive and Aesthetic Surgeons should not give an appointment or guarantee success on the surgical efforts that have been done because there are other factors beyond their power as a doctor. The doctor should explain the risks and complications that may occur. In addition, before surgery, it is recommended that a complete agreement be made with the patient, and the patient understands and understands the risks or possibilities that can occur postoperatively in the future. The doctor and patient agreement are made in full and detailed in written form before medical action is carried out by involving a notary public to ensure legal certainty, fairness, and benefit.

Keywords: *Plastic Reconstructive and Aesthetic Surgeons, Patient, Dispute.*

Introduction

Health is a human right that must be protected and is one of the elements of welfare that must be realized as referred to in Pancasila¹. Pancasila is the basis of creating the articles contained in the Law of

the Republic of Indonesia year 1945, reviewed from the sociological aspect, aesthetic plastic surgery in Indonesia, to improve the quality of life and benefit from science and technology for the welfare of patients or users of medical services contained in Article 28 C paragraph (1) of the Constitution of the Republic of Indonesia year 1945. Then, from the philosophical aspect, the decision to perform aesthetic plastic surgery is a human right by Article 13 of the Law of the Republic of Indonesia Number 39 of 1999, it is based on considerations that affect the atmosphere of spirituality, namely physical and

Corresponding Author:

Endang Sri Sarastri

Faculty of Law, Universitas 17 Agustus 1945

Semarang, Semarang City, Indonesia

Email: endangs.sarastri@yahoo.co.id

psychological suffering, where aesthetic plastic surgery is considered to be able to treat sufferers, namely by increasing confidence².

The desire to be beautiful, handsome and young, is the desire of every human being³. Advances in science and technology and the ability, skills, and soul of the art of a Plastic Reconstructive and Aesthetic Surgeons can be used to change one's organs according to his wishes to improve one's appearance to support his work. Aesthetic plastic surgery is not performed to treat physical disabilities, in contrast to reconstructive plastic surgery, which aims to treat physical defects, such as lip clefts, while aesthetic plastic surgery enhances or enhances appearance⁴. This is greatly embraced by perfectionists. which caused them to want to achieve their wishes by going to the Plastic Reconstructive and Aesthetic Surgeons to perform surgery on him.

Plastic surgery is a series of procedures designed to restructure damaged or injured parts of the body, where the above types of operations include reconstructive plastic surgery⁵. While the surgery that changes the body part is less attractive to be better by the patient's wishes, to support his appearance, including aesthetic plastic surgery. To fulfill his wishes, the aesthetic plastic surgery patient went to the Plastic Reconstructive and Aesthetic Surgeons to perform surgery on him.

Plastic Reconstructive and Aesthetic Surgeons should be careful in providing medical services to avoid unwanted things⁶. However, misunderstanding or failure is often inevitable because the Doctor is also human, no matter the efforts that are fought, God is the determinant. Not infrequently, the misunderstanding peaked, so there was a dispute between the two sides. It is this failure that causes disagreement. Therefore it is necessary to look for what factors cause the dispute to arise⁷.

Research Methods

This research uses empirical normative juridical

research method, a study conducted using secondary data sources that include primary legal materials in the form of norms, basic rules, laws, and regulations—then coupled with secondary legal materials, namely legal materials used to support primary legal materials⁸. In contrast, empirical approach methods are carried out by conducting interviews in the field. Data collection is conducted by studying documents from literature, collecting, reviewing, and processing literature data related to juridical aspects, aesthetic plastic surgery, and treaty notation, as well as interviews with the Chairman and members of the Indonesian Association of Plastic Surgeons (PERAPI), Nurses, Notaries, Aesthetic Plastic Surgery Patients. Data obtained from this study, researchers conduct studies or analysis of opinions from experts in various literature and writings, namely by studying, analyzing, and interpreting every data that has been collected. Techniques of data collection in this study is conducted through two ways, namely field research and literature research and data analysis in this study are conducted qualitatively.

Results and Discussion

The legal relationship between Plastic Reconstructive and Aesthetic Surgeons and their patients is that since the patient came to the Plastic Reconstructive and Aesthetic Surgeons expressed his desire to perform surgery to change the organs as desired⁹. The patient is a healthy patient who wants the desired "results," so the legal relationship is *verbintenis resultaat* because it appoints an outcome. However, because the medical procedure is invasive, which is highly dependent on a person's unpredictable condition, the therapy given to the patient is an "effort" of healing (*inspanning verbintenis*) so that the agreement becomes the right effort to achieve a certain result (*inspanning & resultaat verbintenis*)¹⁰.

Doctors performing specific medical actions require medical approval or informed consent¹¹. The patient will approve if he has been fully explained about the medical treatment to be completed. By the

autonomy of the patient, they have the right to decide their choice freely. If the patient refuses medical treatment, then the patient must sign the informed refusal¹². For aesthetic plastic surgery patients, a complete agreement is required, as it appoints a specific result. To create this agreement to be used as a guideline, it must be regulated in the laws and regulations.

In today's global era, the tendency to appear attractive to both men and women is an essential factor. This appearance is a concern, among others, for people who work as celebrities, presenters. Even today, the tendency to appear attractive has penetrated all circles. This is evident from the results of the author's interview with the Plastic Reconstructive and Aesthetic Surgeons that the patients are not only from celebrity circles but also from socialites, officials, academics, homemakers, and even laypeople who come from labor to household assistants have begun to take advantage of the expertise of Plastic Reconstructive and Aesthetic Surgeons. One of them is due to the promotion in the mass media that promotes the success of this aesthetic plastic surgery⁹.

One way patients can be more attractive, they go to the Plastic Reconstructive and Aesthetic Surgeons. This causes people to be attracted to Plastic Reconstructive and Aesthetic Surgeons because of the number of patients interested in aesthetic plastic surgery to look beautiful, handsome, attractive, and charming². Therefore, Plastic Reconstructive and Aesthetic Surgeons become very important to avoid unwanted things and always pay attention to the prudence in providing services. However, even if it has been done carefully, any action or work done by everyone is certainly successful, and sometimes it does not work, especially when it is medical matters related to the condition of one's body that can not be predicted¹³. Especially when it comes to surgical actions that have to do with anesthesia or anesthesia and one's resistance to medication, it is fraught with risks.

The medical action performed by the doctor in this study is Plastic Reconstructive and Aesthetic Surgeons, basically always resulting in 2 possibilities of success and failure. The failure of a Plastic Reconstructive and Aesthetic Surgeons to perform medical procedures is caused by several things, among others, caused by overmatch (force majeure), the second is caused by reconstructive plastic and aesthetic surgeons performing medical procedures that are not by the standards of the medical profession or the standards of the medical profession.

Health services have a distinctive characteristic that is different from other services, patient ignorance of treatment, lack of bargaining power, and selectability of other service products. Especially when it comes to special skills, such as aesthetic plastic surgery, patients usually do not know what risks will occur. Therefore a detailed explanation is required, which must be notified before the operation is performed. For this explanation to be forgotten, it should be noted and is a mutually known agreement.

Aesthetic plastic surgery is a service that pays attention to the final result, so patient satisfaction becomes one of the barometers of service quality because the patient's dissatisfaction can be a problem. However, do not forget about the previous explanation that the condition or condition of a person's body is unpredictable. This needs to be a form of cooperation between patients and Plastic Reconstructive and Aesthetic Surgeons. Patients should convey precise information to the doctor and listen well to the explanation from the doctor so as not to cause misunderstandings. According to the author, the patient's expectations for Plastic Reconstructive and Aesthetic Surgeons are the same as the expectations of other patients, namely:

- a. Reliability: the provision of service promised immediately and satisfactorily.
- b. Responsiveness: help and provide services with Responsiveness without distinguishing Tribe, Religion, Race, Class of patients.

c. Assurance: guarantee of safety, safety, comfort.

d. Empathy: good communication and understanding of the needs of patients.

In medical actions performed by Plastic Reconstructive and Aesthetic Surgeons, the cause of the dispute is due to several things:

a. Changes in the pattern of the doctor's relationship with the patient.

Previously, the relationship pattern was paternalistic, where the patient always adhered absolutely to what the doctor instructed but has now changed into a way of partner relationships between doctors and patients. The doctor should consider the patient's opinion in choosing to determine which surgery the patient is in. Because if the result is not by his wishes, then the patient feels harmed, so there will be a dispute. According to the researchers, especially for aesthetic plastic surgery, because there is no medical indication, if there is no agreement or conformity between the doctor and the patient, the Plastic Reconstructive and Aesthetic Surgeons may refuse not to perform the surgery.

b. Lack of cooperation between patients and Plastic Reconstructive and Aesthetic Surgeons.

In the healing process, the patient must comply with the advice and instructions of the Plastic Reconstructive and Aesthetic Surgeons, such as the patient must maintain cleanliness and should not be wet, the control must be timely, and so on.

c. Lack of information and communication between Plastic Reconstructive and Aesthetic Surgeons with patients so that it can be a trigger for disputes.

Many Plastic Reconstructive and Aesthetic Surgeons judges that communicating with patients is not an easy task because it is considered difficult. After all, patients lack knowledge about medical problems.

Akibanya raises a misunderstanding between the doctor and the patient because the patient does not understand the term medicine. Otherwise, the patient is reluctant to ask because of embarrassment.

d. Discrepancies between the patient's expectations and the final result obtained.

The patient's expectations are too high, so the patient's dissatisfaction with the doctor occurs. Patients do not know that there are other factors beyond the doctor's power that can affect medical efforts, such as physical condition, endurance, quality of medication, and compliance of the patient to obey the doctor's advice. These factors can result in the best efforts or medical actions becoming meaningless at all. Therefore, it can be said that the results of a medical procedure are full of uncertainty and cannot be taken into account mathematically.

e. Differences in perception.

According to the authors in this study, the perception is that patients consider the most important is the result. They do not understand that although the result is the goal, the alliance between the doctor and the patient remains inspanning verbintennis. This is a misperception of the patient regarding the object of the agreement made with the doctor. The patient only understands that this study is a special medical action for aesthetic plastic surgery if the doctor fails in his medical effort. If the surgery results do not match what the patient expects, the patient will sue the doctor by calling it malpractice.

f. The cost of plastic surgery and maintenance is expensive.

The patient feels that he has incurred a high cost, but if the result is not as expected, the patient feels dissatisfied that he demands compensation from the doctor.

Any medical treatment performed by a doctor, both diagnostic and therapeutic, always carries risks, whether or not this risk arises regarding health care.

Therefore, it is necessary to distinguish between medical risk and medical malpractice. If the patient has been treated by the standard procedures of medical services but fails, the patient is injured or dies, this is a medical risk, but if the patient in treatment fails or suffers a wound or death, as a result of the doctor performing services below medical standards, it means that there is medical malpractice

Medical risks that can occur in medical services or medical actions are:

- a. inherent risks, such as hair loss due to cytostatics (cancer cell killer drugs)
- b. hypersensitivity reactions, such as a distorted immune response (immunity) to the entry of foreign bodies (drugs) that are often unpredictable beforehand.
- c. complications that occur suddenly and unexpectedly before.

Thus it can be concluded that the physical disability or death of the patient is not always a doctor's negligence but also a risk that may occur in medical actions performed by the doctor.

Distinguishing between malpractice and medical risk can be seen from the element of negligence. This negligence must be proven that there is a connection with the disability or death of the patient. If this element of failure does not exist, it means that the defect or death of the patient is not the result of malpractice but is a medical risk that may occur in the course of treatment. So if the doctor acts with medical risk, then the doctor does not have to be responsible for the actions performed. In contrast to medical malpractice, if the doctor performs a medical action that causes the onset of medical malpractice, then the doctor must take responsibility for his actions legally¹⁴.

Disputes arising between Plastic Reconstructive and Aesthetic Surgeons and aesthetic plastic surgery patients have always been linked to suspected medical malpractice¹⁵. Settlement of medical malpractice disputes in Indonesia, taken through 2 lines, namely

litigation (judicial) and non-legal lines (out of court), but most of the path taken either through lawyers or not with lawyers is through mediation or resolved by themselves peacefully. The settlement of medical malpractice through litigation holds the Plastic Surgeons of Reconstruction and Aesthetics accountable for performing aesthetic plastic surgery¹⁶. Doctors may be penalized. Three aspects of the law used to determine malpractice:

- 1) Deviation from medical professional standards.
- 2) Mistakes made by doctors, both in the form of deliberateness and negligence.
- 3) The consequences are caused by medical actions that cause material or non-material, physical (injury or death) or mental harm.

According to the researcher, the doctor's awareness of legal obligations to himself and others in carrying out his profession must be carried out correctly. Especially to be done and what should not be done by Plastic Reconstructive and Aesthetic Surgeons. If the patient sues the doctor with a lawsuit against the law, the patient must show the doctor's guilt due to negligence in carrying out his professional obligations causing harm to the patient. Losses that occur must be explained as a result of negligent doctor's actions, or in other words, there is a clear causal relationship, and there is no justification

A doctor can be declared guilty and must pay compensation if the losses incurred. There is a close relationship with the mistakes made by the doctor. In determining the mistakes of doctors, we must refer to professional standards. So that in the implementation of medical practice, acts against the law can be identified by the actions of doctors who are contrary or not by professional standards applicable to the development of the profession in the field of medicine.

Researchers found the rules on plastic surgery are incomplete, contained in Article 68 paragraph

(1) of the Law of the Republic of Indonesia No.36 of 2009 on Health, that the installation of implants or medical devices into the human body can only be done by health workers who have expertise and authority and are carried out in health care facilities. Ideally, the Article coupled with the sentence of Medical Devices must have a medical device distribution license from the Ministry of Health of the Republic of Indonesia as evidenced by a Circulation License Number. While paragraph (2) mentions the provisions on the terms and procedures for installing drug implants or medical devices and stipulated by a Government Regulation, this Government Regulation contains health care recipients and implant users. Medical devices must mention the requirements of the desired medical devices, among others brand, size and other characteristics that the Plastic Surgeon Reconstruction and Aesthetics must agree, and proven by a letter of the agreement under the hand authorized by a Notarial Or Notarial Certificate. This agreement involves a Notary Public to have a force that can be held accountable because the deed made by a Notary public is an authentic deed in which the form and procedure are stipulated by law.

Conclusion

Based on the research that has been done, it can be concluded that several things can cause disputes between Plastic Reconstructive and Aesthetic Surgeons with patients. In addition, the Plastic Reconstructive and Aesthetic Surgeons do not guarantee the success of the operation, and the doctor also explains the risks and complications that may occur. So to resolve the dispute, there must be good ethics between the two parties to fix it properly an not harm each other. One way to prevent this by making a special agreement that can guarantee legal certainty, fairness and benefit, is in the form of a deed under the hands or a notarial deed. In case of dispute can be resolved by mediation. Researchers advise that risky matters can be discussed first and better addressed in writing and included as clauses in the agreement. In connection with the medical measures taken by

Plastic Reconstructive and Aesthetic Surgeons prone to lawsuits, it is necessary to provide legal protection for doctors to maintain a sense of comfort and safety in work.

Ethical Clearance : Data taken from the books, websites and use of legal provisions only.

Source of Support : Self

Conflict of Interest : None

References

1. Ardinata M. Tanggung Jawab Negara terhadap Jaminan Kesehatan dalam Perspektif Hak Asasi Manusia (HAM). *Jurnal HAM*. 2020;11(2).
2. Macionis V. History of plastic surgery: Art, philosophy, and rhinoplasty. Vol. 71, *Journal of Plastic, Reconstructive and Aesthetic Surgery*. 2018.
3. Siregar DF, Buchari FB, Tarigan UA, Lelo A. PROFILE OF PLASTIC SURGERY TRAUMA PATIENTS AT H. ADAM MALIK GENERAL HOSPITAL MEDAN. *GLOBAL JOURNAL FOR RESEARCH ANALYSIS*. 2019;
4. LaGasse N. Plastic Surgery: Plastic Surgeon and Cosmetic Dermatologist: Complications and Liability. *Journal of Legal Nurse Consulting*. 2011;22(3).
5. Ferreira MC, Ferreira EH. The civil responsibility of the plastic surgeon in esthetic procedures. *Revista do Hospital das Clínicas*. 1992;47(6).
6. Lyu SY, Liao CK, Chang KP, Tsai ST, Lee MB, Tsai FC. Analysis of medical litigation among patients with medical disputes in cosmetic surgery in Taiwan. *Aesthetic Plastic Surgery*. 2011;
7. Sulolipu AB, Handoyo S, Roziqin. Perlindungan Hukum Terhadap Profesi Dokter Dalam Penyelesaian Sengketa Medis Berdasarkan Prinsip Keadilan. *Projudice*. 2019;1(1).
8. Pratiwi SH, Fendri A, Benni B. Authority and Position of Notary Deed in the Land Sector.

- International Journal of Multicultural and Multireligious Understanding. 2019;6(5).
9. Park BY, Kwon JW, Kang SR, Hong SE. Analysis of malpractice claims associated with surgical site infection in the field of plastic surgery. *Journal of Korean Medical Science*. 2016;31(12).
 10. AribowoBN, NurhayatiBR, DahlanS. PERSEPSI PASIEN TENTANG ASPEK HUKUM PERIKATAN UPAYA (INSPANNING VERBINTENIS) DALAM TRANSAKSI TERAPEUTIK ANTARA DOKTER DENGAN PASIEN DI RSUD KOTA SALATIGA. *SOEPRA*. 2018;3(1).
 11. Mavroudis C, Thomas Cook J. Informed consent. In: *Bioethical Controversies in Pediatric Cardiology and Cardiac Surgery*. 2020.
 12. Benjamin R. Informed Refusal: Toward a Justice-based Bioethics. *Science Technology and Human Values*. 2016;41(6).
 13. Lungan L, Riyanto OS, Ardyantara DM, Harahap A. Doctor's Responsibility to the Implementation of 24 Hours Emergency Unit Service in Non Primary Health Care Center of Land Bumbu District. *Annals of the Romanian Society for Cell Biology* [Internet]. 2021 Mar 8;25(3):8333–42. Available from: <http://annalsofrscb.ro/index.php/journal/article/view/2375>
 14. Riyanto OS, Ardyantara DM, Wardhana RSK, Lungan L. Legal Protection For Doctors Against Dishonesty Of Patients In Providing Information During Covid-19 Pandemic. *International Journal of Science, Technology & Management* [Internet]. 2021;2(1):289–99. Available from: <https://ijstm.inarah.co.id/index.php/ijstm/article/view/118>
 15. Zhong ZJ, Nie J, Xie X, Liu K. How Medic–Patient Communication and Relationship Influence Chinese Patients' Treatment Adherence. *Journal of Health Communication*. 2019;24(1).
 16. Liebman BL. Malpractice mobs: Medical dispute resolution in China. *Columbia Law Review*. 2013;