

# Forensic and Toxicological Tests for Protecting the Patients of Esthetic Beauty Clinic as the Constitutional Right in Indonesia

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## Abstract

Esthetic beauty clinic is many people's need, but the critical point of protection for its patients is still weak. Many problems often affect the patients of esthetic beauty clinic. Patients deserve protection of medical service standard constituting something important to maintain and to improve. Forensic and toxicological medical sciences are needed to give adequate protection to the patients of esthetic beauty clinic. Through its scientific method, the state could prove, prevent, and take action all at once against the esthetic beauty clinics operated haphazardly. The clinic selling, concocting, using, and promoting hazardous and toxic drug and cosmetic can be detected and acted on, while forensic test was intended to prove the consequence or output of esthetic beauty clinic's service. This scientific method supported the protection and the right of patients of esthetic beauty clinic, corresponding to the constitution.

**Keyword:** clinic; protection; forensic; toxicology; aesthetic

## Introduction

A new trend of *medical aesthetica*, is an individual's aiming to get healthcare treatment including both general checkup and rehabilitation; it is usually performed by the patients in developing countries looking for medical service in the developed countries in order to get high-technology service quality, as shown by the finding of research below.

In recent years, a variety of beauty clinics appear more prevalently in Indonesia, for example, Dr. Affandi's esthetic beauty clinic, *Natasha Skin Centre*, *London Beauty Centre*, *Erha*, and *Larissa* providing beauty treatment product that can make the patients excited. Beauty Clinic is an ambulatory healthcare service provider providing medical care service (consultation, examination, treatment, and medical action) to deal with many beauty-related conditions/diseases (appearance

esthetics) among individuals, conducted by medical workers (physician, dentist, specialist, and dental specialist) corresponding to their skill and authority.<sup>1</sup>

The result of researches on trend beauty in Asia today shows that:

This beauty business growth builds on women and metrosexual men's want to appear perfectly in Indonesia, so that to achieve their want they voluntarily spend their money to buy the expensive facial and body treatment products. The wish to appear beautifully or charmingly and well-groomed is a human's physical need, particularly to women. Even along with the times, men as if do not want to be left behind the women in the term of tidy and charming appearance; such the men are called metrosexual men. It is this reality that encourages many companies operating in *Beauty and Personal Care* to keep innovating to create high-quality product the patients look for in order to win the market.

Beauty and esthetic clinic is inseparable from the contribution of physician serving as consultant and the one giving treatment or taking action in the beauty clinic's service, and the business of beauty clinic itself. It is important to study because physician is bond to

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Indonesian Medical Ethical Code as the legal source in undertaking his/her profession and Indonesian Honor Chamber for Medical Discipline as the supervision of physician's professionalism in Indonesia; therefore when a physician is suspected to break the law, he/she should be processed immediately, because knowledge and science he/she has should be used duly rather than for profit-oriented purpose only and breaking medical ethical and professional code.

The protection of patients from the service provided by esthetic beauty clinic is a distinctive problem, so the basic problem in this study is how the law protection model is for the patients of esthetic beauty clinic in the citizen's constitutional right perspective<sup>2</sup>. The form of protection provided to the patients of esthetic beauty clinic is, among others, forensic test on esthetic clinic.

Responsible of the state for fulfilling the citizens' constitutional right to the service of Esthetic Beauty Clinic in Indonesia are public and private. The government's responsibility has been mentioned in Article 28D, clause (1) of 1945 Constitution concerning the right to guaranty, law protection and certainty and Article 28H clause (1) related to the right to health and to get healthcare service. The rights fulfillment is accomplished using the legal instrument and the institution of state authorized in licensing, organization, building, supervision, monitoring, and evaluation in the organization of esthetic beauty clinic. The esthetic beauty clinic' responsibility includes: fault, risk, product, and professional<sup>3</sup>.

Forensics is always related to crime (unlawful deed). In books of forensic science, forensic science is generally defined as the application and the utilization of certain science for law enforcement and justice purpose. In investigating a criminal case, observation on physical evidence and interpretation on the result of analyzing (examining) evidence is the main instrument of investigation. Forensic test, in this case, examines the evidence existing, coming from, used, and sold in esthetic beauty clinic, to find out whether or not it has been appropriate or there is malpractice, default, or other finding. In addition to forensic test, there is toxicological test on cosmetics and services provided by esthetic beauty clinic to find whether or not the cosmetics contains mercury or other hazardous materials<sup>4</sup>.

State or state apparatus is authorized to conduct forensic and toxicological tests on esthetic beauty clinic

and to test the drugs used to find out whether or not they have been corresponding to the standard specified. The authorized one is also entitled to conduct toxicological test on the drugs sold by esthetic beauty clinic for the sake of protecting patients. Drugs or cosmetics used by esthetic beauty clinic and having obtained license from BPOM and *halal* certificate from MUI could undertake forensic and toxicological tests suddenly to find out whether its ingredients or contents have been corresponding to what proposed when the *halal* certification or BPOM license was filed or are different.

## Method

This study was a sociological research. The analysis used in this sociological research was socio-legal approach, the law interacting with people (law in action). In addition, social (non-doctrinal) research method was also used with interactional (micro) approach using qualitative analysis or qualitative method<sup>5</sup>.

## Findings and Discussion

The factual condition occurring should be the legal relationship between physicians handling the patients in esthetic beauty clinic and the patients; it is called therapeutic relation. Juridically, therapeutic relation can be defined as a legal relation between physician and patients in esthetic beauty medical service professionally based on the competency corresponding to certain expertise and skill in medical field. Therapeutic relation builds on mutual trust<sup>6</sup>, as formulated in the *Preamble* of Indonesian Medical Ethical Code contained in Republic of Indonesia Minister of Health's Decree Number 434/Men.Kes/SK/X/1983 about the enactment of Indonesian Medical Ethical Code to physicians in Indonesia.

"Since the beginning of written history regarding mankind, a trust relationship has been known between two individuals: the curer and the sufferer. In modern age, the relation is called therapeutic one between physicians and patient, conducted in confidential circumstance and enclosed with any emotion, expectation, and worry of human creature".

The problem arising later is the implementation of norms and rules of law included in many regulations, because the facts existing are sometimes different from the ideal norms, moreover if anything to be governed has distinctive characteristic and specification. Similarly, healthcare (service) has its typical characteristics, as explained below<sup>7</sup>:

1) Uncertainty principle. It means that an individual does not know certainly when he/she will need healthcare service. Basically, no one wants to be sick and hospitalized; everyone to keep healthy.

2) Information asymmetry. When an individual is sick, the decision to purchase healthcare service as needed is on the physician's hand or healthcare center (clinic or hospital). If they are told to follow a surgery procedure, patient can be said as not knowing whether or not they need the operation. Although informed consent<sup>8</sup>, has been known recently to involve patients in making decision over medical action to be done by physician in esthetic clinic, the patients remain to be not on the position knowing their health status at that time like the physician treating them.<sup>1</sup>

Another factor also resulting in the expensive healthcare service is labor-intensive one. To provide healthcare service, multidisciplinary approach and automation production process are required.

The legal implications sometimes arise along with the relationship between healthcare service provider and service patients, the ones instead are understood very poorly by the public. For example, see Prita case or other malpractice cases. The point the people (or perhaps service provider) understand poorly is the presence of such therapeutic relation. The understanding on the emergence of legal relation in service in esthetic beauty clinic is called medical service, legal foundation of medical care service relation, legal position of parties in medical service, and risk of medical service.

A new protection model is required to protect the patients of esthetic beauty clinic. The old law protection model has been replaced with the new one. It is this reconstruction of law protection model that will be the guideline or guidance in organizing esthetic beauty clinic in Indonesia in the form of forensic test that will be prevailed periodically and randomly.

It was reported for the first time that *Josep Bonaventura Orfila* in a trial with toxicity trial in animals in France in the 19<sup>th</sup> century and with his toxicological book can convince the judge to remove an assumption that the toxicity-induced death is cause by mysticism.

Recently in an investigation of a criminal action, it is an imperative to apply authentication and examination of physical evidence scientifically so that the material truth can be achieved. In the presence of scientific

authentication, police, district attorney, and judge should not rely on the suspect or live witness' admittance admission for investigating and settling a case. Because live witness may lie or may be told to lie, based on the information of witness intended, the achievement of truth enforcement objective in the criminal case process intended.

In authenticating and examining scientifically, we know the terms forensics and toxicology.

Generally, forensics can be defined as *the application or the utilization of certain science for law enforcement and justice purpose*. Forensic medical science is one of specialist branches of medical science utilizing medical science to help law enforcement and problem solving in legal domain. Indeed originally the forensic medical science is intended only to justice purpose, but in its development it is also utilized in non-justice areas, including protection or prevention.

The scope of forensic medicine develops over times, from originally the death of crime's victim, unexpected death, unknown corpse, to still alive victim of crime, or even biological skeleton, tissue, and material putatively coming from human being, and to concoction and its consequence to human beings.

The type of case also expands from murdering, mistreatment, sexual crime, domestic violence, child abuse and neglect, dispute in divorce, paternity testing, to human right infringement. While Forensic medical science used to deal with the dead victim is called forensic pathology, the one dealing with the live victim or the suspect is called clinical forensic medicine or called *police surgeon* in some states. Forensic test on esthetic beauty clinic is called clinical forensic medicine.

Toxicology itself has been known since the human civilization development in looking for food, of course having tried a variety of materials including botany, plant, and mineral. Through its experience, it identifies food safely and dangerously. Meanwhile, the word toxic is a term used to explain and to represent a variety of "chemicals" clearly hazardous to body. The word "toxic" come from Greek stem 'tox', meaning bow and arrow.

In which bow and arrow is used at that time as the weapon in war, the arrow of which is always toxic (poisonous). "Papyrus Ebers (1552 B.C.)" of ancient Greek contains complete information on medication and drug. Papyrus also contains toxic concoction such

as *antimony* (Sb), cooper, lead, hiosiamus, opium, turpentine, and verdigris (green crust in copper surface). Meanwhile, in India (500 - 600 B.C.)<sup>9</sup>.

Susrata Samhita wrote about many poisons coming from food, plant, animal, and snake bite antidote. Hippocrates (460-370 B.C.) was known as toxicologist in his time. He wrote about snake poison and in his book also represents that ancient Greek has had knowledge on antidote. In his book, he groups poison from plant, animal, and mineral. It proves that toxic effect resulting from toxin has been known by human beings since the early development of human civilization. Therefore, this toxic effect is utilized widely for murdering or suicide purpose. To prevent poisoning, people always attempt to find and to develop the attempt of preventing or offering poison (toxin)<sup>10</sup>.

This attempt is in line with the development of toxicology itself. The objective of toxicological test is to find out whether or not the drugs and the chemicals used in the beauty treating process contain toxin or prohibited material, its use has been consistent with the dosage expected, patients know the risk and ingredient of drugs and cosmetics in the services in esthetic beauty clinic.

Orfila designed a variety of methods to detect toxin and to show the importance of chemical analysis as the legal evidence. Orfila worked as a medicolegal expert in Sorbonne, Paris. Orfila played an important part in LaFarge (murdering case using arsenic) in Paris, using arsenic analysis method; he proved death due to arsenic poisoning. M.J.B. Orfila was known as father of modern toxicology because of his interest in the effect of toxin. In addition, he also introduced quantitative methodology into a study on toxic action on animal; this approach yields a modern toxicological area, forensic toxicology.

Simply and briefly, toxicology can be defined as a study on the essence and the mechanism of hazardous effect (toxic effect) of many chemicals on living organism and other biological systems. It can also discuss the quantitative assessment on the severity of and frequency of such effect in relation to the creature's exposure. While chemicals are said to be toxic, most of them are defined as substance potentially exerting hazardous effect on certain biological mechanism in an organism<sup>11</sup>.

Toxicity is a term usually used in comparing a chemical with others. It is common to state that a chemical is more toxic than other chemicals. Comparison

is less informative, unless the statement involves information on biological mechanism discussed and in what condition the chemical is hazardous. Therefore, toxicological approach should study on the effect of many chemicals emphasizing on the mechanism of the hazardous effect of such chemical and various condition in which the hazardous effect occurs<sup>12</sup>. Generally, hazardous/pharmacological effect results from the interaction between chemicals (toxin or biological active substance) and receptor<sup>13</sup>.

Scholarship in forensic and toxicological medicine is the fundamental basis the authorized apparatus can use in conducting forensic test and toxicological test on esthetic beauty clinic in Indonesia. Patients' rights can be fulfilled if the clinics evidently endangering the patient by using, storing, and selling hazardous toxic drugs and cosmetics or hazardous substance can be acted on by Health Act, and sentenced with imprisonment.

## Conclusion

Forensic and toxicological tests are scientific methods very effective in protecting the patients of esthetic beauty clinic. The relationship between physician and patient in esthetic beauty clinic is therapeutic one based on honesty and first-rate service. The protection for the patients of beauty clinic from malpractice and physician and medical worker's default in clinic is a constitutional right.

The esthetic beauty clinic evidently hazardous, using hazardous drug, committing malpractice or default should be acted on legally. Forensic and toxicological tests should be conducted suddenly, randomly and routinely, thereby can give security and protection for the patients of esthetic beauty clinic.

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