

The Indonesian Law Perspective on the Authority of Beauty Practitioners in Performing Aesthetic Plastic Surgery

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Abstract—In recent years, Indonesia has faced the impact of advances in medical technology, and one of them is the development of aesthetic plastic surgery. Currently, aesthetic plastic surgery can be easily carried out not only by doctors but also by beauticians at a salon. It is because there is no clear regulation that regulates it. The absence of regulation regarding aesthetic plastic surgery cause it no clear who actually has the authority to perform it. This article will discuss the authority of beauty practitioners in performing aesthetic plastic surgery from the perspective of Indonesian law. This study uses a normative juridical research method with law approach and the data sources used are obtained from literature studies and data analysis techniques obtained from literature and document studies. This article shows that aesthetic plastic surgery is considered as medical practice. Therefore, based on Indonesian law perspective the beauty practitioners who have the authority in performing aesthetic plastic surgery are only registered and licensed doctors with proper expertise and authority which is based on its competence. So, beauticians are prohibited from performing aesthetic plastic surgery. Beauticians may only perform basic skin care or beauty treatments without the use of medical devices or medicine.

Keywords—medical law; aesthetic; plastic surgery

I. INTRODUCTION

The tendency to beauty is an intrinsic and natural desire and quest of every human being [1]. The quest for lasting youth and beauty is increasing in recent years [2]. However, there is no actually wrong with this reason. We must recognize that the growing trend of the population is not only wanting to stay healthy but also aesthetical pleasant [3]. This has in part resulted in the recent emergence of a medical modality known as aesthetic medical practice. This practice is on the rise globally and also gaining popularity in many places around the world, including in Indonesia which is known as aesthetic plastic surgery [3].

The practice of aesthetic plastic surgery is increasingly mushrooming, because of the public perception of aesthetic plastic surgery that it is quick, easy, painless and with little or no risk. Whereas most procedures are extremely complex and require a high degree of surgical skill and aesthetic

appreciation [4]. Therefore, it is not always that aesthetic plastic surgery can be performed successfully, of course it has become a problem for a person having aesthetic plastic surgery to improve their appearance safely.

There are some examples of bad practices of aesthetic plastic surgery, the examples follows: in early October 2012, there were four reported cases of women suffering from septic shock after receiving intravascular infusions at a beauty treatment center. One woman subsequently died of multiple organ failure while the other three were seriously ill. In June 2014, another woman died after undergoing liposuction procedure in a hair transplant center [5]. Those examples occur in a number of overseas places, however it is not impossible that those cases occur in Indonesia as well.

Currently in Indonesia, there is no specific regulation that regulates the aesthetic plastic surgery, therefore these practices are being carried out rather freely by some beauticians at beauty salons and other unqualified personnel. Some general practitioners, physicians, and surgeons also perform aesthetic plastic surgery beyond their training and skill.

So, in Indonesia, it is not clear who actually has the authority to perform aesthetic plastic surgery. Even though actually Indonesia has implemented Law and Regulation namely Law No. 36 of 2009 on Health, Law No. 29 of 2004 on Medical Practice and Law No. 36 of 2014 on Health workers, however, it is not clear, whether they can be applied to Aesthetic plastic surgery or not.

This is because the Indonesian government does not provide a clear explanation of whether aesthetic plastic surgery is a medical practice or not. For this reason, this paper will try to find answers whether aesthetic plastic surgery is a medical practice or not, because, with this answer, it will be easy to determine how the authority of beauty practitioners to carry out aesthetic plastic surgery according to Indonesian legal perspective.

There are numerous studies have been conducted on aesthetic plastic surgery. However, the study which in its research contained a discussion of aesthetic plastic surgery as medical practice, only a few studies.

Legislative Council Secretariat studied the regulatory framework of aesthetic practices in Hongkong, Florida of the United States (US), South Korea, Singapore, and United Kingdom (UK) in terms of Classification of Aesthetic Procedures, competency requirements for performing aesthetic procedures, regulation of the beauty sector in performing aesthetic procedures, regulation of cosmetic-related medical devices and ambulatory facilities, and protection of persons undergoing aesthetic procedures. All the places studied have defined the types of aesthetic procedures to be performed by medical practitioners only. And the beauty sector in all the places studied, with the exception of South Korea, may perform some aesthetic procedures which are not defined as medical practices [5].

There is an assumption in the philosophy of medicine that the cardinal goal of medicine has constantly and universally been to pursue health. According to this view, if the practice is not directed at the goal of health it is no longer medicine [6]. Emran studied the development of a new set of practices within modern medicine that can generally be called "cosmetic medicine". Given that cosmetic procedures have become an integral part of medical practice and are performed across the boundaries of medical specialties. This suggests that the new goal of improving appearance or beauty has been added for medical practice [6].

II. METHOD

This research is normative legal research, therefore the data is only secondary data consisting of primary legal material, secondary legal material, and tertiary legal material [7]. The primary legal material this research used is Law No. 36 of 2009 on Health, Law No. 29 of 2004 on Medical Practice and Law No. 36 of 2014 on Health workers. While the secondary legal material in this research is Research Report regarding Regulation of aesthetic practices in selected places, final report regarding Cosmetic Medical and Surgical Procedures a National Framework from Australian Health Minister's Advisory Council, and Handbook Guidelines for Surgical Specialists undertaking Aesthetic Medical / Surgical practice in Malaysia which conducted by Academy of Medicine of Malaysia College of Surgeons, Academy of Medicine Malaysia Malaysian Association of Plastic, Aesthetic, and Craniomaxillo facial Surgeons. And the Secondary legal material in this research is obtained from the internet particularly from the National Library of The Republic of Indonesia (PNRI) and also from Proquest. And the tertiary legal material this research used is a dictionary.

Once the data is collected. Firstly, the data will be redacted in order to minimize errors. After that, it will be classified according to its categories, which one will be *das sollen* and which one will be *das sein*. Then the data will be separated according to the variables in the title of the study. After that, the data arranged will be explained and evaluated in according to the framework of the problems addressed. Finally, a conclusion will be drawn in response to the problem that has been formulated.

III. RESULT AND DISCUSSION

There is no internationally accepted definition of aesthetic plastic surgery, so it is difficult to define precisely. However, it has a number of key characteristics. It involves reshaping normal structures of a body using surgical and non-surgical techniques [4]. Also, the common characteristic of all these practices can be seen from their cosmetic nature, which differentiates them from similar practices that are performed with the purpose of maintenance or restoration of health [6]. There are two types of plastic surgery base on the basis of necessity, namely: Reconstructive plastic surgery and Aesthetic plastic surgery. Aesthetic plastic surgery is also known as cosmetic surgery [1] (here in after Aesthetic plastic surgery).

The most important branch in the category of aesthetic plastic surgery has developed from and is part of, the older field of plastic or reconstructive surgery. Reconstructive or plastic surgery is the surgery concerned with the restoration, reconstruction, correction, or improvement in the shape and appearance of body structures that are defective, damaged, or misshapen by injury, disease, or growth and development [6].

That is to say, plastic surgery is mainly focused on the correction of deformities or deviations from the normal structure. Despite the fact that techniques for plastic surgery have been known and used for centuries, the application of those techniques and knowledge for the cosmetic improvement of appearance is quite recent. Aesthetic plastic surgery was not part of medical practice until the 20th century, before that time, it was considered by physicians to be minor, without healing purpose, and relegated to lay practitioners. In the beginning, cosmetic surgery enjoyed little social and cultural acceptance and respect and was probably performed most often by charlatans, quacks, and others. At that time reputable surgeons, who derisively called it beauty surgery, generally refused to perform it [6].

In contrast to reconstructive surgery, aesthetic plastic surgery such as breast augmentation, nose reshaping, liposuction, and facelifts are done for the purpose of improving appearance. In other words, in contrast with plastic or reconstructive surgeries, which are directed at the goal of restoring the normal structure, aesthetic plastic surgery is performed with the goal of improving appearance or simply beauty. Thus, if it compared to other fields in medicine: there is no pathology, no patient in the traditional sense of the term, no medical need, and the whole process is initiated by an individual to improve his or her physical appearance [6].

From the differences between aesthetic plastic surgery and reconstructive plastic surgery above can be drawn a conclusion that Aesthetic plastic surgery focused on enhancing appearance. The procedures, techniques, and principles of aesthetic plastic surgery are entirely focused on enhancing a patient's appearance. Then, is aesthetic plastic surgery medical practice? because Indonesia has no specific regulation regarding aesthetic plastic surgery, so it is no clear whether aesthetic plastic surgery is considered as a medical practice or not. However, this article will attempt to find out the answer by studying the regulation concerning aesthetic procedures from various countries.

Here are the regulations on the classification of and competency requirements for performing aesthetic procedures in various countries. In South Korea, aesthetic procedures, including those involving skin puncture and use of medical devices, are considered as medical procedures, and they must be performed by medical practitioners in licensed hospitals or medical clinics. Any licensed medical practitioners, regardless of whether he or she is a general practitioner or specialist, can perform aesthetic procedures. Since aesthetic procedures are considered as medical procedures in South Korea, non-medical personnel such as beauticians are not allowed to provide such services. The law governing the beauty sector also prohibits beauticians from utilizing any medical device or medicine in the provision of beauty services [5].

In Singapore, the Guidelines on Aesthetic Procedures classify aesthetic practices into a) non-invasive procedures, b) minimally invasive procedures, and c) invasive procedures. Non-invasive and minimally invasive procedures can be carried out by any registered medical practitioner with the necessary experience or required competence. For invasive procedures, they must be performed by medical practitioners with appropriate surgical training [5]. Similar to South Korea, in Singapore aesthetic plastic surgery must be performed by registered medical practitioners and non-medical personnel are prohibited from performing procedures that are invasive in nature. So, beauticians may only carry out non-invasive aesthetic services such as skin tightening and hair removal with the use of certain medical devices, and chemical peeling [5].

In Malaysia, aesthetic medical procedures can be classified into non-invasive, minimally invasive, and invasive. Aesthetic procedures are classified as follow: a). non-invasive procedures. This is defined as external applications or treatment procedures that are carried out without creating a break in the skin or penetration of the integument. They target the epidermis only. b). Minimally invasive procedures. This is defined as treatment procedures that induce minimal damage to the tissues at the point of entry of instrument. These procedures involve penetration or transgression of integument but are limited to the sub-dermis and subcutaneous fat; not extending beyond the superficial musculo-aponeurotic layer of the face and neck, or beyond the superficial fascial layer of the torso and limbs. c). Invasive procedures. This is defined as treatment procedures that penetrate or break the skin through either perforation, incision or transgression of integument, subcutaneous and/or deeper tissues, often with extensive tissue involvement in both vertical and horizontal planes by various means, such as the use of knife, diathermy, ablative lasers, radiofrequency, ultrasound, cannulae and needles [3].

Both South Korea and Singapore have defined the types of aesthetic procedures to be performed by medical practitioner since they considered aesthetic plastic surgery as medical practice. So, the beauty sector only performs basic skin care or beauty treatments without the use of medical devices or medicine.

How about Indonesia? who has the authority in performing aesthetic plastic surgery? As mentioned earlier that currently, Indonesia has no specific regulation concerning aesthetic

plastic surgery, so it is not clear who actually has the authority to perform it, however, Indonesia can learn from the other countries which have previously arranged it, for example, Indonesia can learn to the countries as mentioned above.

Indonesia should follow the way that South Korea, Singapore and Malaysia have done in classifying esthetic procedures. Indonesia should formulate a clear regulation regarding aesthetic plastic surgery and classify it into three classified as those countries carried out. So that it is really clear who has the authority to perform it in each classification

South Korea, Singapore, and Malaysia have considered aesthetic procedures as medical practices because it uses medical knowledge and skill also uses any medical devices or medicine, its procedures involving surgery injection, and penetration of the skin, aesthetic plastic surgery, and medical practices are in fact inseparable, and the important thing that aesthetic plastic surgery is surgery, and in fact surgery is medical practice. So, based on these arguments, we can conclude that aesthetic plastic surgery is a medical practice.

According to the discussion above that aesthetic plastic surgery is medical practice, the question then arise is who does it? today, plastic surgery is not the only physicians who perform cosmetic procedures, but a specialist, dermatologists, general surgeons, and Gynecologists, among others, are also involved in cosmetic practices [6].

In Malaysia, it is recognized that aesthetic practice is increasingly attractive to non-specialist doctors and specialist doctors from various specialists, both surgical and medical. It is also recognized that the major scientific concepts supporting aesthetic practice originated within the fields of dermatology and plastic surgery. Hence, the categories of doctors were divided as follows: a). medical practitioners undertaking aesthetic medical practice are categorized as core and non-core practitioners in aesthetic medical practice. b). plastic surgeons are considered as the core specialists for aesthetic surgical and non-surgical procedures. c). Dermatologists are considered as core specialists for aesthetic medical (non-surgical) procedures. d). general practitioners and specialists, other than plastic surgeons and dermatologist, are considered as non-core medical practitioners in aesthetic medical practice [2].

While in South Korea, aesthetic procedures involving skin puncture, including tattooing and ear piercing, are considered as medical practices which should be performed by licensed medical practitioners. Under the current medical system governed by the Medical Service Act, licensed medical practitioners can perform any medical practice including aesthetic procedures. on the other hand, beauty treatments centers can only provide skin care services set out in the Public Healthy Control Act and they cannot use any medical devices or medicines [5].

In Singapore, all invasive and minimally invasive aesthetic procedures such as injections of Botulinum toxin (Botox) and lasers for skin rejuvenation must be performed by medical practitioners who are regulated under the self-regulatory framework of the medical profession. The beauty sector may provide certain non-invasive aesthetic procedures such as a

laser, hair removal and is subject to the regulation of the penal code and other relevant legislation [5].

What Indonesia can learn from those countries is that all the countries studied have defined the types of aesthetic procedures to be performed by medical practitioners.

Moving forward to the question who has the authority in performing aesthetic plastic surgery in Indonesia. Before elaborating more on the answer, again in this paper, aesthetic plastic surgery is perceived as medical practice. Therefore, this paper will use the laws and regulations namely Law No. 36 of 2009 on Health, Law No. 29 of 2004 on Medical Practice and Law No. 36 of 2014 on Health workers to elaborate the answer who has the authority in performing aesthetic plastic surgery in Indonesia.

Article 64 (1) of Law No. 36 of 2009 concerning Health set out that cure of disease and health recovery may be done through plastic and reconstruction surgery. Actually, this article does not explain further what plastic surgery is. Is esthetic plastic surgery and plastic surgery are one and the same? However, according to the discussion above, it is perceived that aesthetic plastic surgery and plastic surgery are the same.

Article 69 (1) of Law No. 36 of 2009 concerning Health requires that plastic and reconstruction surgery may only be conducted by health workers with proper expertise and authority for them. The mean of authority can refer to the elucidation of Article 23 (1) of Law No. 36 of 2009 concerning Health that the authority in this article means the authority given based on his / her education after going through the registration process and granting of a license by the government in accordance to law and regulation.

Then, who are the health workers? article 11 (1) of Law No. 36 of 2014 concerning Health Workers grouping health workers as follow: medical personnel, personnel of clinical psychology, nursing personnel, midwifery personnel, pharmacy personnel, community health workers, environmental health personnel, nutritional personnel, physical therapist personnel, biomedical engineering personnel, traditional health workers, and other health professionals. And article 11 (2) of Law No. 36 of 2014 concerning Health Workers set out the type of health personnel belonging to the medical personnel referred to in paragraph (1) letter a is composed of physicians, dentist, specialists, dentist and, specialists. Base on this article only registered and licensed doctors who have the authority in performing aesthetic plastic surgery.

Further, based on Article 62 of Law No. 36 of 2014 concerning Health Workers, health workers in running the practice must be done in accordance with the authority which is based on its competence. Then, Article 64 of Law No. 36 of 2014 concerning Health workers prohibits any person who is not health workers from practicing as though as health workers who already have a licence.

Then what about beauticians ? do they have authority ? in the country without legal impediment, aesthetic plastic surgery clinics have mushroomed. This lack of legal restraints has, however, encouraged a number of unqualified people

performing these complex procedures in small clinics, day spas and sometimes, even in beauty salons [8]. Indeed, aesthetic plastic surgery is worldwide concern as both the number of doctors entering the lucrative field and the number of patients demanding aesthetic procedures. However, at the same time, the number of deaths from improperly performed procedures also appears to be growing [9]. In Hongkong, in October 2012 causing one death and serious sickness of three other patients resulting from high-risk medical procedures, the Department of Health found that the incident involved a beauty services company and a laboratory processing health products for advanced therapies. Beauticians don't possess the relevant knowledge and skills, so beauticians prohibit from being performed aesthetic plastic surgery [10]. Even though there aren't statistics or information on incidents related to aesthetic plastic surgery in Indonesia. However, according to the case happened in other countries. It doesn't happen but it can happen in Indonesia. moreover, it is clear in the article 11 (2) of Law No. 36 of 2014 concerning Health Workers that beauticians are not classified as medical personnel and they do not have the authority which is based on its competence as mentioned at Article 62 of Law No. 36 of 2014 concerning Health Workers. Therefore beauticians are prohibited to perform aesthetic plastic surgery.

If relating to the beautician, they practice as though as health workers who already have a licence. It means that beauticians failure to follow Article 64 of Law No. 36 of 2014 concerning Health workers, therefore they shall be punished as set out article 83 of Law No. 36 of 2014 concerning Health workers. As follow: everyone who is not medicals practice as if health workers who already have a license as referred to in Article 64 shall be punished with imprisonment of 5 (five) years.

There is also regulation that prohibits everyone to use any title or other attributes which eventually builds an image for society as if he/she were a doctor who has owned the registration letter and/or license for medical practice. The regulation is in article 73(1) Law No. 29 of 2004 on Medical Practice. While article 73 (2) prohibits everyone to utilize tools, methods, or other alternative ways in giving the medical service for the society which eventually builds an image for society as if he/she were a doctor/dentist who has owned the registration letter and/or license for medical practice. If beauticians perform aesthetic plastic surgery then use any title or other attributes which eventually builds an image for society as if he/she were a doctor, they will be punished as mentioned in article 77 and 78 Law No. 29 of 2004 on Medical Practice, as follow:

Article 77 requires everyone who uses any title or other attributes which eventually builds an image for society as if he/she were a doctor/dentist who has owned the registration letter and/or license for medical practice as has been previously explained in article 73 clause 1 is going to be imprisoned for 5 (five) years or is obliged to pay the penalty for Rp 150.000.000;

Article 78 requires everyone who utilizes tools, methods, or other alternative ways in giving the medical service for the society which eventually builds an image for society as if

he/she were a doctor/dentist who has owned the registration letter and/or license for medical practice as previously explained in Article 73 Clause (2) is going to be imprisoned for 5 years or is obliged to pay the penalty for Rp 150.000.000.

IV. CONCLUSION

Aesthetic plastic surgery is being carried out rather freely not only by licensed doctors but also by doctors beyond their skill, even by beauticians at a beauty salon and other unqualified personnel. It is because there is no clear regulation that regulates aesthetic plastic surgery. The absence of regulation regarding aesthetic plastic surgery cause it no clear who actually has the authority to perform it.

This article shows that aesthetic plastic surgery is considered as medical practice and base on Law No. 36 of 2009 on Health, Law No. 29 of 2004 on Medical Practice and Law No. 36 of 2014 on Health workers, only registered and licensed doctors with proper expertise and authority which is based on its competence who have the authority in performing aesthetic plastic surgery. So, beauticians are prohibited from performing aesthetic plastic surgery. Beauticians may only perform basic skin care or beauty treatments without the use of medical devices or medicine.

The attention of the government to regulate aesthetic plastic surgery is very important. The government need to review of the regulation of health and differentiate medical practice and beauty service, also make a recommendation on procedures which should be conducted only by doctors as beauty practitioners and which should be conducted by beauticians for better protection of public interests and health.

ACKNOWLEDGMENT

This research was supported financially by the faculty of Law Bandung Islamic University, and we would like to thank the faculty of law because it has given us the opportunity to develop health law by supporting us to write this article. Thank also to the National Library of The Republic of

Indonesia (PNRI) for providing a very large and useful reference material for academics and especially for writing this article. And Finally, we would like to thank "anonymous" reviewer for their insights, and their comments while assessing our manuscript, We grateful for the work they do.

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