

VIOLATION OF PATIENT'S LEGAL RIGHTS IN AESTHETIC BEAUTY CLINIC

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Abstract

Beauty Clinic is an outpatient health care facility that provides medical services (consultation, examination, treatment, and medical action) to overcome various conditions / diseases which relate to person's beauty (aesthetic appearance) that is performed by medical personnel (doctors, dentists, medical specialist, and dental specialist) based on their expertise and authority.

However, behind the rapid growth of beauty clinics, there are several negative sides and one of them is when the consumer has already paid costly for beauty products services and beauty services, the consumer experiences complications in its use which actually worsens the condition of consumer's skin. Moreover, it needs efforts from authorized stakeholders in order to protect legal rights for aesthetic beauty clinic patients. Various methods and motives of violations which are committed lead to mere profit. Furthermore, the research method that was used in this research was legal-social (non-doctrinal) research method by an interactional (micro) approach with qualitative analysis or qualitative methods.

Keywords: *Clinic, Aesthetic, Violation, Rights, Law, Patient.*

A. INTRODUCTION

In last few years in Indonesia, various kinds of beauty clinics increase more, such as Aesthetic Beauty Clinic of Dr. Affandi, Natasha Skin Center, London Beauty Center, Erha, and Larissa that promise beauty care products which are able to attract consumers. Beauty Clinic is an outpatient health care facility that provides medical services (consultation, examination, treatment and medical action) to overcome various conditions / diseases which relate to person's beauty (aesthetic appearance) and the services are performed by medical personnels (doctors, dentists, medical specialist, and dental specialist) based on their expertise and authority.¹

The followings are research results that relate to current beauty trends in Indonesia. Indonesia is a country with aesthetic and cosmetic beauty clinic needs.

¹Direktorat Jenderal Bina Pelayanan Medik. Departemen Kesehatan Republik Indonesia, *Pedoman Penyelenggaraan Klinik Kecantikan Estetika Indonesia*, Departemen Kesehatan, Jakarta, 2007.

The growth of aesthetic and cosmetic beauty clinic in Indonesia was between 10-15% per year which includes facial care, body care, and sun care services². The growth of this beauty business is based on the desire of women and metrosexual men in Indonesia in order to have perfect looking. Thus, for realizing it, they are willing to spend their money to buy expensive facial and body care products. The desire to look beautiful/ charming and well-maintained are a physical need of human being especially for women. Even development of the era now, the men also want to be looked neat and charming and the group of these men are called as metrosexual men.³

This fact motivates various companies which are in Beauty and Personal Care field continue to innovate to create quality products which are sought by consumers. However, behind the rapid growth of beauty clinics, there are actually negative sides, such as when the consumers have already paid costly for beauty products and services, they experience complications in its use which actually worsens the condition of their skin. For example damage of a beauty clinic patient's face due to high mercury and hydroquinone content are found in treatment cream, which aims to accelerate facial skin whitening process.

The case that was ever occurred as an impact of beauty clinic was the death of a student who named Hilda Pasman, on 7th August 2004 at a beauty clinic in Kebon Jeruk, West Jakarta, Indonesia. The victim died because of being done silicone injections to her body while the victim was being sick with high fever. Hence, the victim was convulsive, then, died.

Other cases were at M Skincare Clinic in Jalan Pangeran Santri Number 60, Jalan Kebon Kol Number 52, and Jalan Terusan 11, Sumedang Regency. On 30th November 2015 was occurred a criminal act of producing and distributing pharmaceutical supplies that did not have any marketing authorization and/ or did pharmacy practices without any expertise and authority as what was referred to Article 197 *jo* Article 106 paragraph (1) and or Article 198 *jo* Article 108 of the

²*Ibid*

³Metrosexual relates to men who are very concerned about body and appearance, men who are very concerned about the body and appearance, <https://kbbi.kemdikbud.go.id/entri/metroseksual>, accessed on 16th June 2017 at 20.30 WIB.

Republic of Indonesia Law Number 36/2009 concerning Health⁴. Regarding it, the perpetrators had been imprisoned for 15 (fifteen) years and a fine of Rp 100,000,000.00 (one hundred million rupiahs).

The other cases were on 22nd November 2012 at Indivara Aesthetic clinic. It was found that there was sale of pharmaceutical supplies in cosmetics products which were not equipped with marketing authorization from the Food and Medicine Supervisory Agency in Indonesia (*Balai Pengawas Obat dan Makanan (BPOM)*) and the cosmetics did not mention the expired date or the best period of use. Besides, the cosmetics also did not put a label or did not explain its contains (the name of item, size, weight/ content or net, composition of how to use, date of manufacture, name and address of the business actor and other information for their use which according to the appointment, it must be explain clearly) and also did not mention information and or instructions for the use of products in Indonesian language in accordance with the provisions of applicable laws and regulations in Indonesia.

Police officers from Denpasar City Resort Police secured evidence in illegal and unsafe imported cosmetic products and then, the defendant took off the label and replaced them with the defendant's product label which was Indivar.A. For that case, Denpasar District Court which examined and adjudicated criminal cases at the first court level had handed down the verdict to Dr. Kadek Trisnadewi, S.Ked who was guilty of committing a crime "intentionally producing or distributing pharmaceutical supplies and/ or medical devices that did not have any marketing authorization", as what was regulated and threatened with criminal penalties in article 197 of Law Number 36 of 2009 concerning Health. Bringing down the criminal offense against the defendant Kadek Trisnadewi was by imprisonment for 3 (three) months with a probation period of 6 (six) months, and a fine of Rp. 1,000,000 (one million rupiah) subsidiary 3 (three) months in captivity.⁵

Another case was Queen Beauty Clinic that operated since 2000 by using illegal cosmetics. Suspect "MGTN" as the manager and owner of the Queen Beauty clinic, held a professor but the title was allegedly fake. Result of investigations was

⁴<https://www.hukumonline.com/berita/baca/lt52d8f95ccb04b/bbpom~bandung~diduga~tidak~serius~tangani~kasus~klinik~marwah>. accessed on 30th November 2015 at 20.30 WIB.

⁵<https://putusan.mahkamahagung.go.id/main/pencariajamn/?q=klinik+kecantikan>, accessed on 12th June 2017 at 20.00 WIB

medicines and cosmetic products which were used in the beauty treatments were mostly not licensed by BPOM and the Ministry of Health. The owner of this Queen Beauty who was a professor was unclear based on the statement from the Head of Indonesian Police Criminal Investigation Agency, Komjen Ari Dono at the National Police Headquarters, Kebayoran Baru, South Jakarta, Indonesia. Queen Beauty had general business license, not a beauty business license. The clinic, which had three branches in North Jakarta, Central Jakarta and South Jakarta claimed to use Japanese and European technology to attract victims. Queen Beauty Clinic served skin whitening, lifting moles, removing eye bags, sharpening nose, chopping chin, until liposuction which had cost up to Rp. 70,000,000.- (seventy million rupiahs). The police confiscated illegal cosmetics such as Miracle Rose, MJ Titanium, Cherro Whitening, NC 24, MJ Diamond, Laroscorbine Diamond, EFP Aqua Skin, Cherrolibe Celi Li, Bema Bio Body, Ravilene Live Cell, Volema Up, Basic Esthelis, Cleansing Milk, Aquamid, Glutax 12G, Glutax 3G, Glutax 15g, Tationil Forte, AM Platinum, Nexcentury, scrubs, lipstick, MJ Gold, Ervolene, Kojic, Aqua Radiance, Raitoro, Biological Pharmaceuticals, Soasa, and Health Pillows. MGTN was alleged Article 197 jo Article 106 paragraph (1) of Law Number 36 of 2009 concerning Health. Then, Article 62 paragraph (1) jo Article 8 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection, Article 80 paragraph (1) jo of Article 42 of Law Number 29 of 2004 concerning Medical Practices was threatened with the threat of imprisonment over five years. This case violated Law concerning Health because the suspect produced and distributed pharmaceuticals without any permission and Law concerning Consumer Protection for distributing products and services without any permission. MGTN was also threatened by the Law concerning Education if the results of the examination indicated that the suspect used fake title. The process of this case was still in the trial stage.

Several cases which related to consumer protection in beauty clinic were very detrimental for patients against aesthetic beauty clinic services, but the aesthetic beauty clinic that had cared for them was seemed to be less cooperative to take responsibility for any consequences which were occurred to the consumers. Whereas, in Law of Consumer Protection was clearly stated that guaranteeing the quality of products and/ or services which were produced and/ or traded was based on the

provisions of quality standard of applicable products and/ or services. Based on the above problems, it could be formulated the problem of how the violation of law that had been done by aesthetic beauty clinic against patient and how to prevent the violation according to the law.

B. RESEARCH METHOD

Setiono says that method is a tool to find answers from a problem. The use of a method (tool) must be in accordance with the problems which are occurred. The method type that will be used in legal research will be very depended on what concept is meant about law⁶.

Research in general according to C. Rajendra Kumar is a search activity that is conducted intensively, systematically, and it aims to develop science and understand social and physical phenomena⁷. As one of variety in research, a legal research is essentially a scientific activity to solve various legal issues⁸, or in definition that is stated by Morris L. Cohen as the process of finding the law that governs activities in human society⁹. In more detail, Soerjana Soekanto interprets it as a scientific activity based on a particular method, systematic, and thought, which aims at learning one or several legal phenomena through analysing it¹⁰.

The approach that was used in this research was socio legal approach which meant that law was not only seen as a set of normative norms or what became law text, but looked at how law interacted with the community (law in action). Method in this research was social (non-doctrinal) research method by interactional (micro) approach with qualitative analysis or qualitative methods.¹¹ As we know that, research is a scientific activity that relates to analysis and construction which are conducted methodologically¹², systematically, and consistently¹³.

⁶ Setiono, *Pemahaman Terhadap Metodologi Penelitian Hukum*, UNS Press, Surakarta, 2010, p.19

⁷ *Reserach is an intensive and purposeful seacrh for knowledge and understanding of social and phsyical phenomena. It is requied a systematic inquiry and undertaken to establish facts or principle.* C. Rajendra Kumar, *Research Methodology*, APH Publishing Corporation, New Delhi, 2008, pp. 1-2.

⁸ Peter Mahmud Marzuki, *Peneltiian Hukum* (9th Printing), Prenanda Media Group, Jakarta 2014, p. 60.

⁹ Morris L. Colsen, *Legal Research*, dalam Peter Mahmud Marzuki, *Op.Cit.*, p. 57.

¹⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum* (3rd Printing), UI-Press, Jakarta, 1986, p. 60.

¹¹ Setiono, *Op.Cit.*, 2010, p.20

¹² Methodology in general understanding means a logical and systematic study about the principles that lead to research. It is a way to find the truth. Setiono, *Metode Penelitian Hukum*, Program Studi Ilmu Hukum Universitas Sebelas Maret Surakarta, 2005, p.3.

Based on the research types, this research was non-doctrinal legal research (socio-legal research) because law was conceptualized as a manifestation of the symbolic meanings of social behavior as what was seen in their interactions. This type of research assumed that law did not place in empty space but it was found side by side with moral rule and its complexity or at least, it was tangible. On the other hand, law was also a social phenomenon which was applied in society that was different from one another. Therefore, legal form could not be denied as a social reality.

As a research that combined normative analysis and other social science approaches, this research was not only a descriptive research, but also evaluative and prescriptive research.¹⁴ In addition to explain clearly, thoroughly, and in detail about the phenomenon of health services in aesthetic beauty clinics toward children in society¹⁵, this research also conducted an assessment against positive legal norms, along with their correlation with other relevant variables¹⁶, and found solutions for selected political law issues through clearly combining normative analysis and other relevant social science approaches.¹⁷

C. DISCUSSION

Based on the results of an interview with one of former patients in one of aesthetic beauty clinics in East Java Province, Indonesia was found that there were medical procedures which were not permitted to be done at the aesthetic beauty clinic, such as nose surgery, thread implants, implants and fillers, which were done by incompetent and unauthorized medical personnels. This was very dangerous for patients because not every place could easily conduct plastic surgery because it was bound by medical service standards in order to protect and care for the patient's body, as stated below:

Given the role cosmetic surgery and, more generally, the feminine beauty system-play in the disciplining and inferiorization of women's bodies, a feminist

¹³Soerdjono Soekanto, *Faktor-faktor Yang Mempengaruhi Penelitian Hukum*, PT Grafindo Persada, Surakarta, 1986, p. 20.

¹⁴ Anne Ruth Mackor, dalam Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind Of Method for What Kind of Discipline?*, Hart Publishing, Oxford & Portland, 2011, p. 61.

¹⁵ Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1986, p. 50.

¹⁶ Sharyn L Roach Anleu, *Law and Social Change*, Sage Publication, London, 2000, p. 150.

¹⁷ Soerjono Soekanto, *Op.Cit.*, p. 51

cosmetic surgeon would seem to be a contradiction in terms. It is hard to imagine how cosmetic surgery might be practiced in a way which is not, by definition, disempowering or demeaning to women¹⁸.

Respect for patient autonomy, as a fundamental principle in contemporary bioethics, guides the process of informed consent through which, it is hoped, patients' wishes are determined and executed. However, when procedures are exclusively cosmetic, questions as to the ethical legitimacy of such requests and enhancements arise¹⁹.

City / district health offices did not routinely monitor the practices at aesthetic beauty clinics whether the practices were conducted in accordance with the documents in the practice permit application requirements or not. Monitoring was only conducted if there was a report from society because there were no operational funds for this monitoring activity.

The results of distribution of questionnaires through Google Form application toward 200 former aesthetic beauty clinic patients who were spread in DKI Jakarta, West Java, East Java, Central Java, and D.I Yogyakarta were found that they did not know the limits on what health efforts were allowed in aesthetic beauty clinic that was visited.

Based on the author's observations against the acceptable operational standard procedure in services of the aesthetic beauty clinic gradually were as followed:

1) Patient's coming to the clinic

When first time, patient came for treatment, he/ she must first register to customer service department. If he/ she had become a member, he/she could directly register for treatment and/ or purchasing the product.

2) Consultation to the Doctor

At this stage, the patient would be asked what facial skin or body skin problems were, then, the problematic body part would be photographed for

¹⁸ Davis, Kathy, *Cosmetic Surgery In A Different Voice: The Case Of Madame Noël*, Women's Studies International Forum, 1999, Volume 22, accessed on 22nd January at 20.30 WIB.

¹⁹ De Roubaix, J. A.M., *Beneficence, non-maleficence, distributive justice and respect for patient autonomy - Reconcilable ends in aesthetic surgery?*, Journal of Plastic, Reconstructive and Aesthetic Surgery, 2011, Volume 4, <http://dx.doi.org/10.1016/j.bjps.2010.03.034>, accessed on 23rd January, at 20.45 WIB.

comparison before and after treatment. However, the 8 of 10 beauty clinics which were researched were:

- a) Dr. S Clinic
- b) EH Lekir
- c) FB Clinic
- d) E Clinic
- e) NS Clinic Center
- f) LBeauty Centre
- g) E Skincare
- h) S Skin Centre

There was a finding that consultation toward doctor was very brief and if the patient was not actively asking or submitting face / body complaint, the consultation was finished. Briefly, the consultation time aimed at time efficiency due to the large number of patients who were queuing especially on weekends. The results of the consultation were treatment recommendations and/ or medicines and products according to the patient's conditions and needs.

The other finding data was that not all patients passed the consultation stage. If only buying the care products, according to the researcher in this research, this should not be occurred because the use of beauty clinic products should be under the supervision from doctors in order to know the patient's condition.

The next finding was doctor who served as a consultant was a general practitioner as well as a doctor who did a treatment to the patients. This violated the authority and competency rules of medical personnel if the medical actions which were conducted were not in accordance with applicable regulations, which at least, a doctor had been trained from educational institutions in accordance with the rules of the Ministry of Education. Recruitment of general practitioners for beauty clinics was commonly found in newspapers. Generally, beauty clinic organizers placed these general practitioners in their aesthetic beauty clinic branches either inside or outside the headquarters.

- 3) Queuing to wait for treatment

At this stage, the patient waited for their turn to be given a treatment and/ or action. If many patients had come to get a treatment, the queuing time was approximately up to one hour.

Based on the research results of all aesthetic beauty clinics showed that there was additional service in this stage which was provided snack (snacks and soft drinks) for free so that the patients did not get bored while waiting in line.

- 4) Queuing to wait for medicine and or product that had been prescribed by a doctor

At this stage, after having treatment, the patient was usually queuing for medicines and / or products which were recommended by the doctor. Based on the research results, only 4 of 10 aesthetic beauty clinics were found to provide medicine and / or product services clearly in pharmaceutical department by special officers because there were those who gave medicines and / or products in customer service department based on the guidelines of the aesthetic beauty clinic. Furthermore, aesthetic beauty clinics were required to have pharmacists who were authorized to handle medicine and product in the aesthetic beauty clinic.

- 5) Going home and having treatment independently at home

At this stage, the patient did an independent treatment by using medicines and/ or treatment products from the aesthetic beauty clinic, such as soap, refreshments, morning cream, night cream, eye cream, neck cream, serum, and body lotion.

The research findings showed that there were medicines and beauty clinic products which were indicated to contain hazardous substances, which were mercury and hydroquinone.

6. Type / Category of Beauty Clinic

The acceptable model of legal protection in this part was preventive, that aimed at classifying types of beauty clinics based on medical action and authorized personnels.

The findings showed that 4 of 10 beauty clinics violated in implementing medical actions which were not in accordance with the type of beauty clinic,

exceeded the limits of medical action and authorized practitioners. There were operations which were not performed by authorized medical personnels, such as implantation surgery on nose, liposuction, infusion of body bleaching, slimming infusion. The 4 (four) beauty clinics were:

- 1) EHang Lekir
- 2) F Beauty Clinic
- 3) E Skincare
- 4) S Skin Centre

7. Physical Building Facilities

Model of legal protection that was applied was preventive. This part aimed to explain general and specific requirements which were related to physical building facilities of aesthetic beauty clinic so that it was in accordance with medical operational standards and standard operational procedures.

Based on the results of this research, it was found a beauty clinic that was not in accordance with the rules of the standard physical building facilities that was stipulated, which was too small room, inadequate room capacity, female and male patients in one room, whereas most of female patients took off their clothes and they wore *kemben*.²⁰

Further findings, based on a study of the content of implementation in guidelines for the implementation of aesthetic beauty clinics was found that no rules regarding the provision of worship place for prayers, even if there were, it would be very minimal and less proper, for example in parking area, behind the security post. Researcher believe that worship is an obligation for anyone, either for the user and the executor of the aesthetic beauty clinic. Besides, there are no rules of breastfeeding space and playground or child care, even though most of patients are women and in practice, the children are prohibited from entering the beauty care rooms with consideration of the children's safety from beauty clinic equipment and products that contain harsh chemicals for children.

²⁰Kemben is standard form of the word "kemban" which means bandage cloth and a breastplate (female): that was commonly used by Balinese princesses. <https://kbbi.kemdikbud.go.id/entri/kemben>, accessed on 20th August 2018 at 20.30.

Based on the research results in the field, it was found that 5 of 10 beauty clinics, which were studied, had a pharmacy that was complete with the pharmacists, and the 5 (five) beauty clinics were :

- 1) Estetika Clinics
- 2) Be Hati Skin Clinic, Care & Esthetic
- 3) Natasha Skin Clinic Center
- 4) London Beauty Centre
- 5) Surabaya Skin Centre

8. Beauty Clinic Equipment

Model of legal protection was preventive. Regulation of this equipment was to ensure that medical equipment which was used in aesthetic beauty clinics must be adequate; guaranteed their quality, advantages, safety, and comfort; and must have been registered in Ministry of Health.

Based on the research results, it was found that there were still beauty clinics that used illegal medical equipment and had not been registered. In addition, there was lack of coordination and collaboration with Ministry of Trade that was related to marketing authorization and legalization of medical equipment that was used because the rapid development of science had an impact on the innovation of more sophisticated medical equipment. Thus, result of field observations that had been found that beauty clinics were currently competing to present treatments with the latest technology.

9. Staffs in Beauty Clinics

Based on the research results, it was found that beauty clinics that had no executing staff based on the requirements were medical specialist, pharmacists, aesthetician who were certified training and had competency education of aesthetic beauty clinics.

Findings of further research based on interviews with Head of Sub-regulation in Health Service Field, Ministry of Health of the Republic of Indonesia, Yanti Herman, was lack of coordination between the Ministry of Health with the Ministry of Education and Indonesian Medical Association (*Ikatan Dokter Indonesia (IDI)*)

which related to doctors who authorized to practice in aesthetic beauty clinics, especially regarding course or training Institute on the practice of beauty clinics for doctors and beauticians as well as aestheticians even though in guidelines, it stated doctors, beauticians and aestheticians²¹.

The research findings showed that there were incompetent practitioners, who were doctors who did operative actions. Moreover, the operative action should be done by an authorized doctors, not a general doctors/ practitioners.

Findings of further research showed that there were no aestheticians and beauticians who practiced did not graduate from the required educational institutions. Training for beautician was conducted by the beauty clinic itself independently for average between 3-6 months, after that, the beautician apprenticed at the beauty clinic for 6 months. Then, they were appointed / not appointed to become permanent employees.

Based on the research results in the field, only 3 beauty clinics had pharmacists who handled medicine and products that must be used. Meanwhile, in other beauty clinics, for handling medicine and beauty products was conducted by staffs in customer service department. Results of interviews with beautician of aesthetic beauty clinics showed that beauticians who were employed in beauty clinics were trained by the beauty clinics staffs themselves, not by a standardized and certified training institute from the Ministry of National Education. Meanwhile, based on an interview result with the Ministry of Health of the Republic of Indonesia, Head of Sub-regulation in Health Service Field, Yanti Herman, was obtained that up to now, the Ministry of National Education had not had training institutions or either formal or informal education for beauticians and aestheticians²². The Ministry of Health had provided recommendations since the issuance of guidelines for the implementation of aesthetic beauty clinics in 2007.

Based on the research results of the content of implementation in guidelines for the implementation of aesthetic beauty clinics, no legal basis was found regarding BPOM rules. According to the researcher, this was very dangerous thing because in

²¹Yanti Herman, Head of Sub-regulation in Health Services Field, Ministry of Health of the Republic of Indonesia, Ministry of Health -Jakarta, 21st December 2017, at 11.00 WIB.

²²Yanti Herman, Head of Sub-regulation in Health Services Field, Ministry of Health of the Republic of Indonesia, Ministry of Health -Jakarta, 21st December 2017, at 11.00 WIB.

practice, the aesthetic beauty clinic used medicines and or chemicals which were given to the consumers when they were treated at the clinic or they treated routinely at home independently.

Based on research in the field, the 6 of 10 beauty clinics which were researched were:

- 1) EH Lekir
- 2) FBeauty Clinic
- 3) E Clinic
- 4) BH Skin Clinic, Care & Esthetic
- 5) E Skincare
- 6) S Skin Centre

It was found that medicine and beauty products in those clinics were not notified (having no marketing authorization that was completed with information on the product used). Based on the Regulation of the Minister of Health Number 1176 / MENKES / PER / VIII / 2010 concerning Cosmetics Notification in Article 1, it was stated that cosmetics were materials which were intended in order to be used for the outside part of the human body (epidermis, hair, nails, lips, and external genital organs) or teeth and oral mucosa, particularly to cleanse, fragrance, change appearance and / or improve body odor or protect or maintain the body in good condition. The products which were used in the implementation of aesthetic beauty clinic and those used by patients were in category of cosmetics. Another finding based on tracking on BPOM website was treatment cream product from N Skin Clinic Center which had expired since 3 years ago and the product had not been updated.

Findings of further research showed that there were medicines and treatment products that used materials which were not in accordance with the laws and regulations. The medicine and treatment products were prohibited because they contained dangerous materials such as mercury, hydroquinone, and steroids. Based on research results, through testing the mercury, hydroquinone, and steroid content on aesthetic beauty clinic products, it showed 90% of treatment creams contained mercury and hydroquinone, and 80% of anti-irritating / anti-inflammatory creams contained steroids. The use of mercury was prohibited because it was dangerous for

cosmetic products, meanwhile, for hydroquinone and steroid actually were still permitted as long as hydroquinone and steroid did not exceed the limits which were stipulated by the legislation, that was 2% for hydroquinone, while, the use of steroid did not exceed for 3 days because it would cause skin addiction against it. If this was occurred, its use must be stopped by reducing the intensity and the amount gradually until it stopped completely.

The problem of violating law was a crime that was committed by a skincare clinic against patients. Violations of this kind must be processed firmly by all stakeholders who authorized to take action. According to researcher, legal protection and prosecution could be classified through several things.

1. Procedure for Application

Model of legal protection that was used was in preventive. The purpose was in order to guarantee the beauty clinic that would practice obeying the rules and orderly law.

In terms of content of implementation in Regional regulations which were researched by researcher, the implementation of the procedure of application was same as an application for a clinical license in general. This was not in accordance with the guidelines for the implementation of aesthetic beauty clinics.

Regional government did not harmonize law before making Regional regulations that regulated about license and the operation of aesthetic beauty clinics. In content of implementation and practice in the regions, license and its implementation were comparable to ordinary clinics. According to the researcher, this was not in accordance with the guidelines for the implementation of aesthetic beauty clinics because the coordination was more complex.

Lack of coordination with Ministry of Education was related to standardization and legalization of training institutions / courses which were in accordance with guidelines for the implementation of aesthetic beauty clinics.

Besides, lack of coordination with Indonesian Medical Association (*Ikatan Dokter Indonesia (IDI)*) was related to the unlicensed and incompetent general practitioners to do practice in aesthetic beauty clinics.

2. Certification

Model of legal protection that was used in this regulation was in preventive. The aim was to ensure the practitioners who practiced were those who were authorized and competent in their fields.

Based on the results of research in 10 aesthetic beauty clinics, it was found that beauticians did not have any certificates/ educational certificates/ diploma courses/ relevant or legal training that was issued by Ministry of Education or Educational Institutions which were recognized internationally. The training was conducted internally by the beauty clinic for approximately 3-6 months. Afterwards, the beautician passed training period in 3-6 months before finally being placed in a branch that was designated by the beauty clinic.

Besides, it was also found that the practitioner did not have any educational certificate/ relevant or legal course diploma that was recognized by governmental institution/ related professional organizations and were proven by a certificate in accordance with the guidelines of P2KB IDI. In fact, the training that was followed was an aesthetic beauty clinic course that was organized by private training institution which did not have any legality and recognition from the Ministry of Education.

Results of interview with Head of Sub-regulation in Health Services Field, Ministry of Health of the Republic of Indonesia, Yanti Herman, was obtained that Ministry of Health had coordinated and conveyed to the Ministry of Education regarding immediately forming an institution for training/ education and beautician certification so that the standardization was clear, thus, legal protection for aesthetic beauty clinic patients were getting better²³.

3. Professional Code of Ethics and Role of Professional Organizations

Model of legal protection that was used was in preventive and repressive. The aim was to ensure the discipline for practitioners who were bound by professional code of ethics in their respective professional organizations. Thus, the patients would trust and be confident for the quality of the practice in those aesthetic beauty clinics.

²³ Yanti Herman, Head of Sub-regulation in Health Services Field, Ministry of Health of the Republic of Indonesia, Ministry of Health -Jakarta, 21st December 2017, at 11.00 WIB.

The results of interviews with Head of Law and the Development of Indonesian Medical Association (*Ikatan Dokter Indonesia (IDI)*) Members who was H.N. Nazar was obtained that there was no collegium/ association of medical specialist of aesthetic beauty clinic, beautician and aesthetician in Indonesia. The interview results also showed that doctors who practiced in aesthetic beauty clinics did not have any collegium/ association. Hence, there was no standardization of the specificity of their expertise because each collegium had own guide book/ standardization of medical service. Doctors who were active as practitioners in aesthetic beauty clinic were only organized in association of seminar doctors, which was aesthetics. In Indonesia, there was only educational program which related to aesthetic beauty clinics. The educational program was Anti Aging in Diploma education at Udayana University.

Based on results of interviews, it was found that during the past 6 (six) years, average of 1 (one) case from Indonesian Medical Association (*Ikatan Dokter Indonesia (IDI)*) members was involved in aesthetic beauty clinic case. He/ she acknowledged that most doctors who currently practiced in aesthetic beauty clinics were general practitioners who only took aesthetic courses which were organized by private training institutions that did not have any collaboration with either Indonesian Medical Association (*Ikatan Dokter Indonesia (IDI)*) or Ministry of Health.

There was no coordination between Ministry of Health and Indonesian Medical Association (*Ikatan Dokter Indonesia (IDI)*) regarding the implementation of professional code of ethics and the role of IDI as a professional organization that facilitated doctors who practiced in aesthetic beauty clinics.

The other findings which were found by researcher were lack of legal protection for aesthetic beauty clinic patients that related to the implementation of informed consent and medical records by conducting good and correct examination and it was not only with formality and in short time with the aim of efficient consultation time due to long queue of patients, especially on weekends.

There was no standard informed consent format that was stipulated by Indonesian Medical Association (*Ikatan Dokter Indonesia (IDI)*) caused the beauty clinic to create its own format that suggested more on the interests of the beauty clinic itself instead of protecting the consumers.

4. Recording (Medical Record and Informed Consent)

Model of legal protection that was used was in preventive. The aim was to ensure data recording even accurate, timely, and reliable information which was needed for the operational practice of aesthetic beauty clinics and protection for patients against medical procedures which were not in accordance with medical service standards. Thus, action that was conducted was based on the patient's condition and medical history.

The research findings was obtained that medical records were still conducted by manual methods based on the examinations between patients and doctors in consultation room briefly. If the patient was less active, the doctor would not provide a detailed explanation. The examination here was by shooting face / body parts which would be given treatment, touching by using flashlight and then, the doctor wrote the contents of the patient's medical record.

Moreover, there was no standard informed consent format and or made by Indonesian Medical Association (*Ikatan Dokter Indonesia (IDI)*) as a professional organization. Based on several informed consent models which were found by researchers in the field, the contents were less protective for patients because there was a statement that stated if there were unexpected conditions, the patient would not make lawsuits against the aesthetic beauty clinic providers.

5. Report

Model of legal protection that was used was in preventive. The aim was to guarantee the quality of services in the aesthetic beauty clinic so that it was always orderly and law-abiding.

The research findings showed that 3 of 10 aesthetic beauty clinics did not conduct quarterly reports because there were no such regulations in Regional regulations that regulated about their implementation and the reports were only conducted every semeste Setiono says that method is a tool to find answers from a problem. The use of a method (tool) must be in accordance with the problems which

are occurred. The method type that will be used in legal research will be very depended on what concept is meant about law²⁴.

Research in general according to C. Rajendra Kumar is a search activity that is conducted intensively, systematically, and it aims to develop science and understand social and physical phenomena²⁵. As one of variety in research, a legal research is essentially a scientific activity to solve various legal issues²⁶, or in definition that is stated by Morris L. Cohen as the process of finding the law that governs activities in human society²⁷. In more detail, Soerjana Soekanto interprets it as a scientific activity based on a particular method, systematic, and thought, which aims at learning one or several legal phenomena through analysing it²⁸.

The approach that was used in this research was socio legal approach which meant that law was not only seen as a set of normative norms or what became law text, but looked at how law interacted with the community (law in action). Method in this research was social (non-doctrinal) research method by interactional (micro) approach with qualitative analysis or qualitative methods.²⁹ As we know that, research is a scientific activity that relates to analysis and construction which are conducted methodologically³⁰, systematically, and consistently³¹.

Based on the research types, this research was non-doctrinal legal research (socio-legal research) because law was conceptualized as a manifestation of the symbolic meanings of social behavior as what was seen in their interactions. This type of research assumed that law did not place in empty space but it was found side by side with moral rule and its complexity or at least, it was tangible. On the other hand, law was also a social phenomenon which was applied in society that was

²⁴ Setiono, *Pemahaman Terhadap Metodologi Penelitian Hukum*, UNS Press, Surakarta, 2010, p.19

²⁵ *Reserach is an intensive and purposeful searh for knowledge and understanding of social and phsycial phenomena. It is required a systematic inquiry and undertaken to establish facts or principle.* C. Rajendra Kumar, *Research Methodology*, APH Publishing Corporation, New Delhi, 2008, pp. 1-2.

²⁶ Peter Mahmud Marzuki, *Peneltiian Hukum* (9th Printing), Prenanda Media Group, Jakarta 2014, p. 60.

²⁷ Morris L. Colsen, *Legal Research*, dalam Peter Mahmud Marzuki, *Op.Cit*, p. 57.

²⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum* (3rd Printing), UI-Press, Jakarta, 1986, p. 60.

²⁹ Setiono, *Op.Cit*, 2010, p.20

³⁰ Methodology in general understanding means a logical and systematic study about the principles that lead to research. It is a way to find the truth. Setiono, *Metode Penelitian Hukum*, Program Studi Ilmu Hukum Universitas Sebelas Maret Surakarta, 2005, p.3.

³¹ Soerdjono Soekanto, *Faktor-faktor Yang Mempengaruhi Penelitian Hukum*, PT Grafindo Persada, Surakarta, 1986, p. 20.

different from one another. Therefore, legal form could not be denied as a social reality.

As a research that combined normative analysis and other social science approaches, this research was not only a descriptive research, but also evaluative and prescriptive research.³² In addition to explain clearly, thoroughly, and in detail about the phenomenon of health services in aesthetic beauty clinics toward children in society³³, this research also conducted an assessment against positive legal norms, along with their correlation with other relevant variables³⁴, and found solutions for selected political law issues through clearly combining normative analysis and other relevant social science approaches.³⁵

There was no harmonization in law and institution among Ministry of Health, Provincial Government and City Government regarding the rules for organizing aesthetic beauty clinics in Regions. This affected to the protection of aesthetic beauty clinic patients' rights.

6. Developing

Model of legal protection that was used was in preventive and repressive. The aim was to guarantee the implementation of aesthetic beauty clinics which were high quality, professional, and provided protection for the society in accordance with the applicable laws. Development was conducted either toward the leader / person in charge, or the practitioners and medical personnel.

Research results showed lack of development activity that was conducted by Central Government (Ministry of Health, Indonesian Doctors Council), Regional Governments (Provincial and District/ City Health Offices), and related professional organizations. Moreover, there was no development activity that was conducted caused poor quality of service guarantee, less professional service guarantee, and poor providing protection to the society.

³² Anne Ruth Mackor, dalam Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind Of Method for What Kind of Discipline?*, Hart Publishing, Oxford & Portland, 2011, p. 61.

³³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1986, p. 50.

³⁴ Sharyn L Roach Anleu, *Law and Social Change*, Sage Publication, London, 2000, p. 150.

³⁵ Soerjono Soekanto, *Op.Cit.*, p. 51

7. Supervision

Model of legal protection that was used was in preventive and repressive. The aim was to ensure and guarantee that the purposes and activities in implementing aesthetic beauty clinics would be conducted and had been conducted in accordance with the applicable policies, plans, and laws and regulations in Indonesia.

Research results showed that not all Cities / Regencies which were researched had a special team for supervision that was consisted of elements of Provincial Government, Regional Government, and related Professional Organizations. Supervision was only conducted by Regional Government, which were City / Regency Health Office, but it was less optimal because in practice, there were still violations which were committed by staffs regarding types of services, service methods, ability of safety equipment (calibration), materials, building facilities and supporting facilities.

Central and Regional governments needed coordination in order to be able to form a supervisory team so that it could be more stringent in conducting supervision against the implementation of aesthetic beauty clinics in the field because based on the research results, it was found that most of beauty clinics committed violation that related to unauthorized and incompetent medical personnel and the use of medicinal ingredients and/ or treatment products which were dominated by skin whitening agents and other chemicals that caused addiction. Researcher tested hydroquinone content against treatment products. It showed that 8 of 10 aesthetic beauty clinics which were researched was found the level of hydroquinone content that was used exceeded the limit which was allowed by the government. As we know that, the limit which was allowed by the government was maximum in 2% and this endangered the patient's health³⁶.

8. Administrative Sanctions and Disciplinary Sanctions

Model of protection that was used was legally repressive. The aim was to provide guarantees for the protection of patients' rights against violation act that was committed by aesthetic beauty clinic.

³⁶ www.pom.go.id, accessed on 20th July 2018.

Based on data that was obtained in the field, either Regional government or related professional organizations were very minimal in implementing sanctions. If there was a violation of the law, it would be directly processed and handled legally and got legal sanctions in accordance with the violation in either health laws or consumer protection laws.

9. Criminal Provisions

Model of legal protection that was used was in preventive and repressive. The aim was to provide scare effects and deterrent effects for the leaders/ owners/ organizers/ administrators who had potency to commit violations in the implementation of aesthetic beauty clinics.

Research results of content of implementation in aesthetic beauty clinic guidelines showed that there was a legal basis that was not included in it, which was the regulation of authorized medicine and medical personnel.

Furthermore, criminal threat was less severe, thus, the leader/ owner/ organizer/ administrator continued to commit violations, such as an aesthetic beauty clinic that domiciled in West Java, Central Java, and East Java, which violated the regulation regarding staff and medicine which were used. The next finding was the existence of a well-known beauty clinic in D. I Yogyakarta, which had many branches in cities throughout Indonesia. The notification of cosmetic product in that clinic apparently had not been updated until recently, even though the products were still used in practice in beauty clinics even the products were still distributed and were used by the patients. However, this case had been escaped from the monitoring of BPOM and the Regional Health Office in Indonesia.

D. CONCLUSION

Researcher had found a variety of legal violations that was committed by aesthetic beauty clinics in providing services to patients. Various types of violations such as permission violations, violations of the composition of skincare materials, violations of the place for practice, violation of practice tools and medical devices for doing treatment.

Motives of violations were also varied such as counterfeiting, neglect, and intentionality that lead to the benefits of aesthetic beauty clinic providers and would

be detrimental for the patients. These violations of law could not be tolerated and must be acted legally. The enforcement could be done in several phases which were started from licensing applications, certification, the imposition of a professional code of ethics and the role of professional organizations for health workers who worked in aesthetic beauty clinics. Recording and reporting of activities and informed consent for patients must be conducted periodically and it needed a development for aesthetic clinics in order to comply continuously with the applicable regulations.

Aesthetic beauty clinics which were recidivist or violated the law repeatedly must be sanctioned in accordance with applicable regulations in disciplinary sanctions and other sanctions. Clinics that still violated legal provisions were charged by criminal provisions for their managers and owners and the clinics must be closed by revoking their license if the clinics were licensed (if the clinics were not licensed, the clinics were forced to close) so that they became an example for other clinics to protect the patients' legal rights.

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