

Legal Protection Of Patients Injecting Silicone And Other Materials In The Penis

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Abstract:

Silicone injection on the penis is the result of developments in the health sector. Efforts to provide services to patients must always apply applicable professional ethics. This relationship is prone to conflict when the parties do not carry out their roles as expected by the other party. This study aims to determine the legal regulation and protection of patients who inject silicone and other substances into the penis. This research is a normative legal research and empirical law, namely research conducted by collecting primary, secondary and tertiary legal materials. Legal materials obtained in research are presented in a more systematic writing in order to answer the problems that have been formulated

Keywords: Legal Protection, Injecting Silicone, Penis

1. Introduction

The development of the world today which is marked by advances in science and technology have made everything possible to happen and can facilitate human desire to make things happen. As a branch of science that can be related to human life and health, medical science seeks to carry out various kinds of discoveries and research in order to improve the quality of human life, and one of its goals is to restore a person's physical condition so that he can return to function in optimal conditions.(Brekke et al., 2017). Various developments in the health sector are carried out continuously, in fact, not all developments carried out produce results as expected, evidenced by the number of cases that have harmed patients. This phenomenon is closely related to the activities of patients who are actually consumers of a business actor. One science that is rapidly developing is medical science in the field of silicone injection(Narins & Beer, 2006) injection of silicone in the penis is the result of developments in the health sector (Silberstein et al., 2008).

Based on the viewpoint of legal science, the relationship between doctor and patient is a legal agreement in which the doctor has undertaken and sought to cure the patient.(Sulmasy & Mueller, 2017). Efforts to provide services to consumers must always apply the prevailing professional ethics, this condition shows that the doctor has a dominant role and the patient has a more passive role.(Goold & Lipkin, 1999).Adawiyah (2018) argued that 9 the use of silicone for breast implants Based on the perspective of Law No. 36 of 2009 as a reconstruction due to surgery is allowed on the condition that it does not violate the provisions contained in the Health Law. In *lex generalis*, the Criminal Code (KUHP) are important sources of consumer law or consumer protection law. As in article 202 of the Criminal Code. This article reads as follows:

Any person who puts something into a well, pump, source or equipment for drinking water for the public or for use by or together with other people, knowing that because of this act water is dangerous to the life or health of a person, shall be punished by punishment maximum imprisonment of fifteen years.

If the act resulted in the death of the person, the guilty was punished by a life imprisonment or a maximum imprisonment of twenty years.

Patients as parties who need help are in a weak position so that patients tend to wait without the authority to fight. This is because doctors have knowledge and skills and a higher social status because doctors have the authority to provide help to patients(Willems et al., 2005). The relationship between patient and doctor based on the needs of each party is also called a therapeutic relationship, which is a situation that is born because there are parties who need and provide assistance(Krishna, 2017). Walansendow et al., 2017states that the patient will feel satisfied when the nurse is able to provide therapeutic communication well. This is also supported by research findings

From a legal aspect, the relationship between doctor and patient is a relationship between those regulated in the rules of civil law which is basically done based on mutual agreement.(Muchsin, 2009; Sibarani, 2017). So in this relationship there are reciprocal rights and obligations; the doctor's right becomes the patient's obligation and the patient's right is the doctor's obligation. This relationship is prone to conflict when the parties do not carry out their roles as expected by the other party(Hardavella et al., 2017; Pavlakis et al., 2011). A doctor in carrying out his obligations to patients is always free from mistakes and mistakes that can have negative consequences for the patient.

In this case, various things can arise, including: which provisions are used as a reference, whether Law Number 36 of 2009 concerning Health or Law Number 29 of 2004 concerning Medical Practice or Law

Number 8 of 1999 concerning Consumer Protection or the Civil Code and how to protect against errors or omissions that affect the patient who takes the silicone injection. This study aims to determine the legal regulation and protection of patients who inject silicone and other substances into the penis

2. Literature Review

Legal Protection for Patients

Law aims at integrating and coordinating various interests in society because in a traffic of interests, protection of certain interests can be done by limiting various interests on the other side (World Bank, 2017). So that the law has the highest authority to determine human interests that need to be regulated and protected (Vago et al., 2018). Meanwhile, according to Satjipto Rahardjo himself that "legal protection is to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community in order to enjoy all the rights provided by the law" (Satjipto, 2000).

The Government of Indonesia, in order to provide legal protection for patients as service consumers in the field of health services, generally through Law Number 8 of 1999 concerning Consumer Protection (State Gazette of the Republic of Indonesia of 1999 Number 42). Based on the provisions Article 48 of Law Number 29 of 2004 concerning Medical Practice (State Gazette of the Republic of Indonesia of 2004 Number 116), namely:

1. In practicing medicine, every doctor or dentist is obliged to keep medical secrets.
2. Medical secrets can only be disclosed for the benefit of patient health, fulfilling requests from law enforcement officials in the context of law enforcement, patient requests, or based on statutory provisions.
3. Further provisions regarding medical secrets are regulated in a Ministerial Regulation.

According to the provisions of Article 48 above, it is mandatory for every medical practice to keep medical secrets and it can only be disclosed by law enforcement officials in the context of law enforcement and the patient's request is based on legislation meaning that apart from law enforcement officials and the patient himself, other parties cannot may disclose the confidentiality of medical records.

Legal Responsibility

Legal responsibility, according to (Tutik & Febriana, 2010) states that: "Accountability must have a basis, namely things that give rise to a legal right for one person to sue another and at the same time in the form of things that give birth to another person's legal obligation to give his accountability.

Furthermore (Tutik & Febriana, 2010), states that: "In civil law, the basis of liability is divided into two types, namely error and risk. Thus it is known as liability without fault and liability without fault known as risk responsibility or strict liability".

The basic principle of responsibility for mistakes implies that a person must be responsible because he made a mistake because he was detrimental to others. On the other hand, the principle of risk responsibility is that the plaintiff's consumer is no longer obliged but the defendant producer is directly responsible for his business risk. (Syamsu, 2016).

In Hans Kelsen's legal theory, it is clear that a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of an act that is contrary (Kelsen, 1966). Kelsen (1966) states that: "Legal responsibility is required when sanctions are not or not only imposed on the delinquent but also against individuals legally associated with it. These relationships are determined by the rule of law. Corporate responsibility for an offense committed by its organs".

In Kelsen's law theory, it can be concluded that:

1. Individual responsibility, that is, an individual is responsible for an offense he has committed himself;
2. Collective liability means that an individual is responsible for an offense committed by another person;
3. Liability based on error which means that an individual is responsible for a violation he has committed intentionally and is thought to cause harm;
4. Absolute liability which means that an individual is responsible for a violation he has committed because it was accidental and unexpected.

In criminal law, criminal responsibility contains the principle of error (principle of culpability), which is based on a monodualistic balance that the principle of error based on the value of justice must be aligned paired with the principle of legality based on the value of certainty. (Barda, 2018). Whereas in civil law, liability can be qualified into three categories, namely:

- 1) Responsibility for cases of illegal acts (PMH) in accordance with the provisions of Article 1365 of the Civil Code, that: Every act that violates the law and brings harm to others, obliges the person who caused the loss due to his mistake to compensate for the loss.
- 2) Liability for default in accordance with Article 1243 of the Civil Code, that: Reimbursement of costs, losses and interest due to non-fulfillment of an agreement is mandatory, if the debtor, even though he has been declared negligent, fails to fulfill the agreement, or if something must be given or doing can only be given or done within a time that has exceeded the specified time.

Silicon injection

In Law No. 36 of 2009 concerning health, article 68 states that implantation of drugs and / or medical devices into the human body can only be done by health workers who have the expertise and authority and are

carried out in certain health service facilities. the placement of any implants must be carried out by a doctor who is truly an expert in the field and carried out in a quality-assured hospital or clinic.

In order to obtain ideal physical perfection, many people will make efforts related to this, including silicone injections. Many use silicone to beautify themselves, such as injecting silicone into the penis area to tighten and enlarge the penis(Nugteren et al., 2010; Sasidaran et al., 2012; Silberstein et al., 2008).

Plant silicone or silicone injection in the area of the penis to enlarge that part, without thinking about very dangerous side effects. As a result of the effect of silicone, many negative effects occur, but many men who perform silicone surgery often do not understand the impact that will occur as a result of knowing the impact after carrying out the operation, everyone tends to just keep quiet and surrender to what has happened.

In Indonesia, many citizens and artists who do penis enlargement use silicone only to improve penis size(Sasidaran et al., 2012). Silicon is a non-organic polymer that varies from liquid, gel, rubber, to a type of hard plastic(Fain & Gad, 2014; LeVier et al., 1995). Some of the special characteristics of silicon are: odorless, colorless, waterproof, and not damaged by chemicals and oxidation processes, resistant to high temperatures, and unable to conduct electricity(Kappel et al., 2014; "Saf. Silicone Breast Implant.," 1999).

Reconstruction due to surgery is a variety of surgical procedures performed to restore the original appearance or function of certain body parts that are deformed from birth or lost as a result of surgery from a disease.(Gundlach, 2004; Stricker et al., 2019).

Health Law No. 36 of 2009, Article 68 Paragraph 1 it says that implantation of drugs and / or medical devices into the human body can only be carried out by health personnel who have expertise and authority and can be carried out in certain health service facilities. In this study the frame of mind is in accordance with Figure 1.1 below:

3. Research method

This research is a normative legal research and empirical law, namely research conducted by collecting legal materials, both primary, secondary and or tertiary. In order to get answers or solutions to problems (legal issues) that have been formulated. This research is a normative juridical research besides it requires an empirical side by recording data in the field, especially to answer practice in the field.

This legal research is based on library research in order to obtain secondary data which is supported by field research. Data obtained from research obtained from primary, secondary and tertiary legal materials, including:

Primary Legal Materials	1. Law Number 36 of 2009 concerning Health 2. Law Number 29 of 2004 concerning Medical Practice 3. Law Number 8 of 1999 concerning Consumer Protection 4. Code of Civil law 5. Criminal Code
Secondary Legal Materials	Articles on several internet sites; Related books in the form of writings, opinions of legal experts, articles, literature related to research problems
Tertiary Legal Materials	Tertiary legal materials in the form of dictionaries, encyclopedias, and other related works that are complementary to research.

Source: (Mahmud Marzuki and Peter Mahmud, 2011; Soekanto & Mamudji, 2011)

The data collected in the form of primary, secondary and tertiary materials were obtained and were related to the existing discussion so that in this study there was no deviation and confusion in the discussion. The data required in this paper is obtained through:

1. Library research

Data information is needed in the form of writing in the form of a thesis, thesis, scientific books, research results, magazines which are then concluded(Sugiyono, 2015). Thus the data examined in a study can be in the form of data obtained through library materials

2. Interview (Interview)

Interviews are a way of obtaining data / information by directly asking the interviewee(Arikunto, 2013). Interviews in this study were conducted as a complement to existing secondary data.

Legal materials obtained in literature study research are supported by field research, statutory regulations, and the articles referred to by the author, describe and link them in such a way that they are presented in a more systematic writing in order to answer the problems that have been formulated. Whereas

the method of processing legal materials is carried out deductively, namely drawing conclusions from a general problem regarding the concrete problems being faced.

4. Results and Discussion

The era of globalization is a time of discovering new and more advanced discoveries in any field. This also applies in the health sector where the sophistication of medical technology has progressed very rapidly (Ahmed et al., 2017). Starting to discover new things that can be used to help and reduce the level of difficulty in dealing with patient diseases. The diseases that afflict patients are very diverse, ranging from the degree that is easy to cure to those that are difficult to cure. However, with modern technology like today, these diseases can be resolved quickly (Plaza & Lautenschlager, 2010).

One technology engaged in the medical field that is often used is using silicone injections in the penis area to enlarge that part. With the growing use of silicone injections as a tool for performing care on the body, many doctor's offices offer silicone injection services to their patients for body care. Society is increasingly facilitated to change the appearance of the body instantly in order to satisfy efforts to look aesthetically beautiful. The purpose of injecting silicone into the penis is for male satisfaction. They consider that the size of the penis can provide satisfaction during intercourse (Fakin et al., 2017).

However, basically the practice of injecting silicone has risks that can occur for its users, such as causing men to be unable to get an erection, resulting in decreased quality during intercourse, bacterial infections, reactions to anesthetic drugs such as lidocaine, allergic reactions to silicone. injection, there is redness in the area that was injected, swelling, itching, abscess, peeling, etc. This can happen if the use of silicone injections is not done properly. This is justified by Law No. 29 of 2004 on health which provides protection for patients who act as consumers. The medical practice arrangement mentioned in the law aims to provide protection to patients, (President of the Republic of Indonesia, 2004).

Meanwhile, in practice, silicone injections are often violated. There are many surgeons who neglect silicone injections (Daniels, 2012). Negligence from the legal aspect is an attitude that is careless and careless. Negligence is also an element of medical malpractice, which includes providing false information or practicing without permission. This unlicensed practice is often done with silicone injections (Ahmed et al., 2017). Therefore, there must be a legal umbrella governing it. Legal protection for patients who inject silicone on the penis is to provide protection to patients who are injured and this protection is given to society so that they can enjoy all the rights provided by law, or in other words this legal protection is a legal remedy that must be provided by law enforcement officers to provide a sense of security, both mental and physical, from harassment and various threats from any party. Consumer protection law regulates rights and obligations that must be fulfilled by business actors and consumers, which are guaranteed to be fulfilled by law enforcers (Plaza & Lautenschlager, 2010).

This is in accordance with article 4 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection, that consumers have the right to comfort, security and safety in consuming goods and / or services. (Government of the Republic of Indonesia, 1999). This right is intended to guarantee the safety and security of consumers in using the goods or services obtained, so that consumers can avoid losses (physical and psychological). So that patients who inject silicone into the penis when they feel the discomfort and their safety are threatened, then they violate these enforced rules. So that in article 19 paragraph (91) UUPK which states that business actors are responsible for providing compensation for damage, pollution and / or loss to consumers due to consuming goods and or services produced or traded (Wariati & Susanti, 2014).

The legal protection that can be provided by the government to consumers who suffer a loss of silicone injections on the penis is the provision of administrative sanctions imposed on business actors who have violated Article 60 paragraph (2) of the UUPK in the form of compensation at most, namely Rp. 200,000,000 (two hundred million rupiah), this administrative sanction is considered to be more effective than criminal sanctions (Government of the Republic of Indonesia, 1999).

In addition, legal protection from the aspect of civil law by providing civil suit against business actors who provide illegal silicone injections that cause harm to consumers, namely by ordering to stop certain activities that cause consumer losses and revocation of business licenses in accordance with Article 63 letter (d) and (f) UUPK. Legal protection from the aspect of criminal law, namely by providing criminal penalties stipulated in article 204 of the Criminal Code that anyone who sells, offers, delivers or distributes goods known to be endangering the life or health of people, while the dangerous nature is not notified, shall be punished with imprisonment at the most. five dozen years (Government of the Republic of Indonesia, 1999).

5. Conclusion

Legal remedies that can be taken by consumers in fulfilling compensation in accordance with Article 19 paragraph (91) UUPK and Article 60 paragraph (2) UUPK are in the form of compensation at most, namely Rp. 200,000,000 (two hundred million rupiah), apart from that protection of civil law in accordance with Article 63 letters (d) and (f) of the UUPK and protection of criminal law is regulated in Article 204 of the Criminal Code.

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