

THE POSITION OF NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT, IN PROTECTING PATIENT PRIVACY AT A BEAUTY CLINIC

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Abstract

Services at beauty clinics are carried out by the professionals with expertise in the field of medical skin care and beauty. In order to promote the products and services provided, these clinics carry out promotions both through social and electronic media. Therefore, it is possible that the beauty clinics will display photos or videos of patients for promotion. This will be a problem related to the law if the patient himself does not want his information to be used in promotional tools. There are even health workers at a beauty clinic who publish the public figure without permission. In this study, professional ethics will be discussed as the basis for protecting patient privacy, the Non-disclosure Agreement and Confidentiality Agreement in the Indonesian Civil Code as well as the Non-disclosure Agreement and Confidentiality Agreement to Maintain the Confidentiality of Patient Information. Professional ethics is actually the basis for protecting patient privacy. Patient confidentiality is a part of company confidentiality where the company can make a non-disclosure agreement that applies to clinic workers and partners of the beauty clinics. Confidentiality regulated in the confidentiality agreement does not only relate to the company's trade secrets but includes the confidentiality of patient information which is part of patient privacy information.

I. Introduction

The beauty clinic business is a business based on the customers' trust; therefore, the need for professionals is an important thing. The prerequisite for the availability of experts who handle beauty treatments is the main thing that patients or users of beauty clinics pay attention to. Handling by professionals is closely related to the expected results, providing qualified beauticians is very important because the purpose of the patient coming to the beauty clinic is to change the appearance that is considered less for the better. In this case, the patient does not want to be treated by unskilled personnel because it has an impact on the health and appearance of the patient. Qualified experts must be supported by services from beauty clinic staff who have at least basic skills in performing beauty treatments. Staff or employees of beauty clinics generally have attended basic education or training as beauty therapists and received certification to be able to practice. Some aspects that are taken into consideration in choosing a beauty clinic for treatment are doctors or experts, staff and employee services, location and comfort, customer privacy and affordable prices.¹ The location of the clinic, the comfort including the interior of the clinic are also the important considerations for patients. Someone who comes to a beauty clinic certainly expects to get beauty treatments in a calm, comfortable and pampered state.² This is supported by the interior of the clinic, lighting, room fragrances, and other facilities. Clinics that are supported by experts, experienced staff and comfortable clinic facilities will of course be able to provide satisfaction to the customers. In addition, affordable prices with good quality are also a plus, consisting of a clinic as a service business that offers beauty treatments to someone. People who come to beauty clinics have a tendency to be insecure with their beauty or physical condition, so they need a sense of comfort and guaranteed privacy. It is very important if the beauty clinic can maintain the privacy of the patients who come.

Confidentiality and privacy of patients themselves have been regulated in Article 57 paragraph (1) of the Law of the Republic of Indonesia Number 36 of 2009 concerning Health which states that everyone has the right to the confidentiality of their personal health conditions that have been presented to health service providers. Article 1 point 1 Regulation of the Minister of Health of the Republic of Indonesia No. 36 of 2012 concerning Doctor's Secrets states that medical secrets are data and information about a person's health obtained by health workers when carrying out their work or profession.³ Matters that must be kept confidential regarding patients in medical secrets are

¹ Supiah Ningsih, "Pengambilan Keputusan Konsumen Terhadap Pemilihan Klinik Kecantikan." (2020) 1: 2 Jurnal Manajemen, Ekonomi, Keuangan dan Akuntansi, 103-106, <http://ejurnal.poltekkutaraja.ac.id/index.php/meka/article/view/31>

² Annisa Rahmawati Kusuma Putri, "Desain Interior Pusat Kecantikan dan Perawatan Tubuh di Solo Baru, Sukoharjo (Dengan Konsep Mesir Kuno)," (2016) Undergraduate Thesis, Universitas Sebelas Maret.

³ Ira Dewi Rachmadhiani, "Rahasia Kedokteran dan Asas Perlindungan Hukum," (2021) Thesis, Universitas Katholik Soegijapranata Semarang.

regulated in Article 3 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia No. 36 of 2012 concerning Doctor's Secrets, which includes the patient's identity; patient's health which includes the results of history taking, physical examination, supporting examination, diagnosis, treatment and/or medical action; and matters relating to the patient. Paragraph (2) states that the patient data and information as referred to in paragraph (1) can be sourced from the patient, the patient's family, the patient's introduction, a certificate of consultation or referral, or other sources.⁴

The healthcare industry generates a huge amount of medical big data that should be stored, operated, and accessed.⁵ As an industry based on trust, the protection of patient privacy is very necessary. In certain interests, beauty clinics take videos of clinical activities and publish them to the general public through social and electronic media about the results of patient care as a promotional medium. This action cannot be blamed as long as the patient concerned allows and does not feel disturbed by it. In certain circumstances, sometimes the patient does not want the beauty clinic to distribute or publish documentation of himself when doing treatment at the beauty clinic. Social and electronic media can be used for the purpose of expanding networks and promoting a health product or service. By utilizing social media, health service actors can easily disseminate information about the health services offered. Social media affords individuals access to online medical information, facilitates communication amongst patients and clinicians, and allows photos and videos to be shared among patients and healthcare professionals. However, ethical dilemmas, ranging from maintaining patient privacy to disclosing conflicts of interest, arise from the expanded influence afforded to providers via social media and the lack of guidelines for its use in the professional context.⁶ Behind many benefits of using social media as a means of promoting health services including beauty clinics, social media can also have a negative impact on beauty clinics itself when it is used unwisely. The constitutional rights that can be applied in wise actions using social media are freedom of speech, freedom of search and unlimited privacy. The element of "unlimited privacy" has started to generate controversy. Several problems arising related to the use of social media in the promotion of beauty clinics are related to patient confidentiality.

In relation to patient confidentiality and privacy, two terms are known, namely Non-

⁴ Istiana Heriani, "Hak Atas Informasi Publik Dan Hak Atas Rahasia Medis: Problem Hak Asasi Manusia Dalam Pelayanan Kesehatan," (2018) 13: 1 Jurnal Hukum Samudra Keadilan, 67-82.

⁵ Nicholas Tarantino, Margaret Lartey, Trisha Arnold, Larry Brown, Awewura Kwara, & Kate Guthrie, "Preferences for a Game-Based SMS Adherence Intervention Among Young People Living with HIV in Ghana: A Qualitative Study," (2022) 26 AIDS and Behavior, 2169-2181, <https://doi.org/10.1007/s10461-021-03562-9>

⁶ Sophia M. Wolfe, Sophia S. Hu, Chandler W. Rundle, Gil S. Weintraub, & Robert P. Dellavalle, "Healthcare Ethics and Professionalism in Social Media," (2021) Dermatoethics, Springer, Cham, 185-197, https://doi.org/10.1007/978-3-030-56861-0_20

disclosure Agreement and Confidential Agreement. A non-disclosure agreement is a contract or part of a legal contract between two parties that describes confidential material, knowledge or information that is to be shared with another party for certain purposes, but also limits its access from third parties. The real motive behind the signing of the Non-disclosure Agreement is, to control the use and disclosure of confidential information.⁷ Confidentiality agreement is a form of special agreement between business actors as trade secret owners and workers who have access to information. Employees and staff of beauty clinics are often known to share the results of beauty treatments from their patients to social media, but in certain circumstances patients do not want their privacy in doing beauty treatments to become public consumption, one of which is patients who perform beauty treatments with cosmetic procedures or plastic surgery aimed to change a part of their body. Responding to this must first be seen from the Confidential Agreement which has been signed by the beauty clinic workers with the beauty clinic management.

Research on Confidentiality Agreements, Non-disclosure Agreements and patient privacy has been written by several researchers, including Anik Tri Haryani regarding "Protection of Trade Secret Owners in Franchise Agreements." The results showed that the protection of trade secrets in the franchise agreement can be done by making an agreement that contains a confidential agreement, Non-disclosure Agreement, Non-compete agreement clause as well as a Non-solicitation agreement clause. The legal consequences if there is a violation of the trade secret in the franchise agreement is that it can be prosecuted civilly by paying compensation through a lawsuit to the court or it can be resolved through arbitration or alternative dispute resolution.⁸ Indah Susilowati, Wisnaningsih Surjoseputro, Dika Silviawati researched on Legal Protection on Privacy Rights and Patient Medical Data in Hospital X Surabaya. In the study, it was found that Hospital X Surabaya did not yet have Standard Operating Procedures related to patient privacy rights, facilities did not guarantee legal protection of patient privacy and medical data, and officers had not fulfilled their obligations to provide information and explanations to some patients.⁹ Annisa Maulida Ningtyas and Ismil Khairi Lubis researched the "Literature Review of Privacy Issues in Electronic Medical Records." The results of this study indicate that electronic medical records contain information about patients and the results of the diagnosis of health actions taken, most of which are considered as health information that must be protected. As has been explained, privacy and security are important in the implementation of RME, so data security techniques are needed that can protect the data and

⁷Tarun Sharma & Rajat Srivastav, "Non-Disclosure Agreement: A Curve in a Glossy Path," (2020) 1: 1 DME Journal of Management, 126-145, <https://www.dmejournals.com/index.php/DMEJM/article/view/79>

⁸Anik Tri Haryani, "Perlindungan Pemilik Rahasia Dagang dalam Perjanjian Waralaba," (2018) 4: 2 YUSTISIA MERDEKA: Jurnal Ilmiah Hukum, 138-147, <https://doi.org/10.33319/yume.v4i2.21>

⁹Indah Susilowati, Wisnaningsih Surjoseputro, & Dika Silviawati, "Perlindungan Hukum Terhadap Hak Privasi Dan Data Medis Pasien Di Rumah Sakit X Surabaya," (2018) 5: 1 Jurnal Wiyata: Penelitian Sains dan Kesehatan, 10-23, <http://dx.doi.org/10.56710/wiyata.v5i1.209>

information contained in it.¹⁰

Research Method

The legal research used in this paper is empirical legal research that examines the legal position of the Non-disclosure Agreement in protecting patient privacy. Sources of data used in this study are primary legal materials obtained from laws and regulations. The laws and regulations related to this research include; Law of the Republic of Indonesia Number 36 of 2009 concerning Health, Regulation of the Minister of Health of the Republic of Indonesia No. 36 of 2012 concerning Doctor's Secrets, Government Regulation of the Republic of Indonesia Number 47 of 2016 concerning health facilities, Minister of Health Regulation no. 9 of 2014 concerning Clinics, Regulation of the Minister of Health Number 1175/Menkes/PER/2020 concerning permits for cosmetic production, Law Number 8 of 1999 concerning Consumer Protection. The data obtained from the primary legal material is then adjusted to the reality that exists in society, the results of the adjustment between the legislation and the reality in society are analyzed descriptively.

2. Result and Discussion

Professional Ethics As A Basis For Patient Privacy Protection.

Humans are social creatures. As social beings, everyone interacts with one another. In social interaction, humans are elongated in a realistic form. Realistic view of a person is certainly related to the appearance of that person. So that the appearance becomes a demand for someone to be able to be in the expected social level.¹¹ The demand for an attractive appearance is slowly changing the construction of thoughts and trends in society regarding beauty standards. The word beauty was originally synonymous with the physical appearance of women, but times have changed the standard of beauty is no longer a benchmark for women's physical appearance, but also for men. Men are also part of the trend of demands for a beautiful physical appearance called metrosexual.¹²

The encouragement of a standard of beauty and attractive appearance makes both men and women do various ways to get an attractive appearance. According to Ning Harmanto, beauty is a harmonious expression between the outer appearance and the inner body of a woman known as

¹⁰ Annisa Maulida Ningtyas and Ismil Khairi Lubis, "Literatur Review Permasalahan Privasi pada Rekam Medis Elektronik," (2018) 5: 2 Pseudocode, 12-17, <https://doi.org/10.33369/pseudocode.5.2.12-17>

¹¹ Riris Anggraini & S. Taufik, "Konsep Diri Pada Konsumen Klinik Kecantikan," (2017), Dissertation, Universitas Muhammadiyah Surakarta.

¹² Siska Diana Sari, "Perlindungan Hukum Pengguna Klinik Kecantikan Estetika Dalam Perspektif Hak Konstitusional Warga Negara," (2018) 6: 2 Citizenship Jurnal Pancasila Dan Kewarganegaraan, 140-154, <http://doi.org/10.25273/citizenship.v6i2.3305>

inner beauty.¹³ The standard of beauty for women is often described with an ideal body condition, having beautiful skin, beautiful hair and an attractive appearance for the opposite sex. Naturally, there is no woman who does not want to look beautiful and attractive. The need for an attractive appearance in society's standards opens up business opportunities for business actors in the business sector that can support beauty. Previously, the beauty business was developed by a beauty salon entrepreneur. In its development, people need more qualified beauty services with professional staff.¹⁴

These beauty services are facilitated through the birth of beauty clinics. Beauty clinics are different from salons. Beauty treatments carried out at beauty clinics are carried out by professional experts, namely by skin specialists who have certification of expertise and permits to practice. Medical ethics should be based on ethical norms that govern human relations in general, and have principles in the philosophy of society that are accepted and developed continuously. Especially in Indonesia, that principle is Pancasila which we both recognize as the basis of the Idil and the 1945 Constitution as the structural basis. Professional ethics is one of the important topics, which includes various rights such as respecting the patient's right to choose (autonomy), being useful (beneficence), being harmless (non-maleficence), and respecting the justice, integrity, and confidentiality of information.¹⁵

Beauty clinic is a term that can be interpreted broadly as the expertise of the beauty doctor profession (aesthetic medicine) to change the cosmetic appearance of patients. The patient himself is any person who consults his health problems to obtain the necessary health services, either directly or indirectly, to the authorized health service personnel. The definition of the patient can be found in Article 1 point 4 of the Regulation of the Minister of Health of the Republic of Indonesia No. 36 of 2012 concerning Doctor's Secrets. Reconstructive actions that can generally be done in beauty clinics are to improve the appearance of the face and body such as; remove acne, spots, remove wrinkles, whiten skin, brighten the face, reduce excess fat and even install implants to change the construction of certain body parts such as sharp nose or lip fillers.¹⁶ Actions performed at beauty clinics include

¹³ Fillyxia Aurora Phinta, "Konstruksi Sosial Dunia Kecantikan (Studi pada Pengguna Klinik Kecantikan di Kota Pangkalpinang)," (2018), Undergraduate Thesis, Universitas Bangka Belitung.

¹⁴ Mia Darmianti & Bulan Prabawani, "Pengaruh Gaya Hidup Dan Nilai Pelanggan Terhadap Loyalitas Pelanggan Melalui Kepuasan Pelanggan Sebagai Variabel Intervening (Pada Konsumen Klinik Kecantikan Larissa Aesthetic Center Semarang)," (2019) 8: 4 Jurnal Ilmu Administrasi Bisnis, 287-299, <https://doi.org/10.14710/jiab.2019.24917>

¹⁵ Haleh Jafari, Alireza Khatony, Alireza Abdi, & Faranak Jafari, "Nursing and Midwifery Students' Attitudes Towards Principles of Medical Ethics In Kermanshah, Iran," (2019) 20: 26 BMC Medical Ethics, <https://doi.org/10.1186/s12910-019-0364-z>

¹⁶ Eugenia Andrea Dennisa & Suryono Budi Santoso, "Analisis Pengaruh Kualitas Produk, Kualitas Layanan, dan Citra Merek terhadap Loyalitas Pelanggan melalui Kepuasan Pelanggan sebagai

medical procedures that are part of medical skin care, reconstructive and plastic surgery. These actions are high-risk or low-risk medical procedures.

Trends regarding the beauty business are growing rapidly in various parts of the world, including in Indonesia. Beauty clinic service providers will develop various strategies in creating formulations to produce maximum beauty products so that they can attract public interest in doing beauty treatments at the clinic. Beauty clinics should prioritize the quality of treatments that have been clinically tested, so that they are safe to be given to the patients. There is still uncertainty regarding service recipients at beauty clinics whether they are categorized as patients or as consumers who use services. This is related to the protection that must be given to the users of beauty clinic services. It is necessary to design a legal protection construction for beauty clinic service users in the perspective of protecting constitutional rights as citizens. Protection of service users is needed in terms of health insurance and their rights in consumer protection.

To open beauty clinic business, a business license from the Health Department must be obtained. The establishment of a beauty clinic requires two types of permits, namely a license to establish a clinic and an operating license. Beauty clinic is one part of health facilities which is regulated in Government Regulation Number 47 of 2016 concerning health facilities. Beauty clinics offer dermatology services. Dermatology itself comes from the Greek word "derma" which means skin. In medical science, dermatology is a branch of medical science that studies the skin and the parts that are directly related to the skin such as hair, nails, sweat glands and so on. Common beauty treatments are performed at beauty clinics. Common types of treatments performed by Beauticians include: Chemical peeling is a treatment that is generally performed on the facial skin to remove wrinkles and scars, acne and black spots on the skin; Dermabrasion is a treatment process with a method similar to chemical peeling which aims to remove dead skin cells on the face. With this treatment process, the patient can remove wrinkles on the face; Botox injection is a skin treatment using botulinum toxin which is injected into the patient's facial skin. Treatment methods with botox injections work by temporarily paralyzing and relaxing facial muscles, so that they can make the face firmer and reduce wrinkles on the face; Thread planting, a beauty treatment technique using the thread planting method is a skin care procedure by planting threads in the subcutaneous tissue that aims to stimulate the formation of collagen; therefore, it can tighten the skin supporting tissue. With this technique, the patient's facial skin can look firm and youthful; Dermal Filler is a beauty treatment technique that is carried out by injecting liquid or gel which contains certain substances that can fill the lower layers of the skin so that the skin surface rises and the wrinkles on the face become smoother. Treatment with dermal filler is a temporary treatment that must be done by the patient gradually and continuously depending on the level of needs of the patient's facial skin; Laser

Variabel Intervening (Studi pada Klinik Kecantikan Cosmedic Semarang),” (2016) 5: 3 Diponegoro Journal of Management, 997-1009.

resurfacing therapy is a form of skin care carried out at a beauty clinic that aims to smooth the facial skin that has scars or acne scars that interfere the appearance of the patient. Therapy is done by means of lasers on the face which can be used to tighten facial skin and slow down the aging process of the skin.¹⁷

In the Regulation of the Minister of Health No. 9 of 2014 concerning clinics states that clinics are health service facilities that provide individual health services by providing basic and/or specialist medical services. Clinics, including beauty clinics, to be able to operate must meet licensing requirements. Doctors who work in beauty clinics are doctors who have a license to practice medical beauty care, which are dermatologists or licensed aesthetic doctors. To acquire expertise as an aesthetic doctor is generally carried out by medical graduates who then undertake special education in the field of beauty to obtain education in the field of skin health and beauty. Education in the field of aesthetic medicine provides education both in theory and practice so that graduates from aesthetic medicine can have expertise in that field. In providing services at a beauty clinic, a dermatologist or an aesthetic doctor has the authority to; a. conduct interviews with patients, b. perform a physical and mental examination of the patient; c. determine the type of examination that supports the patient's needs; d. establish or make a diagnosis of patient complaints; e. perform treatment or care for the patient; f. write prescriptions for drugs or medical devices needed to support the patient's needs; g. make and issue a doctor's certificate; h. store medicines which by the provisions of the regulations can be carried or stored by a doctor; i. perform compounding, mixing and dispensing drugs to patients.¹⁸

The service process at a clinic, including a beauty clinic, is required to use the services of a doctor as a medical professional and a beautician as an executor. A doctor who provides health services in addition to having obtained an academic degree as a doctor, also before opening a practice is required to have a practice permit issued by an authorized official. This is regulated in Law Number 29 of 2004 concerning Medical Practice.¹⁹ In supporting their work, beauty clinic services are equipped with medical devices that are part of consumer services in the treatment process. In Article 1 number 5 of Law Number 36 of 2009 concerning health mentions the definition of medical devices as instruments, apparatus, machines, and/or implants, which do not contain drugs that are used to prevent, diagnose, cure and relieve disease, treat sick people and restore health

¹⁷ Andi Tri Purnama Sari, "Kecantikan di Kalangan Mahasiswi." (2016), Undergraduate Thesis, Universitas Hasanuddin.

¹⁸ Difa Wardatul Izza & Salma Zavira, (2020). Perlindungan Hukum bagi Konsumen Klinik Kecantikan atas Penggunaan Kosmetik Racikan Dokter. (2020) 25: 2 Perspektif, 107-119, <https://doi.org/10.30742/perspektif.v25i2.778>

¹⁹ Nirwana Nirwana, "Tanggung Jawab Dokter terhadap Kewajiban Menyimpan Rahasia Kedokteran Responsibilities of Liability Saving Secret Doctor of Medicine," (2013), Thesis, Universitas Hasanuddin.

in humans, and/or form structures and improve body functions.²⁰ Another support for beauty treatments at beauty clinics is beauty products.

Beauty products provided by doctors at beauty clinics must meet standards and be under the supervision of the Food and Drug Supervisory Agency (BPOM) which is regulated in Minister of Health Regulation Number 1175/Menkes/PER/2020 concerning cosmetic production permits which include supervision of narcotic products, psychotropic substances, addictive substances, traditional medicines, cosmetics, complementary products and supervision of food safety and hazardous materials.²¹ Regulation of the Food and Drug Supervisory Agency Number 3 of 2022 concerning Technical Requirements for Cosmetic Claims article 1 number 1 defines cosmetics as ingredients or preparations intended to be used on external parts of the human body such as the epidermis, hair, nails, lips and genital organs, the exterior, or the teeth and mucous membranes of the mouth, especially for cleaning, perfuming, changing appearance, and/or correcting body odor or protecting or keeping the body in good condition. Article 2 of the Regulation of the Head of the Food and Drug Supervisory Agency Number 18 of 2015 concerning Technical Requirements for Cosmetic Ingredients states that the standard of ingredients used in cosmetics is that cosmetic ingredients must meet the quality requirements as stated in the Indonesian cosmetic codex or other standards recognized or in accordance with the provisions of laws and regulations. The cosmetic ingredients are materials that are allowed to be used in the manufacture of cosmetics. Apart from the aforementioned cosmetic ingredients, certain ingredients are prohibited from being used in the manufacture of cosmetics.

The interests of consumer protection for health clinic service users are protected by Law Number 8 of 1999 concerning Consumer Protection. Article 7 letter d states that business actors are obliged to guarantee the quality of the goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services.²² Legal protection for consumers who use beauty clinic services is protected by Law Number 8 of 1999 concerning Consumer Protection, the Civil Code, Law Number 36 of 2009 concerning Health, Law Number 29 of 2004 concerning Practices Medicine, and Regulation of the Minister of Health Number 9 of 2014 concerning Clinics. Consumer protection includes protection of patient privacy.

²⁰ Talitha Miranda, “Tanggung Jawab Rumah Sakit terhadap Peralatan Medis yang Tidak Layak pada Saat Pengoperasian Dikaitkan dengan Undang-Undang Nomor 44 Tahun 2009 Tentang Rumah Sakit,” (2018), Undergraduate Thesis, Fakultas Hukum Universitas Pasundan.

²¹ Yulia Susantri, Sri Walny Rahayu, & Sanusi Sanusi, “Pencantuman Informasi pada Label Produk Kosmetik oleh Pelaku Usaha Dikaitkan dengan Hak Konsumen,” (2018) 2: 1 Syiah Kuala Law Journal, 113-131, <https://doi.org/10.24815/sklj.v2i1.10591>

²² Jihan Nur Rahmah, “The Right to Information In Regards to Cosmetic Usage Practiced by Beauty Clinics Based on Law Number 8 of 1999 With Consumer Protection,” (2019) 23: 1 Reformasi Hukum, 19-37, <https://doi.org/10.46257/jrh.v23i1.55>

Privacy demands the protection of information about a person, requires the accuracy of information and the absence of unauthorized use or disclosure of information.²³ Sulistyo Basuki stated that information ethics is a branch of ethics that focuses on the relationship between creation, organization, dissemination and use of information as well as ethical standards and moral codes that govern human behavior in society. Information ethics relates to topics such as privacy, intellectual property rights, fair representation, non-maleficence.²⁴ In the context of copyright protection, the party taking photos or videos is seen as a violation of copyright, especially economic rights. Article 12 paragraph (1) of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright states that Everyone is prohibited from making Commercial Use, Reproduction, Announcement, Distribution, and/or Communication of Portraits made for the purposes of commercial advertisements or advertising without approval written from the person photographed or his heirs.

The importance of maintaining privacy is one form of consumer protection in beauty clinics. In a medical setting, privacy needs to be compromised, to keep the patient's private life from being too disturbed. Everyone has different standards in the protection of privacy, this is related to how they want to be treated. Attention must be paid to determining which personal information patients wish to keep confidential and which may be disclosed to others.²⁵ Ethically, everyone is obliged to respect the privacy of others. People of integrity are guided by a set of core principles that empowers them to behave consistently to high standards. The core principles of integrity are based on virtues, such as: compassion, dependability, generosity, honesty, kindness, loyalty, maturity, objectivity, respect, trust and wisdom. Virtues are the valuable personal and professional assets employees develop and bring to work each day.²⁶ Professional ethics is the philosophical foundation whose position is actually above the rule of law or agreements to protect patient privacy.

Non-Disclosure Agreement And Confidentiality Agreement In The Indonesian Civil Code

In Indonesian Civil Law, in making an agreement, the parties are given the freedom to determine the clauses that will be included in the agreement. It is included in setting the clause regarding the confidentiality agreement in the employment agreement. The content in the confidentiality agreement clause must refer to the provisions of Article 1320 of the Civil Code. Non-

²³ Wahyudi Sekedang, "Etika Informasi dalam Menjaga Kerahasiaan Dokumen Rekod Medis pada Puskesmas Biak Muli Aceh Tenggara," (2020) 2:1 Al-Kuttab: Jurnal Kajian Perpustakaan, Informasi dan Kearsipan, 32-40, <https://doi.org/10.24952/ktb.v2i1.2519>

²⁴ Sulistyo Basuki, "Etika Informasi," (2019) 26: 1 Media Pustakawan, 1-8, <https://doi.org/10.37014/medpus.v26i1.171>.

²⁵ Teguh Najoran, "Analisis Hukum Pelanggaran Kode Etik Mengenai Rahasia Kedokteran," (2022) 10: 6 Lex Administratum.

²⁶ Edie West, "Ethics and Integrity in Nursing Research," (2020) Handbook of Research Ethics and

disclosure Agreement is an agreement (generally a work agreement) in which there is a prohibition for employees or workers to disclose important information belonging to the company.²⁷ Data regarding patients, either in the form of medical records or photos and videos of patients, is information owned by the company which in this right is a beauty clinic.

In the confidentiality agreement, it is necessary to determine the limits so that the confidentiality agreement made by the company can be based on the principle of justice. The principle of justice in the employment agreement is based on the provisions of Article 52 paragraph (1) of Law Number 13 of 2003 concerning manpower. The importance of setting the boundaries in the confidentiality agreement is intended so that the contents of the agreement do not violate the norms of morality, religious norms and public order.

Important company information becomes information that is required to be kept confidential. "Confidential information" is about appropriate matters or information in certain forms both in electronic, oral and written formats that are deemed obligatory to be kept confidential relating to business, business activities, finance, marketing strategies, business methods, technical information, terms and conditions that have been stipulated and determined by the company. The confidentiality agreement contained in the work agreement clause is made with reference to the provisions of Article 1338 of the Civil Code which stipulates that "all agreements made in accordance with the provisions of the legislation apply as law for those who agree in the agreement". Agreements or agreements that have been agreed upon by several parties cannot be canceled or withdrawn unilaterally without the consent of the other party or for certain reasons justified by law. One of the initial steps or the first step that can be taken is to make arrangements in the cooperation agreement to keep confidential information under a non-disclosure agreement.

Even though it has been protected by the Trade Secret Law and based on the principle of propriety, the confidentiality of the company's data should not be disclosed to the public, regarding the confidentiality of this company data, it is better to express it explicitly in the work agreement. One specific form of an employment agreement is a non-disclosure agreement. A non-disclosure agreement is the foundation contract of a legally binding professional relationship. For employees or anyone who signs it, the information they get in the relationship should not be shared. Even if employees have stopped working, the information they receive during their tenure remains confidential and is legally binding on them. Confidentiality of information or data that should be kept confidential does not end when the work agreement is completed/expired.

Secrets in business are common to every company known as trade secrets. Regarding trade

²⁷ Kresno Adi Nugroho, Djumadi Djumadi, & Noor Hafidah, "Akibat Hukum Penolakan Penandatanganan Perjanjian Kerjasama (Non-Disclosure Agreement) oleh Pekerja yang Mengundurkan Diri," (2022) 1: 3 Notary Law Journal, 227-246, <https://doi.org/10.32801/nolaj.v1i3.27>

secrets themselves, it has been regulated in Law Number 30 of 2000 concerning Trade Secrets. Trade secrets have an indefinite period of time, as long as the right owner maintains confidentiality.²⁸ In Article 3 of the Law on Trade Secrets, information that includes trade secrets fulfills at least 3 elements, including being confidential, where the information in question can only be known by certain parties, not for the general public; has economic value, confidential information referred to in trade secrets in business activities has economic value; the information is kept confidential by going through the ownership steps that have been obtained properly. Non-disclosure agreement, as an agreement that contains an agreement to maintain confidential information aims to protect the company.²⁹ There are three main functions of a non-disclosure agreement, namely:

1. Protecting Patents. By including a non-disclosure agreement clause, the company can ensure business confidentiality and patent rights owned by the company are maintained.
2. Protect Sensitive Information. The non-disclosure agreement clause serves to protect sensitive and confidential information belonging to the company. The parties who have signed the agreement, both employees and partner companies, are required to maintain all forms of company information by imposing sanctions for the violated party to resolve the problem using litigation.³⁰
3. Provide clear information boundaries. The non-disclosure agreement clause helps the company in providing clear boundaries for employees and partner companies, regarding confidential matters and matters that can still be conveyed to third parties.

In Article 1 paragraph (3) of Law Number 30 of 2000 concerning trade law, trade secrets get protection if the information is confidential, has economic value, and is kept confidential through efforts justified by the applicable laws and regulations.³¹ The provisions of the article are explained further in Article 3 paragraph (2) to Article 3 paragraph (4) which contains confidential information if the information is only known to certain parties or is not known in general by the public; confidential information is considered to have economic value if the confidential nature of the information can be used to carry out business activities or is commercial in nature and can increase the company's economic profits; Information is considered to be kept confidential if the owner of the company has taken appropriate steps in accordance with the applicable laws and regulations.

²⁸ Syahriyah Semaun, "Perlindungan Hukum terhadap Rahasia Dagang," (2011) 9: 1 DIKTUM: Jurnal Syariahdan Hukum, 30-42, <https://doi.org/10.28988/diktum.v9i1.277>

²⁹ Nugroho, Djumadi, & Hafidah, loc. cit.

³⁰ Syarif Mahila, "Perlindungan Rahasia Dagang dalam Hubungannya dengan Perjanjian Kerja," (2010) 10: 3 Jurnal Ilmiah Universitas Batanghari Jambi, 16-24, <http://dx.doi.org/10.33087/jiubj.v10i3.30>

³¹ Nurul Hidayah, "Penggunaan Klausula Baku dalam Non-Disclosure Agreement Ditinjau dari Asas Itikad Baik," (2022), Thesis, Universitas Gadjah Mada.

Non-Disclosure Agreement And Confidentiality Agreement To Maintain Confidentiality Of Patient Information

Social media enhances professional networking and education, organizational promotion, patient care, patient education, and public health programs. However, on the other hand, it also presents potential risks to patients regarding poor information distribution, damage to professional image, violation of patient privacy, violation of professional personal boundaries, and licensing or legal issues. The misuse of social networks by healthcare workers can have dire consequences, ranging from seemingly simple problems such as affecting the reputation of doctors to serious legal problems. Maintaining professionalism and maintaining the concepts of confidentiality and privacy is very important.³² In connection with the potential violation of patient privacy, a legal framework is needed that can protect patient privacy on the one hand, and the protection of the clinic's reputation on the other.

The signing of the confidentiality agreement begins with the existence of a working relationship, both between the entrepreneur and the worker/employee as well as the company and partner companies. The work agreement is one form of standard agreement that has been prepared by the company, where in the standard work agreement the company has determined the contents of the agreement and the worker only signs or does not sign as a form of worker approval or rejection. Confidentiality agreements have legal force to be used as a legal basis in the event of a violation of trade secrets. If one of the parties violates the contents of the confidentiality agreement, a default has occurred. If this happens, a default lawsuit can be filed because there is a contractual relationship between the party causing the loss and the party experiencing the loss.³³

In relation to businesses engaged in health services, maintaining patient confidentiality is an important matter and becomes part of company secrets. In the work agreement, to ensure the preservation of trade secrets and other matters determined by the company to be part of the company secrets, the agreement is generally in written form. The agreement was made with the aim of keeping important information and/or trade secrets of the company from being disseminated or disclosed to the public. The inclusion of trade secret clauses and company secrets which are the obligation of workers to maintain such secrets is intended so that workers in carrying out their work do not disseminate such information that can harm the company. There are sanctions imposed if workers violate what has been determined in the confidentiality agreement.

Confidentiality agreements at beauty clinics include maintaining the confidentiality of

³² Apnizar Sapoeetri & Sri Tunggul Pannindriya. "Geliat Interaksi Sosial Dokter Masa Kini Melalui Media Sosial Instagram," (2019) 5: 2 Bricolage: Jurnal Magister Ilmu Komunikasi, 121-140, <http://dx.doi.org/10.30813/bricolage.v5i2.1884>

³³ Ni Kadek Ayu Sucipta Dewi & I Wayan Novy Purwanto, "Pengaturan Confidentiality Agreement Terhadap Perlindungan Rahasia Dagang," (2018) 6: 11 Kertha Semaya: Journal Ilmu Hukum, 1-19.

information from patients between employers and workers at beauty clinics. Meanwhile, between workers and users of beauty clinic services, there is no written agreement regarding confidentiality as intended. There is a form of agreement that is used as a bond of agreement between the doctor and the patient, the agreement is called a therapeutic agreement. Therapeutic agreements are agreements made between doctors or health care providers with patients or users of health services that authorize doctors to carry out activities to provide health services to patients based on the expertise and skills possessed by the doctor.³⁴ In the context of this study, it is an agreement between a beauty clinic patient and a doctor who practices in the clinic. The relationship that arises between the patient and the doctor gives birth to rights and obligations, but there is also a legal responsibility relationship between the doctor and the patient. Availability of Standard Operating Procedures (SOP) is regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 1438/MENKES/PER/IX/2010 concerning Standards for Medical Services Chapter IV, namely Standard Operating Procedures. Article 10 states that the Head of health care facilities must initiate the preparation of Standard Operating Procedures (SOP) in accordance with the type and strata of the health care facility they lead.

In several cases, beauty clinic patients feel disadvantaged due to the actions of beauty clinic workers who broadcast or share photos or videos of themselves doing beauty treatments through social media as a promotional medium for the beauty clinic. As previously described, beauty clinic patients need privacy and comfort, including security in performing beauty treatments. Patients do beauty treatments because they feel that some parts of themselves want to be perfected to support their beauty; therefore, the actions taken by beauty clinic workers who broadcast themselves doing treatments so that changing their physical form is considered detrimental to the patient such as patients who perform rhinoplasty, liposuction, and others. As regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 36 of 2012 concerning Medical Secrets in article 4, it has been stated as follows: paragraph (1), all parties involved in medical services and/or using data and information about patients are obliged to keep medical secrets. In paragraph (2) it is explained that all parties as referred to in paragraph (1) include doctors and dentists as well as other health workers who have access to patient health data and information; head of health service facilities; personnel related to the financing of health services; other personnel who have access to patient health data and information in health care facilities; legal entities/corporations and/or health service facilities; and students/students in charge of examination, treatment, care, and/or information management in health care facilities. The obligation to keep medical secrets applies forever, even if the patient has died.

From the provisions of the article, without having to be preceded by a confidentiality

³⁴ Bayu Wijanarko & Mudiana Permata Sari, "Tinjauan Yuridis Sahnya Perjanjian Terapeutik dan Perlindungan Hukum Bagi Pasien," (2014) 2: 4 Privat Law, 1-14.

agreement with the patient, beauty clinics are required to maintain confidentiality and information from patients. Patient confidentiality must be maintained by doctors and services in medical treatment carried out by patients, because if this is violated, it becomes a form of betrayal of trust and patient privacy. In the universal declaration on bioethics and human rights initiated by UNESCO in article 9 states that "the privacy of a person and the confidentiality of his personal information must be respected, the use of information from a person must be in accordance with what is agreed and in accordance with international law on human rights". This relates to the privacy of the patient.

Privacy itself is a person's right to withhold information about himself from disclosure to others. Privacy can also be interpreted as the right of a person not to be disturbed or interference from other parties that he does not want. Privacy demands protection of himself and no disclosure of his information without prior permission. Similarly, it is the relationship between beauty clinics and their patients. The main basis that is established is a relationship of trust, where patients come because of trust in the professional abilities of the experts at the beauty clinic and entrust them to perform beauty services for themselves, including maintaining the confidentiality of the actions, information and beauty treatments performed. Confidentiality of the beauty clinic patient that must be maintained includes everything that is conveyed by the patient; and all information known by workers from beauty clinics regarding patients when conducting examinations or handling patients' beauty treatments.

In Government Regulation Number 46 of 2014 concerning Health Information Systems, various matters related to patient privacy are regulated, namely health information, data and information systems. Health information is health data that has been processed into forms that contain values and meanings that are useful for increasing knowledge in supporting health development. Health data are numbers and facts of events in the form of information and signs that are relatively not meaningful for health. Health information system is a set of arrangements that include data, information, indicators, procedures, devices, technology and human resources that are interrelated and managed in an integrated manner to direct actions or decisions that are useful in supporting health development.

Health data and information can be open or closed; therefore, it is the responsibility of beauty clinic workers to maintain and prevent the disclosure of privacy information from patients, including broadcasting photos and videos of patients doing beauty treatments without the patient's permission itself. Privacy security in question includes the protection of physical and electronic data relating to the integrity, availability and trustworthiness of patient information. The existence of the Non-disclosure Agreement will clearly determine the obligations of the parties working at the beauty clinic to maintain patient privacy.

Protection of patient privacy is an obligation of health services to protect patient rights. The

act of documenting the patient's condition is not a violation of Article 31 of Law Number 19 of 2016 concerning Electronic Transactions as long as the action is not followed by the transmission of electronic information. However, the act of recording will become part of a criminal act if the recording is accompanied by the act of distributing the recording. Protection of patients who use beauty clinic services is important with the number of developing beauty businesses. In terms of such protection, the government also participates in providing certainty of legal protection to beauty clinic patients. The presence of the government in this case is related to the implementation of the constitutional right to legal protection and the right to health so that beauty clinic business people obey the applicable legal rules.

3. Conclusion

Confidentiality of information from patients is something that must be maintained by various parties who can access information about patients. This also applies to users of beauty clinic services that can be equated with patients. Users of beauty clinic services can be equated with patients because as stipulated in the regulation of the Minister of Health, beauty clinics are health medical services carried out by professionals in the field of skin health and beauty in general. This equation makes the provisions stipulated in the medical law, legislation and regulations of the Minister of Health apply to beauty clinics.

The actions of beauty clinic workers who broadcast patient information as a means of promotion without obtaining prior permission from the patient concerned are included as acts that violate the provisions on confidentiality of patient information. Companies in the field of beauty clinics, without making a prior confidentiality agreement, are obliged to maintain the confidentiality of patient information. However, the signing of a confidentiality agreement by an employee at a beauty clinic company can be used as a reference for the fact of integrity of the beauty clinic worker to safeguard all forms of information from the company, including patients. For things that are violated in the confidentiality agreement, sanctions can be imposed based on the provisions set by the company or referring to the provisions of the applicable laws and regulations.

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