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### THE PROTECTION FOR CONSUMERS OF DENTAL PROSTHESIS CARE

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#### **ABSTRACT**

This study examines about the legal protection for consumers of dental prosthetic care. The aim of this study is to reveal fundamentally how the liability of dental artisans for consumers who experience disadvantage in using the services of that dental artisans. The researcher uses legal research method. The result of this study shows that the Government through the Ministry of Health has regulated the dental prosthesis care into the Regulation of the Minister of Health No. 39.2014. Meanwhile, if there is a detrimental violation to the consumer, hence, this dental artisan will be sentenced through Article 62 section (1) of the consumer protection act (UUPK). And if the dental service business does not have a permission, it will be subjected to a criminal penalty in accordance with Article 78 of the Medical Practice Act. The supervision of the dental artisans practice in Indonesia does not seem strict although this practice is a health practice which has a high risk of malpractice to the patients.

#### **INTRODUCTION**

The Basic Health Research Result (RISKESDAS) in 2017 showed that the Indonesian population who realized the problem of their teeth and mouth was only 23%. Afterward, among those who realized it, only 30% received the treatment from the dental professionals. It means that the will and ability to obtain a dental service is very low which is 7%. The household health survey (SKRT) in 2001 showed that periodontal disease was the second most common oral and dental disease of  $\pm 70\%$ ;  $\pm 4-5\%$  of the population suffered from advanced periodontal disease which can cause tooth shake and release; and currently it is found the most at a young age in which one of the causes is tartar (Angraeni, 2013).

To achieve optimal dental and oral health, regular maintenance needs to be done, namely by reducing sugar consumption and sweetener alternatives, performing tooth brushing procedures properly, using dental floss or floss after meals, meeting the recommended fluorine levels by drinking water or add fluorine to food, and the most important thing is to check your teeth regularly to the dentist (Budiman, 1996)b.

In 1969, the government through the Ministry of Health issued the Regulation of the Minister of Health No. 53/PDK/I/K/1969 regarding the Registration and Granting Permission in Performing the Dental Work (referred to Permenkes 53/1969) (Adiani and Wairocana, 2013). Afterward, in 1989, the Regulation of the Minister of Health No. 339/MENKES/PER/V/1989 regarding the Dental Work (referred to Permenkes 339/1989) regulates the permission renewal of dental artisans who have previously obtained permission based on the Permenkes No. 53/1969. However, due to the existence of dental and oral health service is not the authority of dental artisan, the government eliminates the dental work in 2011 by revoking Permenkes No. 339/1989 through the Regulation of the Minister of Health No. 1871/MENKES/PER/IX/2011 (referred to Permenkes No. 1871/2011) regarding the Revocation of Regulation of the Minister of Health No. 339/MENKES/PER/V/1989.

Afterward, based on the decision of the Constitutional Court No. 40/PUUX/2012 (referred to the decision of MK No. 40/2012) that the dental work which has permission is considered not violating the Medical Practice Act and as the alternative for the society to receive that affordable dental health service, hence, the dental work is recognized once more. Thereby, in order to provide protection to the community, the Regulation of the Minister of Health No. 39 of 2014 was issued (referred to Permenkes 39/2014) regarding the Development, Supervision and Licensing, as well as the Dental Work.

Practically, the practice of dental initially only accepts the making of artificial teeth, but now it has increased by accepting the installation of artificial crown until dental filling without considering to the medical rules because the dental artisans never learn it before (Rahmayani and Ifwandi, 2012). There are dental artisans who use the tools which are not suitable with the standard of the dental work equipment; and there are also those who do not have permission to open the dental practice.

According to Act No. 39/1999 regarding the Indonesian human rights, the protection is a defense of human rights. Because every human has the same rights and obligations, hence, every single human also has the similar right for protection (Prakoso and Setyaningati, 2018). Because the weak consumers position, hence, it has to be protected by law in order to provide that protection towards society (Kristiyanti, 2008). The provision of law to protect Indonesian consumers is realized by the formation of the Act No. 8 of 1999 regarding the Consumers Protection/UUPK. According to Act No. 39/1999 regarding Indonesian human rights, the protection is a defense of human rights. Because every human has the

same rights and obligations, hence, every single human also has the similar right for protection.

The aim of this research is to find out the revocation of dental artisan service license due to the violation of duty and function. Afterward, try to reveal the dental liability to the consumers disadvantage due to the dental violation of duty and function.

This study is expected to be able to provide benefit in the form of clarity in the legal protection provided by the Indonesian government to the dental artisan consumers in the Indonesian jurisdiction. Moreover, it is also expected to give an education of protection guarantee towards the dental consumers so that they feel safe in their dental control service.

## **RESEARCH METHOD**

This research uses the type of legal research. The legal research is conducted to solve the existed legal issue by identifying, reasoning, analysing, and giving solution to that problem. The research approaches used in this study are the statute approach and the conceptual approach. The statute approach conducted by examining the correlated legislations and regulations with the existed legal issue. Finally, the conceptual approach is an approach which comes from the views and doctrines that develop in the legal studies (Marzuki, 2005).

### ***Identifying the Dental Work***

The beginning of dental artisan education at the time of Dr. Moestopo, who served as the Head of the Jaw Surgery Division at the Army's Hospital (now RSPAD Gatot Subroto), had the idea to set up a dental artisan course because many people had broken and no teeth which use the dental service. Aware of the limited ability possessed by the dental artisans, Dr. Moestopo in 1952 established the "Dental Health Course of Dr. Moestopo" in his own house on Jalan Merak 8, Jakarta. The course lasts for two hours, from 15:00 to 17:00. The aim is to improve the ability and skill of dental artisans throughout Indonesia which at that time are around 2,000 people. In that course, Dr. Moestopo teaches simple things according to the minimum criteria of Dentistry which are hygiene, nutrition, and simple anatomy (Senat Mahasiswa FKG Prof. Dr. Moestopo, 2016).

In 1957, the course was developed into the "Intellectual Dentist Course" with the requirement that students must graduate from junior high school (SMP), and undergo a minimum of one year's education. Subsequently in 1958, it was developed into "Dental College of Dr. Moestopo" which consists of two majors namely Dentist School and Middle Dentist School. Until in 1961, it was upgraded to the Faculty of Dentistry, so that the education of dental artisans was stopped to meet the needs of the society in using the dentists service (Universitas Prof. Dr. Moestopo (Beragama), 2016).

A lot of consumers use the dental service. Based on the research in the Treman village, as much as 82.24% of the community agreed to the making of dentures by the dental artisans<sup>28</sup>. The public has the perception that dentures made by dental artisans are useful to restore the function of mastication, speech, and aesthetics of missing teeth. In that study, it is showed that the public had a perception that dentists do not serve the making of dentures. Thereby, it is only in charge of serving people with toothache. Whereas 74.76% of the public had the perception that dental artisans were competent in making artificial teeth (Angraeni, 2013).

Provisions regarding dental work standards, not much different from the field of dental work. In terms of dentistry, an individual protection measure, sterilization of materials and tools and work areas, and proper handling of waste are universal precautions or called Universal Precaution. Universal Precaution is the action of health workers so that in carrying out their work does not cause cross infection, which is an infection from a doctor (Sumawinata, 2004).

Generally, an application for a permission must take certain procedures determined by the government as the licensor. The dental technician, who will open his/her practice, should obey the procedures and conditions set out in Permenkes No. 39/2014. Based on the request to issue a dental craftsman permission as referred to in article 4 section (1) of Permenkes No. 39/2014 states that the regency/city health office conducts visitation and data verification.

According to Article 3 section (1) letter h stated that one of the requirements for obtaining a dental artisan license is a recommendation from the Head of Regency/City Health Service or a designated official, or based on section (4) if the Dental Builder License is issued by the district/city health office, the recommendation requirements referred to in paragraph (1) letter h are not required. In the Surabaya city itself, there was no dental artisan who took care of licensing regarding the dental work practices at the Department of Health. Although if someone takes care of the licensing, Ms. Retno as the Head of Institutional and Human Resources Department of the Surabaya City Health Office, stated that neither the Head of Surabaya City Health Office nor the Surabaya City Health Office himself dared to issue a letter of recommendation and permission for a dental artisan in Surabaya. This is related to the work of dental artisans who have no educational standard and cannot be tested for their competence. Thereby, it raises doubts for the Head of Surabaya City Service to give recommendation as well as the Surabaya City Health Service to issue a dental artisan permission.

The guidance on the work of dental artisans is based on the consideration of the ruling of Constitutional Court No. 40/2012, aiming that dental artisans have a basic knowledge of dentistry so that they can conduct the work in accordance with applicable regulation as the Government does for the birth attendants who assist the birth. Agus Salim stated that the guidance needs to be conducted so that the dental artisans know the limitations in conducting the work in accordance with the authority regulated in Permenkes No. 39/2014. The guidance is conducted by the

minister, governor, regent/mayor, regional apparatus and/or the dental artisan organization in accordance with their respective authorities. Article 10 section (2) Permenkes No. 39/2014 states that coaching is directed to guarantee protection to the community. Furthermore, the guidance carried out is regulated in article 10 section (3) which can be in the form of periodic supervision, and briefing and/or regular counseling.

Article 10 section (4) of Permenkes No. 39/2014 explains that supervision is intended so that the dental artisans do not work outside the authority stipulated in Permenkes No. 39/2014. The supervision is also intended to control the work of dental artisans in order to conduct the work in accordance with the set standards by the Government and provide sanctions to dental artisans who violate or abuse their work. The supervision is conducted by the minister, governor, regent/mayor, regional apparatus and/or dental artisan organization in accordance with their respective authorities.

### *The Case of Violation and Sanction Against the Dental Artisans*

The case handled by drg. Heni Tri Setiyani is a patient who came with the condition of permanent dentures installed by a dental artisan. Those dentures should be able to be removed for cleaning twice a day and not to be worn during sleep. After the dentures made by dental artisan were removed by drg Heni, it could be seen that the gums became seriously inflamed, and there were residual roots and broken teeth that were immediately overwritten by the dentures. This results in a buildup of plaque to irritate the soft tissues, halitosis (bad breath), and inflammation of the gingiva (gums).

A junior high school student, namely Tasya Aulia Monika, in Garut Regency was also became a victim of the dental artisan. After being put on braces by a dental artisan, she experienced swelling in her cheeks and growing lumps that resemble malignant tumors in the gums.

Another problem encountered on the dental artisan from Madura named Yanto who opened his practice in Durian street, Jagakarsa, Jakarta Selatan<sup>15</sup>. It is known that one of the used tools to handle the consumers is mini drill – a tool for perforating PCB (printed circuit boards) electronic equipment. This matter absolutely violated the standard of dental artisans in accordance with article 8 of Permenkes No. 39 of 2014 regarding the implementation of work, place, equipment, and other matters as the guideline for the implementation of dental work.

Afterward, the problem regarding the dental artisan licensing also exists. In Kebumen, 23 dental artisans who opened practice in a number of places are raided by the Civil Service Police Unit (Satpol PP). The control of those dental artisans is because they do not have a license to practice, hence, it is still considered as illegal. From the 5 dental artisans in Kebumen Regency, only 14 of them who have the applicable license in which a dental artisan is allowed to practice, but should have

a competency as well as official license from the local government. The conducted service is also attach the dentures only, not allowed to handle the other treatments, such as, pulling out, patching cavities, and installing stirrups.

### ***The Dental Artisans' Liability for the Consumers Disadvantage***

Article 1233 of BW stated that the engagement was born because of an agreement or the law. Regarding the agreement stipulated in article 1313 of the Civil Code (BW) stated that an agreement is an act which one or more people commit themselves to one or more people. Article 1329 of the Civil Code (BW) differentiates the agreement into two types, namely nominate agreement and innominate agreement. The nominate agreement is an agreement regulated in Book III Chapter V to Chapter XVIII of the Civil Code. Whereas the innominate one is an agreement which exists, grows, lives, and develops in the society. In the legal relation between the dental artisans and consumers, often exists the sale and purchase agreement, namely in the form of manufacturing and/or installation of removable dentures made from heat curing acrylic. Thereby, it can be categorized as the nominate agreement.

According to Article 1 No. 2 of the Consumers Protection Act, what is meant by consumer is every person or user of goods and/or services which is available in the community, whether for the benefit of themselves, their families, other people, other living things, and not for trading. In the explanation of that article, it is stated that in the economic literature is known the final consumers and the intermediate consumers. The final consumers are the final users of a product. Whereas the intermediate ones are the consumers who use a product as the part from the production process of another product. The definition of consumers in this act is final consumers.

In Indonesia, the consumers rights are explained in article 4 of the Consumers Protection Act. If it is correlated with the consumers rights, then the act of dental artisans which violate the authority provision is considered as a violation towards the consumers rights. The consumers rights which are violated by the dental artisans are the right of security and safety, the right to obtain information, the right to be treated properly and honestly.

In act 1 No. 3 of the Consumers Protection Act explained that “the businessman is every individual or business entity, whether in the form of an established and domiciled legal entity or conducting activity within the jurisdiction of the Republic of Indonesia, both individually and jointly through the agreement to conduct business activity in various economic fields.” The businessman has a right as regulated in article 6 of UUPK in performing his/her activity. Meanwhile, the obligation of businessman is regulated in article 7 of UUPK.

To resolve the dispute, Article 1 No. 8 of the Decree of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001 regarding the Duty Implementation and Authority of the Consumer Dispute Resolution Agency can be used. It stated that

consumers disputes are the disputes between businessmen and consumers who claim a compensation for the damage, pollution and/or those who suffer disadvantages due to consuming the goods and/or utilizing services. The UUPK provides the choice for disputing businessmen and consumers to pursue dispute resolution through the tasked institution in resolving the consumer and businessmen disputes, or through the general justice (Article 45 section (1) of UUPK).

The settlement of consumer disputes outside the court aims to reach an agreement in the form and amount of compensation and/or regarding the certain actions to guarantee that it will not happen again or that the disadvantage suffered by consumers will not be repeated (Article 47 of UUPK). It means that both of the dispute parties, namely the dental artisan and the injured consumers can settle that dispute through an agreement relating to the form and amount of compensation that must be borne by the dental artisan for the action that harms the consumers. In the explanation of article 47 of UUPK, it stated that the intended guarantee form is through a written declaration which states that the detrimental act will not be repeated again to the consumers.

If it is connected with the provision in act 45 section (4) of UUPK, then the dispute settlement through the court can be conducted only if that effort outside the court is declared unsuccessful by one or all dispute parties. The dispute settlement through the court is declared in article 48 that “the consumers dispute settlement through the court refers to the provisions regarding the applicable general court as well as the provision in Article 45.” It means that the consumers dispute settlement mechanism refers to the applicable procedural law, namely the Het Herziene Indonesisch Reglement (HIR) (in civil case) or the Criminal Code Procedures (KUHAP) (in a criminal case). However, in the consumers dispute based on article 23 of UUPK, the consumer submits a claim to the judiciary in the place of consumer. Regarding the proof of whether there is an error element in a criminal case or claim for compensation, in the UUPK the burden of proof lies with the businessmen (Article 22 of UUPK No. Article 28 of UUPK).

### ***The Criminal Sanctions for the Violation of Dental Work***

The dispute settlement which probably can be conducted in the case between dental artisans and the detrimental consumers is through the criminal law instrument. Due to the Permenkes of 39/2014 do not establish the criminal sanction, hence that detrimental consumers can sue based on the Article 62 section (1) of UUPK. It stated that the “businessmen who violate the provision as regulated in Article 8, Article 9, Article 10, Article 3 section (2), Article 15, Article 17 section (1) letter a, letter b, letter c, letter e, section (2) and Article 18 is sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp 2.00,000,000.00 (two billion rupiahs)”.

The dental artisan act has violated article 8 section (1) letter a of UUPK that the trade services that are not in accordance with the required standard and the

provision of the legislation (as stipulated in the authority of the dental artisans work in Permenkes No. 39/2014). The dental artisans who do not have license can be imposed a criminal sanction with regard to Article 78 of the Medical Practice Act which stated: “Every person who intentionally uses the tools, method, or other way by letting service towards the society which arises an impression that the person concerned is a doctor or dentist who has a doctor registration certificate or dentist registration certificate or a license for practice referred to in Article 73 section (2) shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp150,000,000.00 (one hundred and fifty million rupiah)”.

## CONCLUSION

The Permenkes No. 39/2014 has not yet reflected the principles of consumers security and safety as regulated in the UUPK. Regarding the violation of the duty authority and work function of dental artisans, the practice license of dental artisans can be revoked. That license revocation must be preceded by a written warning in accordance with the applicable regulations. Meanwhile the dental artisans who do not have a license to practice, may be subjected to a criminal sanction.

The consumers disadvantages are in the form of physical and material disadvantages. The form of physical disadvantages are irritation of soft tissue in the mouth, halitosis (bad breath), inflammation of the gingiva (gums), and swelling of the cheeks. Meanwhile the form of material disadvantages suffered by them are the price paid by the consumers in using the dental service, and the total cost of health care if they do a health care to doctor, dentist, or hospital. The liabilities of the dental artisans towards the disadvantaged consumers are the compensations in the form of refunds or health care.

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