

# **JURIDICAL ANALYSIS OF THE LEGAL RESPONSIBILITIES OF DENTISTS IN THEIR WORK AND THEIR AUTHORITY**

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## **ABSTRACT**

The job of a dentist is to make artificial teeth, namely removable artificial teeth made from acrylic material. However, in reality, there are still dentists who work outside their authority, such as filling teeth, extracting teeth, installing braces, dental *veneers* , *scaling* and *bleaching* . Many cases that harm the public as consumers and service users occur due to work done by dentists outside their authority, such as infections, cancer and even death. This is due to the fact that the work of dentists is only based on knowledge passed down from generation to generation, not based on formal education in dentistry .

The lack of public awareness of dental and oral health and the absence of government guidance and supervision of the work of dental technicians so that they work in accordance with applicable regulations have resulted in an increase in the number of cases that are detrimental to the community as recipients of dental services. The aim of this thesis is to review the legal perspective on the responsibilities of dentists in their work and their authority.

The method used in normative juridical research uses statutory, conceptual and comparative legal approaches. It can be seen from the research results that from a legal perspective, mistakes made by dentists who work outside their authority as regulated in Minister of Health Regulation Number 39 of 2014 cover several legal aspects, namely aspects of criminal law, civil law and state administrative law.

**Say Key : Responsibilities, Dentist, Rules**

### **A. Background of the problem**

Auctions have long been known by the public as a means of buying and selling goods, but in their development auctions have been used as a law enforcement tool , and as a means of resolving bad credit problems in a company, if the company is unable to settle credit after Execution is carried

out on the collateral that has been submitted. Auctions entered Indonesia with the arrival of the Dutch through a trading company called *the Vereenigde Oostindische Compagnie (VOC)* in 1750. The VOC created an auction system for Indonesian tea commodities, where this system is still used today in tea auctions in London.

Law Number 29 of 2004 concerning Medical Practice is the legal basis for dental practice in Indonesia. The aim of this law is to guarantee that dental practice services are only provided by dentists. In implementing and realizing the ideals of the Indonesian nation that the provision of dental health services is the core of various activities in health efforts carried out by dentists with high ethics and morals, as well as with the expertise and authority possessed by dentists which are continuously improved. quality through continuous education and training, certification, registration, licensing, as well as guidance, supervision and monitoring so that the implementation of dental practice is in line with the latest developments in science and technology.<sup>1</sup>

However, in reality, in society, there are dental practice services provided by other than dentists, namely dentists who often refer to themselves as dental experts and/or as providers of services for extracting teeth, filling teeth, installing braces, *scaling* , *bleaching* . , *veneers* are also carried out in beauty salons, where this causes harm to the community as recipients of dental services because it causes damage and endangers health. <sup>2</sup>Dentists, dental experts, and/or beauty salons have never received previous dental education, so all the procedures carried out are not in accordance with dental science and ignore health principles in order to gain profit. Considering that to this day the Indonesian nation and even the world are still struggling with Covid 19, of course the public needs to be protected to prevent this disease

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<sup>1</sup> Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice

<sup>2</sup>Fedi Gusnadi, Istiana Heriani, Muthia Septarina, Legal Responsibility of Dentists Who Perform Work Exceeding the Limits of Their Authority in View of Law no. 8 of 1999 concerning Consumer Protection, Eprints.Uniska, (2021): 1-14

from spreading through practices that ignore health principles such as the use of personal protective equipment (PPE) <sup>3</sup>.

Appropriate treatment in preventing or treating diseases related to dental and oral health must be provided to experts, namely dentists. This is because dentists are considered capable and have the capacity according to their competence to carry out dental and oral health efforts. The perception that arises in society is that the cost of dental care is unaffordable for lower middle class people, so dentists have become an alternative treatment for some people.<sup>4</sup>

Along with the development of science and technology, especially on social media, the installation of braces, *bleaching* and dental *veneers* has become popular among the public, especially teenagers and young people for the sake of a *trendy/fashionable lifestyle*. Where this work is also carried out by dentists outside the limits of their authority by offering cheap prices.<sup>5</sup> On the other hand, information is also circulating on social media regarding negligence in the work of dentists because they have carried out work outside their authority, such as prolonged illness, infection, cancer and even death caused by dental work that does not comply with standard medical procedures.<sup>6</sup> This makes the community's position as a victim even though most cases are not followed up legally. There are more than one thousand and sixty-five cases that have been documented on the Instagram account @ *campurtukanggigi* and the problems caused are very varied, even resulting in the victim's death.<sup>7</sup>

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<sup>3</sup>PB PDGI Covid-19 Task Force, 2020, Dentist's Guide in the New Normal Era, p 20

<sup>4</sup>Anisa Nurlaila Sari, Legal Analysis of the Responsibility of Dental Services According to Minister of Health Regulation No. 29 of 2014, *Jurnal Cepalo* 2 (1), (2018): 21-32

<sup>5</sup>Adelina Fitria Kusumawardani and Widodo Tresno Novianto, Crimes by Unscrupulous Dentists and Dental Care Service Providers in Surakarta, *Recidive Journal* 8 (2), (2019): 146-162

<sup>6</sup>Chaeunnisa, 2017, Putting false teeth at the dentist can cause migraines and cancer, <https://Www.Suara.Com/Health/2017/09/06/153900/Palsu-Teeth-In-Tukang-Gigi-Bisa -Migraines-To-Cancer>, (accessed January 26 2022)

<sup>7</sup>InstagramGaleriEdukasi@kortugi, 2022, <https://instagram.com/korbuatkanggigi?igshid=YmMyMTA2M2Y=> (accessed 26 January 2022)

This becomes more difficult to reveal because dentists often move from place to business and do not have a business license.<sup>8</sup> From the data that the author obtained from the Bintan Regency Modan Planting and Integrated Services Service, in the last 5 years there were no dentists who had obtained business permits or were registered in the Bintan regency area. The number of dentists who have opened businesses has not been recorded by the relevant agencies, so the Bintan District Health Service does not know for sure how many dentists work in the Bintan Regency area, because they have not officially collected data. The opposite happened to the number of dentists practicing in the Bintan district area recorded in the PDGI Bintan Branch in accordance with the number of dentists licensed to practice at the Bintan Regency Investment and One-Stop Integrated Services Service, in the last 5 years, namely 35 dentists.<sup>9</sup>

Based on the description above, the researcher wants to examine this matter which is contrary to the aim of the law itself, the aim of the law is to achieve the aim of the law, namely to uphold an orderly social order and uphold order and balance. It is hoped that by establishing a social order, the interests of humanity will be protected. To achieve this goal, the law is responsible for dividing rights and obligations between individuals in society, sharing power, and standardizing methods for resolving legal problems and maintaining legal certainty. This research will explore legal responsibility for the dentist so the researcher takes the title of the thesis as the final statement

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<sup>8</sup>Fedi Gusnadi, Istiana Heriani, Muthia Septarina, Legal Responsibility of Dentists Who Perform Work Exceeding the Limits of Their Authority in View of Law no. 8 of 1999 concerning Consumer Protection, Eprints.Uniska, (2021): 1-14

<sup>9</sup>PDGI Secretariat Data Tanjung Pinang Bintan Branch, <https://ertification.pdgi.or.id/> (accessed 05 February 2023)

## **B. Formulation of the problem**

Based on the description above, the problem formulation can be drawn as follows:

1. How to limit the authority of dentists and dentists so that there is no overlap in providing services?
2. Do the dentist's authority and responsibilities fulfill legal protection for patients?
3. What are the legal consequences for dentists who provide services outside their authority?

## **C. Research methods**

In carrying out this research, the researcher **used** a type of normative legal research. Normative legal research is conceptual legal research as contained in statutory regulations and conceptually existing in other legal rules that exist in society regarding a particular legal problem. In this research, researchers used a type of normative research, namely research carried out by reviewing statutory regulations or other regulations applied in resolving a particular legal problem. Normative research is often called doctrinal research where the object of study is are statutory regulatory documents and library materials which constitute basic data which in research science is classified as secondary data.<sup>10</sup> According to Soerjono Soekanto, legal research can be divided into:<sup>11</sup> Normative Legal Research, consisting of:

1. Research into legal principles
2. Research on legal systematics
3. Research on the level of legal synchronization
4. Legal history research
5. Comparative legal research

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<sup>10</sup> Soerjono Soekanto, Normative Legal Research, (Jakarta, PT Raja Grafindo Persada, 2003) p.23

<sup>11</sup> *Ibid* pg 67

In accordance with the type of research, namely normative legal research (normative juridical), more than one approach can be used. In this research, a statutory approach and a concept approach are used . The legislative approach is carried out to examine the statutory regulations that regulate. In the perspective of legal theory, justice is the main goal of the natural law school. Where the natural law school holds the view that law is universal and eternal.<sup>12</sup>

#### **D. Research Results and Discussion**

##### **1. How to limit the authority of dentists and dentists so that there is no overlap in the provision of services.**

Dentists carry out dental health services using the same methods, methods and tools as dentists without being based on dental knowledge, only based on hereditary and self-taught knowledge. Considering that this action is very risky and even endangers a person's health, legal protection is urgently needed for both the patient and the dentist himself.

According to Philipus M. Hadjon, legal protection is the protection of honor and dignity, as well as the recognition of human rights possessed by legal subjects based on general provisions of authority or as a collection of regulations or rules that can protect other things. The authority of a dentist in carrying out his work is the authority that has been regulated in Minister of Health Regulation Number 39 of 2014, namely making and installing removable dentures, namely making partial and/or full removable dentures made from *heat curing acrylic material* that meets the health and safety requirements. installing partial and/or full removable dentures made from *heat curing acrylic material* without covering the remaining tooth roots. Where the work of a dentist can only be carried out in a way that does not endanger health, does not cause pain or death and does not conflict with the norms and values that exist in society.

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<sup>12</sup> Lili Rasjidi, *Basics of Philosophy and Legal Theory* , PT. Citra Aditya Bakti, Bandung, 2011, p. 47.

However, in reality, dental practice services are often found in the community by dentists (dental experts), such as extracting teeth, filling teeth, installing braces, *scaling*, teeth whitening and dental *veneers*. Where these activities are carried out at customers' homes and/or at beauty salons through *online promotions*.

Dentists are considered workers in the field of traditional medicine who are recognized by the government based on the Constitutional Court Decision Number 40/PUU- Supervision, and Licensing, of Dental Work. The Health Law has stipulated that based on the method of treatment, traditional health services are divided into traditional health services that use skills and traditional health services that use herbs. Dentists carry out their work using skills based on self-taught and hereditary knowledge without formal education, therefore dentists are categorized as empirical traditional healers. This is also what differentiates dentists from traditional health workers. Traditional health workers are health workers who are trained through formal education and work according to their competence as traditional health workers (in providing Complementary Traditional Health Services) as health workers as regulated in the Health Workers Law. As traditional healers, dentists are prohibited from using dental tools and dental diagnostic support. The work of a dentist as a traditional hygienist is limited to promotive and preventive efforts and is non-invasive in nature. Meanwhile, tooth extraction, tooth filling, *scaling*, tooth *whitening*, dental *veneers* are invasive dental procedures carried out by dentists as curative and rehabilitative measures.

## **2. Do the dentist's authority and responsibilities fulfill legal protection for patients?**

The law regulates relationships between one person and another, between a person and society or between one society and another, this will give rise to power or authority and obligations. In accordance with Philipus M. Hadjon's Legal Protection Theory, in order to fulfill legal protection for

his patients, dentists should provide the patient's rights as a legal subject based on his authority. However, researchers will first discuss the legal relationship between dentists and patients as service users. Article 1233 of the Civil Code explains that a legal subject or person can be bound by a legal relationship with another person or legal subject due to binding themselves and making a promise because of an agreement established between them or a person or another legal subject is bound by a legal relationship with other legal subjects because of the provisions of law that bind them. If this situation is applied to a dentist and his patient, the relationship between the dentist and the patient can occur based on an agreement or *ius contractu*. Where this legal relationship is the most common form. The patient comes to the dentist's practice and is handled by the dentist. In conditions like this, a voluntary legal relationship exists between the patient and the dentist with free will. Lawsuits against dentists can arise due to breach of contract in medical procedures carried out by dentists on patients. However, if an action or non-action is carried out by someone and causes loss to another person, in civil law, they are required to pay for the loss. In this type of engagement the dentist can be sued based on breach of contract.

Meanwhile, based on its form, the relationship between the dentist and the patient is an implied contract *relationship*. In this form, the existence of the contract is concluded from the actions of the parties. The emergence of this contract is not due to agreement but is deemed to exist by law based on common sense and justice. So if someone comes to a dentist's practice and receives a patient, examines the patient and provides treatment, then it is assumed that there is an implied contractual relationship between the dentist and the patient. Therefore, the relationship between dentist and patient can be included in a contractual relationship containing the following two (2) elements:

- a) There is an agreement ( *consensual, agreement* ) based on mutual agreement between the doctor and patient regarding the provision of

treatment services.

- b) There is trust (*fiduciary relationship*) because the contractual relationship is created based on mutual trust between the parties.

To fulfill legal protection for patients regarding the work of dentists which is carried out in accordance with their authority as regulated in Minister of Health Regulation Number 39 of 2014, it is based on considerations to increase the dignity of consumers, it is necessary to increase consumers' awareness, knowledge, concern, ability and independence to protect itself and develop an attitude of responsible business behavior, the government has established Law Number 8 of 1999 concerning Consumer Protection with the following objectives:

- a) Increase consumer awareness, ability and independence to protect themselves
- b) Raising the dignity of consumers by preventing them from negative access to the use of goods/services;
- c) Increasing consumer empowerment in choosing, determining and demanding their rights as consumers;
- d) Creating a consumer protection system that contains elements of legal certainty and information transparency as well as access to information;
- e) Raising the awareness of business actors regarding the importance of consumer protection so that an honest and responsible attitude in business grows;
- f) Improving the quality of goods and/or services that ensure the continuity of the business of producing goods and/or services, health, comfort, security and safety of consumers.

### **3. What are the legal consequences for dentists who provide services outside their authority?**

Individual dentists who carry out work outside their authority and cases that occur continuously in society, causing victims, show that the law

is not being implemented properly. Philipus M. Hadjon wrote that legal protection is an illustration of the function of the law itself, namely that the law can provide justice, order, certainty, benefit and peace. In this case, it is the state that provides guarantees for security and safety in the use, use and utilization of goods and/or services used by its citizens as a form of legal protection. Responsibility is a consequence of the consequences of a person's freedom regarding his actions which are related to ethics or morals in carrying out an action. This legal responsibility occurs because there are obligations that are not fulfilled by one of the parties entering into the agreement, this also causes the other party to suffer losses due to their rights not being fulfilled by one of the parties. Accountability must have a basis, namely something that gives rise to a legal right for a person to demand that another person provide an account. As a form of government effort to provide legal protection to the public, the legal liability of dentists who carry out work outside their authority can be reviewed from health law, criminal law, civil law, and administration.

Based on the Consumer Protection Law, Dentists who provide services outside their authority can endanger the patient's health and this has definitely harmed the patient as a consumer. Losses that can be experienced by someone as a user of dental services who carry out work that exceeds the limits of their authority, namely: Material losses, namely real losses suffered from profits that should be obtained. Immaterial losses, namely losses in the form of illness, fear and loss of enthusiasm for life. The legal consequences

for consumers who are harmed by dental services are that consumers can report the actions of dental services that result in losses suffered by consumers to the District/City Health Service. After receiving reports from consumers, the Health Service provides administrative sanctions in accordance with Minister of Health Regulation No. 39 of 2014, article 11, namely in the form of a written warning up to the revocation of the permit.

In principle, the legal relationship between business actors and consumers is a civil legal relationship. This means that any behavior that harms consumers must be resolved civilly. However, Article 45 of the Consumer Protection Law states that resolving disputes outside of court does not eliminate criminal responsibility as regulated in the applicable laws and regulations:

Article 45:

- a. Every consumer who suffers losses can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through courts within the general judiciary.
- b. Consumer dispute resolution can be pursued through court or outside court based on the voluntary choice of the parties to the dispute.
- c. Settlement of disputes outside of court as intended in paragraph (2) does not eliminate criminal responsibility as regulated in the Law.
- d. If an effort to resolve a consumer dispute outside of court has been chosen, a lawsuit through court can only be pursued if the effort is declared unsuccessful by one of the parties or the parties to the dispute.

Sanctions that can be imposed on business actors who violate the provisions of the Consumer Protection Law consist of administrative sanctions, basic criminal sanctions and additional criminal sanctions. The main criminal sanctions are sanctions that can be imposed and imposed by the court at the request of the public prosecutor for violations committed by business actors.

## **E. Conclusion**

1. That there are restrictions on the authority of dentists and dentists so that there is no overlap in the provision of services. The work and authority of dental technicians are regulated in the general provisions of Article 1 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 39 of 2014 concerning the Development, Supervision and Licensing of Dental Work, that a dental technician is anyone who has the ability to make and install teeth. loose copy. So that the dental technician's work does not exceed the limits of his authority, guidance and supervision is needed by the local District/City Health Service. The aim of coaching is for dental technicians to understand that their work must be in accordance with their authority as regulated in Minister of Health Regulation Number 39 of 2014 concerning Guidance, Supervision and Licensing of Dental Work. Meanwhile, supervision aims to control the work of dental technicians so that they carry out their work in accordance with the standards set by the government. This guidance and supervision can start from collecting data on the number of dentists working in the area, related problems licensing dentists and also controlling dentists who carry out *online promotions* that mislead the public. Where this guidance and supervision also involves related institutions, such as the local branch of the Indonesian Dentists Association. So that there is no overlap between the work of dentists and the services of dentists in the community.

2. Authority and Responsibility of Dentists in Fulfilling Legal Protection for Patients is to fulfill legal protection for patients by the work of dentists which is carried out in accordance with their authority as regulated in the Minister of Health Regulation Number 39 of 2014, which is the basic consideration for increasing the dignity of consumers, it is necessary to increase awareness, knowledge, concern, ability and consumer independence to protect themselves and develop an attitude of responsible business behavior in accordance with the Consumer Protection Law. To fulfill these obligations, in carrying out their work, dental technicians are required to carry out work in accordance with dental work standards and other matters as guidelines for the implementation of dental work, record services made in special books, make periodic reports every 3 (three) months. to the Head of the Regency/City Health Service, including the number of users of dental services and what actions were taken. In this way legal protection for patients can be achieved.
3. Legal consequences for dentists providing services outside their authority is an administrative sanction by the district/city regional government as regulated in Article 11 of the Minister of Health Regulation Number 39 of 2014 in the form of a. written warning; b. revocation of temporary permits; and c. revocation of permanent permit. Civil sanctions as regulated in the Civil Code Article 1365 and Article 1366. Criminal sanctions as regulated in Article 351, Article 359 Article 360 and Article 361 of the Criminal Code.



**F. Suggestion**

1. The government should conduct outreach regarding the work of dental artisans in accordance with its authority and immediately provide guidance and supervision of the work of dental artisans. make a registration book regarding dental artisan permits that have been issued, including dental artisans who open businesses online. When assessing or verifying data on the issuance of business permits for dentists, the government also involves related elements, namely the local branch of the Indonesian Dentists Association (PDGI), which also prevents dentists from frequently moving from place to place. The District/Municipal Health Service carries out regular visits to dental artisans' business premises and provides counseling or training to dental artisans, as well as disclosing problems faced, including violations and losses to the community using dental services to the central government for immediate follow-up. Furthermore, the District/City Health Service will immediately provide sanctions for violations committed by dentists who work outside their authority, including dentists who carry out online promotions, where these sanctions start from verbal warnings, written warnings, and will have their place of business closed if they violate the rules. applies.
2. For Academics to understand the legal aspects of dental work in accordance with their authority, and need to know the principles of legal protection for the public as users of dental services. Understand the limitations of a dental technician's work as a traditional hygienist, who has self-taught abilities without receiving formal/non-academic education.
3. For Dentists Understand and be aware of the work of dentists according to their authority as regulated by the government. Manage business permits and renew them every two years with the local government. Make regular reports every 3 (three) months to the Head of the Regency/City Health Service which includes the number of users of dental services and the actions taken so that regular supervision can be carried out. Dentists are also expected to understand that there is legal responsibility for every action or work carried out on the community using dental



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services and are willing to increase their knowledge through training held by the local government.

4. For the public to realize that every person has the right to receive high-quality, safe and quality health services, this is a human right for every individual. Understand that dentists are not dentists who have formal dental education. Dentists are traditional healers who have acquired knowledge autodidactically and passed down from generation to generation. Every dentist has the authority to carry out their work as regulated by law. Realizing that every citizen has legal protection from the state for the health services they receive.

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