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Research Paper

Review of Maslahah Mursalah and Consumer Protection Laws on Traditional Dental Practices

Nurus Tasyabilah¹, Busro Karim², Dzikrulloh³ ^{a,b,c} Universitas Trunojoyo Madura Corresponding email: <u>ntasyabilah@gmail.com</u> Leave it blank

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ABSTRACT

This research is field research to know how dental artisans practice at Pink Behel Sukodono Sidoarjo, which will then be analyzed based on maslahah mursalah theory and Law Number 8 of 1999 concerning Consumer Protection. This research uses qualitative research for the type of field research (field research), which is descriptive-analytical. The approach method used is normative-empirical juridical. In the research process, researchers use primary data obtained directly through observation, interviews, documentation, and secondary data to complement the data. Then, the researcher analyzes the data using the inductive analysis method. This study's results prove that the Dental Practice at Pink Behel Sukodono Sidoarjo needs a license from the health office and the Sidoarjo district/city government. When viewed from the theory of maslahah mursalah, the practice of Dental Practice is included in the maslahah tahsiniyyat. During their practice, no consumers have been harmed by Dental Practice; if the benefits are greater than the mafsadat that will be generated, then attracting benefits is far more prioritized than rejecting mafsadat. Viewed from Consumer Protection Law, Dental Practice at Pink Behel Sukodono Sidoarjo violated Article 4 letter (a) regarding consumer rights to security and safety in consuming goods and services, and Article 7 paragraph (2) does not provide correct, clear, and honest information to consumers, so that it is very risky to harm and if a consumer is harmed then the Dental Practice must provide compensation as stipulated in Article 19. Dental Practice also exceeds the limits of their authority in working as stipulated in the Regulation of the Minister of Health Number 39 of 2014 concerning Guidance, Supervision, and Licensing for Dental Practice Work.

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Introduction

Nowadays, many people flock to beautify themselves to look more confident, one of which is caring for teeth. However, because of the large number of people with middle to lower social economies, they prefer to visit the dentist rather than the dentist. This is because the cost of treatment at the dentist is relatively cheaper. Dentistry is a traditional health service that, until now, is still chosen by people as a choice of dental and oral health services. In Law Number 36 of 2009 concerning Health, the treatment is called traditional medicine (Purwaningrum, 2022).

The work of a dentist is very different from that of a dentist because of limitations (Afroz et al., 2013). Dentists can only make dentures without considering other things, while dentists must gain education and master all aspects of teeth and mouth (Aldahmashi et al., 2021). Dentists in this profession can skip education and get an official diploma from the Ministry of Health (Yudistira et al., 2023). Dentists are included in the category of producers or can also be called business actors because they sell health services to the community as consumers, as explained in Law Number 8 of 1999 concerning Consumer Protection (Nonik, 2022).

Because it is often found in various places, many dentists still need to pay a license letter from the local health office to carry out their practices. Because of the rampant practice of dentists who do not have a license to practice and even carry out practices outside their authority, it makes concern about the impact of losses experienced by consumers when these consumers receive services that are not what they should. This is certainly contrary to the obligations of business actors contained in Article 8 Number 1 Letter a of Law Number 8 of 1999 concerning consumer protection, which does not meet and is not by the required standards and statutory provisions (Iswanty et al., 2017). To supervise the existence of the dental profession, the government has established the legal basis of the dental profession in Indonesia, namely in the Regulation of the Minister of Health of the Republic of Indonesia Number 39 of 2014 concerning Coaching, Supervision, and Licensing of Dentist Work (Yudistira et al., 2023).

In Sidoarjo Regency, there is a beauty salon that provides health services, one of which is the installation of braces, but this is done by dentists who allegedly do not have a license to practice and do not have the authority to install braces. Many people, especially young people, are consumers; this proves the increasing community awareness about the importance of teeth care. However, in the development of dental care, consumers prefer to come to business actors who need to be more competent in their fields because the prices offered are cheaper than those of dentists in general.

Dentists who exceed the limits of their authority are at great risk of causing losses to consumers because there is no guarantee of the competence and expertise possessed by dentists in installing braces (Kasuma et al., 2023). In Article 19, paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, it has been explained that business actors are responsible for losses consumers suffer.

There have been several previous studies on dentists, including research conducted by (Agustimada, 2022; Anwir et al., 2021; Dharmawan & Jonathan, 2019; Halomoan, 2021; Kasuma et al., 2023; Raharjo et al., 2023; Suparto Wijoyo et al., 2020; Widyarman et al., 2020; Wijaya & Vitasari, 2020; Yudistira et al., 2021; Rita & Triana, 2023). The research focuses on legal protection, the responsibility and authority of dentists, and the juridical analysis of illegal practices. This study builds on previous research by analyzing it using the maslahah mursalah approach and then reviewing it with consumer protection laws. This is interesting to discuss because this research is analyzed with juridical law and the istibathul hukmi (legal decision-making) approach with the maslahah mursalah approach.

In Islam, the interaction between dentists and consumers is a form of muamalah in the economic field, where dentists act as business actors providing services (Nonik, 2022). This makes the author's attention to conduct research reviewed using the concept of maslahah mursalah because the purpose of Islamic law is maslahah (benefit) for humanity, namely by striving for all activities to achieve things that result in the benefit of humans, or by seeking activities that can directly realize the benefit itself (Wahbah et al., 1986).

Thus, this study contributes to a deeper scholarship on the practice of dentists by Islamic law and juridical law. This research also provides benefits for dental business actors and consumers in increasing legal literacy and awareness so that mutually harmful practices do not occur because Islam forbids practices that harm other parties or are affected by losses from others (*La dharara wa la dhirara*) (Abdulahana, 2020).

Research Methods

The research method used in this study is the qualitative research method with a field research approach. Researchers analyze with a normative-empirical juridical approach (*applied law research*), namely an understanding of law in the sense of norms (rules) and the implementation of legal rules in real behavior as a result of the enforcement of legal norms (Riyanto & Hatmawan, 2020). This behavior can be observed clearly and is evidence of whether residents have behaved by or not applicable legal provisions (Sugiyono, 2017). In this case, it is connected with consumer protection regulations, health minister regulations, and existing legal theories.

The data sources of this study are primary and secondary data. Primary data sources are obtained directly from informants. Secondary data sources are obtained through literature, books, and readings related to the research focus. The data collection methods used were observation, interviews, and documentation. The data obtained is then analyzed by researchers with three steps, namely data reduction, data presentation, and conclusions.

Discussion and Results

Dentist Practice at Pink Braces Sukodono Sidoarjo

Pink Braces Sukodono Sidoarjo is a beauty salon that provides braces installation services. 23-year-old sister Dinda founded it in May 2018. To gain expertise in braces installation, sister Dinda conducted a course on someone who has been an expert in braces

installation practices in the Surabaya area. He obtained this information from a friend. The budget spent to take part in the course was Rp2,500,000 (two million five hundred thousand rupiah) for three meetings. After attending the course, sister Dinda obtained a certificate of expertise in braces installation, which, with this knowledge and experience, will later be used as capital in opening her practice. For braces, installation services offered various types.

The price is much cheaper than going to the dentist, so Dinda's sister business attracts many consumers of various ages, including young people. As time goes by, the dental business continues to grow. Many services are offered, ranging from scaling (tartar cleaning), teeth whitening, teeth bleaching, tooth fillings, rabbit teeth installation, gingsul teeth, diamond teeth, facial, and nail art.

In receiving consumers, dentists apply a *by-booking* system via WhatsApp. Every consumer who will do treatment at Pink Braces Sukodono Sidoarjo must make a reservation in advance so that there are only a few consumers who come every day, which can cause dentists to be overwhelmed to handle it. That is because dentists still practice alone.

In installing braces, the dentist must explain to consumers that it is not his authority that should not be done. Based on the results of the interview, sister Dinda, as a dentist, revealed the following:

"I actually know that if my actions are illegal, the installation of braces should be done by a dentist. But what else do I want to do with a lot of demand, maybe this is also because the price in me is much cheaper than having to go to the dentist. After all, from the beginning I opened, no customers complained, so God willing, my business is safe, no one is harmed. Regarding the authority of the dentist I do not know, I know that the installation of braces should be to the dentist and for the Consumer Protection Act I do not know".

From the observations made by the author while in the field, the tools used by dentists to practice in less sterile conditions. Dentists also do not use gloves when practicing; besides that, Many glasses pile up for the rest of the consumers to gargle, which are not immediately thrown away. Dentists need to communicate more with consumers regarding how to care for teeth for a beginner who has just used braces or braces.

The author also interviewed one of the Pink Behel Sukodono Sidoarjo consumers. Based on the results of the author's interview with Dina's sister, he said that he knew the dentist at Pink Braces Sukodono Sidoarjo from a friend's recommendation. He needed to learn the authority of the dentist, who was not supposed to install braces. He installed braces at the place in hopes of flattening his gingsul teeth. He was satisfied with the dentist's service, and during the treatment period, there were no obstacles that he felt.

Review of Maslahah Mursalah on the Practice of Dentists in Pink Braces Sukodono Sidoarjo

It is undeniable that not all direct problems have answers in the Qur'an or Sunnah; they only provide an outline of the answers to these problems. There is a taqiyya rule that reads:

دَرْءُ الْمَفَاسِدِ مُقَدَّمُ عَلَى جَلْبِ الْمَصَالِح

Meaning: "The effort to reject mafsadah (damage) must take precedence over taking benefit (goodness/benefit)".

The rule explains that the purpose of establishing Islamic law is to bring benefit to humanity and reject all dangers. However, this rule does not apply absolutely but needs to be detailed by looking at the size of the benefits and customs caused, with the following conditions: first, Avoiding mafsadat must take precedence over bringing benefit; this is if the mafsadat arising from a matter is greater than the benefit. Second, on the other hand, if the benefit is greater than the mafsadat that will be caused, then attracting the benefit takes precedence over rejecting the mafsadat, and third if the maslahat and mafsadat caused are balanced. The priority is to reject the mafsadat.

Judging from these provisions, dentists benefit the community, especially consumers in the lower middle class, because the tariffs are much cheaper than dentists. In addition, observations and interviews show that every consumer has felt disadvantaged by the practices carried out by dentists.

The conditions for determin*ing* maslahah mursalah must meet 3 (three) conditions: the essential benefit; the benefit in question must be general, not individual, and not contrary to the provisions of shari'a (Rozallindah, 2016). The practice of dentists at Pink Braces Sukodono Sidoarjo, if studied from the conditions that must be met, is explained as follows:

The first condition is the ultimate benefit. The dentist-run business is not regulated in Nash, and no Nash refuses it because the services offered by the dentist are halal as long as both parties feel supported. With this, dentists can also be a choice for dental care, especially for consumers with a lower middle-class economy, because the rates at the dentist are cheaper.

The second condition is that the benefit must be general, not individual. The existence of dentists at Pink Braces Sukodono Sidoarjo can meet this second requirement. During his practice, dentists have provided many benefits to consumers. Sister Dinda, as a dentist at Pink Braces Sukodono Sidoarjo, has provided very satisfying service for many consumers. This is proven by the author when making observations and interviews while in the field. In addition, it can also be proven from the many testimonials posted by sister Dinda on Instagram social media.

The third condition does not contradict the provisions of sharia. Islam strongly recommends that its people maintain cleanliness, both physical and spiritual. One of them is to maintain cleanliness, oral health, and teeth. To maintain the cleanliness and health of teeth and mouth, namely by caring for them, one way to care for teeth is to install braces. The law to wear braces has been debated. The law regarding the installation of braces has two opinions, namely haram and mubah (Habibah et al., 2023). Installing braces is said to be haram if a person's dental condition is fine and good and has no problems. Moreover, the purpose of the installation is to beautify yourself; the law is prohibited. Described in a hadith narrated by Bukhari and Muslim (Permana & Aksara, 2021) :

لَعْنَ اللهُ الْوَاشِمَاتِ وَالْمُو تَشِمَاتِ وَالْمُتَنَمَّصَاتِ وَالْمُتَفَلِّجَاتِ لِلْحُسْنِ الْمُغَيَّرَاتِ خَلْقَ اللهِ

Meaning: "Allah Almighty decrees those women who make tattoos and who ask for tattoos, who shave their eyebrows, and who stretch their teeth for beauty, who change Allah's creation."

Installing braces is said to change if the condition of a person's teeth is deformed; for example, the arrangement of teeth is very contrasting between high and low so that it has difficulty eating, and some teeth are very forward or very backward so that it is difficult and painful to close the mouth, etc. In such conditions, it is allowed to install braces for treatment. The hadith narrated by Bukhari explains as follows (Idri, 2015):

عَنْ ابْنِ هُرَيْرَةَ رَضِيَ اللهُ عَنْهُعَنْ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَا أنْزَلَ اللهُ دَاءً إلَّا أنْزَلَ لَهُ شِفَاءً

Meaning: "From Abu Hurairah (ra). From the Prophet (peace be upon him), he said: "If Allah Almighty sends down a disease, then Allah also sends down the cure."

Both laws return to one's intention when you want to install braces, whether to beautify yourself or for treatment. When viewed from maslahah based on the level (rank), dentistry practice enters maslahah tahsiniyyat (Habibah et al., 2023). Maslahah tahsiniyyat is a necessity that supports the needs of life in order to bring beauty, which, if ignored, does not interfere with our lives less pleasant. Maslahah tahsiniyyat here is the perfection of consumer life in teeth care. This can be proven from the results of interviews with dentists at Pink Braces Sukodono Sidoarjo, who stated that his place practices providing various services, including braces installation, scaling (tartar cleaning), teeth whitening, teeth bleaching, tooth fillings, rabbit teeth installation, gingsul teeth, diamond teeth, and others.

The practice of dentistry, when viewed in terms of the content of maslahah, is included in maslahah 'ammah. Maslahah 'ammah is a public benefit that concerns the people's interests. The existence of dentists at Pink Braces Sukodono Sidoarjo provides benefits for many people, especially for consumers with lower middle-class economies, because the price of dental care at dentists is more affordable. This can be proven from the results of interviews with dentists that in his place of practice, there are many consumers from various circles, ranging from young people and mothers to fathers who are also consumers. In his place of practice, there are also no consumers who complain or feel aggrieved for their service.

The practice of dentistry, when viewed in terms of the existence of maslahah according to sharia, enters into maslahah mursalah. Maslahah mursalah is a benefit whose existence is not supported by Sharia and is not canceled/rejected by Sharia through detailed propositions (Hasan, 2018). The dentistry practice is not regulated in Nash, and no Nash refuses it because the services offered by the dentist are halal as long as neither party feels disadvantaged.

Review of Consumer Protection Law Against Dentistry Practices in Pink Braces Sukodono Sidoarjo

As users of goods or services, consumers have rights and obligations. Knowing consumer rights is crucial to acting as a critical, intelligent, independent consumer. This, of course, aims so that no one feels disadvantaged between consumers and business actors, especially since the position of consumers is weaker than that of business actors. Therefore, the government enacted Law Number 8 of 1999 concerning Consumer Protection.

Article 4, letter (a), explains that consumers have the right to security and safety in consuming goods and services. However, according to facts in the field, the installation of braces at Pink Braces Sukodono Sidoarjo is carried out by dentists who need to be more competent in their fields. In installing braces, many things must be considered, including the tissues in it, so that if a dentist does it, it is very risky to give losses to consumers. If consumers suffer a loss due to the practice, the dentist must provide compensation as described in Article 19.

The dentist at Pink Braces Sukodono Sidoarjo does not explain to consumers what his authorities are; besides, the dentist needs to communicate more about how to care for teeth for a beginner who has just used braces. As stipulated in Law Number 8 of 1999 concerning Consumer Protection in Article 7 paragraph (2): "*Provide true, clear, and honest information about the condition and guarantee of goods and services and provide explanations of use, repair, and maintenance*." It is an obligation for dentists as business actors to convey clear and correct information to consumers because this is a consumer right that must be obtained.

The practice carried out by dentists at Pink Braces Sukodono Sidoarjo can be said to be included in malpractice activities, which are illegal actions that violate the provisions according to laws and regulations and should not be carried out by the medical profession in providing services to patients in order to obtain their benefits. When viewed from the types, it falls into administrative malpractice because it runs a practice without having a license or license by laws and regulations. In the Regulation of the Minister of Health Number 39 of 2014 concerning the Guidance, Supervision, and Licensing of Dentists in Article 2 paragraph (2), it is explained that: *"All dentists who carry out dental work must register with the local government of the district/city or the local district/city health office to obtain a dentist license*." Furthermore, the dentist also violates the limits of his authority as contained in Article 6 paragraph (2).

As a result of his actions, dentists may be subject to sanctions in the form of written reprimands, revocation of temporary licenses, and revocation of permanent licenses, as described in Article 11 of the Regulation of the Minister of Health of the Republic of Indonesia Number 39 of 2014 concerning Coaching, Supervision, and Licensing of Dentist Work.

Conclusion

Dentists at Pink Bebra, Sukodono Sidoarjo, practice without obtaining a license. Not only the installation of braces, but many services offered by dentists ranging from scaling (tartar cleaning), teeth whitening, teeth bleaching, tooth fillings, installation of rabbit teeth, gingsul teeth, diamond teeth, facial, nail art, and others. Dentists also exceed the limits of their authority so that they risk getting sanctions in the form of (1) written reprimands, (2) revocation of temporary licenses, or (3) revocation of permanent licenses, as explained in the Minister of Health Regulation Number 39 of 2014 concerning Coaching, Supervision, and Licensing of Dentist Work in Article 11. The existence of dentists at Pink Braces Sukodono Sidoarjo during the practice has yet to feel disadvantaged. Many consumers are satisfied with the service, and many benefits are felt, especially for people with middle to lower economies. Thus, if the benefit is greater than the mafsadat that will be caused, then attracting the benefit takes precedence over rejecting the mafsadat. The practice of dentistry, when viewed from maslahah based on the level (rank), enters into maslahah tahsiniyyat, which is a need that supports the needs of life in order to bring beauty. Reviewed based on Law Number 8 of 1999 concerning Consumer Protection, Dentists at Pink Braces Sukodono Sidoarjo violated Article 4 letter (a) related to consumer rights to security and safety in consuming goods and services and Article 7 paragraph (2) by not providing true, clear, and honest information to consumers so that it is very risky to harm consumers even though during the practice period there have been no consumer complaints. Consumers who feel aggrieved have the right to receive compensation from business actors, namely dentists, by Article 19.

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