

Review Article

Patterns of Arbitration in Medical Dispute Resolution: A Literature Review

Review Of Literature: THE ROLE OF ARBITRATION FUNCTIONS IN RESOLVING HEALTH MALPRACTICES

ABSTRACT:

Background and Objective: Most malpractice disputes are caused by the breakdown of communication between patients and doctors or hospitals, which can harm the reputation of both parties, necessitating a fair solution. Cases can be resolved in one of two ways: litigation or non-litigation. Arbitration is a non-litigation method to reach a fair settlement without involving a court. The aim of the literature review is to be able to describe the role of arbitration in the settlement of malpractice cases. **Methods:** This study uses a systematic literature review. **Results:** Arbitration is a reasonable method for resolving malpractice claims. This can be done by optimizing the rule of law in the form of pre-contract agreements between patients and hospitals or doctors, and by using the Arbitration Board to resolve medical disputes, especially malpractice disputes before they become court cases. **Conclusion:** The significance of maximizing the rule of law as a foundation for carrying out an arbitration pattern is that it is faster and less expensive, and the decision is final and binding.

The relationship between patients and doctors/hospitals, which is growing, will automatically increase Malpractice cases in terms of number, for the settlement of Malpractice cases using two channels, namely the Court (Litigation) and Non Litigation. Arbitration is one of the Malpractice settlement solutions, especially in the Non Litigation Path. The aim of the literature review is to be able to describe the role of Arbitration in the settlement of Malpractice cases. This study uses a Systemic Literature Review (SLR). **Results:** This arbitration can be carried out by optimizing legal rules in the form of Pre Contract agreements between patients and hospitals or doctors, Utilization of Arbitration Institutions/Boards to resolve medical disputes, especially Malpractice, as well as anticipation of medico-tourism in increasing cross-border tourism sector

Keywords: Non-litigation, Arbitration, Malpractice dDisputes, Arbitration boardAet, Arbitration Pre-contract agreement

1. INTRODUCTION

The progress of the medical world today, particularly in terms of health services, has converted the connection between physicians and patients, which was traditionally a paternalistic relationship, into a partnership one[1][2], ~~it~~ **this** involves the equality of rights and duties of both doctors and patients in this scenario [3][4]. As an expression of the interaction between patients

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and physicians, it takes the shape of therapeutic transactions [5][6] It also contains a component of respecting the patient's rights, which will become a doctor's ~~obligatio~~obligation. [7][8].

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This therapeutic transaction includes facts that the patient must be aware of, as well as an acceptance or rejection document for medical treatment, which is known as informed consent.

[9][10][11] Informed consent includes an approval or refusal sheet that must be filled out by the patient or the patient's family before a specific medical action can be performed ~~informed~~

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~~consent berisikan suatu lembar persetujuan ataupun penolakan yang wajib diisi oleh pasien atau keluarga pasien terhadap suatu tindakan medis tertentu~~ [11] [12]. The contents of informed

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consent include diagnosis, procedure, purpose of action, alternative action, complications, and

prognosis of action; this must be communicated to the patient or the patient's family ~~The contents of informed consent include diagnosis, procedures, the objective of the action, alternative~~

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actions, complications, and action prognosis; this must be communicated to the patient or

patient's family, whether or not the patient has requested medical information. [13][14] [15][16].

Malpractice is defined as a failure to comply with the aspects of informed consent in the

interaction between doctors and patients. As a result, failure to satisfy the aspects contained in

informed consent in the interaction connection between physicians and patients is referred to as

malpractice. [17]. Malpractice violations that can be reduced include providing clear information

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to the patient or patient's family so that the patient or patient's family can estimate the risks that

may arise indirectly ~~This breach must fulfill the standards established for the type of malpractice~~

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violation that can be minimized, namely providing clear information to the patient or patient's

family, so that the patient or patient's family can forecast the dangers that may develop in an

indirect manner [18] Although we must recognize that there are numerous "grey areas" in

assessing whether a case is a malpractice violation or not. [19][20], to solve this, health

legislation must be stringent and specific, as opposed to existing generic regulations. [21] [22].

Malpractice claims can be resolved in two ways: through the court (litigation) or outside the court

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Injury, including Malpractice 4. Workplace Disputes. This lawsuit has the problem of taking a pretty long time, which means that the expenses will be fairly high (20), here are studies that suggest the need for a special court in the health sector, so that the length, time, and costs of court may be decreased. [22].

Malpractice claims can be resolved in two ways: through the court (litigation) or outside the court (conciliation) (non-litigation). Suits in the courts (litigation) take a long time, which means the costs are quite high. Thus, an arbitration institution is required through out-of-court channels, specifically in the health sector, to reduce the length, time, and cost of the courts. Settlement of claims outside of court (non-litigation) recognizes a pattern known as Alternative Dispute Resolution (ADR), which is used as a settlement step outside of court. ADR includes conciliation, negotiation, mediation, and arbitration Out of Court (Non Litigation) recognizes a pattern called Alternative Dispute Resolution (ADR), which is used as a settlement step outside the court, in ADR itself includes conciliation, negotiation, mediation, and arbitration (22). According to Tuttle. (2011) mediation and arbitration are used to settle disputes and demonstrate that mediation and arbitration are far more effective than litigation, research in Mexico has proven that the arbitration path and conciliation are much more effective than Litigation [23][24]. According to Wiradisuria et al (2019) That arbitration as an alternative to non-litigation settlement in medical cases di Indonesia [24]. Irfan (2019) In a review of Law No. 30 of 1999 concerning the settlement of disputes outside of court and Supreme Court Regulation No. 1 of 2016 concerning Mediation in Courts, it is stated that the mediation pattern is considered effective in arbitration and alternative medical dispute resolution. [25] According to the Korea Medical Dispute Mediation and Arbitration Agency, in 2013, 36,099 people attended counselling, mediation, or arbitration, but this number increased to 57,349 in 2019. This indicates the high number of malpractice cases According to statistics from the Korea Medical Dispute Mediation and Arbitration Agency, there were 36,099 people who performed counseling, mediation, or arbitration in 2013, but that number climbed to 57,349 in 2019. This illustrates how severe the malpractice case is. [26][27].

The case of mediation or arbitration, the two disputing parties will appoint a third party to help in the problem-solving process In the case of mediation or arbitration, the two disputing parties will appoint a third party to help in the problem solving process [28], the main difference between mediation and arbitration is that for the results of joint decisions, mediation only

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Comment [NAH 18]: Reference [23] Y. Du *et al.*, "Violence against healthcare workers and other serious responses to medical disputes in China: surveys of patients at 12 public hospitals. The article is not about arbitration for medical malpractice in Mexico.

How about in Republic of Indonesia. Whether ADR is well accepted in resolving dispute.

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provides a recommendation, which is prone to not being followed up on, whereas in arbitration, the final decision will determine who wins and who loses, and the decision will be binding [28].

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In addition, there are initiatives to combine mediation and arbitration, which is sometimes referred to as a hybrid procedure, and which is intended to provide better outcomes than either mediation or arbitration alone, which is impacted by each country's political culture. [29]

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~~Settlement through arbitration is attractive to the author because it is binding, cheaper, and more cost efficient, as a result, the authors raised it in a literature review. In this specific scenario, a more in depth investigation is required since the Hybrid Process has yet to yield adequate findings for application in all nations. The authors are interested in examining arbitration because it has binding qualities and is less expensive and more efficient in terms of cost. period, thus the author brought it up in a literature review on that premise.~~

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2. METHODS

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his scientific article was written using qualitative methods as well as literature studies. Researching references based on the theories discussed, as well as analyzing scientific articles and journal articles, particularly in the context of health-related arbitrations. Furthermore, it is thoroughly discussed as the foundation for developing hypotheses, which will then serve as the foundation for making comparisons with the study's results or findings [30]. Semua artikel ilmiah yang di citasi bersumber dari Google Scholar, Elsevier, SagePub, dan ScienceDirect.

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he study considered all references to out-of-court (non-litigation) topics, particularly by using a potential arbitration approach in the resolution of medical malpractice cases, which journals discovered by conducting a literature review search using the PICO (Population, Intervention, Comparison, and Outcome) approach, cited by GoogleScholar, Elsevier, SagePub, and ScienceDirect. [31]. The PICO approach is a tool that can be used to aid in the search for clinical information, as a foundation for hypotheses, and then as a basis for comparison with clinical research results or findings to sort out the correct and current ones.

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able 1 shows the PICO components in the article review process, as follow:

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2.

This study's approach discusses how to locate journals that will be utilized as a source for literature reviews. The journals are chosen by taking into account the utilization of efforts through the Out of Court (Non litigation) technique, specifically by employing a choice of approach in the form of Potential Arbitration in the Settlement of Medical Malpractice. The journal was discovered by searching for literature reviews using the terms PICO (Population, Intervention, Comparison, and Outcome) on GoogleScholar, Elsevier, Sagepub, and ScienceDirect.

Comment [NAH 22]: Confusing sentence - are you going to explain how to locate journals for medical malpractice?

PICO is a clinical data gathering technique that consists of four components: P (patient, population, issue), I (intervention, prognostic variable, exposure), C (comparison, control), and O (outcome) (outcome). We were able to utilize the PICO to establish that the study we were seeking for was relevant to the clinical scenario, allowing us to conduct an evidence based reference search in the case under consideration [30]

Comment [NAH 23]: Keywords used for each database. Put it into a table

Comment [NAH 24]: PICO is a commonly used strategy for framing research questions, especially in the study of medicine. It is not a methodology for literature review, particularly SLR.

PICO is also not a database for journal.

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Table 1. PICO Components in Article Review [32]

PICO	Key Word
Population	Patient, Doctor, Healthcare Facilities
Intervention	The court, Arbitration Board, Medical Arbitration Commission
Comparison	Social media, the internet, training, workshop,
Out Come	Doctor-Patient Communication Patient Knowledge, Supreme Court, National Arbitration Body
Methodology	Alternative Dispute Resolution (ADR),

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Extraction of Data

The articles chosen are those that are pertinent to the research objectives. The data is collected by taking into account the type of intervention, the approach used, and the scope of the problem, as shown below (Fig. 1)

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The sources chosen are those that are relevant to the study goals. Data was retrieved while considering the type of intervention, the approach utilized, and the scope of the problem.

Data Synthesis

The research data is presented in tabular form, organized by the following criteria: Journal Author, Journal Title, Journal Page, Journal Theory, Journal Method, Design and Hypotheses, and Journal Research Results, as well as other issues pertaining to the function of arbitration in medical malpractice, as seen in Figure 1, as follows:

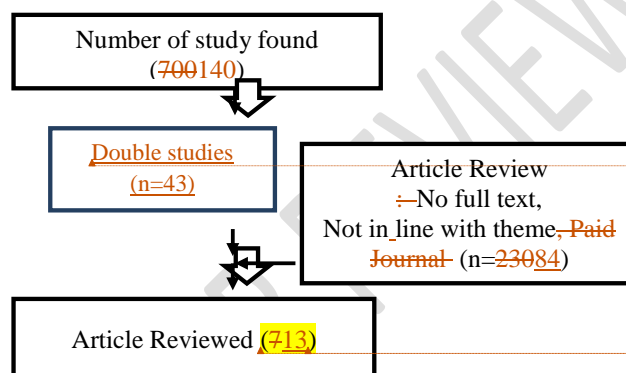


Fig. 1. Data Extraction (Articles relevant to the purpose of research)

Data Synthesis

The research data is presented in tabular form, organized by the following criteria: journal author, journal title, journal page, journal theory, journal method, design and hypotheses, and journal research results, as well as other issues concerning the role of arbitration in medical malpractice.

The results of the research will be objectively and theoretically analyzed using a narrative systematic literature review. The research data is presented in tabular form, organized by the following criteria: journal author, journal title, journal page, journal theory, journal method, design and hypotheses, and journal research results, as well as other issues pertaining to the function of arbitration in medical malpractice, as seen in Figure 1, as follows:

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Comment [Ma26]: Data extraction : The number of study references found (700) based on the filtering flow using the PICO approach. Review Articles: Without Full Text, Not Related to Themes, Paid Journal (n = 230), then filtered again to obtain Review Articles (7), which became the topic of discussion.

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Comment [Ma28]: Data extraction : The number of study references found (700) based on the filtering flow using the PICO approach. Review Articles: Without Full Text, Not Related to Themes, Paid Journal (n = 230), then filtered again to obtain Review Articles (7), which became the topic of discussion.

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3.1.3. ~~Research~~ RESULT

Health-related legal cases, also known as "Health Laws," are common not only in Indonesia but also in other more developed countries. This is evidenced by the growing body of literature or legal literature that examines medical-legal cases or the legal liability of doctors and hospitals. As a result, medical malpractice lawsuits have become a worldwide phenomenon [33]

3.2. ~~Health-related legal cases, or "Health Law," occur not just in Indonesia, but also in industrialized nations such as Canada and the United States. This is obvious from the expanding body of literature or legal literature that analyzes medical law cases or the legal liability of doctors and hospitals. As a result, medical law lawsuits are a worldwide phenomenon.~~

According to Wiradisuria Errawan et al (2019), disagreements between patients and the services offered by hospitals or physicians can create a poor image of the hospital or doctor, especially if third parties such as journalists or mass media who would listen to complaints are involved. From the patient's standpoint, it is critical that the hospital or doctor take prompt action; hence, the function and role of arbitration are critical in the dispute settlement process, because arbitration is a closed process, the settlement period is generally short, cost-effective, and results in a definitive and final conclusion. ~~Because the arbitration is closed in its settlement, the settlement period is generally short, cost effective, and results in a definitive and final conclusion. Arbitration boards' and health professional organizations' responsibilities in cooperating with hospitals to carry out arbitration activities [24]~~

According to Rapatsa (2018) and Sgubini (2004), arbitration is a more effective method of dispute resolution than alternative dispute resolution (ADR) methods such as negotiation, conciliation, and mediation. ~~Rapatsa (2018) discusses the numerous advantages of arbitration over alternative dispute resolution (ADR) methods such as negotiation, conciliation, or mediation [34] [35]. The arbitration process will run well if it has a solid legal basis as an institution. As an example of how arbitration is used in California, the local government has mandated that all hospitals resolve malpractice disputes through legal arbitration institutions. Arbitration institutions have trained individuals who can determine arbitration policies, understand health issues, understand arbitration procedures, and are certified as experts in the field of arbitration. As arbitration requires regulation as a legal basis, such as in the City of California, where regulations require hospitals to resolve malpractice disputes through~~

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Comment [NAH 32]: The citation not only from Rapatsa it also includes Sgubini, M. Prieditis, and A. Marighetto.

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arbitration, it is necessary to prepare people who are capable of determining arbitration policies, understanding health problems well, understanding arbitration procedures, and are certified as experts in the field of arbitration. [36] [37]

Myriam Gilles (2014) research highlights the reluctance of the public to sign pre-contractual arbitration agreements because they believe it is unnecessary, implying that patients and hospitals should understand the need for contractual agreements prior to medical activity. This pre-contract agreement means that if a malpractice event occurs, it is expected that all parties will comply in carrying out arbitration, and it is estimated that with arbitration activities, the pattern of prosecuting malpractice cases will shift to the use of more arbitration (non-litigation) than through court (litigation). [37]

Myriam Gilles (2014) research highlights the public's unwillingness to sign into pre-contract arbitration agreements because they believe it is unnecessary, implying that patients and hospitals must grasp the necessity of contractual agreements prior to the medical activity. This pre-contract agreement means that if there is a malpractice incident, it is hoped that all parties will be obedient in carrying out arbitration, and it is estimated that with arbitration activities, the pattern of prosecution for malpractice cases will shift to using more arbitration paths (non-litigation) than through the court (Litigation).

Gantz et al. (2011), the arbitration agreement can be used not only within the country but also across borders. Of course, there must be an agreement between the health service recipient and the health service provider, which can be included in the pre-arbitration contract agreement. In addition to the closed nature of the settlement (only the litigants), the results of the arbitration decision are final and binding, and carried out in a relatively short time frame (litigation) [38]

Kalra (2020), in the face of the era of medictourism, which goes hand in hand with the development of a country's tourism, if a medical dispute occurs, it necessitates the pattern of dispute resolution of malpractice cases to be carried out outside the court (non-litigation), namely through arbitration, because, aside from the relatively quick time and relatively low cost, the adoption of the arbitration procedure still provides the patient with autonomy in picking the arbitrator, which is not possible if the disagreement case is addressed through the court (litigation). [39] With the advancement of technology, it is possible for the treatment process to be carried out abroad; however, if a malpractice case occurs, it will cause a problem; therefore, it

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is hoped that the International Arbitration Board will also take an active role in resolving cross-border malpractice cases.

According to ~~Munjae~~ Lee (2018), with a rising number of contested medical cases including malpractice charges and prosecution of physicians and hospitals, it is required to establish a dedicated institution to manage malpractice cases. The Korea Medical Dispute Mediation and Arbitration Agency, for example, is an institution that focuses on professional medical dispute counseling, reliable investigations, and fair case mediation by certified workers. This organization is active in hospital training or seminars to improve awareness of medical disputes, notably abuses. Also described by Du et al. (2020), that the malpractice dispute resolution approach is much more effective when using an arbitration pattern, because both parties agree to appoint an expert or an arbitration body who can resolve malpractice problems in hospitals, and the implementation of this arbitration process is felt to be much cheaper and more efficient. Save time because the decision will be time-limited, closed, and the result of the decision is final and binding. This is much more fun than using the judiciary (litigation) Many literature reviews explain that the approach to resolving malpractice disputes is much more effective when using the arbitration pattern, where both parties agree to appoint an expert or body that can resolve malpractice problems in hospitals, and the implementation of this arbitration process is felt to be much cheaper and more efficient. Saving time because the decision will be restricted by time, be closed, and the result of the judgment is final and binding. This is much more pleasant than utilizing the judicial path (litigation)[40].

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Similarly, according to Susila (2021), conflict resolution out of court is an option for the disputing parties. Arbitration forums are one way of resolving disputes out of court. According to Susila (2021), conflict settlement outside of court is an option for disputing parties. An arbitration forum is one method of resolving disputes outside of court. The arbitration decision is final, has permanent legal effect, and is binding on the parties.

According to Article 60 Number 30 of the Law of the Republic of Indonesia on Arbitration and Alternative Dispute Resolution, when an arbitration decision is reached, there is no right to appeal, cassation, or review, and the decision is final. Arbitration is a method of resolving civil disputes outside of the general court based on an arbitration agreement made in writing by the disputing parties and an agreement in the form of an arbitration clause contained in the written agreement made by the parties prior to the occurrence of the dispute, or a separate arbitration agreement, made by the parties after a dispute has arisen, in order for the arbitration committee's decision to be considered fair, according to

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Article 60 of Law Number 30 of 1999 governing arbitration and alternative dispute resolution (hereafter abbreviated as "UU AAPs"). This implies that the arbitral award cannot be appealed, cassated, or judicially reviewed [41]

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ANNEX Table 2. Summary of article review

<u>Writer of a journal.</u>	<u>Nevers, Ann H</u>
<u>Title of a journal.</u>	<u>Medical malpractice arbitration in the new millennium: Much ado about nothing</u>
<u>Name of the journal.</u>	<u>Pepperdine Dispute Resolution Law Journal. Volume 1, Issue 1 article 6</u>
<u>Investigate Theory.</u>	<u>Descriptive Qualitative Analysis</u>
<u>The outcome of research.</u>	<u>Medical malpractice arbitration cases have been used to reduce litigation risks and costs. This article looks at the constitutional issues surrounding medical malpractice arbitration clauses and contract enforcement, as well as the existing medical malpractice legal processes. Arbitration has proven to be an effective and efficient tool for resolving medical malpractice claims.</u>
<u>Writer of a journal.</u>	<u>Errawan, Dwi Herri, Anjar Bhawono</u>
<u>Title of a journal.</u>	<u>Arbitration as on Alternative to Non Litigation Settlement in Medical Cases</u>
<u>Name of the journal.</u>	<u>Advances in Economics, Business and Management Research, volume 121</u>
<u>Investigate Theory.</u>	<u>Descriptive Qualitative Analysis</u>
<u>The outcome of research.</u>	<u>There are a number of flaws in handling medical malpractice cases through the Mediation Line (Non-Litigation). The result is a win-win solution, but flaws are found if the agreement reached by both parties to the dispute is not stated in the deed, the results of the mediation can be canceled, and the arbitrator does not have executive power. Therefore, arbitration can be used as a solution to obtain legal certainty. It is necessary to optimize the role of the arbitrator.</u>
<u>Writer of a journal.</u>	<u>Butler Jr, James R.</u>
<u>Title of a journal.</u>	<u>Arbitration Agreement and Your Malpractice Coverage</u>
<u>Name of the journal.</u>	<u>Advances in Economics, Business and Management Research, volume 121</u>
<u>Investigate Theory.</u>	<u>Normative Juridical</u>

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<u>The outcome of research.</u>	Arbitration has several advantages over other alternative dispute resolution (ADR) patterns, including the fact that it is inexpensive, private, and provides legal certainty in the event of a malpractice issue. For example, in California, a special arbitration law has been enacted that serves as a legal basis for the hospital in carrying out arbitration and also requires people who are experts in arbitration policy to enter the arbitration body.	Formatted: Justified
<u>Writer of a journal.</u>	Samuel, A. (2020)	Formatted: Font: 12 pt
<u>Title of a journal.</u>	Be Like Europe: Let's Redux the Federal Arbitration Act	Formatted: Justified
<u>Name of the journal.</u>	Alternatives to the High Cost of Litigation, 38(1), pp. 3–6.	Formatted: Justified
<u>Investigate Theory.</u>	Normative Juridical	Formatted: Justified
<u>The outcome of research.</u>	This article discusses how to make the most of international arbitration law's role in resolving malpractice cases. The article also discusses the law of international arbitration and the evolution of international arbitration law.	Formatted: Justified
<u>Writer of a journal.</u>	Kalra, M. and Gupta, V.	Formatted: Not Highlight
<u>Title of a journal.</u>	The Potential of Arbitrating Healthcare Disputes	Formatted: Justified
<u>Name of the journal.</u>	Medico Legal Update, 20(2), pp. 358–362 (2020)	Formatted: Not Highlight
<u>Investigate Theory.</u>	Normative Juridical (doctrinal)	Formatted: Justified
<u>The outcome of research.</u>	Transnational advances in technology and healthcare create legal ambiguity, increasing the likelihood of transnational medical malpractice lawsuits. this requires globally uniform arrangements for the anticipation of medical disputes that are more flexible and predictable than courtroom litigation. This article also discusses and expresses the opinion that most medical disputes should be resolved through arbitration mechanisms. Arbitration is a method of amicable, cost-effective, and timely resolution of medical disputes.	Formatted: Not Highlight
<u>Writer of a journal.</u>	Munjae Lee	Formatted: Justified
<u>Title of a journal.</u>	The Effects of Criminal Punishment on Medical Practice in the Medical Environment	Formatted: Justified
<u>Name of the journal.</u>	International Journal of Environment Research on Public Health	Formatted: Justified
<u>Investigate Theory.</u>	Quantitative	Formatted: Justified
<u>The outcome of research.</u>	There is a need for a specific institution within the Korea Medical Dispute Mediation and Arbitration Agency to manage malpractice claims, as well as specialized training to discuss medical disputes and how to handle them in hospitals.	Formatted: Justified
<u>Writer of a journal.</u>	Swartz, Bruce M.	Formatted: Font: 12 pt
<u>Title of a journal.</u>	Medical Abitration in a group Practice Setting	Formatted: Justified
<u>Name of the journal.</u>	West J Med	Formatted: Justified
<u>Investigate Theory.</u>	Qualitative Theory	Formatted: Justified, Indent: Left: 0 cm, Add space between paragraphs of the same style

<u>The outcome of research.</u>	<u>With the rising demands for medical malpractice insurance that arise, prompting arbitration to be one of the solutions, with the benefit that the content of the arbitration agreement will be binding, affordable, and personal, there is a need for legal counsel in carrying out the arbitration agreement.</u>	Formatted: Justified
<u>Writer of a journal.</u>	<u>Hadiwinata, Krismawan</u>	Formatted: Font: 12 pt
<u>Title of a journal.</u>	<u>Tanggung Jawab Hukum Badan Arbitrase Nasional Indonesia (Bani) Dalam Menghadapi Tuntutan Ingkar Dan Permohonan Pembatalan Putusan Arbitrase Nasional (Legal Responsibilities of the Indonesian National Arbitration Board (BANI) in the Face of Denial Claims and Requests to Cancel the National Arbitration Award)</u>	Formatted: Justified
<u>Name of the journal.</u>	<u>Doctoral Dissertation, Universitas Tarumanagara</u>	Formatted: Justified
<u>Investigate Theory.</u>	<u>Normative Juridical</u>	Formatted: Justified
<u>The outcome of research.</u>	<u>According to the Indonesian Arbitration Law, Article 60 Number 30 of 1999, the arbitration award is final, has permanent legal force, and is binding on the parties; it cannot be appealed, appealed, or reviewed. The legal responsibility of the Indonesian National Arbitration Board (BANI) in dealing with demands and requests for cancellation of national arbitration awards was also discussed.</u>	Formatted: Justified
<u>Writer of a journal.</u>	<u>Gantz, David A Gupta, Amar Sao, Deth</u>	Formatted: Font: 12 pt
<u>Title of a journal.</u>	<u>Disputes Related to Healthcare Across National Boundaries: The Potential for Arbitration</u>	Formatted: Justified
<u>Name of the journal.</u>	<u>George Washington International Law Review 2011</u>	Formatted: Justified
<u>Investigate Theory.</u>	<u>Qualitative Analysis</u>	Formatted: Justified
<u>The outcome of research.</u>	<u>When it comes to transnational medical malpractice, transnational health services will be a rather sophisticated subject, requiring common knowledge of a problem with international arbitration law. Arbitration has provided a simpler answer that consumes less time and money while being more effective and adaptable than litigation.</u>	Formatted: Justified
<u>Writer of a journal.</u>	<u>Herwastoeti</u>	Formatted: Font: 12 pt
<u>Title of a journal.</u>	<u>The Authority of the Court Against the Decision of the Indonesian National Arbitration Board (BANI) in the Settlement of Business Disputes in the Perspective of Legal Certainty</u>	Formatted: Justified
<u>Name of the journal.</u>	<u>International Conference on Indonesian Legal Studies, 01 July 2020 Semarang City</u>	Formatted: Justified
<u>Investigate Theory.</u>	<u>Doctrinal legal research (Normative Juridical)</u>	Formatted: Justified

<u>The outcome of research.</u>	<u>This article discusses that if the parties have entered into an arbitration agreement, then the disputing parties have no reason to reject the arbitration clause in the contract that has been made and used as a reason to file for annulment of BANI's decision, then the court must reject if the application for annulment does not comply with the provisions. which is regulated.</u>
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<u>Writer of a journal.</u>	<u>Ferrara, Santo Davide</u>
<u>Title of a journal.</u>	<u>Malpractice and medical liability. European guidelines on methods of ascertainment and criteria of evaluation'</u>
<u>Name of the journal.</u>	<u>International journal of legal medicine, 127(3), pp. 545-557. 2013</u>
<u>Investigate Theory.</u>	<u>Normative Juridical</u>
<u>The outcome of research.</u>	<u>The "Consensus Guidance Document" on Medical Malpractice is an important step toward harmonizing legislative-juridical, operational, and institutional practices in medical liability cases. The institution must be legally recognized as an arbitral institution and supported by experts and other international communities from various disciplines.</u>

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<u>Writer of a journal.</u>	<u>Meenakshi, Vikas</u>
<u>Title of a journal.</u>	<u>The Potential of Arbitrating Healthcare Disputes</u>
<u>Name of the journal.</u>	<u>Medico Legal Update</u>
<u>Investigate Theory.</u>	<u>This is a doctrinal study in which primary and secondary data sources have been assessed and studied for research purposes. Settlement of malpractice claims, particularly multinational ones, should lead to non-litigation, as should the growth of the tourist business, which also has an influence on the health side (medicotourism), so that patients have authority (autonomy), and arbitration is one approach. solution, particularly, low-cost</u>
<u>The outcome of research.</u>	<u></u>

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<u>Writer of a journal.</u>	<u>Errawan, Dwi Herri, Anjar Bhawono</u>
<u>Title of a journal.</u>	<u>Arbitration as an Alternative to Non Litigation Settlement in Medical Cases</u>
<u>Name of the journal.</u>	<u>Advances in Economics, Business and Management Research, volume 121</u>
<u>Investigate Theory.</u>	<u>Descriptive Qualitative Analysis</u>
<u>The outcome of</u>	<u>There are a number of flaws in handling medical malpractice cases through the Mediation Line (Non Litigation). The result is a win win</u>

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<u>research.</u>	<u>solution, but flaws are found if the agreement reached by both parties to the dispute is not stated in the deed, the results of the mediation can be canceled, and the arbitrator does not have executive power. Therefore, arbitration can be used as a solution to obtain legal certainty. It is necessary to optimize the role of the arbitrator.</u>
<u>Writer of a journal.</u>	<u>James R Butler</u>
<u>Title of a journal.</u>	<u>Arbitration Agreement and Your Malpractice Coverage</u>
<u>Name of the journal.</u>	<u>Advances in Economics, Business and Management Research, volume 121</u>
<u>Investigate Theory.</u>	<u>Normative Juridical</u>
<u>The outcome of research.</u>	<u>Arbitration has several advantages over other alternative dispute resolution (ADR) patterns, including the fact that it is inexpensive, private, and provides legal certainty in the event of a malpractice issue. For example, in California, a special arbitration law has been enacted that serves as a legal basis for the hospital in carrying out arbitration and also requires people who are experts in arbitration policy to enter the arbitration body.</u>

<u>Writer of a journal.</u>	<u>Munjae Lee</u>
<u>Title of a journal.</u>	<u>The Effects of Criminal Punishment on Medical Practice in the Medical Environment</u>
<u>Name of the journal.</u>	<u>International Journal of Environment Research on Public Health</u>
<u>Investigate Theory.</u>	<u>Quantitative</u>
<u>The outcome of research.</u>	<u>There is a need for a specific institution within the Korea Medical Dispute Mediation and Arbitration Agency to manage malpractice claims, as well as specialized training to discuss medical disputes and how to handle them in hospitals.</u>

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<u>Writer of a journal:</u>	<u>Swartz, Bruce M.</u>
<u>Title of a journal:</u>	<u>Medical Abitration in a group Practice Setting</u>
<u>Name of the journal:</u>	<u>West J Med</u>
<u>Investigate Theory:</u>	<u>Qualitative Theory</u>
<u>The outcome of research:</u>	<u>With the rising demands for medical malpractice insurance that arise, prompting arbitration to be one of the solutions, with the benefit that the content of the arbitration agreement will be binding, affordable, and personal, there is a need for legal counsel in carrying out the arbitration agreement.</u>

<u>Writer of a journal:</u>	<u>Myriam Gilles</u>
<u>Title of a journal:</u>	<u>Operation Arbitration : Privatizing Medical Malpractice Claims</u>
<u>Name of the journal:</u>	<u>The Journal Theoretical Inquiries in Law</u>
<u>Investigate Theory:</u>	<u>Descriptive Theory</u>
<u>The outcome of research:</u>	<u>The public often refuses to issue a pre arbitration contract agreement. With the enactment of the arbitration law, the use of arbitration will not only be in trade/business disputes, but medical disputes will also be included in the duties and authorities of arbitration, so it is estimated that there will be more and more medical dispute resolutions. The focus shifted from the Court of Justice (litigation) to Arbitration (non-litigation).</u>
<u>Writer of a journal:</u>	<u>Gantz, David A Gupta, Amar Sao, Deth</u>
<u>Title of a journal:</u>	<u>Disputes Related to Healthcare Across National Boundaries: The Potential for Arbitration</u>
<u>Name of the journal:</u>	<u>George Washington International Law Review 2011</u>

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<u>Investigate Theory.</u>	<u>Qualitative Analysis</u>
<u>The outcome of research.</u>	<u>When it comes to transnational medical malpractice, transnational health services will be a rather sophisticated subject, requiring common knowledge of a problem with international arbitration law. Arbitration has provided a simpler answer that consumes less time and money while being more effective and adaptable than litigation.</u>

<u>Writer of a journal.</u>	<u>Meenakshi, Vikas</u>
<u>Title of a journal.</u>	<u>The Potential of Arbitrating Healthcare Disputes</u>
<u>Name of the journal.</u>	<u>Medico Legal Update</u>
<u>Investigate Theory.</u>	<u>This is a doctrinal study in which primary and secondary data sources have been assessed and studied for research purposes.</u>
<u>The outcome of research.</u>	<u>Settlement of malpractice claims, particularly multinational ones, should lead to non litigation, as should the growth of the tourist business, which also has an influence on the health side (medicotourism), so that patients have authority (autonomy), and arbitration is one approach. solution, particularly, low cost</u>

4. DISCUSSION

5. ——— Nevers (2000), The application of the arbitration patterns in the settlement of medical disputes, particularly those involving malpractice, is particularly important because it provides the legal basis for the appointed arbitration institution to settle disputes for litigants, and the decision's results must be carried out by both parties. [42] Analysis of the similarities and differences of the research

The application of the arbitration pattern in the resolution of a medical dispute, particularly one involving malpractice, means that the most important thing is that there is a legal basis that will be used both in the provisions of the litigating party and the institution appointed as a third party, and in the results of decisions that must be carried out, as stated in the research. According to Butler Jr. (1976), a special arbitration law was created for the California area as a

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reference for arbitration institutions for hospitals in particular, this institution will carry out an arbitration pattern in resolving medical disputes, the decisions of this institution are legally binding and must be obeyed for litigants. ~~James R James R Butler (1976) created a specific arbitration law for the California area, with this as a reference for the hospital in particular, so that parties in carrying out the arbitration pattern. [43] (Butler Jr, 1976).~~ This study backs up the findings of Samuel et al. (2020) who looked at how to maximize the function of international arbitration law in anticipating patients seeking treatment abroad or between countries so that it can be used as a useful reference for the government to use arbitration patterns in resolving malpractice cases. This research is also consistent with the findings of Samuel et al. (2020), who reviewed the need to maximize the function of the International Arbitration Act in anticipating patients seeking treatment abroad (cross country) so that it may be used as a useful reference for governments. ~~who wish to use arbitration patterns to resolve malpractice cases.e[44] (Born, 2021).~~ According to Kalra and Gupta (2020), with the increase in the tourism industry, it is possible for someone to seek treatment abroad (medico tourism). Therefore, it is very important to have an international legal framework to deal with malpractice issues if they are found. According to Kalra et al. (2020), as the tourist industry increases, it is conceivable for a person to seek health treatments abroad (medico tourism). Hence, it is critical to have an international legal framework in place to handle a malpractice problem if one is discovered later [39].

According to Gilles (2014), as a form of obedience and compliance in carrying out the Law on Arbitration between Patients and Hospitals/Doctors, it is compulsory to enter into a Pre-Contract Arbitration agreement, which will be utilized as a foundation if a malpractice incidence arises in the future. According to Gilles (2014), as a form of obedience and compliance in carrying out the Law on Arbitration between Patients and Hospitals/Doctors, it is compulsory to enter into a Pre Contract Arbitration agreement, which will be utilized as a foundation if a malpractice incidence arises in the future. [37] (Al Nuaimi, 2021)

This arbitration pattern is very appropriate for the resolution of malpractice cases because it has advantages in terms of its closed nature, where the problem is only known to the disputing parties, which is very important, especially for hospitals, in maintaining their reputation in the community. Settlement through arbitration has several advantages, including the lack of the need to file an appeal, as in a general court (judicial), resulting in a final and binding decision, and the

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relatively short settlement time when compared to the court path (litigation). ~~The analysis of effectiveness and efficiency, shows that this arbitration pattern is also very appropriate to be used in resolving malpractice cases because it has advantages in terms of its closed nature, where the problem is only known by the parties to the dispute, which is very important, especially for hospitals in maintaining their reputation in the community. Settlement through Arbitrators has several advantages, including a low cost because there is no opportunity for the losing party to appeal, as in the general court (litigation), so the decision from the arbitration is a final and binding decision, as well as a relatively short settlement time when compared to the Court Path (Litigation).~~ This is consistent with James R Butler (1976) research, which claims that the Arbitration Pattern has been acknowledged in the City of California, as indicated by the presence of a separate law on arbitration in the City of California, while ~~Bruce M. Sw~~Wartz (1977) claimed the same thing in the study [45]. Regarding the benefits of arbitration, according to Kalra and Gupta (2020), ~~Kalra's~~ research (2020), if there is a malpractice issue involving two or more nations, the International Arbitration Pattern is the best way to handle it [39]

Arbitration patterns can be used only if they are managed by a body or institution, particularly as a third party. Hadiwinata (2019) dan Herwastoeti (2021) research on the function of the Indonesian National Arbitration Board (BANI) is expected to play a role in resolving malpractice problems or medical disputes that occur in Indonesia and are deemed adequate in the process of resolving medical problems ~~The arbitration patterns may only be used if they are managed by a body or institution, particularly as a third party. Hadiwinata's (2019) research, the function of the Indonesian National Arbitration Board (BANI) is also expected to play a role in solving malpractice problems that occur in Indonesia, because the function of BANI in Indonesia is more to solve problems in the fields of trade and business, wealth, intellectual property, the environment, and human resources (HR). BANI, which is regarded as adequate in the process of resolving medical issues, [46] [47] Kwon, H. K. (2018)~~ also stated that with the birth of the California Law on Arbitration, an expert (arbitrator) who is experienced in arbitration is needed. [43] [48]. Meanwhile, Munjae Lee (2019) proposed in his research that a specific institution for

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malpractice concerns be developed under the Korea Medical Dispute Mediation and Arbitration Agency, demonstrating the level of seriousness in dealing with malpractice cases [49]. According to Gantz et al. (2014), it must also be examined if there is a case of malpractice involving two or more nations. This is also consistent with Kalra and Gupta (2020) M. Kalra's (2020) research, which states that along with the development of inter-country tourism, one must consider the existence of people who allow, in addition to traveling, the taking advantage of health services in other countries (medico tourism), in order for international arbitration bodies/institutions to participate. take part in the resolution of malpractice issues.[39]-

~~Santo Davide~~ Ferrara et al (2013). The "Consensus Guidance Document" on medical malpractice is currently being debated. The document's goal is to standardize the legal-legislative structure of medical malpractice lawsuits in various European countries. According to the guidelines, certified experts from various disciplines, as well as the international community, are needed to understand malpractice guidelines and arbitration patterns, particularly in hospitals. The European Guidelines on Confirmation Methods and Medico Legal Evaluation Criteria in Cases of Alleged Subjective "Medical Liability" and/or "Liability," established by an international working group under the auspices of the European Academy of Legal Medicine, are presented. It offers a graphic step by step description of the authorized flowchart, which is articulated into 18 sequential and thorough phases of the Establishment Method and Evaluation Criteria.[50]

6.5. CONCLUSION

~~Based on the findings of the literature research, the following conclusions were reached:~~

~~The implementation of the arbitration pattern requires a legal institution, especially in the process of socializing pre-contract agreements for patients with hospitals or doctors, as a reference in carrying out the arbitration process.~~

~~Arbitration has an advantage over other forms of dispute resolution (ADR) because it is faster and less expensive, and the decision is final and binding.~~

~~Arbitration has the potential to replace the role of courts in resolving medical disputes, as well as to improve the quality of decisions and justice in society.~~

DATA AVAILABILITY

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CONSENT

The authors have collected and saved the written consent of respondents in accordance with international or university standards.

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ETHICAL APPROVAL

It is not applicable.

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COMPETING INTERESTS

The authors have stated that there are no competing interests.

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~~The importance of maximizing the rule of law as a foundation for carrying out the arbitration pattern, including the socialization of pre contract agreements for patients with hospitals or doctors, as a reference point in carrying out the arbitration process,~~

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~~The arbitration pattern offers benefits over other alternative dispute resolution (ADR) patterns in that it is faster and less expensive, and the ruling is final and binding.~~

~~The function of the Arbitration Institution/Board, which must also address the health sector, particularly issues concerning the settlement of medical disputes,~~

~~Anticipating potential growth in the cross border tourist business, which also allows for the use of health care abroad (medicotourism), so that the International Arbitration Board/involvement Institution's required anticipatory actions in dealing with medical disputes, particularly malpractice~~

CONSENT

~~The study was carried out in compliance with research regulations in the Republic of Indonesia, and signed consent was obtained and preserved by the author.~~

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ANNEX

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teome of research.	are a number of flaws in handling medical malpractice cases through the Mediation Line (Non-Litigation). The result is a win-win solution, but flaws are found if the agreement reached by both parties to the dispute is not stated in the deed, the results of the mediation can be canceled, and the arbitrator does not have executive power. Therefore, arbitration can be used as a solution to obtain legal certainty. It is necessary to optimize the

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research,	non-litigation, as should the growth of the tourist business, which also has an influence on the health side (medicotourism), so that patients have authority (autonomy), and arbitration is one approach. solution, particularly, low cost
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