

REVIEW OF LITERATURE: THE ROLE OF ARBITRATION FUNCTIONS IN RESOLVING HEALTH MALPRACTICES

ABSTRACT:

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: Arbitration, Malpractice Disputes, Arbitration Act, 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 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 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. [7][8]

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* 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 consent include diagnosis, procedures, the objective of the action, alternative 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]. 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]. This breach must fulfill the standards established for the type of malpractice 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]. Settlement of malpractice claims can be accomplished in two ways: through the Court (Litigation) and outside the Court (Non Litigation), with the Court (Litigation) explicitly addressing the following issues: 1. Commercial Disagreements 2. Claims for Marital Discord 3 Claims Against Persons Injured Due to Personal 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]. 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), research in Mexico has proven that the arbitration path and conciliation are much more effective than Litigation[23]. 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..[24][25]. In the case of mediation or arbitration, the two disputing parties will appoint a third party to help in the problem-solving process [26], the main difference between mediation and arbitration is that for the results of joint decisions, mediation only 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 [27]. 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. [27]

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.

2. METHODS

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.

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 [28]

Table 1. PICO Components in Article Review

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

2.1. Extraction of Data

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:

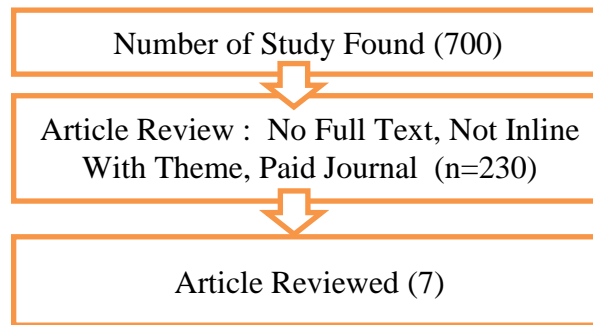


Fig. 1. Data Extraction (Articles relevant to the purpose of research)

2.2. Research result

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 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 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 [29]

Rapatsa (2018) discusses the numerous advantages of arbitration over alternative dispute resolution (ADR) methods such as negotiation, conciliation, or mediation [30] [31]. As arbitration requires regulation as a legal basis, such as in the City of California, where regulations require hospitals to resolve malpractice disputes through 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. [32] [33]

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) [34]

Kalra (2020), in the face of the era of medicotourism, 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).)[35] 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 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. 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)[23]

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 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 [36]

3. DISCUSSION

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. 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 [37]. 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[38][39]. 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 [35]

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.[40][41]

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. SWartz (1977) claimed the same thing in the study [42]. Regarding the benefits of arbitration, according to 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 [35]

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, [43][44] 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. [37][45], Meanwhile, Munjae Lee (2019) proposed in his research that a specific institution for malpractice concerns be developed under the Korea Medical Dispute Mediation and Arbitration Agency, demonstrating the level of seriousness in dealing with malpractice cases.[46]. 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 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.[35] . Santo Davide Ferrara et al (2013) 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.[47]

4. CONCLUSION

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

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,

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

Writer of a journal.	Errawan, Dwi Herri, Anjar Bhawono
Title of a journal.	Arbitration as on Alternative to Non Litigation Settlement in Medical Cases
Name of the journal.	Advances in Economics, Business and Management Research, volume 121
Investigate Theory.	Descriptive Qualitative Analysis
The outcome of research.	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.

Writer of a journal.	James R Butler
Title of a journal.	Arbitration Agreement and Your Malpractice Coverage
Name of the journal.	Advances in Economics, Business and Management Research, volume 121
Investigate Theory.	Normative Juridical
The outcome of research.	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.

Writer of a journal.	Munjae Lee
Title of a journal.	The Effects of Criminal Punishment on Medical Practice in the Medical Environment
Name of the journal.	International Journal of Environment Research on Public Health
Investigate Theory.	Quantitative
The outcome of research.	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.
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Writer of a journal.	Swartz, Bruce M.
Title of a journal.	Medical Abitration in a group Practice Setting
Name of the journal.	West J Med
Investigate Theory.	Qualitative Theory
The outcome of research.	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.

Writer of a journal.	Myriam Gilles
Title of a journal.	Operation Arbitration : Privatizing Medical Malpractice Claims
Name of the journal.	The Journal Theoretical Inquiries in Law
Investigate Theory.	Descriptive Theory
The outcome of research.	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).
Writer of a journal.	Gantz, David A Gupta, Amar Sao, Deth
Title of a journal.	Disputes Related to Healthcare Across National Boundaries: The Potential for Arbitration
Name of the journal.	George Washington International Law Review 2011
Investigate Theory.	Qualitative Analysis
The outcome of research.	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.

Writer of a journal.	Meenakshi, Vikas
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Title of a journal.	The Potential of Arbitrating Healthcare Disputes
Name of the journal.	Medico Legal Update
Investigate Theory.	This is a doctrinal study in which primary and secondary data sources have been assessed and studied for research purposes.
The outcome of research.	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

UNDER PEER REVIEW