Review Article

ROLE OF ARBITRATION IN RESOLVING MEDICAL MALPRACTICES : A Literature Review

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 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.

Keywords: Non-litigation, Arbitration, Malpractice disputes, Arbitration board, 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], 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 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 obligation. [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 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 [11] [12]. The contents of informed 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 [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. [17]. Malpractice violations that can be reduced include providing clear information to the patient or patient's family so that

the patient or patient's family can estimate the risks that may arise indirectly [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 (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 costs of the courts [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 (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 [23]. 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 [26][27].

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 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. 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]

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.

2. METHODS

This 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] All scientific articles cited are sourced from Google Scholar, Elsevier, SagePub, dan ScienceDirect.

The 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.

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

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),*

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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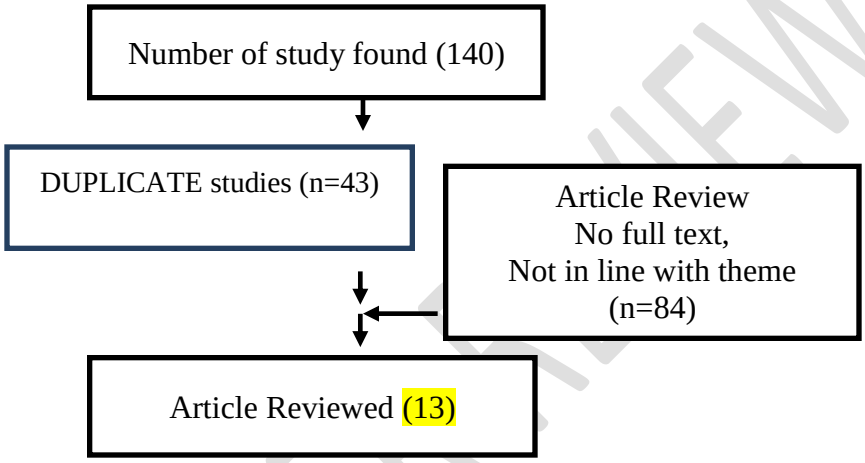

Fig. 1. Data Extraction (Articles relevant to the purpose of research

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..

3. 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]

According to Wiradisuria 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 [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 [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.. [36]

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]

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

According to 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) [40]. 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. 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.[41]

Table 2. Summary of article review

AUTHOR OF ARTICLE.	Nevers, Ann H
Title of a-ARTICLE.	Medical malpractice arbitration in the new millennium: Much ado

	about nothing
Name of the journal.	Pepperdine Dispute Resolution Law Journal. Volume 1, Issue 1 article 6
Investigate Theory.	Descriptive Qualitative Analysis
The outcome of research.	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.
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.	Butler Jr, James R.
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.	Samuel, A. (2020)
Title of a journal.	Be Like Europe: Let's Redux the Federal Arbitration Act
Name of the journal.	Alternatives to the High Cost of Litigation, 38(1), pp. 3–6.
Investigate Theory.	Normative Juridical
The outcome of research.	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.

Writer of a journal.	Kalra, M. and Gupta, V.
Title of a journal.	The Potential of Arbitrating Healthcare Disputes
Name of the journal.	Medico Legal Update, 20(2), pp. 358–362 (2020)
Investigate Theory.	Normative Juridical (doctrinal)
The outcome of research.	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.

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.

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.	Hadiwinata, Krismawan
Title of a journal.	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)

Name of the journal.	Doctoral Dissertation, Universitas Tarumanagara
Investigate Theory.	Normative Juridical
The outcome of research.	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.

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.	Herwastoeti
Title of a journal.	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
Name of the journal.	International Conference on Indonesian Legal Studies, 01 July 2020| Semarang City
Investigate Theory.	Doctrinal legal research (Normative Juridical)
The outcome of research.	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.

Writer of a journal.	Ferrara, Santo Davide
Title of a journal.	Malpractice and medical liability. European guidelines on methods of ascertainment and criteria of evaluation’
Name of the journal.	International journal of legal medicine, 127(3), pp. 545–557. 2013
Investigate Theory.	Normative Juridical

The outcome of research.	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.

Writer of a journal.	Meenakshi, Vikas
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

4. DISCUSSION

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]. According to Butler Jr. (1976), a special arbitration law was created for the California area as a 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 [43]. 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. [44]. 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 [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. [37]

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 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 Swartz (1977) claimed the same thing in the study [45]. Regarding the benefits of arbitration, according to Kalra and Gupta (2020), 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 [46] [47] 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 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) 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].

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. [50]

5. CONCLUSION

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

The papers and supporting information files contain all relevant data

COMPETING INTERESTS

The authors have stated that there are no competing interests.

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