

Online Arbitration as An Alternative for Non-Litigation Resolution in Medical Dispute Cases

Hadi Zulkarnain¹, Richard²

hadizulkarnain@yahoo.com¹, richardseshmkn@gmail.com²

Universitas Borobudur, Indonesia^{1, 2}

Abstract. Technological advances have created so many options for resolving medical disputes, both traditional and electronic. The existence of weaknesses in resolving medical disputes through mediation has encouraged the birth of alternative dispute resolution, such as online arbitration which is an improvement over traditional arbitration. The issue in this exploration is how might online mediation be utilized as an option non-prosecution goal in clinical question cases? This examination is regularizing juridical exploration utilizing auxiliary information and investigated unmistakably. The examination results show that web-based intervention as an option non-prosecution resolution in medical dispute cases is a manifestation of advances in information technology and also the need for fast, precise medical dispute resolution and achieving a win-win solution between the parties. Subsequently, online mediation as an option non-suit goal in clinical debate cases which by giving the gatherings the potential chance to decide the area and procedural law of the discretion can be promptly executed in emergency clinics as one more option in settling clinical cases, so collaboration is essential between Indonesian Public Discretion Board with the Indonesian Specialists Relationship to make an extraordinary idea in regards to online assertion for clinical questions in Indonesia.

Keywords: Online Arbitration; Alternative Dispute Resolution; Medical

1 Introduction

Health development seeks to increase individuals' awareness, willingness, and ability to live healthily. It is done to achieve optimal health, one aspect of general welfare as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia. Thus, health as a human right must be realized by providing various health services that can be accessed by all levels of society. The implementation of quality and affordable health development is critical to ensure that all people receive adequate health services. [1]

One of the main components of the health care system is doctors and dentists. They play a very significant role because they are directly involved in providing health services to the community. The role of doctors and dentists is not only limited to providing medical care but also maintaining the quality of the services provided. They are responsible for ensuring patient to receive care by applicable medical standards. In addition, they also play a role in health education to the community, thereby increasing public awareness and knowledge about the importance of maintaining health. [2]

To bridge the interests of both parties in health services and assess the objective capabilities of a doctor and dentist, the establishment of the Indonesian Medical Council is required. This council consists of the Medical Council and the Dental Council and functions as an independent body that acts as a regulator in improving the capabilities of these medical practitioners. The Indonesian Medical Council plays an important role in regulating and improving the standards of medical practice in Indonesia. Its main functions include registering all doctors and dentists who will practice medicine, ratifying professional education standards for both fields, and conducting coaching and supervision with other related institutions. Through these efforts, the council ensures that doctors and dentists have the necessary qualifications and comply with the established professional standards. [3] In addition, various professional organizations and associations of educational institutions also play an important role in improving the quality of health services. They are responsible for compiling and monitoring the code of ethics and standards of discipline that must be adhered to by doctors and dentists. Thus, these medical practitioners are not only subject to applicable legal provisions but must also comply with the code of professional ethics designed by their respective professional organizations.

However, in practice, health services stipulation often causes problems that lead to medical disputes. These disputes are usually related to violations of medical ethics, medical discipline, violations of patient rights, or violations of public interests. As a result, doctors and dentists can be held accountable in terms of ethics, discipline, and civil, criminal, or state administrative law. Public trust in doctors and dentists has decreased, and lawsuits from the public have become more frequent. It often occurs because the failure of healing efforts by doctors and dentists is often misinterpreted as their professional failure. [4]

Di On the other hand, when medical action is successful, it is often considered excessive, even though doctors and dentists are only trying to cure patients with the knowledge and technology they have. Failure in medical science application does not always mean failure in medical action. [5] To overcome this problem, various legal efforts have been made to provide comprehensive protection to the public as recipients of services and doctors and dentists as service providers. These efforts involve legal protection that covers civil, criminal, and administrative aspects to ensure that both parties receive justice and that public trust in the medical profession can be restored.

To address medical disputes, one potential solution is to consider online arbitration as an alternative to traditional litigation. Online arbitration offers a faster and more efficient solution compared to conventional litigation processes in court. Despite its considerable potential in resolving medical disputes, online arbitration remains unregulated by specific laws and regulations in Indonesia. Hence, there is a need for clear and comprehensive stipulations to facilitate its use in resolving medical disputes, ensuring legal certainty for all parties involved.

2 Research Methodology

The research in this study employs the empirical legal method, which integrates the legislative and case approaches. [6] The empirical legal techniques are designed to examine the practical application of legal regulations and their societal impact. The legislative approach involves a thorough examination of relevant legal regulations, including laws, government regulations, and other rules that govern medical practice and dispute resolution. Furthermore, the case approach analyzes real-life examples of medical disputes, shedding light on how the law is implemented and its impact on the involved parties. By integrating these two approaches,

the study aims to offer a comprehensive assessment of the law's efficacy in resolving medical disputes and highlight potential areas for additional regulations, such as those related to online arbitration, to enhance legal certainty and protect the community and medical professionals.

3 Results and Discussion

Medical practice in Indonesia includes a series of activities performed by doctors and dentists to provide health services to patients. The term "medical practice" encompasses all interactions between medical professionals, including general practitioners, specialized physicians, dentists, and dental specialists holding recognized domestic or foreign medical qualifications, and their patients. Patients, in this case, are individuals who desire health assistance, either through direct or indirect consultation with the medical personnel. Patients, in this case, are individuals who desire health assistance, either through direct or indirect consultation with the medical personnel. [7]

According to Article 2 of Law No. 29 of 2004 concerning Medical Practice, the implementation of medical practice must be based on principles that include Pancasila and scientific principles, benefits, justice, humanity, balance, and patient protection and safety. Scientific values require that medical practice be carried out based on valid medical knowledge and technology, obtained from formal education and professional experience, as well as professional ethics. Benefits emphasize the importance of health services that provide maximum benefits to humans, focusing on improving public health.[8] The principle of justice demands that all people receive equal services at a reasonable cost and of good quality, while humanity demands fair treatment without distinction of ethnicity, religion, race, or social status. Balance requires harmony between the interests of the individual and society, and patient protection and safety ensure that health services are not only adequate in terms of quality but also safe and considerate of patient welfare. Regulation of medical practice aims to protect the rights and safety of patients, improve the quality of medical services provided by doctors and dentists, and provide legal certainty to the public and the medical personnel themselves. [9]

In the practice of medicine, it is essential to consider several important factors to ensure that the rights and obligations for doctors and patients are properly met. One crucial aspect is informed consent, which is the patient's or their family's approval after a thorough explanation of the proposed medical procedure. This process is governed by various regulations, including Law No. 29 of 2004 concerning Medical Practice and Permenkes No. 290/Menkes/PER/III/2008. Informed consent encompasses information about the diagnosis, the purpose of the medical procedure, alternative options and their associated risks, and the prognosis of the procedure. For high-risk procedures, this consent must be provided in writing, unless in emergencies where an explanation must be given as soon as possible after the patient regains consciousness. [10]

In addition, the legal relationship between a patient and a doctor involves two main aspects: the therapeutic contractual relationship and the statutory relationship. The therapeutic contractual relationship is an agreement that gives the doctor the authority to provide medical services, while the statutory relationship involves obligations that the doctor must fulfill without requiring the patient's consent. These relationships result in legal and ethical responsibilities for the doctor, which are usually like a business contract, where the doctor is responsible for the efforts made, not the final result. [11]

Doctors have rights and obligations regulated in Law No. 29 of 2004. Doctors' rights include legal protection while carrying out duties according to professional standards, the right to compensation for services, and the right to obtain complete information from patients. Conversely, doctors' obligations include providing medical services according to standards, referring patients when necessary, keeping patient information confidential, and continuing to update knowledge. Patients also have rights, such as obtaining a complete explanation of medical procedures, choosing the opinion of another doctor, and refusing medical procedures. Patients' obligations include providing honest health information, complying with doctor's advice, and fulfilling health service provisions. [12]

In the context of medical practice aimed at providing optimal healthcare services, disputes between patients and healthcare providers often arise. These disputes typically stem from patient dissatisfaction with the outcomes or processes of healthcare services received. Issues can range from violations of medical ethics, and errors in medical procedures, to inadequate provision of information regarding risks and treatment options.

Several factors contribute to medical disputes, including negligence or errors in diagnosis or treatment, differing interpretations of treatment outcomes, or poor communication between doctors and patients. For example, patients may feel they did not receive adequate explanations about medical procedures or that the care provided did not meet expected standards. Moreover, dissatisfaction can arise when treatment outcomes do not meet patient expectations, despite all medical procedures being performed correctly.

Resolving medical disputes requires careful attention due to the complex interplay of medical knowledge with legal and ethical principles. Therefore, mediation or arbitration processes are often employed to seek fair solutions for all parties involved. Effective dispute-resolution efforts are crucial for maintaining relationships between healthcare providers and patients, as well as ensuring that emerging issues are resolved without escalating dissatisfaction or further conflict.

Medical disputes involve conflicts between patients or their families and healthcare providers, or between patients and hospitals or healthcare facilities. It discusses specifically focuses on disagreements between doctors and patients. Typically, contested issues revolve around the outcomes of medical care, often without considering or overlooking the processes undertaken by the doctor. Medical disputes can manifest in various forms, including violations of medical ethics, breaches of medical discipline, infringements on patient rights, or violate public interest. For instance, infringements of medical ethics occur when a doctor acts contrary to the professional code of conduct, while breaches of medical discipline happen when a doctor fails to adhere to established medical procedures.

The characteristics that define medical disputes involve the relationship between the doctor and the patient, occurrences of negligence or mistakes made by the doctor, and efforts to resolve the situation. Patients often bear the brunt of these situations, particularly if medical negligence or errors result in health loss or unwanted complications. Examples of negligence include diagnostic errors, improper treatment, or medical procedures performed without patient consent.

Various complex and multifaceted factors contribute to the occurrence of medical disagreements. One primary factor is actions taken by healthcare providers that do not align with agreed-upon standards or protocols, for example, performing actions that should not have been done as per agreement or implementing necessary procedures late or incorrectly. Additionally, incomplete execution of medical actions, despite being agreed upon, can also lead to disputes. Poor information and communication between doctors and patients can exacerbate medical disagreements. Ineffective communication can lead to misunderstandings, while effective communication can help mitigate potential issues. Differences in perception regarding

what constitutes malpractice or differences in interests between patients and healthcare providers can also cause conflicts. Disparities between patient expectations and treatment outcomes often worsen situations, especially if their overconfidence triggers dissatisfaction.

Those who feel aggrieved often express their dissatisfaction directly to those they perceive as causing harm or to third parties. This dissatisfaction can escalate if not promptly and effectively addressed. If there is no adequate response from those deemed responsible, patients or their families may share their complaints with others, exacerbating the situation if these individuals also stoke the problem. Social media misinformation and the influence of inaccurate information can also contribute to medical disputes. Moreover, if ethical values in medical practice begin to fade, such as due to a focus on material gain or neglect of oaths and codes of ethics, this can increase the likelihood of disputes. Competition among peers and weak confidence in the healthcare system can also contribute to the emergence of medical disputes. All these factors underscore the importance of maintaining standards of professionalism and effective communication in medical practice to prevent unnecessary arguments.

Medical dispute resolution can be done through various non-litigation methods, one of which is arbitration, by the provisions of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Based on this law, arbitration is a method of resolving civil disputes outside the general courts, which is carried out based on a written agreement between the disputing parties. The advantages of arbitration include guarantees of confidentiality, avoidance of procedural delays, freedom in choosing an arbitrator and determining the choice of law and location of implementation, and the arbitrator's decision is binding and can be implemented directly with a simple procedure. [13] In addition to arbitration, there are also alternative dispute resolution methods that include various out-of-court procedures. These include consultation, mediation, conciliation, and expert assessment. Consultation is a personal process in which a consultant provides an opinion to a client regarding a problem. Mediation is a dispute resolution process in which a mediator helps the parties to reach an agreement through negotiation. In mediation, especially in medical disputes, the mediator often has medical and legal expertise so he can handle the medicolegal aspects well. [14]

Mediation is recommended because the process is peaceful, and effective, and can provide wider access to fair resolution while maintaining the confidentiality of the case. Conciliation, on the other hand, involves a third party called a conciliator who is more active in formulating and developing steps to resolve the dispute. Although conciliators do not have the authority to make decisions, they can provide recommendations whose implementation depends on the good faith of the parties. The Expert assessment involves obtaining a technical opinion from an expert mutually agreed upon by the parties involved in the dispute. This evaluation as a crucial role in resolving conflicts and reaching fair outcomes. This assessment is useful for explaining technical matters related to the dispute and can assist in the resolution process by providing views from a certain expert perspective. [15]

One increasingly popular method for resolving medical disputes that facilitates the process is online arbitration. Online arbitration offers a modern approach utilizing information technology to resolve disputes outside of courts efficiently and flexibly. In online arbitration, the dispute resolution process occurs through digital platforms, allowing parties to communicate, submit evidence, and make arguments without physical presence. This method not only reduces the requirement for potentially cumbersome physical attendance but also accelerates the dispute-resolution process.

The primary advantage of online arbitration lies in its ability to resolve disputes more quickly and at lower costs than traditional litigation processes. By utilizing online platforms, parties can access dispute-related documents and information anytime and from anywhere, thus

reducing the time needed for dispute resolution. Additionally, online arbitration enables parties to select arbitrators with specialized expertise in the medical field, facilitating decisions that are more relevant and accurate. This process also maintains confidentiality, which is crucial in medical disputes where patient information privacy must be protected.

Despite offering significant potential as an efficient and flexible alternative for resolving medical disputes, online arbitration is currently not specifically regulated under Indonesian legislation. Existing regulations, such as Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, do not encompass provisions specifically governing arbitration procedures conducted via digital platforms. Consequently, there is legal uncertainty regarding how online arbitration should be conducted and how the resulting arbitration decisions can be recognized and enforced lawfully. To maximize the potential of online arbitration in resolving medical disputes, clear and detailed regulations in the law covering the technical and legal aspects of digital arbitration processes are necessary.

To fully capitalize on the potential of online arbitration in medical dispute resolution, it is imperative to reform the laws governing this method. Presently, the existing legal provisions do not specifically cover arbitration conducted via digital platforms, leading to legal uncertainty concerning the implementation and recognition of online arbitration decisions. Legal reforms are needed to ensure that online arbitration is regulated, including technical procedures, data protection aspects, and mechanisms for enforcing decisions. Updated regulations should encompass provisions on how online arbitration platforms operate, including security standards and privacy protections to safeguard sensitive information in medical disputes. Additionally, regulations are needed on how arbitrators involved in online arbitration are selected and how they ensure fair and lawful decisions. These reforms should also address the recognition and enforcement of online arbitration decisions within the Indonesian legal system, ensuring that the resulting decisions are recognized and applied lawfully.

With clear and comprehensive regulations, online arbitration can become an effective, efficient, and legally recognized alternative for resolving medical disputes. This not only expedites the dispute resolution process but also enhances accessibility and transparency in conflict resolution, providing fair and appropriate solutions for all parties involved. Appropriate legal reforms will ensure that online arbitration is effectively implemented and delivers optimal benefits within Indonesia's medical dispute resolution system.

4 Conclusion

The resolution of medical disputes can be effectively achieved through non-litigation methods such as arbitration, mediation, and conciliation. These methods provide fast, flexible, and less formal solutions compared to traditional litigation. Online arbitration has the potential to simplify and expedite the resolution process. However, the current lack of specific regulations for online arbitration in Indonesia calls for legal reform. This reform should encompass online arbitration procedures, technical aspects, data protection, and the recognition of awards. By establishing clear legal guidelines, online arbitration can be implemented effectively and recognized as a legitimate alternative, promoting efficiency, transparency, and fairness in resolving medical disputes in Indonesia.

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