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A Study of the Provisions for Dispute Resolution in the Health Sector through Mediation and Arbitration in Indonesia

Jafar Sidik
Faculty of Law, Langlang Buana University, Indonesia

Dewi Sulistianingsih ✉
Faculty of Law, Universitas Negeri Semarang, Indonesia

Asep Rozali
Law School of Bandung, Indonesia

Deni Haspada
Faculty of Law, Langlang Buana University, Indonesia

Edi Pramono
Faculty of Law, Langlang Buana University, Indonesia

✉ Corresponding email: dewisulistianingsih21@mail.unnes.ac.id

Abstract

One of the ideals of the Indonesia nation is to advance general welfare. Health is a human right as one of the elements of general welfare, which must be realized. Legal relations in the health sector are not always harmonious, therefore it is necessary to have a way or mechanism to resolve disputes or disputes or differences of opinion between related parties, such as the relationship between health facilities in the form of hospitals or clinics and doctors, doctors, or other related parties. The political direction of Indonesia's law regarding dispute resolution can be carried out through state judicial institutions or resolved outside the state courts. The purpose and purpose of this article is to know, describe and analyze positive legal provisions related to dispute resolution in the health sector. This study uses research methods with juridical-normative and descriptive-analytical approaches, using library research. The results of this study show that the provisions in the Health Law have accommodated efforts to resolve disputes outside the court by using arbitration and mediation. However, there is still a need for health mediation institutions at the district level so that there are institutions available to resolve disputes in the health sector.

Keywords

Arbitration; Health; Disputes; Mediation; Indonesia.

I. Introduction

Lately, the mass media has often revealed dissatisfaction of patients or patients' families with the health services they receive, whether from doctors or from health service institutions. Electronic and print media have raised cases of alleged malpractice due to negligence associated with disability or death of a person after undergoing a medical procedure. Not infrequently, these problems then continue to the courts[1]. Viral news of health disputes through social media and *online* media or print media such as the case of Prita Mulyasari versus Omni International Hospital Alam Sutera (2009) has attracted the attention of many circles[2]. The case was resolved through the state judicial institution. Another example of a case is dr. Dewa Ayu Sasiary Prawarni, SpOG. Cs. and not a few examples of other viral cases that have occurred.

Siti Chomsatun was a victim of malpractice committed by Kramat 128 Hospital in February 2010. As a result of the malpractice, Siti Chomsatun then filed a lawsuit for unlawful acts against the President Director of Kramat 128 Hospital, dr. Tantiyo Setyowati, M.Kes., and dr. Fredy Merle Komalig, M.K.M. Siti Chomsatun was represented by LBH Jakarta as her legal representative on May 23, 2017. On November 22, 2018, the Panel of Judges of the Central Jakarta District Court in Decision 283/Pdt.G/2017/PN. JKT. PST won Siti Chomsatun[3].

According to the records of the Health Legal Aid Institute (LBH) regarding health conflicts in Indonesia, it is stated that the number of cases of doctor malpractice in Indonesia is due to an unsupportive health system. From 1999 to 2004, according to LBH Kesehatan data, there have

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1 Lukman Hakim Apriyanto, Ika Dewi Sartika Saimima, "Implementasi Pasal 29 Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan Terkait Upaya Penyelesaian Sengketa Medis," *Jurnal Hukum Pelita* 4, no. 1 (2023): 67–78, https://doi.org/10.37366/jh.v4i1.2378.

2 Jafar Sidik, *Klausula Arbitrase Dalam Kontrak Bisnis (Cases & Materials)* (Bandung: Binara Padaasih, 2016).

3 Anggi, "Siti Chomsatun, Korban Malpraktik Menang Di Pengadilan," LBH Jakarta, 2019, https://bantuanhukum.or.id/siti-chomsatun-korban-malpraktik-menang-di-pengadilan/.

been 126 cases of suspected malpractice[4]. These cases are spread across various hospitals. These cases are also not all resolved at the level of investigation or police reports. Most houses are willing to take responsibility after the package receives legal advocacy. Or cases that occur can be resolved peacefully, voluntarily deliberated between the parties to the dispute.

The occurrence of cases in the health sector is caused by, among others, the absence of legal protection for patients and the weakness of the health system in Indonesia. Health problems are poorly understood. In fact, the Police or Law Enforcement Officers (APH) do not understand about this health problem.

The Indonesia Health Consumer Protection Foundation (YPKKI) has handled more than 255 cases in the period 1998-2004[5]. Malpractice cases that occur are rarely resolved to the level of investigation.

The increasing number of cases of patient dissatisfaction with health services, allegations of malpractice by health workers, the provision of health services that are not up to standard, and other health disputes, which enter the legal realm through law enforcement officials or even in state judicial bodies, some examples include the West Jakarta District Court Decision Number: 625/Pdt.G/2014/PN. JKT. BRT, Jakarta High Court Decision Number: 614/PDT/2016/PT. DKI., Decision of the Supreme Court of the Republic of Indonesia Number 42/Pdt/2018.

Examples of other cases are in the South Jakarta State Decision Number 312/Pdt.G/2014/PN. JKT. Sel., Jakarta High Court Decision Number 240/PDT/2016/PT. DKI., Decision of the Supreme Court of the Republic of Indonesia Number 3695 K/Pdt/2016., Decision of the

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[4] Yophiandi, "LBH Kesehatan: Pasien Di Indonesia Tak Terlindungi," *Tempo News Room* (Jakarta, July 2004), https://metro.tempo.co/read/45022/lbh-kesehatan-pasien-di-indonesia-tak-terlindungi.

[5] Mahkamah Konstitusi Republik Indonesia, "Putusan Mahkamah Konstitusi No. 15/PUU-XII/2014 Tentang Pengujian Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa" (Jakarta, 2014), https://bphn.go.id/data/documents/15-2014.pdf.

Jakarta State Administrative Court Number 121/G/2013/PTUN-JKT., Decision of the South Jakarta District Court Number 484/Pdt.G/2013/PN. Jkt.Sel., Jakarta High Court Decision Number 66/PDT/2016/PT. DKI., Decision of the Supreme Court of the Republic of Indonesia Number 1001 K/Pdt/2017., Decision of the Jambi High Court Number 63/PDT/2013/PT. Jbi., Decision of the Supreme Court of the Republic of Indonesia Number 1361 K/Pdt/2014., Decision of Review of the Supreme Court of the Republic of Indonesia Number 699 PK/Pdt/2017.

The urgency of understanding dispute resolution regulations in this case, especially disputes in the health sector, is absolutely necessary, so that Arbitration and Mediation or other Alternative Dispute Resolution can produce the best solution that does not harm both parties *to the dispute (win-win solution)*. It is necessary to address the dispute resolution through Arbitration and Mediation or other Alternative Dispute Resolution (APS),

As a search that has been carried out by the author, there are several similar studies that will be compared with the author's article. This is to prove the originality of the author's research. First, an article from Yuyut Prayuti, et.al. entitled: The Effectiveness of Mediation and Arbitration in Healthcare Consumer Dispute Resolution. The focus of Yuyut Prayuti's article is that mediation has proven to be effective in handling consumer disputes in the health sector, while the effectiveness of arbitration is highly dependent on the ability and expertise of arbitrators, especially in the context of cases involving special technical knowledge[6]. The author's article is more about disputes in the health sector which focuses more on civil disputes in the health sector which are resolved using mediation and arbitration. Second, an article from Niru Anita Sinaga, entitled: Medical

[6] Beni Yuyut Prayuti, Arman Lany, Davin Takaryanto, Angkasa Ramatuan Hamdan and Enggar Adi Nugroho Ciptawan, "Efektivitas Mediasi Dan Arbitrase Dalam Penyelesaian Sengketa Konsumen Kesehatan," *Journal Syntax Idea* 6, no. 3 (2024), https://doi.org/https://doi.org/10.46799/syntax-idea.v6i3.3165.

Dispute Resolution in Indonesia[7]. This article is very broadly discussed, in contrast to the author's article which focuses more on resolving disputes in the health sector using mediation and arbitration.

In relation to the matters described above, the main problems are: (1) Where can the legal source of provisions on the settlement of health disputes outside the state judiciary be found in positive law in Indonesia? (2) What are the stages of the mechanism for resolving disputes in the health sector outside the state judiciary in positive law in Indonesia?

II. Method

The research method used is to use a normative juridical approach with literature study, inventorying and examining legal norms or applicable legal provisions (positive law) related to the research title such as reviewing the Law on Health, the Law on Medical Practice, the Law on Judicial Power, the Law on Arbitration and Alternative Dispute Resolution Outside the State Court and other relevant laws and regulations. After conducting a literature study on positive law in the form of laws and regulations, then describing (deciphering) without using formulas or statistical figures, then analyzing these norms or provisions related to the title of the research. In order to support optimal research results, the researcher conducted interviews with selected legal experts and health experts, using research instruments in the form of a List of Questions as a guideline. After the data is collected and analyzed, then a conclusion is drawn to identify the identification of the problem, the subject matter of the research. The conclusion was then presented in a limited circle.

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[7] Niru Anita Sinaga, "Penyelesaian Sengketa Medis Di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 2 (2021): 1–22, https://doi.org/https://doi.org/10.35968/jihd.v11i2.765.

III. Result & Discussion

Observing business activities where the number of transactions is hundreds every day, it is impossible to avoid disputes (disputes/differences) between the parties involved. Every type of dispute that occurs always demands quick resolution and resolution. The more and more extensive trade activities are, the higher the frequency of disputes, which means that it is very likely that there will be more disputes that must be resolved. Business disputes can be resolved through litigation and non-litigation channels, Dispute resolution through litigation is settlement through the court, while settlement through non-litigation channels is settlement through arbitration and alternative dispute resolution (Alternative Dispute Resolution)[8]. Business Dispute Resolution Law in Indonesia, namely:

1) Dispute Resolution through the State Court, namely: Law on Judicial Power (Law No.48/2009): Law on General Justice (Law No.49/2009), Law on Religious Justice, Law on State Administrative Justice and Law on Military Justice.
2) Court of First Instance (District Court-PN / Religious Court-PA / State Administration-TUN); The Court of Appeal (PT) and the Court of Cassation (MA) and Review (MA).
3) Dispute Resolution Outside the State Courts, namely: Law on Judicial Power (Law No.48/2009): Law No.30/1999 on Arbitration and APS (through Negotiation and Mediation and Other Means).

The Political Direction of Indonesia Law regarding the settlement of business disputes outside the state court, appears in several laws and regulations, including:

1. Law on Judicial Power (Articles 58 – 61 of Law No. 48 of 2009);

[8] M. Shidqon Prabowo, "Aspek Hukum Bisnis Tentang Penyelesaian Sengketa Bisnis," *Jurnal Ilmiah Ilmu Hukum QISTIE* 10, no. 1 (2017): 75–81, https://doi.org/http://dx.doi.org/10.31942/jqi.v10i1.1963.

2. Law on Construction Services (Article 47 and Article 88 of Law No.2 of 2017);
3. the Law on Intellectual Property;
4. Law on Sports (Article 102 of Law No.11 of 2022);
5. Law on Health (Article 29 of Law No. 36 of 2009);
6. Government Regulation on Procurement of Government Goods/Services (Article 85 PP No.11 of 2018)
7. LKPP Regulation No.18 of 2018 concerning Government Goods/Services Procurement Contract Dispute Resolution Services.

Basically, the doctor's mistake or negligence in carrying out the medical profession is an important thing to discuss, this is because the consequences of the mistake or negligence have a very detrimental impact. In addition to damaging or reducing public trust in the medical profession, it also causes harm to patients[9].

Disputes in the health sector often arise because of the disharmonious relationship between doctors or hospitals and patients. Health disputes that begin with a gap in perception and interests between patients and health service providers (doctors and/or hospitals) often lead to settlement in the legal realm[10]. Health services to vulnerable communities can cause health disputes between health service providers such as hospitals, doctors/dentists and nurses with patients or their families. Health dispute resolution can be done through the courts, either through criminal courts or civil courts[11].

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[9] Rif'atul Hidayat, "Hak Atas Derajat Pelayanan Kesehatan Yang Optimal," *Syariah Jurnal Hukum Dan Pemikiran* 16, no. 2 (2017): 127, https://doi.org/10.18592/sy.v16i2.1035.

[10] Eny Kusdarini Setiati Widihastuti, Sri Hartini, "Mediasi Dalam Penyelesaian Sengketa Kesehatan Di Jogja Mediation Center," *SOCIA: Jurnal Ilmu-Ilmu Sosial* 14, no. 1 (2017), https://doi.org/10.21831/socia.v14i1.15889.

[11] Mansyur, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Kesehatan," *Akta Yudisia* 2, no. November (2017): 2–4, https://doi.org/https://doi.org/10.35334/ay.v2i2.1547.

This study will examine Dispute Resolution Outside the State Court, with more specifically on civil disputes in the health sector.

Legal Source Provisions on Settlement of Health Disputes Outside the State Judiciary in Positive Law in Indonesia

Terms that are commonly used in disputes in the health sector are medical disputes, civil disputes in the health sector, etc. Medical disputes are disputes that often occur in people's lives, where the aggrieved party has a very large loss, especially in the health sector.

Medical Disputes are disputes that occur between patients or patients' families and medical personnel or between patients and hospitals/health facilities. Medical disputes usually occur because patients are dissatisfied with medical personnel in providing health services. Dissatisfaction arises because the patient suspects that there has been a mistake or negligence of medical personnel in carrying out their duties, causing losses to the patient[12].

Health disputes can be said to be part of malpractice actions. The types of malpractice are[13]:

1. Criminal Malpractice (criminal):
    a. Because negligence (culpa) causes the patient to die or be injured (Articles 359-361 of the Criminal Code).
    b. Deliberately committing a provocatus abortion (Article 299, Article 347, Article 348, Article 349 of the Criminal Code).
    c. Committing a violation of morality (Article 285, Article 286, Article 290 of the Criminal Code)
    d. Unlocking medical secrets (Article 322 of the Criminal Code)

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[12] Habibah Zahra Mutiara and Devi Siti Hamzah Marpaung, "Penyelesaian Sengketa Medik Melalui Arternatif Penyelesaian Sengketa Mediasi," *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora* 9, no. 2 (2022): 889–97, http://jurnal.um-tapsel.ac.id/index.php/Justitia.

[13] Takdir, *Pengantar Hukum Kesehatan* (Sulawesi Selatan: Lembaga penerbit Kampus IAIN Palopo, 2018).

   e. Falsifying certificates (Article 263, Article 267 of the Criminal Code)
   f. Agreeing to commit a criminal act (Article 221, Article 304, Article 351 of the Criminal Code).
2. Civil Malpractice (civil):
   a. Lack of thoroughness/negligence that causes the party to suffer losses (Articles 1366, 1367 of the Criminal Code)
   b. Doctors misdiagnose
3. Ethical malpractice that leads to abuse of the Service can be a legal case. Example:
   a. Over-utilization of advanced equipment, just to be able to return loans to leasing companies;
   b. Under-treatment of patients who are underprivileged and unable to pay, or unable to receive it under various pretexts;
   c. Increasing the "length of stay" of VIP class patients for medical reasons, so that income increases;
   d. Conducting 'patient dumping', namely patients who are unable and do not have insurance as soon as possible are told to go home or referred to another hospital, even though their health condition has not recovered properly/is not yet stable
   e. Not accepting patients who are in a 'terminal' state to reduce the 'mortality rate' and maintain the good name of the hospital;
   f. Detaining patients and not referring them to other hospitals even if the necessary equipment for diagnostics and therapy from the hospital concerned is not present or inadequate.

Civil disputes or malpractice in the civil realm are negligence or mistakes committed by medical personnel and claims for compensation. In general, civil disputes can be resolved outside the court. The scope of trade dispute resolution is activities, among others, in the fields of commerce, banking, finance, investment, industry, intellectual property rights. This provision is enshrined in Law No. 30 of 1999. Thus, in this

case, civil disputes in the health sector can be resolved by using arbitration and alternative dispute resolution.

Furthermore, Law No. 36 of 2009 concerning Health in Article 29 regulates in the following cases: "Health workers are suspected of negligence in carrying out their profession, the negligence must be resolved first through mediation". "Mediation is carried out if a dispute arises between health workers, health service providers and health service recipients. Mediation is carried out with the aim of resolving disputes outside the court by a mediator agreed upon by the parties".

This mediation is an effort by the parties involved to reconcile for the benefit of the parties themselves. Regarding how much costs are incurred due to a mediation process is the responsibility of the party who has the case. In civil law, there are several types of actions that are considered to violate the law, namely default, where there is a failure in a medical action that has indeed been informed to the patient or the patient's family, which is regulated in articles 1243-1289 of the Civil Code. Then negligence in medical procedures, regulated in articles 1365-1366 of the Civil Code, if the medical action causes death, it is regulated in article 1370 of the Civil Code and if disability occurs, it is regulated in article 1371 of the Civil Code[14].

In general, there are two types of civil dispute resolution, namely adjudication and non-adjudication. Adjudication is Adversarial/Mutual Dispute/Proof and Decided. Non-Adjudication: Consensus Building/Investigational.

The settlement of dispute by adjudication can be distinguished into two types, namely: (i) by Arbitrators/professionals who are not state officials and by non-state agencies/bodies based on agreements or clauses in the agreement. (ii) by judges/professionals of state officials and state bodies without being based on an agreement.

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[14] Rospita Adelina Siregar, *Hukum Kesehatan Jilid I*, vol. 1 (Jakarta: UKI Press, 2021).

Dispute resolution through non-adjudication, namely (i) Negotiation, is a negotiation by the Parties to the dispute without the assistance of another neutral party; (ii) Mediation, which is a negotiation by the parties to the dispute assisted by another neutral party without the authority to decide with an active and passive role; (iii) Conciliation, which has the same meaning as mediation.

In resolving medical disputes, there are several efforts that patients can make in addition to mediation with medical personnel or hospitals, patients can report to the MKDKI (Honorary Council of Indonesia Medical Disciplines) and the court.

Medical disputes can be resolved through medical professional institutions, namely the Medical Honorary and Ethical Council (MKEK) and the Indonesia Medical Honorary and Disciplinary Council (MKDKI). MKEK is an autonomous body in the organization of the Indonesia Doctors Association (IDI) which was formed in 1979 which functions to coach, supervise, and assess the implementation of medical ethics by doctors consisting of the Central MKEK, Regional MKEK and Branch MKEK. MKEK's special task is to handle violations (complaints) of medical ethics. In handling complaints by MKEK, conduct an analysis of complaints of ethical violations, and if violations are found, MKEK has the authority to give a reprimand or revoke a practice license, according to the severity of the ethical violation. If there is dissatisfaction with the MKEK's decision, both the complainant and the doctor/dentist complained about can file an appeal. In addition to going through MKEK, medical dispute resolution can also be done through MKDKI, as mentioned in the Health Law. MKDKI is an institution under the auspices of IDI which was formed based on Law Number 29 of 2004 article 55 paragraph (1) and has the authority to determine whether there are mistakes made by doctors and dentists in the application of medical and dental disciplines, and to set sanctions[15].

[15] Saadah Kurniawati and Mohd M Yusuf Daeng, "Penyelesaian Sengketa Medis Berdasarkan Hukum Indonesia," *INNOVATIVE: Journal Of Social Science*

Medical dispute resolution through non-profession can be done through litigation and non-litigation channels. These provisions refer to the rules in the court (litigation) and Law No. 30 of 1999 which regulates alternative dispute resolution.

The relationship between doctors and patients sometimes does not always go well. The patient's expectations to get a cure from the disease he suffers from are not met or can worsen his body condition to the point of death. The patient then assumes that the doctor has committed medical negligence. Patients who think that the actions done by the doctor in examining or treating the patient with the final results of the examination are not in accordance with the patient's expectations, then the patient will complain to the doctor so that the patient seems to blame the doctor that the doctor has made a mistake in performing medical procedures[16].

The concept of a win-win solution is to ensure that doctors do indeed commit negligence when carrying out their profession Every patient who complains about a civil case or negligence must report it to the Honorary Council of Indonesia Medical Discipline (MKDI). The patient is waiting for MDKI's decision if he is indeed going to file a lawsuit with the Court. Patients and doctors must be able to receive every decision from MKDKI. The final decision is a reference to what action will be taken next. If the doctor is found guilty of negligence, the doctor will get the right to settle through the mediation process and the patient will give the opportunity for that right[17].

Research 3 (2023): 12234–44, https://doi.org/https://doi.org/10.31004/innovative.v3i2.1854.

16 Uly Purnama Nasution, "Efektivitas Mediasi Dalam Penyelesaian Sengketa Medis (Studi Lapangan Rumah Sakit PKU Muhammadiyah Gamping Sleman)," *Jurnal Widya Pranata Hukum* 2, no. 2 (2020), https://doi.org/https://doi.org/10.37631/widyapranata.v2i2.263.

17 Mutiara and Marpaung, "Penyelesaian Sengketa Medik Melalui Arternatif Penyelesaian Sengketa Mediasi."

Health disputes have a different character from civil disputes in general, such as consumer disputes, land disputes, industrial relations disputes and so on. This is because health disputes not only have an impact on doctors as individuals but can also have an impact on professional organizations and the institutions that oversee them (hospitals). If the process of resolving health disputes is carried out through a litigation process that is open to the public, it will provide opportunities for character assassination that is detrimental to the reputation of health care providers. Considering the distinctive character of this medical profession, it is necessary to look for alternatives to resolving health disputes outside the court[18].

The settlement of medical disputes, especially those that occur in hospitals, which is resolved through mediation, occurs because of an agreement made by the parties, especially the patient's family and the doctor who handles the case. The legal force of the mediation results is in the form of a peace deed signed and approved by both parties and witnessed by the mediator who has competence as evidenced by a certificate[19].

The Arbitration Arrangements are:

(i) Articles 615-651 Rv Stb 1847: 52, Article 377 Hir Stb 1941: 44, and Article 705 Rbg Stb 1927:227, valid until August 12, 1999.

(ii) Law No. 52 of 1968, Ratification *the Convention on The Settlement of Investment Disputed Between States and National of Other States, 1965 (Icsid Convention);* (iii) *Keppres No. 34 Thn 1981*, Ratifikasi *the Convention on The Recognition and Enforcement of Foreign Arbitral Award, 1958 (The New York Convention).* Regulating the Mechanism for the Enforcement of

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[18] Setiati Widihastuti, Sri Hartini, "Mediasi Dalam Penyelesaian Sengketa Kesehatan Di Jogja Mediation Center."

[19] Sabir Alwy Syamsul Rijal Muhlis, Indar Nambung, "Kekuatan Hukum Penyelesaian Sengketa Medik Pasien Dengan Rumah Sakit Melalui Jalur Mediasi," *Jurnal Ilmiah Dunia Hukum* 5, no. 1 (2020), https://doi.org/http://dx.doi.org/10.56444/jidh.v5i1.1557.

Arbitral Awards in a State Party to the Convention through Courts in Other States Parties to the Convention. Conventions related to the New York Convention. The Uncitral Arbitration Rules, 1976, Revised in 2013, 2021; Procedural Rules that may be agreed upon by the Parties and enforced by the Arbitral Bodies to produce Arbitral Awards in the States Parties to the New York Convention. The Uncitral Model Law, 1985, Amended in 2006: Contains Model Law that can be adopted by the States Parties to the New York Convention to realize the Harmonization/Uniformity of Arbitral Proceedings and the Enforcement of Arbitral Tribunal Awards.

(iii) Supreme Court Regulation No. 1 of 1990 concerning Procedures for Enforcement of Foreign Arbitral Awards.
(iv) Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.
(v) Law No. 21 of 2008 concerning Sharia Banking (Article 55 paragraph (2):
(vi) Sharia Arbitration. Supreme Court Regulation No.14 of 2016 concerning Procedures for Resolving Sharia Economic Cases.

Mediation, which is dissolved by the court process, has a legal basis, namely Supreme Court Regulation No. 2 of 2003, replaced by Perma No. 1 of 2008, replaced by Perma No. 1 of 2016 concerning Mediation Procedures in Court and Perma No. 3 of 2022 Mediation in Court Electronically. In addition, there is also the Supreme Court Regulation No. 1 of 2016 which is currently in effect.

Mediation in court is mandatory before the case is adjudicated. Out-of-court mediation can be corroborated by the judge's decision (Article 4 Paragraph (2) Letter E Jo Article 36 of the Supreme Court Regulation No. 1 of 2016.

Mediation carried out in court is carried out by a certified judge mediator or non-judge mediator. Mediator with a certificate, after

passing mediator training/education. Mediators are trained by the Supreme Court Education and Training Center. Non-judge mediators are trained by private/community/university mediation educational institutions.

Dispute resolution through mediation takes a shorter time than settlement through the court (litigation). Mediation takes place privately so that the parties' problems are not known to others, only certain people are allowed to participate in the mediation process. Meanwhile, dispute resolution in court, the process takes place openly[20].

Supreme Court Regulation No. 1 of 2016, supported by the Chief Justice of the Supreme Court Decree No. 108/KMA/SK/VI/2016 concerning Mediation Governance in the Court, regulates the accreditation of mediation education/training institutions in Indonesia. Currently, there are twenty-five mediation education/training institutions that have obtained accreditation from the Supreme Court of the Republic of Indonesia (MARI).

Stages of Dispute Resolution Mechanisms in the Health Sector Outside the State Judiciary in Positive Law in Indonesia

Alternative principles of dispute resolution and arbitration include Principles of party's autonomy and competence; Pacta sun servanda; Good faith; and Confidential. Law No. 36 of 2009 concerning Health Article 29 explains that if health workers are suspected of negligence in carrying out their profession, the negligence must be resolved first through mediation.

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[20] Dewi Sulistianingsih & Yuli Prasetyo Adhi, "Menjelajahi Penyelesaian Sengketa Melalui Mediasi Pada Masyarakat Pedesaan," in *Hukum Dan Politik Dalam Berbagai Perspektif Jilid 1* (Semarang: Universitas Negeri Semarang, 2023), 1–23, https://doi.org/https://doi.org/10.15294/hp.v1i1.103.

Law number 17 of 2023 concerning Health (on dispute resolution in the health sector) explains that in the event that Medical Personnel or Health Workers are suspected of making mistakes in carrying out their profession that cause losses to patients, disputes arising from these mistakes are resolved first through alternative dispute resolution outside the court.

Law Number 48 of 2009 concerning Judicial Power article 10 (1), the court is prohibited from refusing to examine, adjudicate, and decide a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and adjudicate it. Articles 58-61 of Law Number 48 of 2009 concerning Judicial Power explain that efforts to resolve civil disputes can be carried out outside the state court through arbitration or alternative dispute resolution.

Arbitration is a way of resolving a civil dispute outside the court which is based on an arbitration agreement made in writing by the parties to the dispute. The arbitral award is final and has permanent legal force and is binding on the parties. In the event that the parties do not voluntarily enforce the arbitral award, the award shall be implemented based on the order of the chairman of the district court at the request of one of the parties to the dispute.

Today, arbitration has become the most popular and most used alternative dispute resolution institution compared to other alternative dispute resolution institutions. This is due to the many advantages that this arbitration has. These advantages are, among others: the procedure is not convoluted and the verdict can be reached in a relatively short time; procedural and evidentiary laws are more flexible, the parties can choose which law will be applied to the arbitration proceedings; the parties may choose for themselves arbitrators who are considered qualified and who are experts in their fields; arbitral awards are generally final and binding (without having to appeal or cassation); and dispute resolution through arbitration is also considered to be able to give birth

to a compromising decision, which is acceptable to both parties to the dispute (win win solution)[21].

Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert assessment. Dispute resolution through alternative dispute resolution as referred to in paragraph (1) the results are stated in a written agreement. The written agreement as referred to in paragraph (2) is final and binding on the parties to be implemented in good faith.

Provisions regarding arbitration and out-of-court dispute resolution as referred to in Article 58, Article 59, and Article 60 are regulated in the law (Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution). Article 1 (10) Article 1 (1) provides a definition of Arbitration as a means of resolving a civil dispute outside of the general court which is based on an arbitration agreement made in writing by the parties to the dispute. Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert assessment.

Article 6 of the Arbitration Law and the APS reads: Disputes or differences of civil opinion can be resolved by the parties through alternative dispute resolution based on good faith by setting aside litigation settlement in the District Court; Dispute resolution or disagreement through alternative dispute resolution as referred to in paragraph (1) shall be resolved in a direct meeting by the parties within a maximum of 14 (fourteen) days and the results shall be stated in a written agreement; In the event that a dispute or difference of opinion

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[21] Kikin Nopiandri, "Peran Lembaga Arbitrase Dalam Penyelesaian Sengketa Bisnis Internasional: Tinjauan Dari Perspektif Teori Sistem Hukum," *Jurnal Legal Reasoning* 1, no. 1 (2019): 48–67, https://doi.org/10.35814/jlr.v1i1.46.

as referred to in paragraph (2) cannot be resolved, then with the written agreement of the parties, the dispute or difference of opinion shall be resolved through the assistance of one or more expert advisors or through a mediator; If the parties within a maximum of 14 (fourteen) days with the help of one or more expert advisors or through a mediator do not succeed in reaching an agreement, or the mediator does not succeed in bringing the two parties together, then the parties may contact an arbitration institution or an alternative dispute resolution institution to appoint a mediator. After the appointment of a mediator by an arbitration institution or an alternative dispute resolution institution, within a maximum of 7 (seven) days the mediation effort must be able to commence; Efforts to resolve disputes or differences of opinion through mediators as referred to in paragraph (5) by upholding confidentiality, within a maximum of 30 (thirty) days an agreement must be reached in written form signed by all parties concerned; The agreement on the settlement of disputes or differences of opinion in writing is final and binding on the parties to be implemented in good faith and must be registered at the District Court within a maximum of 30 (thirty) days from the signing; The agreement on the settlement of disputes or differences of opinion as referred to in paragraph (7) must be completed within a maximum of 30 (thirty) days from registration. (9) If the peace effort as intended in paragraphs (1) to (6) cannot be achieved, then the parties based on the written agreement may propose a settlement through an arbitration institution or ad hoc arbitration.

Article 1 (4) of the Arbitration Law and the APS reads; The District Court is a District Court whose jurisdiction includes the respondent's place of residence. Article 59 (1); Within a maximum of 30 (thirty) days from the date the award is pronounced, the original sheet or an authentic copy of the arbitral award shall be submitted and registered by the arbitrator or his attorney to the Registrar of the District Court; Submission and registration as referred to in paragraph (1), is carried out by recording and signing at the end or on the edge of the

decision by the Registrar. The District Court and the arbitrator or his attorney submit, and the record is a deed of registration; The arbitrator or his attorney is obliged to submit the original award and the original sheet of appointment as arbitrator or an authentic copy of it to the Registrar of the District Court; Failure to fulfill the provisions as intended in paragraph (1), resulting in the arbitral award being unenforceable; All fees related to the creation of the registration deed are charged to the parties.

Medical disputes can always arise anytime and anywhere in any medical unit in the hospital. Medical disputes occur when two interests cannot be accommodated together and it is certain that it will not be possible to produce a winning decision for both parties. Then one party must lower its demands in order to achieve a balance between the two interests of the disputing parties. It becomes easier if one party gives in a little to get a peaceful agreement, not to be defeated. It requires awareness from the disputing parties to lower their demands a little, and to be able to get to that state, there needs to be communication that leads to that state. So good communication, communication that exchanges ideas, communication that does not dominate the conversation is the key to opening the willingness of the disputing parties to give in a little to lower their demands[22].

The use of Alternative Dispute Resolution (ADR) has been widely recognized as an efficient and effective method in resolving various types of disputes, including medical disputes[23]. In Indonesia, medical disputes resolved through litigation are not many. Usually these disputes stop at

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[22] Jonathan Hendran A A W, "Rancangan Upaya Mediasi Sengketa Medis Di Rumah Sakit RK Charitas Palembang," *Jurnal Manajemen Dan Administrasi Rumah Sakit Indonesia* 3, no. 1 (2019): 1–8, https://doi.org/https://doi.org/10.52643/marsi.v3i1.380.

[23] Fhika Maisyarah Mufrizal and Irsyam Risdawati, "Yurisdiksi Mediator Kesehatan Dalam Penyelesaian Sengketa Medis Melalui Alternative Penyelesaian Sengketa," *Jurnal Ners Widya Husada* 8, no. 2 (2024): 1175–81, https://doi.org/https://doi.org/10.31004/jn.v8i2.27165.

the time of proof, where the patient cannot prove the doctor's mistake or negligence. However, reaching the proof stage itself is not easy. In fact, the legal principles applicable in Indonesian courts should meet the principles of simplicity, cheapness, and quick. Trials that take a long time and cost a lot of money are clearly not in accordance with the applicable legal principles. For that, it is necessary to find alternative dispute resolution that can meet the principles of simplicity, cheapness and quick[24].

Disputes related to health services, non-legal channels are prioritized. This is also stated in Article 310 which suggests that the resolution of health service disputes must be based on non-legal channels. In this case, according to the Health Law, the resolution of this health service dispute is decided by a panel formed by the Ministry of Health in accordance with Article 204 of the Health Law[25]. Therefore, the establishment of a health dispute resolution institution in each region is very necessary.

[24] Apriyanto, Ika Dewi Sartika Saimima, "Implementasi Pasal 29 Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan Terkait Upaya Penyelesaian Sengketa Medis."

[25] Yuyut Prayuni et al., "Tinjauan Yuridis Penyelesaian Kasus Sengketa Medis Pasca UU Kesehatan Tahun 2023," *Inovatif: Jurnal Penelitian Ilmu Sosial* 3 (2023): 5479–91, https://doi.org/https://doi.org/10.31004/innovative.v3i6.5559.

IV. Conclusion

In this study, it was found that the legal source of provisions on the resolution of health disputes outside the state judiciary in positive law in Indonesia, namely in the Law on Judicial Power (Articles 58 – 61 of Law No. 48 of 2009); Law No. 36 of 2009 concerning Health, namely in Article 29, Law No. 17 of 2023 concerning Health, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In addition to the positive law, there are also other legal sources, namely clauses/agreements that contain provisions for dispute resolution through negotiation, mediation, and arbitration, other sources, namely Court Decisions, doctrines (expert opinions), general legal principles/principles regarding arbitration and alternative dispute resolution. The stages of the mechanism for resolving disputes in the health sector outside the state judiciary include: the first stage, the existence of an agreement/clause for dispute resolution; The second stage is negotiation. If the negotiations are successful, a mutual agreement is made on the settlement of the dispute; Third, if the negotiation fails, then ask for the help of a third party, namely a non-judge mediator, if this stage succeeds in making a mutual agreement on the dispute resolution known to the mediator, then the legal document is registered in the District Court of the respondent's domicile, in accordance with Law Number 30 of 1999 article 6 (7). If the stages of dispute resolution assisted by a mediator fail, then the parties can continue the dispute resolution through the arbitration stage, both ad-hoc arbitration and institutional arbitration according to the agreement of the parties, the results of this arbitration award must be registered with the District Court of the respondent's domicile in accordance with Law Number 30 of 1999 article 59 (1).

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