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Sociological Jurisprudence as the Basis for Online Arbitration in Non-Litigation Alternative Dispute Resolution in Medical Dispute Cases

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Abstract This study explores the application of sociological jurisprudence in online arbitration as a non-litigation alternative for resolving medical disputes in Indonesia. Sociological jurisprudence integrates the law with the social dynamics of society, which in the Indonesian context is reflected in the culture of consensus decision-making. Online arbitration utilizes technology to facilitate efficient and fair dispute resolution. This study proposes that the principle of consensus, in line with the Fourth Principle of Pancasila, can be implemented in online arbitration to achieve win-win solutions between patients and doctors or hospitals. Understanding that online arbitration is akin to consensus decision-making, led by a neutral and impartial arbitrator, is crucial for applying this concept in medical practice. The findings of this study indicate that online arbitration meets the need for a swift, precise, and mutually beneficial dispute resolution process for all parties involved.

Keywords: Sociological Jurisprudence, Online Arbitration, Medical Disputes

1. INTRODUCTION

The Indonesian government must create conditions that enable every citizen to live healthily. This obligation is articulated in Article 28 H, Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI), which states that every person has the right to a prosperous physical and mental life, to a place to live, and to a good and healthy environment, as well as the right to receive healthcare services. Article 28 H, Paragraph (1) of the UUD NRI should not be interpreted to mean that the government must provide expensive and inaccessible healthcare facilities; rather, the government must ensure that healthcare services are adequate and equitable for all Indonesian citizens.

The demands for healthcare services, as outlined in the Medical Practice Act concerning the rights and obligations of healthcare practitioners, are inherently linked to these binding legal regulations. To provide optimal healthcare services, adequate health resources, including personnel, facilities, and infrastructure of sufficient quantity and quality, are necessary. In hospitals, where healthcare professionals such as doctors and nurses are the primary caregivers, disputes such as malpractice can arise, leading patients who feel wronged to pursue legal action, either criminally or civilly, against the healthcare providers and hospitals involved.

In efforts to resolve such disputes, Article 310 of Law No. 17 of 2023 on Health stipulates that when a healthcare professional or worker is alleged to have committed an error in their professional duties causing harm to a patient, the resulting disputes must first be resolved through alternative dispute resolution methods outside of the court system. One such alternative

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is arbitration, which involves resolving civil disputes outside of the general court system based on a written agreement between the parties involved. However, the advancement of technology and the increasing number of options for resolving medical disputes have led to the emergence of online arbitration, which represents an evolution from traditional arbitration.

Arbitration is unusually decided to resolve medical disputes, as it is more often used for commercial conflicts to avoid lengthy court processes. As a result, medical disputes are typically resolved through mediation, which aims to find a mutually beneficial solution. However, a limitation of mediation is that if the resulting agreement is informalized in a written document, the mediation agreement can be voided and lacks enforceability, even though it is meant to be final and binding.

The prevalence of medical disputes is demonstrated in the following table:

Table 1.

Total Case of Medical Disputes 2006—2022 (Gatra, n.d.)

No.	Case types	Total Case		
		2006—2015	**2016—2019**	**2020—2022**
1.	Medical dispute	310	362	379
2.	Medical dispute resolution through mediation	16	18	19

Based on the data presented, there has been a noticeable increase in medical disputes between patients and doctors, as well as between patients and hospitals. However, successful resolutions through mediation are scarce, constituting less than 10% of all medical disputes. An illustrative case is that of Falya Raafan Blegur, a 14-month-old girl who died in late October 2015 due to alleged medical malpractice by a doctor at Rumah Sakit Awal Bros in Bekasi. Another notable case involves Prita Mulyasari, who was involved in a dispute with RS Omni International Serpong-Tangerang.

In the Prita Mulyasari case, the Supreme Court granted a cassation request from the Public Prosecutor of Tangerang District Court regarding a defamation suit against RS Omni International. Tangerang District Court level seen the criminal charges against Prita Mulyasari were dismissed. However, her civil lawsuit was not granted. (Ratman, 2012) Based on the medical dispute cases discussed above, it is evident that there is often poor communication between doctors and hospitals as the healthcare providers and patients or their families as the healthcare receivers. The dissatisfaction frequently leads to conflicts, resulting in what is called as medical disputes. Resolving medical disputes primarily through non-litigation methods reflects the values of Pancasila, particularly the Fourth Principle, which states, "Democracy Guided by the Inner Wisdom of Deliberation and Representation." Therefore, any issues or

disputes concerning civil relationships should ideally be resolved peacefully through consensus.

Consensus is a legal culture deeply ingrained in Indonesian society and aligns with the principles of sociological jurisprudence, which posits that effective law must correspond to the living law within society. This jurisprudence separates positive law from the residing law, emerging from the dialectical process between legal positivism and historical schools of thought. Legal positivism views law strictly as commands issued by authorities, while the historical school contends that law evolves with society. The former emphasizes reason, while the latter focuses on experience; sociological jurisprudence considers both elements equally important.

Given this context, the research question addressed in this study is: How can sociological jurisprudence serve as the foundation for online arbitration as an alternative non-litigation resolution for medical dispute cases?

2. RESEARCH METHOD

This study involves a normative legal analysis designed to provide a comprehensive explanation of the concept of sociological jurisprudence as a basis for implementing online arbitration in resolving non-litigation medical cases. The methodology used is descriptive, outlining relevant legal regulations and theories, particularly as they apply to online arbitration. The collected data will be qualitatively analyzed to grasp the implications and practical uses of sociological jurisprudence in resolving medical disputes through online arbitration. The aim is to gain a deeper understanding of how the consensus principle can be applied in an arbitration process conducted by a neutral and impartial arbitrator. (Soerjono Soekanto dan Sri Mamuji, 2007)

3. RESULT AND DISCUSSION

Health development aims to enhance awareness, willingness, and capability for a healthy lifestyle among individuals to achieve optimal health levels as one of the components of general welfare outlined in the Preamble to the 1945 Constitution of the Republic of Indonesia. Health is a fundamental human right and must be realized through the provision of various health efforts to the entire population by ensuring that health development is both high-quality and accessible to all segments of society. (Sinaga, 2021) In practice, a doctor is someone who assists in a personalized manner to patients through medical services. Thus, when a person

consults a doctor to receive tailored medical care, a relationship is established between the patient and the doctor, referred to as a therapeutic transaction. (Habibah Mutiara Zahra, 2022)

Discrepancies in perception and interests between the public and medical professionals often lead to legal claims and lawsuits (Sulistiyono, 2019). Generally, all legal claims and lawsuits originate from the health issues experienced by the patient following medical treatment. It is primarily due to poor communication between the patient and the doctor, which often results in medical disputes (Syamsul Rijal Muhlis, Oktober 2020). Medical disputes do not arise spontaneously; there is usually an underlying issue that causes dissatisfaction from one partaker, perceived as detrimental to the other party. The most common dissatisfaction is experienced by patients who are unhappy with the care, treatment, or service received from doctors or hospitals.

The increase in medical disputes, whether between patients and independent doctors or between patients and hospital services, is closely related to changes within society itself. These shifts have led to changes in how patients view themselves as individuals. Consequently, there is a growing tendency towards litigious behavior in society, where every problem is addressed through legal action or lawsuits. This trend reflects a shift in how doctors are perceived; they are no longer seen as partners in resolving health issues with good faith, but rather as entities against whom grievances can be lodged when patient expectations are not met.

The shift is largely driven by changes in lifestyle and consumerist principles among patients, who now often believe that since they are paying for services, they should receive exactly what they want. According to Timothy Low, this change in patient behavior can be attributed to increased education, easy access to information via the Internet, lifestyle changes, seeking value, and differing demands and expectations. (Baulle, 2005) According to Dickens, several factors contribute to conflicts from the patient's perspective, including:

1. Patients feel they have not received information that is understandable or acceptable to them.
2. Patients are concerned that the actions taken by the doctor do not meet standards, whether based on factual evidence or mere suspicion.
3. Patients feel they are not treated with consideration, sympathy, or respect.
4. Patients either do not receive the information they seek or receive it in a form that does not meet their expectations.
5. Patients feel they were discharged before fully recovering, without adequate explanations, advice, or follow-up.

6. Patients fall into the category of those with chronic complaints.

Many medical disputes arise from poor communication between healthcare providers and recipients, leading to increased dissatisfaction and potential conflicts. Common issues leading to poor communication include:

1. Misunderstandings
2. Differences in interpretation
3. Unclear rules
4. Offense or insult
5. Suspicion
6. Inappropriate actions
7. Inadequate information
8. Dishonesty, rudeness, arbitrary behavior, lack of respect, etc.

When conflicts occur, one alternative for patients to resolve them is mediation, which involves discussions facilitated by a mediator. This approach is chosen when negotiations reach an impasse without finding a solution, allowing one party to suggest involving a mediator to assist with the negotiation process. Such patients are generally aware of their rights and prefer to resolve issues without public exposure. (Amriani, 2011) Mediation can also be proposed by the doctor or the hospital. However, in addition to mediation, the parties involved can employ alternative dispute resolution methods, such as arbitration.

According to Article 1 point (1) of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, arbitration is a method for resolving civil disputes outside of the general court system, based on an arbitration agreement made in writing by the disputing parties. With the advancement of technology, online arbitration has emerged, which is not constrained by distance or time. Arbitration is a method of dispute resolution outside of the judicial system, based on an agreement between the disputing parties, with the assistance of an impartial third party chosen by the parties or by an arbitration institution. The decision in arbitration is final and binding. Similarly, online arbitration also uses a neutral third party to make decisions. However, in online arbitration, there is an additional "fourth party"—technology—that assists the arbitrator in performing their duties.

The definition of online arbitration is:

"*Arbitration, where parties make their case to a neutral party who does have decision making authority. Arbitration works like a courtroom, the arbitrator is like a judge, and after*

hearing both sides renders a decision. This decision can be either binding or non-binding, depending on what the parties agree to before take arbitration take place." (Baugher, 1998)

Based on this definition, arbitration decisions can be binding or non-binding, depending on the agreement between the parties before the decision is executed. Thus, online arbitration is divided into two forms: binding arbitration and non-binding arbitration. Essentially, non-binding arbitration resembles negotiation assistance and is also the final stage of mediation strategy, where the mediator provides an opinion to the parties and then makes a non-binding decision. However, this decision acts as a settlement agreement between the parties. In other words, the decision is facultative. If the disputing parties voluntarily comply with the decision, it becomes a settlement agreement and can be executed.

Non-binding arbitration can be further divided into two types: optionally binding and truly non-binding. Initially, both types are non-binding, but optionally binding arbitration can become binding based on the parties' agreement. In contrast, truly non-binding arbitration cannot produce a binding decision. The term "binding" here refers to the capacity of public authority to enforce the decision. While a truly non-binding decision may not be enforceable by public authority, it can still be binding within certain social sub-systems, such as domain name systems or marketplaces, through self-enforcement by private authority without public authority intervention.

Generally, parties prefer non-binding arbitration for several reasons, including:

1. The primary goal of alternative dispute resolution (ADR) is not only to resolve disputes between parties but also to enhance consumer trust in businesses. Parties, especially consumers, may view binding arbitration systems as coercive, feeling that they are forced to relinquish their rights, which leads to consumer skepticism. As a result, in the case of disputes, parties often prefer non-binding arbitration due to its more open, quicker, and cost-effective process.
2. Binding arbitration faces various legal obstacles, such as issues related to the form of agreements and decisions made online.
3. Non-binding arbitration procedures offer consumers the right to control the dispute resolution process. Consumers can withdraw from the process at any time and are not obligated to follow the advice or decisions of the third party (arbiter).

In online arbitration, several critical aspects must be considered, including the arbitration agreement. About this Arbitration Clause, the Indonesian National Arbitration Board (BANI) advises parties wishing to use BANI arbitration to include the following standard clause in their agreements:

“All disputes arising from this agreement shall be decided by the Indonesian National Arbitration Board (BANI) by BANI’s administrative rules and arbitration procedures, with its decision being final and binding on both parties as a first and final judgment.”

It is essential to emphasize that when formulating the arbitration agreement or clause, it is stipulated that the arbitration decision is "binding on both parties as a first and final judgment," meaning that no legal remedies such as appeal, cassation, or judicial review are available. It is reinforced by Article 60 of Law No. 30 of 1999, which states that "Arbitration decisions are final and have permanent legal force, binding on the parties." The arbitration clause grants BANI absolute authority to make decisions as the first and final adjudicator, by Articles 3 and 11 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. It implies that the District Court has no jurisdiction and must reject any examination or adjudication of the dispute.

In online arbitration agreements, arbitration can be established at any time. Consequently, parties are not bound by the timing of the agreement, whether it is made before the dispute arises (pactum de compromitendo) or after the dispute occurs (acta compromissoria). The 1958 New York Convention has indeed provided regulations for online arbitration, although these provisions require interpretation. It is reflected in Article II, paragraph (1), which states that:

> “*Each contracting state shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any diference which have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not concerning a subject matter capable of settlement by arbitration*.” (Hill, 1995)

The requirements for a written agreement as stated in Article II paragraph (1) of the New York Convention are explained again in Article 2 paragraph (2) of the New York Convention, which states that:

> “*The term "agreement in writing" shall include an arbitral clause in contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams*.”

The term "telegrams" in the aforementioned provision can be equated with e-mail. From a technical perspective, it is challenging to distinguish between a telegram and an e-mail. For each technology, messages are converted into a digital format, transmitted through a communication network, and then converted into a human-readable format. Based on this, an arbitration agreement made via e-mail can be regarded as equivalent to a conventionally executed arbitration agreement. In other words, online agreements are recognized as written

agreements. The UNCITRAL Model Law on International Commercial Arbitration, 1985, provides its own definition regarding this matter. Article 7, paragraph (2) states:

> *"…. an Agreement is in writing if it is contained in a document signed by the parties or in exchange of letters, telex, telegrams or other means of telecommunications which provide a record of an agreement*."

According to Article 7, paragraph (2), an arbitration agreement can be made through other forms of telecommunication, including e-mail. As long as the occurrence of the agreement can be proven (recorded in electronic form), the agreement can be deemed valid. Concerning the law applied in online arbitration, parties have the freedom to determine the procedural law. If the parties do not specify the procedural law, the law of the place where the arbitration takes place will apply. The chosen law must be neutral. The UNCITRAL Model Law on Electronic Commerce can be used as the procedural law for the parties.

Another important aspect is the place of arbitration, which refers to the location chosen by the parties or the arbitrator as the legal domicile of the arbitration. The place of arbitration provides access for local courts to intervene if necessary during the dispute resolution process. This access is related to the procedural rules in the jurisdiction where the arbitration is conducted. When arbitration is conducted online, determining the place of arbitration can be more challenging than in traditional arbitration settings. However, arbitration regulations that have adapted to online arbitration have found solutions for determining the place of arbitration, typically allowing the parties to designate it. If the parties do not specify a location, the arbitrator will determine it.

The advantages of online arbitration solutions to issues related to the form of the agreement, the place of arbitration, and the applicable procedural law. It aligns with Roscoe Pound's view of law as a tool for social engineering. His famous expression, "law as a tool of social engineering and social control," reflects the idea that sociological jurisprudence aims to create harmony and balance to meet the needs and interests of people in society optimally. Justice represents the effort to achieve harmonious and unbiased alignment in addressing the interests of the relevant members of society. (Lathif, 2017)

Understanding justice is not as straightforward as reading the definitions provided by experts because discussions about its meaning quickly move into the philosophical realm. It requires deep contemplation to reach its most fundamental essence. (Angkasa, 2010) Justice is the harmony between the exercise of rights and the fulfillment of duties by the legal principle of balance, which entails:

1. The extent of each person's rights is proportionate to the extent of their duties;
2. Under normal circumstances, it is unjust for someone to receive their rights without corresponding duties or for someone to be burdened with it that are not aligned with their rights;
3. No one should be entitled to rights without fulfilling their duties, nor should anyone be imposed with duties without being granted corresponding rights. (Halim, 2005)

Justice is fundamentally essential to human existence. Therefore, justice should be manifest in all aspects of life, and the values of justice should be embedded in every product created by humanity. It is because unjust behavior and products can lead to imbalance and disharmony, resulting in harm to both individuals and the universe (Aburaera, 2013). The values of justice should be reflected in every product created by humanity, especially in legal products, which serve as instruments for establishing order and regulation. This aligns with the concept of online arbitration, which is one alternative for resolving medical disputes. Its goal is to create harmony and balance between patients and doctors or hospitals, aiming for a win-win solution. Achieving a win-win solution in online arbitration also aligns with the principle of deliberative consensus as mandated by the Fourth Principle of Pancasila. According to the Fourth Principle of Pancasila as stated in MPR Decree No. I/MPR/2003, the following points are emphasized:

1. As citizens and members of society, every Indonesian has equal status, rights, and obligations.
2. No one may impose their will on others.
3. Deliberation should be prioritized in decision-making for the common good.
4. Deliberations to reach consensus should be imbued with a spirit of kinship.
5. Every decision reached through deliberation should be respected and upheld.
6. Decisions made through deliberation should be accepted and implemented with good faith and a sense of responsibility.
7. The community interest should take precedence over personal and group interests in deliberations.
8. Deliberations should be conducted with reason and a noble conscience.
9. Decisions must be morally accountable to God Almighty, uphold human dignity, and emphasize truth, justice, unity, and the common good.
10. Trust should be given to trusted representatives to conduct deliberations.

Based on these principles, it can be analyzed that the core values are:

1. Prioritizing the interests of the nation, state, and society.
2. Using deliberation as a method for making collective decisions to reach consensus, characterized by kinship, good faith, a sense of responsibility to accept and implement decisions, rationality, noble conscience, and moral accountability before God Almighty. Thus, promoting democratic attitudes primarily involves teaching and practicing deliberation to achieve consensus.

Based on this, when related to sociological jurisprudence, it demonstrates a careful compromise between written law, which serves the needs of the legal community to ensure legal certainty (positivism law), and living law, which reflects the importance of societal roles in the formation and orientation of the law. The legal system aims to achieve legal order by recognizing these interests, setting boundaries for their recognition, and applying legal rules developed and enforced through authoritative dispute-resolution processes. This approach positively impacts the resolution of disputes and respects various interests within the recognized and established limits.

The concept of online arbitration emphasizes that opinions must be expressed by customary practices and moral rules. This implies that parties should present their views responsibly and not arbitrarily. Furthermore, opinions should adhere to religious norms, decency, and social etiquette. Ignoring these norms in favor of mere emotional expression could hinder the effective resolution of disagreements. Acknowledging and respecting individual opinions contributes to maintaining a safe, orderly, and peaceful societal life.

Deliberation to reach a consensus in online arbitration involves collaborative discussion aimed at resolving an issue. In this process, everyone has an equal right to propose ideas or suggestions. Each participant should prioritize the common good over personal or group interests. Therefore, it stated that deliberation to reach consensus in online arbitration embodies values such as togetherness, equality of rights, freedom of expression, respect for others, and responsible implementation of decisions.

4. CONCLUSION

Sociological jurisprudence, as the foundation for online arbitration in non-litigation alternatives for medical disputes, represents both the advancement of information technology and the need for swift, precise resolution of medical disputes that achieves a win-win solution for all parties, in line with the principle of deliberative consensus as mandated by the Fourth Principle of Pancasila. Therefore, in the context of online arbitration for medical disputes,

patients and doctors/hospitals must understand that the value of deliberation to reach consensus is a reflection of the online arbitration process. Patients and doctors/hospitals must fully grasp that online arbitration involves negotiations guided and organized by a neutral and impartial arbitrator, akin to a deliberation led by someone trusted to unify the parties involved.

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