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**PROFESSIONAL DOCTOR MISTAKES AND VERDICTS JUDGE: DILEMMA IN
MEDICAL SERVICES IN INDONESIA**

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Abstract

The complexity of medical malpractice problems and the challenges faced when proving the cases has resulted in a backlog of cases in the court systems and tribunals set up by regulatory and professional bodies. The objectives of the research are to demonstrate how the errors and mistakes committed by healthcare practitioners create a dilemma in the Indonesia medical services sector. The current study entailed identifying, collecting, summarizing, and synthesizing existing research data related to the topic being investigated. This study entailed generating data or collecting data from the field; secondary research consists in identifying various reliable sources that may be used to develop answers to a formulated question or test a particular hypothesis. The issue of medical malpractice is a problem within the Indonesian legal system. Patients expect doctors to offer services that will improve their health and wellbeing. Furthermore, doctors should interact with patients in a professional way and provide safe and quality services. Indonesian courts use criminal law to address the problems related to medical malpractice. Even though the trend has helped in ensuring that doctors are held culpable for their acts, it has also resulted in fear among physicians. There is a need to streamline the regulation of medical practice through enactment of policies that will not hinder practitioners from performing their duties.

Keywords: Medical malpractice, medical errors, medical mistakes, regulations, laws, professional standards, liability, Indonesia

Introduction

Healthcare practitioners have a critical role to play in improving access to safe and quality healthcare services for communities. From time to time, they offer essential services that can prevent diseases, promote good health, and strengthen communities, families, and individual patients (Imran et al., 2014). In all countries, the optimization of the skills and capabilities of healthcare professionals is essential to the realization of development goals. International organizations such as the World Health Organization have been working with local governments and other stakeholders to improve the delivery of services to patients globally (Farzi, Farzi, Alimohammadi, & Moladoost, 2015). The process entails addressing factors such as the shortage of doctors and nurses and providing guidelines that will enable practitioners to offer high-quality services and make appropriate clinical decisions (Winters, Bharmal, & Wilson, 2016). In some instances, governments work with healthcare stakeholders to support the development of competencies of practitioners through training, research, and sharing of information (Meghea et al., 2014). Others create platforms through which those who belong to the profession may interact, learn from each other, analyze policy options, and determine the tools that will promote the collaborative practice and the delivery of quality services to patients (Saman, Kavanagh, &

Johnson, 2016; Hatta, 2018). The centrality of healthcare in the realization of economic and social development goals has also made it necessary for researchers to explore the work of healthcare professionals and the manner in which they carry out their duties (Wang, Li, Jiang, Dear, & Hsie, 2017). Furthermore, attempts have been made to understand how the choices and decisions that the healthcare professionals like nurses and doctors make affect the wellbeing of patients and the development of a nation (Hatta, 2018). The trend has been witnessed in both developed and developing nations as the delivery of quality, and safe services is a major objective in all countries.

Medical errors are one of the professional issues that affect the delivery of safe and quality healthcare services to patients. The events usually occur when the practitioner practices or makes decisions that are contrary to what is expected of them as professionals (Soydemir, Intepeler, & Mert, 2017). The events may end up harming the patient, increasing the length of hospital stay, or worsening the health condition of an individual. Some mistakes also put doctors and nurses at risk of harming themselves or contracting deadly diseases. Hatta (2018) opined that medical errors can be caused by a wide range of factors such as the failure to meticulously carry out professional duties, inability to make sound judgments, and the disregard to the existing standards of practice and codes of ethics (Renkema, Broekhuis, & Ahaus, 2014). Makary and Daniel (2017) noted that the mistakes may also be a form of medical practice that extends beyond the idea of conducting a negligent act while in the process of performing professional roles. Akachi, Tarp, Kelley, Addison, and Kruk (2016) added that some mistakes take place when the doctor unintentional cause injury, death or disability to patients while striving to address a particular health problem or issue. Although scholars have taken diverse approaches when it comes to defining the scope of medical mistakes, there is a consensus that such events are harmful to patients and may put a significant burden on the healthcare system (Makary & Daniel, 2017; Tedesco et al., 2016). Furthermore, the errors may result in costly litigations and result in practitioners losing their licenses to practice or engage in activities related to the delivery of healthcare services. Therefore, a medical mistake is a serious issue that warrants research both at national and international levels.

Medical errors may take different forms and lead to diverse outcomes within the healthcare setting. In some cases, they relate to the administration of the wrong drug, use of inappropriate dosage to treat a condition, and treating the wrong patients. In other instances, healthcare practitioners may end up operating on the wrong patient or conducting a wrong-site surgery (Renkema, Broekhuis, & Ahaus, 2014). In all instances, the events are linked to the inability of the healthcare practitioner to follow the laid down procedures and stick to their professional codes of conduct when taking care of patients and making decisions in hospital settings (Classen, Resar, & Griffin, 2016). Every patient expects to receive safe and quality care from nurses, doctors, and other professionals in the medical field. In addition, they expect the caregiver to carefully assess their condition and come up with interventions that will address the underlying health problem. When medical errors occur, the ability of the practitioner to take care of the patient and assist them in recovering is often questioned. Some patients and families may go ahead to report the issues to relevant authorities like the police and professional bodies that regulate the work of the involved person (Makary & Daniel, 2017). It is, however, worth stating that proving the cases that involve professionals like nurses and individuals may not be an easy process. The argument is based on the notion that some law enforcement agencies may not understand the medical events in question, and the data brought to them as evidence. For instances, the health records related to patient surgical procedures can only be understood well by a person with a medical background. Hatta (2018) stated that medical errors and malpractices

might also be challenging to prove because of the complex and technical nature of work done by professionals in the field. Therefore, it may be difficult for a layperson to identify a mistake or understand the workings of the medical profession. The author also added that there are medical malpractice cases that may be more difficult to prove than others because of a wide range of factors such as the involved parties, the nature of the procedure in question, and the outcome of the error.

The complexity of medical malpractice problems and the challenges faced when proving the cases has resulted in a backlog of cases in the court systems and tribunals set up by regulatory and professional bodies (Kassim & Najid, 2014). Some of the cases take long before they are complete and require the use of enormous resources that could otherwise be directed to other areas of practice such as the training of doctors (Kassim & Najid, 2014). If the above issues are to be addressed, law enforcement agencies and regulatory organizations must rely on the input of expert witnesses and those who belong to the profession to understand the cases (Farzi, Irajpour, Saghaei, & Ravaghi, 2017). Such persons may be called upon to examine, interpret, justify, and explain the actions of the physicians during the care provision process and determine whether they were justified or not. In addition, the persons can assist law enforcers in clarifying whether the healthcare practitioners were on the wrong and assess the damages or remedy that may be required (Sylvia et al., 2015). While relying on the input of the experts, the law enforcers should also ensure that they have no unprofessional interest in the case or have any relations with the parties to the cases.

Researchers contend that the process of determining whether the actions of healthcare practitioners were contrary to what is expected of them and the law may be a civil or criminal law-oriented (He, 2014; Unwin, Woolf, Wadlow, Potts, & Dacre, 2015; Imran et al., 2014). Consequently, the law enforcement agencies and the judicial team should assist the witnesses to effectively use their medical expertise to present evidence that can help in making a conclusive and appropriate decision. Furthermore, the investigations and analysis of the facts should be done in an objective and non-biased manner to ensure that justice is served irrespective of the problem at hand or the identity and background of the parties involved (Rostami et al., 2017). Unfortunately, some doctors and members of the medical profession object to the idea of acting as expert witnesses or being involved in the investigation process (Kavanagh, Saman, Bartel, & Westerman, 2017). Their argument is that they belong to the profession and are possibly working with the person whose conduct is being questioned (Farzi, Irajpour, Saghaei, & Ravaghi, 2017). There are instances where those who are called upon to assist in the processes of addressing the medical malpractices provide inaccurate and unsubstantiated information that may lead the court or professional tribunals to make uninformed and inappropriate decisions. These factors and events are pointers to the complex nature of the issue of medical practice and the challenges that are likely to be faced when investigating the conduct of doctors (Hatta, 2018). However, attempts should always be made to gather factual information that will ensure that the final decision is not only made in accordance with the law but also in a manner that protects the rights of both the patient and the accuse professional.

Indonesia, just like any other country in the world, struggles with the problem of medical errors and professional malpractices among doctors. Every patient seeking medical assistance in the available institutions expect to get a remedy from his or her condition and receive services that will promote their health and wellbeing (Hatta, 2018). Furthermore, the patients anticipate that healthcare professionals will use their skills and expertise to identify the underlying problem and develop the most appropriate intervention that will lead to positive clinical outcomes (Pan et al., 2015). However, this is not always the case as instances of professionals making mistakes or

engaging in malpractices in the course of their duties have been reported over the years (Hatta, 2018). The events may adversely affect the wellbeing of patients and lead to litigations in the courts of law. In the judicial process, the prosecutors and the law enforcers often look for indispensable evidence in order to bring the case to a conclusion and determine what actually happened and how it affected the patient. Every individual who appears before the court or submits data and evidence before the judges and the investigators may influence the final decision that will be taken regarding the matter at hand (Soydemir, Intepeler, & Mert, 2017). The evidence that is brought before the courts may be in the form of objective data, testimony, or hearsay. In other cases, it may be documented information, expert accounts, or circumstantial evidence. For the judge to make the most appropriate and just decision, it is imperative to consider the available evidence and other contextual factors that may help in understanding the professional malpractice or the medical error that is being challenged (Hatta, 2018). Moreover, it is important to work with those who understand the information deduced from the hospital records and systems in order to arrive at a proper conclusion. Unfortunately, the process in the Indonesian context is as complex as it is the case with other jurisdictions around the world (Hatta, 2018).

Objectives

The law enforcers and judicial officer struggle to understand the medical expert of the case and relate it to the legalistic aspects that should be taken into consideration before making the final decision. The aim of this paper is to explore the professional and legal issues associated with the medical malpractice in Indonesia. Furthermore, the author intends to systematically present concepts, laws, facts, and principles related to the problem of medical malpractices and the decisions made by judges in such cases. The primary goal is to demonstrate how the errors and mistakes committed by healthcare practitioners create a dilemma in the Indonesia medical services sector.

Methods

For the purpose of this study, the researcher will focus on article that have been done on the medical malpractices that may Indonesian doctors engage in and how such acts are dealt with based on the existing legislations.

In this study, secondary research method will be used to gather information needed to explore the professional and legal issues related to medical malpractices and mistakes in Indonesia. Secondary research entails identifying, collecting, summarizing, and synthesizing existing research data related to the topic being investigated. Unlike primary studies that involve generating data or collecting data from the field, secondary research consists in identifying various reliable sources that may be used to develop answers to a formulated question or test a particular hypothesis. It is imperative to state that secondary research is usually done with the primary goal of getting information in a quick and low-cost way, clarifying a research question, ruling out potential proposals, and aligning the focus of a primary study to a larger population.

In this case, the approach was entirely used to gain valuable insights into the problem of medical malpractice and the dilemmas faced by judges and regulatory authorities when dealing with the issues. The information was gathered from a wide range of sources that included peer-reviewed articles, textbooks, and court cases.

Results

Indonesia, just like any country in the world, has laws and regulations that are meant to streamline the healthcare system and ensure that doctors engage in professional practice. Article 1 of the Constitution states that Indonesia is a Law state. It allows for freedom of religion and

promotes the dignity of human beings. In addition, Article 33 of the Constitution affirms that the prosperity of citizens is of paramount importance to the government and leaders in the country. The other element that defines the state is recognition as well as the protection of human rights (Berenschot, 2010). Every citizen is treated equally by the government and accorded the chance to contribute to the development of the country. However, people should also understand their liability and the anticipated consequences of their actions and choices in the course of their work. The goal of the Indonesia justice system is to give sanctions towards citizens who already anticipate the adverse effects of their choices and actions (Minas & Diatri, 2008; Nadirsyah, 2007; Rahman, 2006). Furthermore, attempts are always made to determine whether individuals understand the possible implications of their actions and go ahead to harm others. In some cases, however, the consequences that are categorized as harmful under the Indonesian constitution may be caused by someone who does not have the intention to hurt or cause injury to other people. For instance, a person may decide to end the life of a very ill parent with the intention of relieving him of the misery of sickness. While the law may consider the act to be harmful, the perpetrator has a genuine concern that motivated them to behave in a particular way.

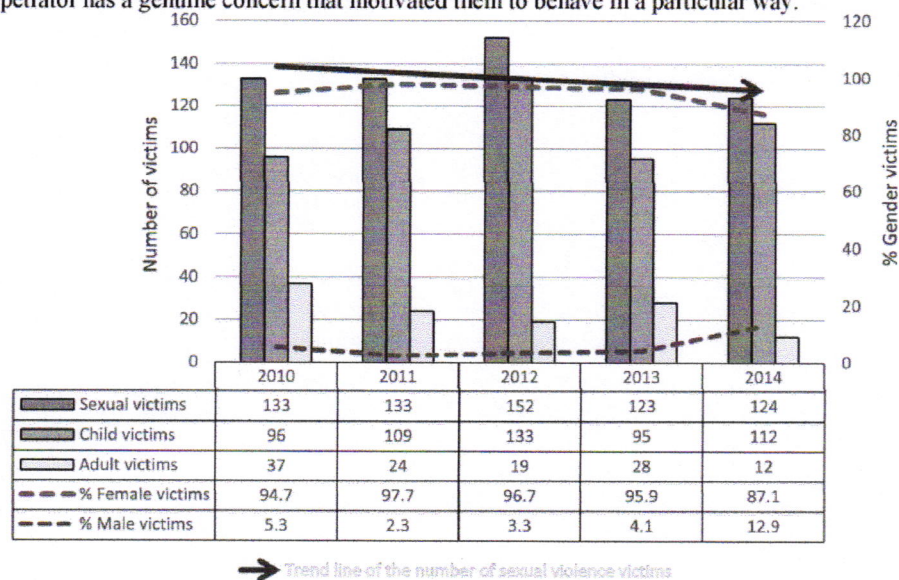


Figure 1: Sexual violence involving patients

According to Berenschot (2010), a person is not only regarded to be responsible for his actions, including those that are objectively dangerous. Judges usually look at the intentions of a person as well as the consequences of an act to determine whether he or she is guilty or not. The author added that offensive actions are usually complemented by psychological conditions and the environment in which a person operates. Someone legally responsible for his actions should understand the law and how he or she will be judged in a court of law. The disadvantaged party may be compensated by the court for the fault that has been committed against them as per Article 1365 of the Indonesia Civil Code. From a civil law point of view, medical malpractice and errors usually occur when a doctor commits a fault in the course of medical service to patients. The actions of the doctor may cause a civil loss to the patient and lead to poor clinical outcomes such as injury. It is worth stating that the mental and physical loss, as well as death

caused to patients by a medical practitioner, is a critical element of malpractice from Criminal and Civil law perspective. The emergence of the civil loss to the patient is the foundation of civil liability for the doctors.

From an ontological point of view, the work of a doctor entailed practicing in a manner that is in line with their training and professional standards. The process also involves taking into account the available information and knowledge about medical practice and respecting the oath to protect humanity by providing high quality and safe services. In the same sense, medical malpractice is an act that is characterized by the failure of a doctor to conform to the professional standards of care and making decisions that can worsen the condition of the patient. The issue can be caused by negligence during the care provision process, lack of skill, and the use of the wrong equipment. Doctors are given the permit to carry out medical procedures and assist patients to recover from their conditions. However, they should pass the competency test to be able to carry out their duties effectively. Furthermore, doctors working in Indonesia require registration letters and the license to practice. Even after meeting these conditions, those who work in the medical practice organizations should always remember that they have a duty to devote their work and life to humanity, be fair to their patients, and offer safe services.

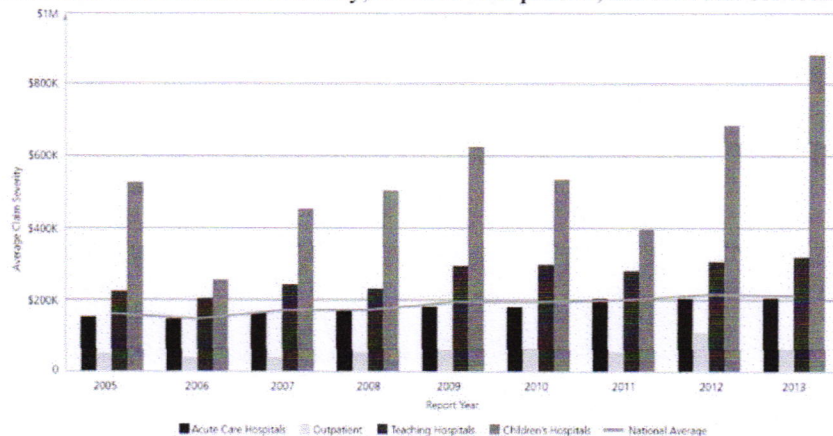


Figure 2: Medical Malpractice claims

Over the years, authors have strived to explore the laws relating to medical practice and how doctors should be dealt with when they fail to meet their ethical and professional duties. The investigations have revealed that there are significant conflicts and differences in the provisions of the law relating to medical practice. The conflicts have been highlighted with regards to the requirements and provisions of Article 66 of Indonesian Medical Practice Act, Article 29 of *UUNRI Nomor*, Article 58 verse (2) of *UUNRI Nomor 36 Tahun 2009* and Article 84 of *UUNRI Nomor*. In some cases, the disagreements are caused by the different terms and elements that have been used to describe the subject of medical malpractice. Since there is no standard definition in the Indonesia Law system, researchers and experts tend to look into other jurisdictions and fields to explore what the concept is all about. In addition, there is no particular norm that is being used to regulate medical malpractice (Istiadjid, Santoso, Djatmika, & Sugir, 2017; Irmansyah, Prasetyo, & Minas, 2009; Berenschot, 2010; Emirbayer, 1997). It is against this background that researchers and experts have called for the creation of legislation and frameworks that define the concept, identify different types of violations, and highlight the liability and duties of the doctors. The enactment of such laws will help in addressing the current

vacuum and enabling courts and regulatory agencies to address the issue of medical malpractice effectively.

According to Article 1 of the Medical Practice Act, "Medical practice is a series of action done by a doctor and dentist to a patient in performing a health effort." It is worth stating that Article 2 of the same Act states that doctors should practice in accordance with the Pancasila principles founded on scientific research and evidence. Furthermore, doctors are expected to engage in actions that will benefit patients, enhance the safety of service seekers, and protect humanity. The decisions that the doctors make should be based on the desire to promote equality among patients. The primary purpose of Medical practice is found in Article 3 of the Medical Practice Act of Indonesia. The article shows that the primary duty of those who belong to the medical profession is to protect patients, improve the quality of services, and give support to service users. Health is considered to be one of the fundamental human rights in Indonesia and other nations. The United Nation's Universal Declaration of Human Rights states that everyone has a fundamental right to safe and quality health services that will enhance their life and wellbeing. It implies that the government and its agencies should create favorable conditions that ensure that citizens can access safe and affordable services (Maru, 2006; Mulder, 1994; Van Rooij, 2012; Von Benda-Beckmann, 1981; Pandit & Pandit, 2009). Researchers contend that healthiness of a person is defined by the social, mental, spiritual, and physical wellbeing. The services that the doctors provide enable citizens to live a productive life and develop socially and physically (Pandit & Pandit, 2009). Article 1 Verse 1 of Health Act recognizes the humanism of the services that doctors provide and the extent to which practitioners should go to help patients. Without the provision of the right services, doctors will not be able to support their clients and contribute to the development of society. In other words, doctors have a critical role to play in assisting their patients in living their lives to the fullest extent.

The significance of health as a fundamental human right has been recognized both in Indonesia and internationally. Experts believe that everyone deserves high-quality health services to be able to live a healthy life, get a job, and take care of their families. As per the Universal Declaration of Human Rights, every person should be accorded the right to live adequately. The process entails getting the chance to access food, clothes, housing, and medical services (Murthy, 2007; Bonetti, CirilloMusile Tanzi, & Trincherro, 2016; De Feijter, de Grave, Muijtjens, Scherpbier, & Koopmans, 2012). Children and mothers, on the other hand, require special assistance and care in order to deal with the challenges of life. In the case of children, for instance, parents should provide social protection to enable them to develop optimally. Health is a critical element that defines the welfare and safety of society (Traina, 2009; Fattore & Torbica, 2006; Cirillo, Hüsler, & Muliere, 2013). It enables people to achieve their life goals and contribute to the development of the nation. According to Article 21 of the Healthcare Act of Indonesia, the government has the duty to organize, plan, and offer healthcare services. In addition, government agencies have been set up to supervise the quality and safety of the services provided by doctors. Hospitals, on the other hand, develop their human resources to ensure that Indonesians are able to access safe and quality services. In the globalization era, the process of developing the skills of doctors may entail partnering with international organizations in areas related to technology and competency standards.

Discussion

Doctors belong to an honorable and noble profession that is central to the development of a country and the wellbeing of the society. The practitioners who fail to meet their professional and ethical responsibilities either through negligence or ill intention should be given a punishment that is equal to their faults. The government and the courts use the constitution to

determine whether the actions of a doctor are legal or not (Rapp, 2006; Jena, Seabury, Lakdawalla & Chandra, 2001; Tediosi, Gabriele, & Longo, 2009). To ensure that the society develops, attempts should be made to limit the cases of malpractice and errors that occur in hospitals and other care provision settings. Physicians, on their part, are expected to behave and act professionally and show a high level of morality (López Ordoñez, Manrique Bacca & Torres, 2004; Markides & Newman, 2014). Furthermore, they should use their knowledge, scientific evidence, and technology to improve the wellbeing of patients. To avoid errors and medical malpractice, there are requirements that an individual should meet before being allowed to provide services to patients. First, it is important that the person in question be a graduate of a recognized medical school (Pellin & Pellino, 2015; Jena, Seabury, & Lakdawalla, 2011). The individual should also pass competency tests and gain authority to practice based on the Indonesia laws. The Medical Practice Act further states that a person can only engage in medical practice after getting the necessary approval and licenses. Those who violate the provisions of the law risk getting sanctions or being charged in a court of law.

A review of existing literature and laws related to medical practice showed that when health practitioners engage in negligent acts, they may cause severe harm and injury to the health service recipient. Such individuals can be convicted and imprisoned for a certain period depending on the severity of the act and the consequences. When the negligent act causes death, the involved doctor may be imprisoned for up to five years (Studdert, Mello, & Gawande, 2006; Mello, Studdert, & Kachalia, 2014). The punishment given to the perpetrator of the act may also be enhanced depending on the context of the case and the implications it has on the health and wellbeing of the patient (James, 2013; Gallagher, Waterman, Ebers, Fraser, & Levinson, 2003). The intention is to deter practitioners from engaging in practices that deprive the patient the right to life and access to high quality and safe services. It is worth stating that regulatory agencies may also come in to look at the case and determine the nature of punishment that the doctor should be given for neglecting their professional and ethical obligations (Ramírez, Ramírez, & Larios, 2016; Lambert, Centomani, & Smith, 2016). The punishment can take the form of warning, withdrawal of practicing license, and fine. Therefore, it is the duty of the doctors to ensure that they follow all the set professional standards and engage in practices that will not cause harm to the service recipients.

There are different criminal prosecutions under the Indonesian penal code that have been witnessed over the years. In addition, researchers concur that the criminal prosecution of physicians has been recognized in the Indonesia legal system since the early time. In some instances, doctors are charged for issuing false information to patients. Section 267 of the Penal Code prohibits the issuance of false information letters regarding the absence or presence of a given disease (Gómez-Durán, Mulà-Rosias, & Laila-Vicens, 2013; Kessler, 2011). When one breaks this particular law, he or she risks being sent into prison for up to eight years. The second type of offense that has been dealt with by the courts is the commission of indecent acts against the patients. Section 294 part 2 of the Penal Code prohibits different people, including doctors from committing indecency against the individuals under their care. The violation of this particular law may lead to up to seven years imprisonment. In other instances, the criminal prosecutions related to the disclosure of confidential information, euthanasia, and illegal abortion.

In accordance with the equality principle before the law, any doctor that engages in a criminal or negligent act may be subjected to criminal prosecution. However, the criminal act alone may not be enough to determine whether the physician is criminally liable. The intention should accompany the act to harm the patient or cause injury to them (*mens rea*). In the recent

years, the concept of *mens rea* has become an important topic of debate for researchers and experts in medical malpractice cases and litigations (: Kachalia, & Mello, 2011; Waxman, Ridgely & Heaton, 2014). The topic has attracted the attention of experts and researchers with a section arguing that doctors do not have the intention to cause pain to patients in the course of their practice. Within the Indonesian legal system, it is only the actions that are categorized as criminal offenses under the Penal Code or other legislation results in prosecution. The judges use the principles of *nullum delictum nulla poena sine praevia lege poenali* ("no offense and no penalty without previous criminal legislation") to determine whether the doctor in question should be held criminally liable. In addition, the prosecution process takes into account the existing laws, the issue of negligence, and the consequences when making a determination about a case.

Conclusion and Recommendations

From the above discussion, it is apparent that the issue of medical malpractice is a problem within the Indonesian legal system. Patients expect doctors to offer services that will improve their health and wellbeing. Furthermore, doctors should interact with patients in a professional way and provide safe and quality services. Indonesian courts use criminal law to address the problems related to medical malpractice. Even though the trend has helped in ensuring that doctors are held culpable for their acts, it has also resulted in fear among physicians.

The reluctance by some doctors to take up complex cases that may be risky out of the fear of being charged when things go wrong can affect access to services. Therefore, there is a need for urgent reforms geared towards addressing cases of medical malpractice. The reforms may be done through judicial or parliamentary amendments. First, the police need to offer necessary supervision on the prosecution and handling of medical cases. Second, investigators should not strive to determine whether mediation is possible before the cases are taken to courts. Finally, the judges should not excessively use the Penal Court to punish doctors for cases that could have been handled through mediation.

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