

Doctor Criminal Liability for Therapeutic Agreements With Patients in Case of Benzodiazepine Drug Distribution

Muhammad Ridwan El Muhaimin, Hamidah Abdurrachman, Achmad Irwan Hamzani
{ridwan@upstegal.ac.id}

Magister of Law, Universitas Pancasakti Tegal, Indonesia

Abstract. Benzodiazepines, a class of psychotropic drugs, are prescribed by doctors to patients and raise questions about the responsibilities of healthcare providers. This study aims to describe the therapeutic agreement between doctors and patients based on Indonesian law and analyze the criminal liability of doctors when patients distribute benzodiazepines to others. The study uses a statutory and conceptual approach, with data collected through traditional and online literature searches and analyzed qualitatively in a narrative-descriptive style. The findings reveal that a therapeutic agreement creates a legal relationship between doctors and patients based on trust, encompassing not only treatment but also diagnostic, preventive, rehabilitative, and promotive efforts. Patient distribution of benzodiazepines obtained from a prescription violates the therapeutic agreement, but doctors cannot be held legally responsible for medical risks if they have followed professional standards, medical service standards, and standard operating procedures. The criminal law provisions cannot be fulfilled in cases of patient distribution of benzodiazepines as there is no causality between medical actions by doctors and the criminal acts by patients.

Keywords: Benzodiazepines, Doctor's Prescription, Responsibilities

1 Introduction

March 2022, 88,900 tablets of the benzodiazepine class of drugs had been confiscated as evidence in psychotropic crimes. A total of 217 cases of criminal acts and 418 suspects were obtained from these psychotropic crimes. There was an increase in the number of psychotropic crimes compared to the previous year as seen from the 2021 report, namely 178 criminal cases and 216 suspects. [1] Benzodiazepine drugs are ranked as the third most consumed amount, namely 11.75%, of all types of drugs used by abusers.

Drugs that are abused are usually obtained through 55% giving from friends or family, 20% taking medication, 10% buying from friends or family, 5% stealing from friends or family, 5% buying from drug dealers, 2% from going to several doctors, 1% steal from drug storage or pharmaceutical installations, and 1% buy from the internet. Most of the sources of drug acquisition which are then misused come from doctor's prescriptions.[2]

Benzodiazepine drugs in the world of health are a class of psychotropic drugs that are useful as therapy to reduce acute anxiety or agitation. Prescription of benzodiazepines in clinical practice in conditions of anxiety with a history of drug abuse is quite high [3]. Benzodiazepines are not only given to treat acute conditions, but also as maintenance therapy in the long term. It was reported in a study of a total of 91 patients, as many as 52 of them had a history of drug abuse in the past. Drugs and substances abused include benzodiazepines, marijuana, methamphetamine, alcohol, putaw, and

ecstasy. Generally, each patient has a history of abuse of more than 1 substance. Marijuana, methamphetamine and alcohol were the most abused substances in the 52 patients, where marijuana ranked first. Patients with a history of abuse tended to show no improvement during the 6 months of observation.[4]

The term "psychotropics" refers to a class of medications or compounds, both natural and manufactured, that are non-narcotic and have psychoactive qualities through a selective action on the central nervous system that results in certain alterations in behavior and mental activity.[5]. The scope of regulation in the field of psychotropics in the law is all activities related to psychotropics that have the potential to cause a dependency syndrome. This drug is a drug that is used for psychiatric or mental disorders which are usually called sedatives and anti-depressants. Use of this drug can cause hallucinations, depression, stimulation (not sleepy, not hungry) and impaired motor or muscle function (head moving up and down or shaking).

The psychotropic logo is included in certain hard drugs that are the same as hard drugs, namely a red circle with a black border and there is the letter K (black color) in the middle of the circle and touching the edge line on the package so you have to get a doctor's prescription to get it[3]. Because this class of drugs can cause dependence or addiction, the government carries out strict supervision (regulations and legal sanctions) so that drug abuse does not occur.

Psychotropic crimes are regulated in the Law of the Republic of Indonesia Number 5 of 1997 concerning Psychotropics. The enactment of Law of the Republic of Indonesia Number 5 of 1997 concerning Psychotropics aims to ensure the availability of psychotropics for the benefit of health services and in the framework of scientific development, to prevent the occurrence of psychotropic abuse, and to prevent the illegal circulation of psychotropics.[6]

Benzodiazepine drugs are class IV psychotropic drugs, which according to the Law of the Republic of Indonesia Number 5 of 1997 concerning Psychotropics can only be used for health care purposes. One of the ways to provide health services is through medical services, which are the essence of health efforts regulated in the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice.[7]

Psychotropic drug users can only own, store, and/or carry psychotropics to be used for treatment and/or treatment. Problems occur when patients after treatment and receive psychotropic drugs from doctors then commit criminal acts that violate the Law of the Republic of Indonesia Number 5 of 1997 concerning Psychotropics, namely distributing drugs (such as selling or giving drugs to other people). As a result of the patient's actions, the doctor who examines and prescribes drugs to the patient may be suspected of committing medical malpractice.

Medical malpractice is often confused with what is meant by medical risk. Not infrequently a doctor who has worked professionally is in accordance with the standards of the medical profession, medical service standards, standard operating procedures, still being prosecuted on charges of medical malpractice. In addition to medical malpractice, doctors can also be suspected of committing criminal acts of narcotics and psychotropic abuse.

Doctors' attachment to legal provisions in carrying out their profession is a legal responsibility that must be fulfilled by doctors[8]. The relationship of trust between one human being and another has been known since the beginning of human history, in this case between a patient and a doctor which is currently referred to as a therapeutic agreement. The existence of an agreement between doctor and patient, then gave birth to rights and obligations. Rights can be requested by patients, while doctors are burdened with obligations and responsibilities as health service providers.

From this description, a legal issue arises in medical services and it is necessary to have an in-depth discussion regarding the criminal responsibility of doctors for therapeutic agreements with

patients in cases of distribution of benzodiazepine drugs so that doctors can feel safe in carrying out medical services. Based on the background above, the problems studied are:

1. How is the therapeutic agreement between a doctor and a patient based on the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice?
2. What is the criminal liability of doctors in cases of patients who distribute benzodiazepine drugs to other people?

2 Method

This type of research is library research. Research conducted at a library is research that uses secondary data from the literature as the main source of information and involves searching for laws and other relevant books.[9]. This research uses library research since it only deals directly with sources that are already in the library or ready-to-use data, as well as secondary data. It does not deal directly with field data or through eyewitnesses in the form of events. used.

The approach used in this study is a normative approach. [10]The normative approach is a literature-based approach, which focuses on the analysis of primary legal materials and secondary legal materials. This study uses a normative approach because this study aims to provide a detailed explanation that is systematic, corrects and clarifies a rule of law governing a particular field of law.[11]

Secondary data were the source for the research's data. Data sources that indirectly supply information to data gatherers, such as through other individuals or documents, are known as secondary data sources. Because secondary material is easily accessible in written form in books, scholarly journals, and other written sources, it is used as the primary reference in this study.

Through conventional and online literature searches, this research data gathering method was carried out. By visiting the library, buying books and periodicals, and participating in scientific events, traditional literature searches are conducted (seminars). Online searches are done with a search engine for something via the internet. Because it is important for establishing a theoretical foundation by studying and researching books, rules and regulations, papers, reports, archives, and other research findings both printed and electronic relevant to the object of study, this study uses traditional and online library search strategies.

The research's approach of data analysis is qualitative. The goal of qualitative data analysis is to comprehend phenomena relating to what research subjects experience, such as behavior, perceptions, motivations, actions, and others, holistically and through verbal and linguistic descriptions, in a specific setting that is natural and with the aid of natural methods. Because the data will be presented in a narrative-descriptive style rather than as figures or numbers, this study uses qualitative data analysis.

3 Discussion

3.1. Therapeutic Agreement Between Doctor and Patient Based on Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice

According to the legal doctrine of health, the relationship between doctor and patient in the medical field is known as a therapeutic agreement. Therapeutic is a translation of therapeutic which means in the field of medicine, because of that the term therapeutic is used to further clarify that the agreement that occurs between doctors and patients is not only in the field of medicine but is broader than that, which includes the fields of diagnostic, preventive (preventive efforts), rehabilitative. (recovery efforts), as well as promotive (health improvement efforts).[2]

As in an agreement, in a therapeutic agreement there are two parties, namely the doctor as the provider of medical services and the patient as the recipient of medical services and the rights of the doctor on the one hand and the obligations of the patient on the other.[12] The therapeutic agreement is also known as a therapeutic transaction or therapeutic contract. Therapeutic agreement is an agreement between a doctor and a patient that authorizes a doctor to carry out activities to provide health services to patients based on the expertise and skills of a doctor. With this therapeutic agreement, of course there is a legal relationship between doctors and patients where doctors and patients are legal subjects which of course give birth to rights and obligations that must be fulfilled by each party.[13]

A relationship between two or more legal subjects that pits one party's rights and obligations against another party's rights and obligations is known as a legal relationship (*rechtbetrekkingen*).[14]. Existence of a legal basis and the occurrence of legal events are prerequisites for legal relations.. [15]This legal relationship stems from the patient's trust in the doctor, so that the patient is willing to give consent for medical actions that will later be carried out by a doctor known as informed consent.

The relationship between doctors and patients in medicine generally takes place as an active-passive biomedical relationship [16]. In this connection, it seems that the superiority of doctors over patients in the field of biomedical science is evident because doctors understand more about the disease suffered by patients, there are only activities on the part of the doctor while the patient remains passive by accepting everything given by the doctor concerned.

Since the patient's faith in his doctor is the foundation of their connection, it is actually a highly personal one. The pastor's congregation is said to have a close relationship and express their emotions in this extremely personal relationship..[17] This paternalistic relationship between doctors and patients is a result of a pattern of vertical paternalistic interactions that deviate from the tenet of father knows best, such as those between fathers and children..[18] The doctor and the patient are not in an equal position in a vertical paternalistic relationship because the doctor is assumed to be fully knowledgeable about the patient's illness and its treatment while the patient is assumed to be completely ignorant of the illness and thus completely trusts the doctor with their fate..[19]

In fact, it can be said that the pattern of vertical paternalistic relationships has both positive and negative impacts. The positive impact is that doctors can help patients who are unfamiliar with their disease. [18] The activities of doctors that restrict the patient's autonomy, which have existed throughout the history of cultural development and fundamental rights (human rights), on the other hand, have a detrimental impact on the patient's attempts to get healed. In the end, though, the structure of connections between doctors and patients underwent a transformation, going from being originally vertical paternalistic to being horizontal contractual, in accordance with the development of the times. A legal relationship between doctors and patients that is characterized by an equal or parallel position between the two parties and a mutual respect for their respective rights and obligations is known as a contractual horizontal relationship.

There are also other reasons that lead to legal relations between doctors and patients, namely because of the patient's condition that must immediately get help from a doctor, for example because of an accident, natural disaster, or because of other situations that cause the patient's condition to be dying, so the doctor may difficulties in carrying out medical actions for patients because they cannot know with certainty the patient's will. Therefore, in these circumstances the doctor will immediately carry out what is called voluntary action or what is known as

zaakwarneming as stipulated in Article 1354 of the Civil Code, namely a form of legal relationship that occurs not because of prior approval of medical action, but because of compelling circumstances or emergency state. The relationship between the doctor and the patient that occurs as intended is one of the characteristics of a therapeutic agreement that distinguishes it from an ordinary agreement as regulated in the Civil Code.

The difference between therapeutic agreements and other agreements is the object, where in a therapeutic agreement the object is an effort or therapy to cure the patient, while the core of the implementation of the agreement in general is to carry out an achievement. Article 1234 of the Civil Code states that achievement is indicated by the act of giving something or doing something or not doing something.

Basically the therapeutic agreement relationship is the same agreement relationship because it gives birth to achievements for the parties, it's just that through these relationship patterns it provides a wider opportunity for legal subjects to enter into agreements.[20] Even though technically the person who is healing the patient is a doctor, through this relationship pattern it will affect whether there is an obligation from the doctor who violates the contents of the therapeutic agreement.

Viewed from the legal aspect of health, the relationship between doctor and patient is inseparable from what is called health service, therefore as a doctor, he has a direct role in the task of healing efforts for the community in order to create good and quality public services. A doctor in carrying out his profession must carry it out in accordance with professional standards as stated in Article 51 Paragraph (1) of the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice.[21] Professional standards are norms that must be followed in order to practice a profession correctly. Medical service standards, which are mostly concerned with medical procedures, are the rules applied in terms of medical services.

For doctors, upholding medical professional standards while doing their jobs is a need. Regarding the implementation of standards, legal rules require average ability, but ethical rules require the highest ability for doctors to fulfill them. This is as stated in Article 1 and Article 2 of the KODEKI which states that every doctor is obliged to uphold, live and practice the doctor's oath and or promises.

In the next article it is stated that a doctor must always make professional decisions independently and maintain professional behavior at the highest standard. In carrying out their profession, doctors must consider means of effort that are comparable and/or proportional to the concrete objectives of the medical action or action.[22] That is, in accordance with scientific guidelines and their expertise in the medical industry, doctors must exert their maximum effort when performing medical treatments on patients.

Contrary to what many people believe, the therapeutic agreement between the patient and the doctor begins when the doctor expresses his willingness. This willingness may be expressed orally (oral statement) or implied by behavior, such as receiving registration, providing serial numbers, providing and recording medical records, etc.[23]

In the therapeutic agreement, the law of engagement also applies because there are parties who bind themselves in an agreement or agreement. This means that it is clear that the therapeutic agreement is bound by the terms of a valid agreement set forth in Article 1320 of the Civil Code, which states that in essence a valid agreement must fulfill the following elements: first, there is an

agreement from the parties making the agreement; second, the ability to make an agreement; thirdly, there is a certain thing; and fourth, the existence of a lawful cause.

The first and second elements are subjective requirements of an agreement because these two conditions are directly related to the legal subject who enters into the agreement. If one of the subjective conditions is not met, the legal consequences of the agreement can be requested for cancellation at the request of one of the parties. This means that the agreement remains valid for the parties as long as the judge has not asked for cancellation. Cancellation comes into force since the judge's decision has permanent legal force, while the third and fourth elements are objective elements because they relate to the object of something that was agreed upon. With regard to this objective element, if one of the elements is not fulfilled then the agreement is declared null and void (*ex officio*). The legal consequence of the agreement is that the agreement is deemed to have never existed.

A therapeutic agreement requires informed consent since, as stated in the agreement, there must be an agreement (the consensual principle). After receiving information from the doctor about the medical steps that can be taken to help him and information about all potential hazards, the patient must give informed permission before the doctor can begin any medical treatment on him. The patient or the patient's family must provide their consent before any medical procedure with a significant risk.

In essence, informed consent is a process of communication between a doctor and a patient regarding an agreement on medical action that the doctor will take on the patient (there is a detailed explanation by the doctor), so that even an oral agreement is actually sufficient. The written informed consent form must be signed in order to affirm what has already been decided..

Informed consent consists of two words, namely informed which means information or information and consent which means approval or giving permission. So the notion of informed consent is an agreement given after receiving information. The goal of obtaining informed consent is to protect patients from any medical procedures performed without the patient's knowledge and to give physicians legal protection from unforeseen and unfavorable outcomes, such as risks associated with treatments that cannot be avoided despite doctors' best efforts, thoroughness, and care.

Informed consent is the foundation of the relationship between doctor and patient. In Indonesia, there are regulations that specifically (*lex specialis*) regulate informed consent, namely the Regulation of the Minister of Health of the Republic of Indonesia Number 290/MENKES/PER/III/2008 concerning Approval of Medical Actions. An agreement or consent by the patient for medical action to be taken on him is referred to as approval for medical action. This occurs when the patient receives information from the doctor regarding medical actions that can help him as well as information about all the hazards that may occur. An agreement or consent by the patient for medical action to be taken on him is referred to as approval for medical action. This occurs when the patient receives information from the doctor regarding medical actions that can help him as well as information about all the hazards that may occur. So the point is that the principle of having informed consent or consent to medical action is that there must be an explanation and consent is given. With the signing of this written agreement, the nature of this agreement is legally valid and fulfills the requirements for the validity of an agreement. With this signature, this agreement has received approval from the doctor and hospital as well as approval from the patient.

Community views and understanding of therapeutic agreements are still low. People who have high legal awareness can result in people being very obedient to applicable agreements and regulations. Conversely, when people's awareness of the law is low, compliance and adherence to a law are also low. If in the therapeutic agreement the community has low understanding, awareness of the agreement that has been made is also low without realizing that there is a risk of a standard agreement from a party with a higher position.

Doctors when fulfilling patient rights usually already know if the patient will agree to the medical action to be given because usually the patient chooses to immediately agree and sign the agreement when the patient's condition urgently requires medical action. Then the approval of medical action and the refusal of medical action taken by the patient is a manifestation of a patient's right to make choices and determine health services according to the patient's needs.

Initially, patients had a position that only depended on doctors for treatment and medication, but now doctors and patients have the same rights. Doctors in carrying out their duties treating patients cannot ignore the considerations that have been given to patients, doctors are not allowed to choose their own method of treatment, including in determining whether or not a patient is given surgery. Even so, in the implementation of healing, patients are always overshadowed by the risks that could occur. From the patient's side, the risk of treatment can cause him to lose his health and even his life, and from the doctor's side, he can be at risk from his work and result in sanctions, both light and heavy sanctions. But it is possible for patients who do not comply or do not fulfill their obligations as patients, namely not complying with the doctor's instructions and suggestions, may provide incorrect information about their illness so that it can affect their health condition after medical action is taken by the doctor.

3.2. Doctor's Criminal Liability in Cases of Patients Who Distribute Benzodiazepine Drugs to Others

Benzodiazepines are anxiolytics which are useful as therapy to reduce acute anxiety or agitation. Its use is not recommended in the long term due to dependency factors, memory impairment, motor disturbances, dizziness, vertigo, blurred vision, mood changes and euphoria, and withdrawal symptoms. The results of a study stated that the use of benzodiazepines can induce a tendency for relapse and dependence. The desired effect of benzodiazepines is a sedative-hypnotic effect. The desirable properties of using hypnotics are anxiety relief, euphoria, and increased sleep capacity, making these drugs the first choice for treating insomnia. If this condition persists, consumption becomes obsessive and leads to physical dependence. Almost all sedative hypnotics can be addictive or dependent. These side effects depend on the high dose given just before stopping, the half-life and the class of drug used.

Sedatives are depressant drugs that act on the central nervous system and are primarily used as therapy for insomnia, anxiety, muscle relaxation, and anticonvulsants. Abuse of sedatives is caused by a sedative-hypnotic effect which can lead to an increase in the dose of use without monitoring from a health professional or after insomnia, anxiety, or pain has subsided.

Sedative drugs are useful for dealing with anxiety and insomnia, but their use can lead to addiction and dependence which can be at risk of the three types of drugs previously mentioned. If an individual is addicted to a particular drug, the individual requires a higher dose to have an effect, and there are physical or psychological effects that occur when consumption of the drug is stopped. Therefore, stopping the consumption of sedative drugs cannot be stopped just like that and can be done by reducing the dose periodically.

In fact, not everyone can get this benzodiazepine drug carelessly. Benzodiazepine class drugs are included in the list of drugs that must be purchased with a doctor's prescription, however sedatives such as benzodiazepines are often misused by certain parties to treat psychological symptoms that do not actually require the use of these drugs or the use of these drugs that are not monitored by medical personnel. so that the function of the drug is not on target.

Generally drugs belonging to the class of benzodiazepines are in tablet form. However, in the hospital, benzodiazepines can be given by injection to patients. Benzodiazepines increase the effect of natural chemicals in the brain and make the patient feel calmer. In the management of anxiety (panic), administration of these drugs usually lasts for four weeks. In order to obtain a benzodiazepine class drug, or more commonly known as a class IV psychotropic drug, the patient or potential buyer of the drug is required to have a prescription letter from a doctor proving that he really needs the drug for medicinal purposes because benzodiazepines have effects that can affect the central nervous system so that can cause hallucinations, mental and behavioral changes and can lead to dependence for the wearer.

Medical risk is a form of risk that is not the responsibility of the doctor. Therefore, the elements of medical risk will try to be broken down into several categories of risks that cannot be held responsible or risks that are not the responsibility of the doctor, namely:

1. Have performed medical procedures in accordance with professional standards, medical standards and standard operating procedures. As is also stated in Article 50 letter a of the Medical Practice Act, if a doctor has carried out medical services or medical practice in accordance with professional standards and operational standards, then the doctor cannot be prosecuted either in civil, criminal or administrative terms.
2. The existence of informed consent or approval of medical action. Before carrying out a medical action, the doctor is obliged to provide an explanation to the patient and or his family, namely regarding the diagnosis and also procedures for medical action, the purpose of the medical action being carried out, as well as other alternative actions along with the risks that will occur. The arrangements regarding the approval of medical action are regulated in Articles 39 and 45 of the Medical Practice Act. Apart from that, approval for medical action is also regulated specifically in the Regulation of the Minister of Health Number 290 of 2008 concerning Approval for Medical Action. It was explained that, every medical action must obtain consent from the patient after receiving a complete explanation regarding the forms of action, alternative actions and medical risks that may occur. Explanation or information can be given in writing or orally, which explanation at least includes: (i) Diagnosis and procedures for medical action; (ii) The purpose of the medical action performed; (iii) Alternative actions and risks; (iv) Risks and complications that may occur; (v) Prognosis of the action taken; (vi) and Estimated costs. After the patient has given his consent to the doctor's actions based on the conditions as above, and the medical action has been carried out in accordance with medical procedures, and in accordance with professional standards and operational standards, then if there is a medical failure the doctor cannot be blamed.
3. Contribution negligence. The doctor cannot be blamed if the doctor fails or is not successful in treating his patient because the patient does not want to cooperate or the patient is uncooperative, does not wish to explain honestly about a history of the disease he has suffered and the drugs consumed before the patient seeks treatment from the doctor concerned or even the patient does not carry out what the doctor has advised the patient. This is basically regulated in Article 50 of the Medical Practice Act regarding the rights of

doctors, where in point c it is stated, doctors and/or dentists in carrying out their practice are entitled to receive complete and honest information or explanations from patients or their families regarding health background. patients and vice versa, Article 51 of the Medical Practice Act regarding doctors' obligations, in which doctors are required to provide services and/or treatment to patients based on medical standards and operational standards. Article 52 letter a of the Medical Practice Act regarding patient rights emphasizes that patients have the right to receive a complete explanation of medical actions from a doctor. That is, the doctor's obligations are directly proportional to the patient's rights and vice versa the doctor's rights are also directly proportional to the patient's obligations. In a medical failure caused by the patient not carrying out his obligations as stated in Article 52 of the Medical Practice Act, the doctor cannot be blamed.

4. Error of Judgment. The field of medicine is a very complex field, as in medicine there are often disagreements or different opinions about a disease-healing therapy. Medical science is a combination of an art and arts, in addition to a combination of technology and the maturity or experience of the doctor. For such matters, in practice a different approach or difference in the treatment of a disease that has been suffered by the patient may appear. There tend to be differences in treatment between one doctor and another, but this is permissible as long as it is in accordance with medical standards as well as professional and operational standards. Based on the situation above, a theory called the (respectable minority rule) emerges, namely that a doctor is not considered negligent if he chooses one of the many recognized treatment methods.
5. Volenti non fit injury. Volenti non fit injuria is a legal doctrine which is also known as the Assumption of risk or an assumption that the patient already knows there is a risk that will occur. If a patient already knows that there is a risk in medical action for him, but he still agrees to the action and if later there will be a risk as he has known before, then the doctor cannot blame that risk. Therefore, information on disease and risks must be informed to patients before doctors perform medical procedures on patients

Medical risk is a condition that is unwanted by both the patient and the doctor or dentist himself, after the doctor or dentist has made every effort to meet professional standards, medical service standards and standard operating procedures but accidents still happen. This medical risk contains elements that cannot be blamed (verwijtbaarheid), cannot be prevented (vermijtbaarheid) and cannot be predicted (verzinbaarheid).

An unexpected result that occurs in medical practice can actually be caused by several possibilities, namely: First, the result of a disease course or disease complication that has nothing to do with medical actions performed by doctors. Second, the result of an unavoidable risk. Referring to these descriptions, basically for medical risks, doctors cannot be held legally responsible as long as they have taken the actions as explained above. because medical malpractice and medical risk are two different things.

Basically, medical risk cannot be held accountable to the doctor as long as the doctor has taken action in accordance with standard procedures and in accordance with the provisions of treatment that have been properly accepted by the patient. Researchers are of the opinion that none of the reasons why patients distribute benzodiazepines are the result of medical action. One of the medical risks is the emergence of risks in the patient's body that cannot be known or suspected beforehand.

As a profession that is specifically regulated in a law, the medical profession applies the legal principle *lex specialis derogate lege generali*. Thus the provisions of the general laws and regulations will be overridden by the provisions of the special laws and regulations. The medical profession is specifically regulated in the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice.

Criminal law provisions generally stipulate that criminal responsibility requires a causal relationship between a criminal act committed by a person and the loss suffered by another person. Meanwhile, in the case of patients distributing benzodiazepines, this provision cannot be fulfilled because there is no causality between the medical actions given by doctors and the criminal acts committed by patients. In the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice, one cannot find the concept of criminal liability included in the context of cases of patients distributing benzodiazepines, but only the concept of criminal responsibility for administrative violations in carrying out medical practice.

There is no provision in the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice which regulates medical malpractice committed by the medical profession or medical risks in carrying out medical practice so that until now there is no legal reference if there is an allegation of medical malpractice from a patient or an explanation medical risk by the medical profession. This is very unfortunate considering that there are many conceptualizations of medical malpractice and medical risk in the academic field, but it has not been regulated in a law and regulation, even though medical practice itself often intersects with allegations of medical malpractice and explanations of medical risks.

It can be said that there is no concept of criminal liability that can be applied to cases of patients distributing benzodiazepines. Thus, in the concept of legal responsibility regulated in laws and regulations in general and laws and regulations specifically, doctors cannot be held criminally responsible in cases of patients who distribute benzodiazepines to other people.

A doctor who already has material requirements (a doctor's certificate and oath) and formal requirements (Registration Certificate and Practice Permit) which are the basis for being able to practice medicine and has complied with the medical service standards that apply in the place where the doctor practices his medicine, should all These conditions can be used as or are justification reasons (criminal eradication), so that if in carrying out medical practice a medical dispute occurs, as long as the doctor is carrying out his profession in accordance with the law, law enforcement officials should not immediately investigate and make the doctor a suspect because it cannot be categorized as having fulfilled the elements of an unlawful act. In criminal provisions doctors should be legally guaranteed and protected by the state as referred to in Article 50 of the Consumer Protection Act, Article 27 of the Health Act and Article 75 of the Health Personnel Act which states that doctors must receive legal protection while carrying out their medical practice in accordance with with professional standards and standard operating procedures. Doctors are not only free from criminal liability but can also claim compensation for unlawful acts committed by patients for violating therapeutic agreements.

Ignoring unlawful nature (*wederrechtelijheid*) and mistakes (*schuld*) in determining the occurrence of criminal acts in the medical field will disrupt the relationship between doctors and patients which can lead to medical disputes. Medical disputes spread through the mass media will reduce public trust in doctors. This will have a broad impact on health services as a whole in the future which will eventually lead to a defensive medicine reaction, namely the doctor's excessive

fear of lawsuits which will lead to excessive caution by carrying out various laboratory tests and other examinations. which is not really needed.

Doctors will be afraid to take action in medical treatment considering the risk of prosecution that may occur, so they may think that it is better to let or directly refer the patient than to be accused of committing a medical crime. If this is not addressed immediately, it will have an impact on high health service costs that are detrimental to all parties, including doctors, patients, the public, health service fee payers, the government, as well as the nation and state.

Medical efforts carried out by doctors are efforts that are full of uncertainties and the results cannot be calculated mathematically because they are strongly influenced by other factors beyond the ability of doctors to control them. If a doctor has made a mistake or because of his will caused harm or death to a patient, then the doctor deserves to be punished using criminal law. However, if a patient commits an unlawful act as a result of a medical risk that cannot be predicted and avoided, then criminalizing a doctor is wrong.

4 Conclusion

Based on the results of the research and discussion, it can be concluded as follows :

First, The therapeutic agreement creates a legal relationship between a doctor and a patient based on the patient's trust in his doctor and creates a right and obligation that must be fulfilled by each party and starts from the time the doctor expresses his willingness verbally or impliedly. Therapeutic agreements that occur between doctors and patients are not only in the field of treatment but are broader, namely covering the diagnostic, preventive (preventive efforts), rehabilitative (recovery efforts), as well as promotive (health improvement efforts) fields.

Second, The act of a patient distributing a benzodiazepine obtained from a prescription as a result of a doctor's medical action is an act that violates a therapeutic agreement. The patient's action of distributing benzodiazepines is not a direct result caused by a medical action performed by a doctor. Basically, for medical risks, doctors cannot be held legally responsible as long as actions have been taken that meet professional standards and service standards medical and standard operating procedures. In the case of patients distributing benzodiazepines, the provisions of the criminal law cannot be fulfilled because there is no causality between the medical actions given by doctors and the criminal acts committed by patients.

References:

- [1] Mendra NNY, Ikawati Z. Efektivitas dan Keamanan Terapi Benzodiazepin pada Pasien Gangguan Ansietas dengan Riwayat Penyalahgunaan Obat". *Jurnal Farmasi Klinik Indonesia* 2021;10.
- [2] Mannas YA. Hubungan Hukum Dokter dan Pasien Serta Tanggung Jawab Dokter Dalam Penyelenggaraan Pelayanan Kesehatan". *Jurnal Cita Hukum (Indonesian Law Journal)* 2018;6.
- [3] Diniarti FA, Octaviani I. Penyalahgunaan Obat Sedatif serta Dampak Pengguna terhadap Kesehatan dan Sosial", *2-TRIK: Tunas-Tunas Riset Kesehatan* 2022;12.
- [4] Ohoiwutun T, Kedokteran BRH. *Bunga Rampai Hukum Kedokteran*. Malang: Bayumedia Publishing; 2018.
- [5] Preuss C V, Kalava A. *Prescription of Controlled Substances: Benefits and Risks* 2022.
- [6] Nongka OA. Penerapan Sanksi Pidana Terhadap Penyalahgunaan Psikotropika Berdasarkan Undang-Undang Nomor 5 Tahun 1997". *Lex Crimen* 2018;VI.

- [7] Candra S. Pembaharuan Hukum Pidana; Konsep Pertanggungjawaban Pidana Dalam Hukum Pidana Nasional Yang Akan Datang". Jurnal Cita Hukum 2018;1.
- [8] Hidayat AR, Sugiarta DING. Pertanggung Jawaban Pidana Terhadap Dokter Yang Melakukan Malpraktik Dalam Memberikan Pelayanan Kesehatan Di Tengah Pandemi Covid 19". Jurnal Konstruksi Hukum 2021;2.
- [9] Irwansyah PH. Pilihan Metode Dan Praktik Penulisan Artikel. Yogyakarta: Mirra Buana Media; 2021.
- [10] Purwati A. Metode Penelitian Hukum: Teori dan Praktek. Surabaya: CV. Jakad Media Publishing; 2020.
- [11] Benuf K, Azhar M. Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer". Jurnal Gema Keadilan 2020;7.
- [12] Hendrik E dan HK. Etika dan Hukum. Jakarta: Penerbit Buku Kedokteran EGC; 2018.
- [13] Hamzah A. Asas-Asas Hukum Pidana Edisi Revisi. Jakarta: PT. Rineka Cipta; 2020.
- [14] Atmaja DG, Hukum T-T. Teori-Teori Hukum. Malang: Setara Press; 2018.
- [15] Ratman D. Aspek Hukum Penyelenggaraan Praktek Kedokteran dan Malpraktik Medik. Bandung: CV Keni Media; 2019.
- [16] Aryzki S, Wahyuni DA. Studi Deskriptif Skrining Resep Di Apotek X Banjarmasin Tahun 2019". Journal Of Current Pharmaceutical Sciences 2021;4.
- [17] Asyhadi HZ. Aspek-Aspek Hukum Kesehatan di Indonesia. Depok: PT. Rajagrafindo Persada; 2019.
- [18] Simamora SD, Hertini MF, Bagan HPD. Hukum Pidana Dalam Bagan. Pontianak: FH Untan Press; 2018.
- [19] Dananjaya AAND. Sanksi Malpraktik Dan Resiko Medik Yang Dilakukan Oleh Dokter". Jurnal Analogi Hukum 2019;1.
- [20] Rusianto A. Tindak Pidana dan Pertanggungjawaban Pidana. Jakarta: Prenamedia Group; 2018.
- [21] Sudarto. Hukum Pidana 1 Edisi Revisi. Semarang: Yayasan Sudarto; 2018.
- [22] Sjawie HF, Korupsi PPKPTP. Pertanggungjawaban Pidana Korporasi Pada Tindak Pidana. Depok: Prenada Media Group; 2018.
- [23] Saleh R, Pertanggungjawaban Pidana PP. Perbuatan Pidana dan Pertanggungjawaban Pidana. Jakarta: Aksara Baru; 2018.