

# Involuntary Mercy Killing During the Covid-19 Pandemic in the Perspective of Health Law in Indonesia

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## ABSTRACT

In conditions full of uncertainty and overshadowed by despair, sometimes humans make irrational choices, one of which is when the patient's family refuses treatment procedures and/or takes action to request medical personnel to remove or stop the function of life support medical devices to patients. which resulted in the patient's death. Whether we realize it or not, this action is included in the category of involuntary mercy killing where the patient's family has taken steps to hasten death without the patient's request or consent. The purpose of this research is to study involuntary mercy killing or involuntary euthanasia from the perspective of health law in Indonesia, especially in the conditions of the COVID-19 pandemic. The approach method used is a conceptual approach and a statute approach. As a result, there is no specific regulation governing Involuntary Mercy Killing in health law in Indonesia. This legal vacuum is not good because it can confuse the community due to the absence of legal certainty in regulating social life. Currently, in public awareness of the practice of Involuntary Mercy Killing in the medical field, the context of Involuntary mercy killing only ends at the ethical level, not at the legal substance which is regulatory and has legal standing. It should be underlined that the moral value that is the main reference in the context of Involuntary mercy killing is to accelerate the duration or stop the suffering experienced by the patient to maintain human values, not to end the patient's life which is then categorized as euthanasia. It is necessary to immediately develop health laws related to Euthanasia, especially involuntary mercy killing.

**Keywords:** *Involuntary Mercy Killing; Health Law; Indonesia.*

## 1. INTRODUCTION

The problem of euthanasia has existed since the health community has faced an incurable disease, while the patient is already in a dying and tormented state[1]. Kartono Muhammad categorizes euthanasia into 5 types, namely[2]:

1. "Active euthanasia, taking active action, either directly or indirectly that results in death;
2. Passive euthanasia, hastening death by refusing to give/taking usual relief measures or stopping regular help that is in progress;
3. voluntary euthanasia, hastening death at the patient's consent or request.
4. Involuntary euthanasia, hastening death without the patient's request or consent, even against the patient's will, is often referred to as mercy killing.

Non-voluntary euthanasia, hastening death following the wishes of the patient submitted by or through a third party, or at the decision of the government."

In conditions full of uncertainty and overshadowed by desperation, sometimes humans make irrational choices,

one of which is when the patient's family asks medical personnel to remove or stop the function of life support medical devices to the patient which causes the patient to die with the same thought. underlying, among others, is that the life expectancy of patients is very low, especially in patients who are in a coma, serious illness, or are in certain health conditions where the probability of being healthy again is very small, then feelings of compassion for patients who have to go through endless critical conditions and are so excruciating. and considering the high cost of patient care. In line with this, Haryadi said, "continuous suffering causes the patient's family to sometimes be unable to bear it both morally and materially so that the patient's family wants the end of the patient's life when it is at the climax point of suffering"[3].

Whether we realize it or not, this action is included in the category of involuntary mercy killing where the patient's family has taken steps to accelerate death without the patient's request or consent because the patient himself is powerless and unable to consider his survival.

It is interesting then to examine involuntary mercy killing or involuntary euthanasia from the perspective of

health law in Indonesia, especially in the current state of the covid-19 pandemic.

This research has its own added value because most studies are still focused on aspects of Euthanasia in general, it is still rare to specifically discuss involuntary mercy killing. In addition, the perspective used in general is the perspective of human rights and criminal law, so that studies in the perspective of health law become a special attraction to increase scientific knowledge in the field of law in Indonesia.

## 2. MATERIALS AND METHODS

The approach method used in this paper is a statute approach by examining legal regulations related to the legal issues raised as well as a conceptual approach which makes doctrines and theories in legal science as a basis for building legal arguments to resolve legal cases being studied[4].

## 3. RESULTS AND DISCUSSION

Law Number 36 of 2009 concerning Health in the section considering the letter a emphasizes that "health is a human right and one of the elements of welfare that must be realized following the ideals of the Indonesian nation as referred to in Pancasila and the Constitution of the Republic of Indonesia of 1945." All activities to improve the degree of health must be carried out optimally, but in reality, sometimes we as humans are faced with a dilemma. On the one hand, having to fight for the health and lives of patients who are seriously ill, dying, and torturing themselves, but on the other hand, faced with the rationality that the patient's life expectancy is low even in the study of medical science, the patient's condition can no longer be cured, cannot Seeing the suffering of the patient and also the hospital costs for the treatment and recovery of the patient's health which is not cheap, which is then exacerbated by the current state of the covid-19 pandemic where people are economically affected due to many layoffs. As stated by the Ministry of Manpower of the Republic of Indonesia, "29.4 million people have been affected by the Covid-19 pandemic. That number includes those affected by Termination of Employment (PHK), laid off without pay to reduce working hours and wages"[5].

This makes us faced with a difficult position, especially the patient's family so that we then take action to request medical personnel to remove or stop the function of life support medical devices to patients which causes patient dies. In line with this, L. Ratna Kartika Wulan explained that "the most common incident occurred was the patient or the patient's family after hearing an explanation about the patient's condition that could not be helped and then refusing the treatment procedure and asking that the patient be taken home from the health center and left alone. died peacefully among the family[6].

If these thoughts are drawn a common thread, they are based on Article 56 paragraph (1) and paragraph (2) of Law Number 36 the Year 2009 concerning Health which affirms

- 1) "Everyone has the right to accept or reject part or all of the relief measures that will be given to him after receiving and fully understanding the information regarding the action.
- 2) The right to accept or reject as referred to in paragraph (1) does not apply to :
  - a. Patients with diseases whose diseases can quickly spread to the wider community;
  - b. The state of an unconscious person;
  - c. Severe mental disorder."

Therefore, if you look at the substance of the regulation, then in unconscious patients, it is understood that the power of medical action is in the family of the patient concerned because the patient does not have the power to make efforts for his survival and can be said to be in a state of incompetence to take legal action.

It is ironic because of course this action is against morality and law and religion. For Indonesia, which is predominantly Muslim, there is a teaching that whether a person's life or death is in the hands of God is not a human right, while in the perspective of medical personnel, of course, there will be inner conflict because their task as outlined in Law Number 36 of 2014 concerning Health Workers is to carry out health efforts so that the community can increase awareness, willingness, and ability to live a healthy life." Moreover, Article 11 of the Indonesian Medical Code of Ethics also states "Every doctor must always remember his obligation to protect the life of human beings." It does not even facilitate the occurrence of death or the destruction of the patient's life values to injure human rights. In addition, Article 54 of Law Number 36 the Year 2009 concerning Health states "The implementation of health services is carried out in a responsible, safe, quality, as well as equitable and non-discriminatory manner.

Indeed, there is a view that "If an action can be judged to be useless, the doctor is no longer competent to perform medical treatment"[7]. Because if it refers to the health law, medical care is aimed at curing disease and restoring health, as explained in Article 63 paragraph (1) of Law Number 36 of 2009 concerning Health that "Healing disease and restoring health is carried out to restore health status, restore bodily functions due to disease and/or disability, or eliminate disability." The development of the medical world today has not been able to cure deadly diseases so that if the medical treatment no longer leads to healing or restoring the health of the patient, it leads to a decline in the values of life and quality of life that exist in the patient because the patient must continue to survive in torturous conditions and even enter into a mental position, die reluctantly, live unwillingly, then, in essence, the medical action is

meaningless, even in certain conditions as described in Article 117 of Law Number 36 of 2009 concerning Health. the brain stem is no longer functioning, then someone is actually dead” and also a few legal experts are of the view that “an act of medical treatment that is useless and beneficial can be legally categorized as persecution”[8]. Persecution itself is regulated in Article 351 of the Criminal Code where in paragraph (4), "persecution is likened to intentionally damaging health." However, it should be underlined that the moral value that is the main reference in this context is to speed up the duration or stop the suffering experienced by the patient to maintain human values, not to end the patient's life which is then categorized as euthanasia. In line with Pinkan K. Paulus who stated that "death can be legalized into something definite and the date of the incident can be ascertained with the basic aim of helping patients, in this case, patients who have suffered from illness or disease, which of course is based on on a correct and appropriate diagnosis and the diagnosis must be scientifically justified[9].

The results of the author's observation of Law Number 36 of 2009 concerning Health, no article explicitly regulates euthanasia, especially specifically on involuntary mercy killing. This provision regarding euthanasia itself only exists in Indonesian Criminal Law which is regulated in the Criminal Code. According to Chintya E. Waney in his research, views:

“Legal experts think that Article 344 of the Criminal Code is a criminal law provision regarding the practice of euthanasia, if examined closely it contains several elements, namely: the act of taking a life; object: other people's lives; at one's request; solemnly stated. It becomes a dilemma if the case is faced with a patient who can no longer be cured. In the framework of future development of criminal law, three things must be considered, namely revoking Article 344, maintaining Article 344, or amending Article 344. All three have their respective consequences. If maintained, euthanasia including passive euthanasia will not be allowed. If revoked, any form of euthanasia will be permitted. If changed, some standards must be clarified, namely on the categories of euthanasia that are allowed and those that are prohibited”[10].

The Criminal Code itself in this context only regulates active euthanasia, while passive euthanasia especially involuntary euthanasia or also known as involuntary mercy killing, there is no specific regulation that regulates it. This legal vacuum is not good because it can confuse the community. "As a result of the existence of a legal vacuum, for things or conditions that are not or have not been regulated, there can be legal uncertainty (*rechtsonzekerheid*) or uncertainty in-laws and regulations in society which will further result in legal chaos (*rechtsverwarring*)[11].

If you delve further into the regulations related to euthanasia, at the international level there is the 1981 Lisbon Declaration where the point of the declaration regulates the rights of patients, namely:

If you delve further into the regulations related to euthanasia, at the international level there is the 1981 Lisbon Declaration where the point of the declaration regulates the rights of patients, namely:

- a. Right to medical care of good quality
- b. Right to freedom choice
- c. Right to self determination
- d. Right to information
- e. Right to confidentiality
- f. Right to health education
- g. Right to dignity
- h. Right to religious assistance

So if you look at the patient's rights as stated in the 1981 Lisbon Declaration, it is implied that euthanasia is not allowed, especially mercy killing, where there is no patient consent in taking these actions, because patients have the right to maintain their lives and die with dignity. However, once again, there are no regulations that regulate so that for Indonesia, which adheres to the principle of legality in its legal system, which in Lamintang's opinion as quoted by Danel Aditia Situngkir means “*Geen feit is strafbaar dan uit kracht van eene daaraan voorafgegane wettelijke strafbepaling* which means that no action can be punished, except based on criminal provisions according to the existing law before the act itself [12]. So that the context of Involuntary mercy killing only ends at the ethical level, not at the regulatory legal substance.

#### **4. CONCLUSION**

There is no specific regulation that regulates Involuntary Mercy Killing in health law in Indonesia. This legal vacuum is not good because it can confuse the community due to the absence of legal certainty in regulating social life. Currently, in public awareness of the practice of Involuntary Mercy Killing in the medical field, the context of Involuntary mercy killing only ends at the ethical level, not at the legal substance which is regulatory and has legal standing. It should be underlined that the moral value that is the main reference in the context of Involuntary mercy killing is to accelerate the duration or stop the suffering experienced by the patient to maintain human values, not to end the patient's life which is then categorized as euthanasia. It is necessary to immediately develop the law as well as reform in the field of health law so that the issue of euthanasia in general and involuntary mercy killing can be immediately made regulations so that the State's goal to provide legal protection to its citizens as mandated by the constitution can be realized properly.

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