

Reformulation of Criminal Policy Against Offenses Related to Euthanasia in the Context of Renewing the National Criminal Law

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ABSTRACT

Along with the problems that arise regarding Euthanasia, there must be a need for a sanction in which to deal with the problems that occur, especially in criminal matters. In this problem, Euthanasia is often encountered and becomes a problem for people who experience it because in other countries Euthanasia is allowed by the government. This is based on various cases in various countries. The government must give strict sanctions to the perpetrators of euthanasia, but in general, in this aspect, criminal law policies in Indonesia are still inadequate and have not been properly sentenced. Sexual crimes are happening in various countries, especially in Indonesia. The author uses the doctrinal law method and uses the doctrines as supporting data. The results of the study reveal that sanctions in cases of Euthanasia have yet to be carried out by the Government due to the lack of clarity and legal certainty in Indonesia.

Keywords: *Euthanasia, Criminal Policy, National Criminal Law, Offenses*

1. INTRODUCTION

A death for most of mankind is an unpleasant thing and most of mankind would like to avoid the time of his death. Humans continue to keep trying to delay death in various ways and various modern technological advances that exist. Even with modern medical equipment, a patient's pain can be alleviated. A person's life can be extended for a certain period of time, by installing a respirator and other medical equipment. Talking about death, according to the way it occurs, science divides it into three types, namely Orthothanasia (death that occurs due to a natural process), Dysthanasia (death that occurs because of something natural), and Euthanasia (death that occurs with help or not with help doctor). [1] In Indonesia until the end of the twentieth century, there has not been a single article that specifically regulates euthanasia, while in the medical field implementing euthanasia is considered contrary to the medical code of ethics in accordance with Article 10 which states that: "A doctor is not allowed to end the life of a patient, which according to science and experience it is impossible to cure again (euthanasia)." In such situations, it is not uncommon for the patient to ask to be released from such suffering or in other conditions where the patient is

unconscious and the patient's family cannot bear to see the prolonged suffering experienced towards death, so they ask the doctor not to continue treatment or if necessary give medicine in the form of injections. which could hasten his death.

The term Euthanasia is etymologically derived from the Greek words *eu* and *Thanatos* which means "good death" or "death in a calm or happy state". In English it is often called Marc Killing, while according to "The American encyclopedia includes Euthanasia ISSN the practice of ending life in order to give release from incurable suffering". In the Netherlands it is stated that Euthanasia is intentionally not making an effort to prolong the life of a patient or deliberately not doing something to shorten or end a patient's life, and all of this is done specifically for the benefit of the patient himself. [2] Euthanasia, a type of death that has become a problem that has existed since health practitioners face an incurable disease where the patient is in a state of dying and languishing for so long. According to Anton M. Moeliono and friends, the definition of Euthanasia is an act of intentionally ending the life of a creature (person or animal) who is seriously ill or seriously injured with a quiet and easy death on the basis of humanity. [3]

1.1. Related Work

The implementation of euthanasia or lethal injection in Indonesia is hindered by the existence of Article 344 of the Criminal Code and the oath of Indonesian doctors. In Indonesia, concern for the future of euthanasia has long emerged, although the cases are rare. The debate about euthanasia is also taking place globally and there are countries that allow seriously ill patients to apply for permission to carry out euthanasia. The book "Euthanasia, Human Rights and Criminal Law" states that in the context of the *ius constituendum* of criminal law, the formulation of Article 344 of the Criminal Code, needs to be reformulated in order to make it easier for the public prosecutor in terms of proof. [4] There are three conditions that must be met if euthanasia is to be declared as an act that is not prohibited. First, the patient's condition can no longer be expected to live according to medical standards, which are stated by the treating doctor. Second, the healing efforts that have been carried out so far have no longer potential to make the patient healthy. Third, the patient is already in a state which in medical science is called in a persistent vegetative state (not dead, not alive). [5] To be able to legalize euthanasia, one way out is to revise the total of Articles 344 and 345 of the Criminal Code, which reads:

"Whoever robs another person's soul at the earnest and convincing request of that other person, is threatened with a maximum imprisonment of twelve years" and "Whoever encourages another person to commit suicide, helps him to do it or provides him with the means for it, then if the other person commits suicide, he is punishable by a maximum imprisonment of four years."

In addition, Articles 344 and 345 of the Criminal Code are closely related to the issue of suicide. The difference lies in the will of the object where in Article 344 the death will come from the object and conversely in Article 345 of the Criminal Code the object may still have doubts or even there is no desire to commit suicide. In terms of punishment, the sanctions for Article 344 of the Criminal Code are much heavier than Article 345 of the Criminal Code. According to Sianturi, the legislators started from the idea that everyone should respect the souls of others and this is also in line with religious teachings which believe that one's life is the power of God. Whereas in Article 345 of the Criminal Code, other people only encourage or help someone to commit suicide, so the sentence is lighter. [6] Criminal law is part of the legal system or system of norms. As a system, criminal law has the general nature of a system, namely whole, has several elements, all elements are interrelated and then form a structure. Lawrence W. Friedman divides it into three elements, namely structural elements, substance

elements, and legal culture elements. [7] Therefore, legal reforms that do not change the substantive meaning only have a very limited effect because such reforms are said to only replace the old formulations with new words. Conversely, if the reform comes to change or replace the substantive aspects of the old legal system, then the reform will affect the elements of the legal system as a whole.

The reform of criminal law must start from the renewal of written laws (regulations) derived from legal rules and norms that live in society. The next legal reform must be able to touch concrete and specific legal aspects, namely the law has been applied/enforced in certain cases. Courts through judge decisions play a role in transforming ideas that are based on abstract moral values into concrete events, so that judges' decisions visualize abstract principles into concrete legal rules. Criminal law reforms can also be carried out by judges in resolving a criminal case in court. This is because the area of criminal determination is the area of the judge's authority, even in this area no one can influence the will of the judge in determining the amount of punishment that deserves to be imposed on the defendant. It is not surprising that in a sentence there is often a criminal disparity, because the size of the punishment from each judge will not be the same, because the area of conscience is the most abstract area in a dimension of authority.

Criminal law generally contains at least two types of norms, namely norms that must always be met so that an action can be called a crime, and norms relating to criminal threats that must be imposed on the perpetrator of a crime. In detail, the criminal law law has regulated:

- a. If a crime can be imposed on an offender,
- b. What types of punishment can be imposed on the perpetrator?
- c. For how long the sentence can be imposed or the amount of the fine that can be imposed, and
- d. In what way should the punishment be carried out? [8]

The concept that a criminal act violates the interests of the state as a representation of the public interest generally becomes the basis for the state's authority to determine, make regulations, prosecute, and punish someone who violates the rules. This is reinforced by the classification of jurisprudence in which criminal law is part of public law that does not allow individual intervention. [9] Here in the importance of state policy in relation to the stipulation of criminal law legislation.

1.2. Our Contribution

The writing of this thesis is expected to provide research objectives to be achieved, among others, to find out and examine the formulation of punishment policies for Euthanasia offenses in Indonesia. The existence of the development of Criminal Law in Indonesia in terms of Euthanasia. This research is practically useful for legislators in order to establish legal certainty in Indonesia.

1.3. Paper Structure

The rest of the paper is organized as follows. Section 2 This chapter contains a description of the facts that are used to spur the emergence of problems to be discussed, namely the Background, Problem Formulation, Research Objectives and Uses, Conceptual Framework, Research Methods and Writing Systematics. Section 3 will be explained about what theories are used in research as a means to analyze and solve problems contained in existing cases. Section 4 there will be an in-depth description of the answers to the existing problems using the research data obtained and the theories associated with these problems. Section 5 will contain the conclusions of this study and suggestions that are solutions given in this research to the existing parties.

2. BACKGROUND

The most important right of humans is the "right to life" or the right to life. This definition of life also includes the existence of "the right to die" or the right to die which has been recognized by the world by its inclusion in the Universal Declaration of Human Rights by the United Nations on December 10, 1948, while the right to die because it is not explicitly stated in a declaration world, it is still a debate and discussion among experts in various fields in this world. There are some countries who argue that the issue of life and death is the right of God Almighty, not the rights of humans. In general, this opinion is based on religious considerations. However, some countries also allow and regulate it clearly in their legislation, so it can be said that the right to die is not absolute for everyone. [10] Euthanasia cases that have occurred in Indonesia, one of which is the request of Mrs. Agian Isna Nauli. Beginning with Mrs. Agian Isna Nauli was unconscious after giving birth to a child by caesarean section on August 20, 2004. The condition of Mrs. He was in a coma and suffered permanent brain damage which is thought to have occurred as a result of malpractice. Mrs. Agian, Hasan Kusuma, submitted an application for the determination of Euthanasia for his wife, Mrs. Agian to the Central Jakarta District Court. Hasan Kusuma submitted a request for the

determination of Euthanasia or lethal injection accompanied by the Chairman of the Health LBH Iskandar Sitorus. The application was accepted by the Deputy Chairperson of the Central Jakarta District Court. Mrs. condition. Agian Isna Nauli has not made any significant progress and has been in a coma for four months after her cesarean section and is being treated at the RSCM. The Euthanasia application which was submitted to the Central Jakarta District Court by the extended family of Mrs. Agian was ultimately unable to be granted by the Central Jakarta District Court on the grounds that the judiciary explained that the judiciary could not simply issue a decision without examining a case submitted by the applicant with all the evidence that had been prepared to support the arguments for his application in accordance with the applicable law. apply. Indonesian law is not ready for Euthanasia requests. The act of euthanasia above was rejected by the judge on the grounds that it was against the law because it took a human life by intentionally giving a substance that could end the life of a patient who could no longer be cured or stopping treatment and treatment for a patient who was suffering. The question is what if one day the judge grants the request. Therefore, it is necessary to regulate which Euthanasia acts are allowed and which are not. Until now there is no regulation on Euthanasia in Indonesia. Even if there is, there is Article 344 of the Criminal Code relating to Euthanasia.

In Indonesia, these human rights are regulated in Law Number 39 of 1999 concerning Human Rights which regulates matters relating to basic human rights. In addition to the Human Rights Law, it has actually been regulated in the 1945 Constitution and other laws of the Republic of Indonesia. However, the problem is that currently it is a moral right and not a positive right. The challenge for all of us is to promote the improvement of the rights of Indonesian citizens from moral rights to positive rights, so that both in law and in reality, Indonesia is truly a legal state that respects the human rights of its citizens.

In connection with the discussion of the right to life and the right to die, it will be related to the issue of criminal law, which is called euthanasia. For this reason, one of the legal grounds used is Article 344 of the Criminal Code which reads:

"Whoever removes the soul of another person at the request of the person himself who he mentions clearly and sincerely is sentenced to 12 years in prison".

The right to life must be protected by the state, especially the rule of law. That is why a good rule of law upholds human rights. Human rights and the rule of law cannot be separated. Recognition and confirmation of the rule of law, one of its objectives is to protect human rights, meaning that individual rights and freedoms are recognized, respected

and upheld. Regarding the human soul in the Criminal Code, there are Articles 338, 339, 340, and 341. With respect to the provisions of these articles, it can be said that the legislators at that time (the Dutch East Indies era) considered the human soul to be their most valuable possession, compared to human property. other.

In principle, the right to life is a fundamental right or human right of every human being, namely the 1945 Constitution protects the right to life in Article 28A of the 1945 Constitution which states that everyone has the right to live and has the right to defend his life and life. The patient's right to die, which is often known as euthanasia, has often been discussed by many experts. However, this issue will continue to be the subject of a long and melting debate, especially if there are interesting cases. In the Euthanasia problem, there are many aspects behind the problem because it will be studied and seen from various points of view such as from a religious, moral, medical, and legal point of view which has not found an agreement in dealing with the patient's desire to die in order to stop his suffering. This situation poses a dilemma for doctors, whether they have the legal right to end the life of a patient at the request of the patient or his family, under the pretext of ending prolonged suffering, without the doctor himself facing legal consequences. Of course in this case the doctor is facing a conflict in his heart. [11]

Euthanasia is prohibited by criminal law. Euthanasia is directly related to Article 344 of the Criminal Code and indirectly euthanasia is related to Articles 345, 338, 340 and 359 of the Criminal Code. This condition creates a dilemma for a doctor who will perform medical action (euthanasia). On the one hand doctors carry out their professional duties, but on the other hand doctors commit crimes/violate the law. [12] Thus, the issue of euthanasia from a legal point of view, on the one hand establishes it as a human right, on the other hand establishes it as not a human right. As a logical consequence for countries that regard euthanasia as a human right do not make euthanasia a crime. On the other hand, a country that states that euthanasia is not a human right makes the act of euthanasia a criminal act in its criminal law, for example the country of Indonesia. [13]

In contrast to the condition of Euthanasia regulations in Indonesia, the Netherlands was the first country in the world to legalize Euthanasia on April 10, 2001 by issuing a law that allowed Euthanasia, namely wet van 12 April 2001 in Article 293. The law was declared effective on April 12 2002. The Euthanasia process in the Netherlands also has a long application process. The applicant or patient is given enough time to think and get counseling with a psychologist for a certain period. After that, the applicant must obtain a certificate from at least two doctors stating that the patient's condition can no longer be helped or cannot be cured. After the process has been passed, it will be submitted to the court for a decision.

The approval of the Dutch Parliament on the proposal to legalize the activities of Dutch doctors to help patients with serious illnesses who choose to end their lives was obtained after a vote was carried out. The support of 104 votes to 40 votes against has proven the parliament's side to immediately enact the euthanasia legalization law. [14] Euthanasia has massive public support in the Netherlands but there are concerns that this practice leads to abuse of the law, Euthanasia has not become a crime in the Netherlands, since 1984 when the court of the Royal medical association developed strict guidelines for doctors. The new amendments to the Act, will eliminate any possibility that doctors will be required to perform euthanasia with their consent and consultation.

An article entitled "The Slippery Slope of Dutch Euthanasia" in the magazine "Human Life International Special Report" Number 67, November 1998, page 3 reports that since 1994 it is possible for any doctor in the Netherlands to perform euthanasia and will not be prosecuted in court as long as following certain procedures which have been set. The procedure is to hold consultations with colleagues (not necessarily a specialist) and make a report by answering about 50 questions. Since late 1993, the Netherlands has legally regulated the obligation of doctors to report all cases of euthanasia and assisted suicide. The judiciary will always assess whether the procedure is correct or not. In 2002, a 20 year old convention was codified by Dutch law, whereby a doctor who euthanizes in a particular case will not be punished.

Since the end of 1993, the Netherlands has legally regulated the obligation of doctors to report all cases of euthanasia and assisted suicide. The judiciary will always assess whether the procedure is correct or not. In 2002 a 20 year old convention was codified by Dutch law. where a doctor who performs euthanasia in a particular case will not be punished, it is stated that assisted suicide is carried out on the basis of ongoing and unbearable suffering, is legal and furthermore in the regulation it is stated that the patient must be calm Doctors also have to get a second opinion and only non-family doctors have the right to give lethal drugs to patients.

On April 10, 2001. Prior to that date, active euthanasia was a crime based on article 293 (1) *Wetboek van Strafrecht* (Article 293 (1) of the Dutch Criminal Code) which reads:

"Hij die opzettelijk het leven van een ander op diens uitdrukkelijk en ernstig verlangen beëindigt, wordt gestraft met een gevangenisstraf van ten hoogste twaalf jaren of geldboete van de vijfde categorie."

Then in article 293 (2) *Wetboek van Strafrecht* (Article 293 (2) of the Dutch Criminal Code) it reads:

” Het in het eerste het in het eerste lid bedoelde feit is niet strafbaar, indien het is begaan door een arts die daarbij voldoet aan de zorgvuldigheidseisen, bedoeld in article 2 van de Wet toetsing levensbeëindiging op verzoek hierzel en hulp over bij hierzel article 7, tweede lid, van de Wet op de lijkbezorging.”

Article 293 (1) of the Dutch Criminal Code stipulates that anyone who intentionally ends another person's life with a clear and firm wish will be punished with imprisonment of not more than twelve years or a category five fine. So it is explained that any act of ending another person's life will be subject to criminal sanctions.

In Article 293 (2) of the Dutch Criminal Code there is an exception, namely the violation referred to in the first paragraph cannot be punished if it is carried out by a doctor who meets the requirements of the due diligence as referred to in Article 2 of the Suicide Request and Assistance Act and who notifies the officer city coroner on this matter in accordance with Article 7 paragraph (2) of the Funeral Services Act.

3. CONCLUSION

From all the discussion of the main issues regarding the reformulation of criminal policy for offenses related to Euthanasia, the author has completed it through the research stages using normative legal research methods and conducting pre-crisis research with the stages of selecting a theoretical framework, data collection stages, to the stage of analyzing the main problems that the author has scientifically responsible, then in this sub-chapter the author will provide conclusions on the reformulation of criminal policies against offenses regarding euthanasia where the author's conclusions are as follows: Along with the problems that arise regarding Euthanasia, there must be a need for a sanction in which to deal with problems that occur, especially in criminal matters. In this problem, Euthanasia is often encountered and becomes a problem for people who experience it because in other countries Euthanasia is allowed by the government. This is based on various cases in various countries. The government must give strict sanctions to the perpetrators of euthanasia, but in general, in this aspect, criminal law policies in Indonesia are still inadequate and not appropriate in imposing sentences. The government must consider policies regarding criminal law which can be seen from the various incidents that are often faced by the community before enacting a law because in general there is a lack of clarity in the regulation of this issue. In addition, looking at the development of the medical world, we can feel that the issue of Euthanasia is indeed the time to be clearly regulated. If the regulation is enforced, then the Euthanasia includes Euthanasia upon request (the patient refuses medical treatment), Euthanasia not on

request (if medical action is useless), and Indirect Euthanasia (if the patient experiences excruciating pain and medical science has can't handle it anymore). This will ensure that there is certainty, so that doctors can carry out their profession fairly and responsibly without being overshadowed by undue fear. For patients, as human beings who have basic rights (both basic individual rights and basic social rights) will thus realize and take lessons, that this life is not only biological life but what is called life is physical and spiritual life. Therefore, every event that occurs, whether sweet or bitter, has meaning and significance for the person concerned. It's up to us to realize and look for the wisdom behind these events.

Indonesia has a Draft Criminal Code Bill that is being drafted. When viewed from the Draft Law on the Criminal Code in Indonesia which is being formed, the issue of Euthanasia still does not have legal certainty. Article 344 of the Draft Criminal Code also does not clearly explain criminal acts related to Euthanasia. The Draft Criminal Code still criminalizes Euthanasia, which is the act of intentionally killing a seriously ill person at the request of the sick person or the patient himself. However, the Draft Criminal Code reduces the Euthanasia penalty. As is known, although Euthanasia's act can still be criminalized, the threat is lighter. In the Draft Criminal Code, the maximum threat is 9 years in prison while in the current Criminal Code, the maximum threat is 12 years in prison. In the formulation of the Criminal Code Bill, it is necessary to clarify and include issues regarding Euthanasia, because in general what distinguishes the Criminal Code which is currently still not explaining in detail and answering the issue of Euthanasia which is widely disputed by the community. The application of sanctions for Euthanasia in general cannot be carried out in Indonesia because of the regulations that have not regulated the entirety of the existing penalties, considering the Article that regulates Euthanasia

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