



Juridical Analysis of Euthanasia (Right to Death) Based on Article 344 of Indonesian Criminal Code and Law Number 39/1999 Concerning Human Rights

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Abstract. Euthanasia, also known as the "right to die," is the practice of taking away a person's or an animal's life in a method that is deemed painless or causes little to no pain. Typically, fatal injection is used. The act of euthanasia itself is brought about by the patient's intolerable suffering, an incurable illness, or the patient being in a coma as a result of an incurable illness. The patient or his loved ones will ask the doctor to put them to death. Legal guidelines on this subject vary from nation to nation and frequently change in response to shifting cultural norms and the accessibility of medical care or treatment. Euthanasia is seen as illegal in some nations, like Indonesia, while it is regarded as legal in others. Euthanasia is a practice that is prohibited by Indonesian law and is frequently construed as contravening Article 344 of the Indonesian Penal Code. Euthanasia is considered a violation of human rights since the patient's right to life must be safeguarded. There is currently no fresh and comprehensive legal rule on euthanasia. Euthanasia cannot be justified on the grounds of the individual's right to self-determination. Given the connection between medical ethics and human rights, a doctor is required by his knowledge to work to preserve and defend the patient's life. Patients' rights to be protected by law and human rights in the practice of euthanasia have not been fully implemented. Only the right to life is acknowledged as a fundamental human right in Indonesia.

Keywords: Euthanasia · the right to life · human rights

1 Introduction

The quickening pace of science and technology development nowadays has altered human society and culture. This is brought on by the rise in new technical discoveries, all of which, of course, work to advance humankind's interests and the quality of life. Medical advancements are among the technological advancements that are occurring so quickly and with no less significance. The diagnosis of an illness can be precisely determined using extremely sophisticated medical knowledge and technology. Effective illness treatment is possible. The agony and anguish of a patient can be reduced with the

aid of contemporary medical technology. By using specific medications and equipment, a patient's life can be prolonged for a period of time.

However, despite the state of medical technology, some individuals continue to experience excruciating anguish. A patient will feel extreme agony if they have an illness that, in the opinion of medical science, is already tough or incurable, such as malignant cancer. The intense anguish won't end until death has arrived. Regarding the problem of death according to its occurrence, science distinguishes it into three types, namely.

- a. A death that results from a scientific procedure is known as orthothanasia.
- b. Dysthanasia, which is death that occurs unnaturally
- c. Euthanasia. That is when a patient passes away purposefully shortening or ending their life, either with the assistance of a doctor or without it.¹

The third sort of death, which falls under the category of euthanasia or is often referred to as mercy killing, is the difficulty because it presents medical personnel with a patient who is suffering from an incurable illness and is in a terminal condition. In these conversations, it is not uncommon for patients to request that their lives be ended. For example, if a patient is unconscious and his or her family is no longer able to pay for treatment or witness the suffering the patient is going through as he approaches death, the patient may ask the doctor not to continue treatment or, if necessary, to administer drugs or injections that speed up the patient's demise.

The doctor must decide if he has the legal authority to end a patient's life at the patient's or the patient's family's request under the pretext of putting an end to their extended suffering without risking his or her own legal repercussions. Of course, the doctor is torn inside in this situation. Until now, euthanasia is still a debate among the public, some are pro and some are against it. Those who are pro against the act of euthanasia argue that euthanasia is an act carried out with consent and assume that every individual has the right to determine the future and according to medical science the disease is incurable, causing suffering for him. Meanwhile, groups against euthanasia argue that this act is murder and violates the will of the Almighty.

Indonesia is a developing nation, and that includes its criminal law, specifically the Indonesian Criminal Code, which is still an artifact of the Dutch colonial administration and is currently out of date and unable to keep up with the advancement of science and technology, which was very advanced in the past. Unlike the Netherlands, where the Criminal Code and other laws have undergone significant changes.

Current medical science and technology are also very advanced so that they can predict the possibility of successful medical procedures or reducing patient suffering. If according to the doctor's analysis as well as medical science and technology, there is no hope for a cure and a reduction in his suffering, whether a person should not apply for the right to end his life in order to be free from suffering from the pain of his illness. All the efforts that have been made have no meaning anymore, because apart from not bringing healing to other families, they will also be dragged into financial problems.

¹ Sumitro P Manurung, *Euthanasia Ditinjau dari Undang-Undang Nomor 39 Tahun 1999 Tentang HAM dan Dilihat Dari Segi Hukum Pidana*, Grasindo, Jakarta, 2012, hal 22.

The primary natural human right, as is well known, is the right to life, which includes the "right to die," which is utilized to spare people from all pain. The Universal Declaration of Human Rights (UDHR), which was ratified by the United Nations on December 10, 1944, established the right to life. In Indonesia, this right is outlined in Law Number 39 of 1999 Concerning Human Rights, Article 9 paragraph (1), which states that "Everyone has the right to live, maintain life, and improve their standard of living." In the meanwhile, neither international statements nor Indonesian legal guidelines specifically mention the right to die.

On the other side, there is also the right to determine life for self-determination that comes from the patient, including the right of the patient to make his choice in this case health services. This right is not in accordance with the right to live because the right to self-determination arises when the patient himself requests the euthanasia without any pressure from other parties and is supported by a doctor's statement stating that the disease is incurable. In the event that the patient refuses the medical treatment offered by the doctor, the doctor may not impose his will, even though the refusal will have a negative impact on the patient's survival.

It will also be tied to the topic of criminal law in relation to the right to life and the right to death in the context of the euthanasia question. Because of this, Article 344 of the Criminal Code, which states: "Whoever takes another person's life at the request of the person himself, which is clearly stated with sincerity, is threatened with a maximum imprisonment of twelve years". Until now, this article is considered the closest to solving the euthanasia problem.

1.1 Problem

- a) What are the causes of euthanasia?
- b) How does the Criminal Code govern euthanasia?
- c) Based on Law Number 39 of 1999 Concerning Human Rights, how is euthanasia related to human rights?

2 Research Method

The research's approach method is normative juridical because it is positive law and seeks to collect knowledge in accordance with relevant laws. This research is based on existing legal norms. The research was conducted by means of a literature study by collecting data and information as well as laws and regulations, books, journals and newspapers.

3 Result and Discussion

- a) The words "euthanasia" and "thanatos" are related (Greek)

Thanatos means dead or corpse, while Eu signifies good. Euthanasia, then, is defined as a nice or joyful death in the literal sense. In his book *Vitaceasurum*, Seutinius defines

euthanasia as a swift, painless death. According to Richard Lamberton, euthanasia in the 20th century was interpreted as mercy killing. Also interpreted as the act of letting someone die by themselves (mercy dead), or without doing anything let someone die.

This understanding seems to be seen solely from the point of view of the nature of death (without suffering) or from the point of passive action in the form of letting someone die without trying to maintain his life. Such an understanding does not describe what actually happened because it does not describe the will of the person who wants to die. In fact, it is the will that is most important and is an essential element of euthanasia. Therefore, the term euthanasia is defined as killing at the will of the victim himself.²

The word euthanasia in medical science is used in three senses. First, those who have faith and the name of Allah on their lips will be able to enter the hereafter painlessly and safely. Second, their time on earth will come to an end. Third, they will intentionally put an end to their suffering by their own and their loved ones' desire.

Three definitions of euthanasia are given in the Indonesian Medical Code of Ethics' explanation³:

1. For those who have faith and the name of Allah on their lips, the hereafter will be a peaceful and pain-free transition.
2. When a person's life is coming to an end, sedatives are administered to lessen their agony; and.
3. Purposely putting an end to a person's suffering when they are ill, at their own and their family's desire.

In general, agreed limits on euthanasia, namely:

1. Active euthanasia, which is an act intentionally carried out by a doctor or other health worker to shorten a patient's life.
2. Passive euthanasia is when medical professionals purposefully withhold treatment that may otherwise help the patient live longer.
3. When a patient actively declines medical care even when he is aware that doing so may reduce or end his life, this is known as auto-euthanasia.

According to Leenen, as quoted by Chrisdiono⁴, there are cases called pseudo-euthanasia, which cannot be included in the prohibition of criminal law. The four forms of pseudo-euthanasia are

1. Termination of medical care due to signs of brain stem death, where the heart is still beating, the blood is still flowing, and the breathing is still occurring but there is no consciousness since the brain is completely incapacitated, as may occur after a catastrophic accident.

² Ibid.

³ Ratna Suprapti Samil, *Etika Kedokteran Indonesia*, Yayasan Bina Pustaka, Sarwono Prawi-hardjo, Jakarta, 2001, hal 92.

⁴ Chrisdiono M Achadiat, *Dinamika Etika dan Hukum Kedokteran Dalam Tantangan Zaman*, Buku Kedokteran, Jakarta, 2006, hal 185.

2. The patient refuses treatment or medical assistance for himself. The rationale is that doctors can't do anything if the patient doesn't want them to.
 3. The end of life due to an emergency due to force majeure. In this case, there are two legal interests that cannot fulfill both.
 4. Unknown cessation of treatment/medication/medical assistance is useless Display equations should be flush left and numbered consecutively, with equation numbers in parentheses and flush right. First, use the equation editor to create the equation. Then, select the equation, and set the "Equation" Style. Press the tab key and type the equation number in parentheses.
- b) Euthanasia in various countries

There are several countries in the world that clearly state that this act of euthanasia is legally justified, as long as there are several considerations.

1. Euthanasia in the Netherland

This issue has become so terrible in the Netherlands that there is even a group there that satisfies requests for Dutch citizens to pass away. The Dutch Society for Voluntary Euthanasia was the name of this group. Since its formation in 1980, this organization has received formal recognition. The Netherlands passed a law permitting euthanasia on April 10, 2001. The Netherlands became the first nation in the world to legalize euthanasia when this law was deemed to be in force on April 1, 2002. Patients have the right to receive pain relief if they are suffering from chronic or untreatable pain.

2. Euthanasia in United States of America

The state of Oregon in America, whose law clearly permits terminal patients (those who can no longer be treated) to end their life, authorized the practice of euthanasia in 1977 with the passage of the law on proper death. The requirements are quite strict. Terminal patients who are 18 years of age or older who believe they will die within six months may request assistance in killing themselves, but they must do so up to three times, twice verbally (with a grace period). Fifteen days apart) and once in writing (attended by two witnesses where one witness may not have a family relationship with the patient). The second doctor must verify the prognosis and disease diagnosis, as well as make sure the patient is not suffering from a mental ailment at the time of decision-making. The law further states that the patient's decision to end his life cannot have an impact on his old-age savings, health insurance, life insurance, or accident insurance.⁵

3. Euthanasia In Indonesia

Indonesian law does not recognize and does not justify the reasons or motivations for euthanasia as stated by Eenen. Law in Indonesia does not provide a place to tolerate one of the reasons for ending human life in this way. According to the following formula, Article 344 of the Criminal Code forbids all methods of ending human life, even when done at the individual's own request: "Whoever takes another person's life at the person's request is clearly stated with sincerity and is punished by a maximum imprisonment of twelve years. Murder committed at the victim's

⁵ Agnes Agustuna Hartanty, hal 12.

request has a slightly lower value than regular murder (Article 338 of the Criminal Code), which carries a maximum sentence of 15 years in prison, and it has a much higher value than negligence that results in another person's death (Article 359 of the Indonesian Criminal Code), which carries a maximum sentence of 5 years in prison.

c) Factors Causing Euthanasia

For some humans experiencing a disease or suffering to their body is considered a trial and a test given by the Almighty and is a natural thing, so that he goes through it steadfastly, patiently and always strong in the face of his suffering. Apart from trying as much as possible according to his abilities as a human being, the rest he puts his hope in his recovery by putting his trust in the God he believes in, so that there is no need for anxiety to arise. However, not a few people also despair when an illness is overwritten and behaves the other way around, constantly complaining and feeling that life is meaningless because of a disease that does not go away. So they choose to die as soon as possible as the best way to escape from endless suffering.

In the world of medicine and medical services, sometimes both doctors and other health workers face cases where a patient suffers from an incurable disease such as terminal cancer which is very painful and unbearable and only causes suffering to the patient so that they plead repeatedly to end their life because feel unable to bear the disease, especially if the disease is no longer possible to cure. There are a number of different conditions that lead to requests for euthanasia from both the patient and the patient's family, in addition to illnesses that can no longer be treated.

A. Human Factor

A doctor may perform this factor at the patient's or the patient's family's request or at the doctor's own discretion. This is done because doctors feel sorry for the prolonged suffering of their patients which is medically difficult or even incurable. Thus a doctor grants the patient's request.⁶

B. Economic factor

The patient's family typically requests this aspect because they cannot bear to watch one of their loved ones in the hospital for an extended period of time. Therefore they chose to take the patient home in the hope that he would die in the midst of his family.

C. Patient's condition

This patient's condition can be qualified under several conditions.

- The patient's inability to endure suffering, namely the inability to cope with the pain of serious illness, excruciating pain and fear of disability.
- The patient's fear of suffering near death, because the burden of physical and psychological suffering is very heavy, so there is an impression that the process to death will be very difficult and painful.

⁶ Kartono Muhammad, *Euthanasia Dipandang dari Sudut Kedokteran*, Jakarta, Sinar harapan, 1984, hal 6.

d) Regulation of Euthanasia in the Indonesian Criminal Code

As has been explained that euthanasia can be stated as an act that violates the law. This is determined by a written regulation that contains provisions that regulate how actions are allowed and not allowed and make sanctions based on applicable law. Juridical, euthanasia is closely related to individual interests regarding the protection of life. The act of euthanasia involving life is regulated in Article 344 of the Indonesian Criminal Code. Chapter XIX on Crimes Against Life, which reads as follows:

“Anyone who takes another person’s life at the request of the person himself, which is clearly stated with sincerity, is threatened with a maximum imprisonment of twelve years.”

Euthanasia is still regarded as a forbidden act in Indonesia under positive law. Even at the person’s own request, it is illegal to end a person’s life under positive Indonesian law. This behaviour is regarded as unlawful.

e) Relationship with Human Rights based on Law Number 39 of 1999 concerning Human Rights

Every person is born with the ability to exercise their human rights. According to Article 9 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, every human being has the right to life, which does not preclude the possibility of having the right to death. In many ways, abuses of human rights are more frequently linked to mortality. This is evident from the legal side of assisted suicide, which frequently places the blame on medical professionals.

At first glance, the act of euthanasia against a patient violates human rights, especially the right to life. Indirectly, euthanasia can be interpreted as depriving human rights of life. However, if there is a right to live, there should also be a right to die. Moreover, if to avoid all suffering due to the disease suffered by the patient which according to medical science is already incurable. Moreover, if the euthanasia action has been requested and approved directly by the patient himself.

However, in our country until now there is no clear regulation regarding euthanasia. An order from the senior administration of the Indonesian Doctors Association serves as the basis for deciding whether euthanasia can be carried out or not. The Indonesian Doctors Association issued a circular letter with the following statement in it: "Active euthanasia cannot be accepted in Indonesia since it is a Pancasila-based nation and God Almighty is its first premise. This can show that the circular letter of the Indonesian Doctor is only limited to active euthanasia.

4 Conclusion

There are several factors that cause euthanasia, among others due to humanitarian factors, where both the family and the doctor themselves feel sorry for the patient’s prolonged suffering as a result of an incurable disease.

The patient's fear of the pain of dying and the fear of the economic burden borne by his family, because of an incurable disease; Then the last one is the medical staff factor, where the medical staff sees that all the treatment that is being done is no longer effective for the patient, the medical staff's compassion for the patient's suffering, and the family's desire to stop treatment and bring the patient home is granted by the medical staff.

Article 344 of the Criminal Code is now the closest law in the Republic of Indonesia that addresses the practice of euthanasia. This law forbids active euthanasia and states that a person who kills another person upon that person's request—even if it is made seriously—will receive a penalty of up to twelve years in jail.

Law Number 39 of 1999 Concerning Human Rights does not precisely define the legal standards governing euthanasia. Every person has the right to live, maintain life, and improve his standard of living, as stated implicitly in Article 9 paragraph (1), and as stated explicitly in Article 21: "Everyone has the right to personal integrity, both spiritual and physical, and as such he must not be the subject of research without his consent." According to the aforementioned two paragraphs, it can be understood as the right to make one's own decisions regarding one's own life as well as the right to personal integrity or freedom with regard to oneself, including the right to take one's own life.

However, as stated in Article 19 of Law Number 39 of 1999 Concerning Human Rights, the ability to control one's own life cannot exist without the right to information. Based on these two articles, the patient and the patient's family or representative after receiving clear information and the doctor can ask for approval from the doctor to stop the treatment because it is considered that the disease suffered by the patient can no longer be cured.

5 Sugestion

- a. So that doctors and other medical personnel do not experience a dilemma in the issue of euthanasia, the government needs to make a regulation that strictly regulates euthanasia itself.
- b. It is also necessary to regulate the possibility of active euthanasia requests for patients in terminal conditions by including the following conditions
 - For patients who have no hope of living according to medical science stated by the doctor who treats them.
 - All the treatment that is done is no longer useful for the patient.
 - Must obtain written approval from the requesting party and the party performing the euthanasia
 - There is a court decision that underlies the permitting of active euthanasia for patients, so that in the future the doctor will not be blamed by the patient's family.

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