

A Review of Euthanasia: Criminal and Medical Law Aspects in Indonesia

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Abstract

The development of science is a separate guide for health care workers to provide better health care and also the complex condition of patient, and even tend to be critical. The issue of euthanasia is a dilemma that places in a dilemmatic position. It is growing, but it is not compensated by legal certainty. The issue to be discussed in this paper is how the restrictions imposed by law for euthanasia action requires a review of medical science and criminal law as well as aspects of human rights. The results show that normatively, euthanasia has not been clearly regulated. For this reason, a doctor always remembers the obligation and responsibility to protect human beings, it means that any country of the world a doctor has an obligation to “respect every human life from the conception.” In this case it means that no matter how serious a patient, every doctor should still protect and sustain the life of patient. In terms of criminal law, euthanasia is a prohibited act in which the articles in the Indonesian Criminal Code relating to euthanasia. Social reasons as developed in society to legalize euthanasia is not true. By developments in society today, and it is possible for judges to issue decision on euthanasia based on the doctrine of law degree and the limitative-medical requirements. There is a justification for life disappearance but must be viewed casuistically and in a limitative nature.

Keywords: Euthanasia; Human Rights; Criminal Law; Medical Law

1. Introduction

All this time, a wish of death for mankind is an unpleasant and perhaps undesirable thing. Man, as one of the most perfect creation of God because mind, sense and taste as a gift of God. By using a mind, the human is able to create technology to facilitate in doing its daily activities. From this, the humans continually strive to delay death in various ways, including the findings of science and technology to heal human health. On the contrary, with the discovery of science and technology, bring certain consequences to mankind like euthanasia.¹ Whereas the expectation of human for the advance of science and technology is facilitate human life with various its progress. In a sense the development of science is the manifestation of human desire to develop and improve their life, and to solve the secrets of nature. One development of science that helps a lot and directly deal with health problems and human life is medical technology.²

The development of science is a separate guide for health care workers to provide better health care and also the complex condition of patient, and even tend to be critical. It is not separated from the development of science and technology in the field of health. The rule of law is necessary in regulating the relationships between people in all aspects of their lives, so it is not surprising that lately legal issues often enter the field of health professions.³ The issue of euthanasia is a dilemma that places in a dilemmatic position. It is growing, but it is not compensated by legal certainty. In Indonesia expressly rejects euthanasia. According to Farid Anfasal Moeloek, as the chairman of the Indonesia Doctors Association argues that euthanasia to date has not been accepted in the values and norms that developed in Indonesian society. It is because Euthanasia is not in accordance with ethics adopted by the nation and it violates positive law in Indonesia.⁴

¹ Grewal, B., Harrison, J., & Jeffrey, D. (2012). Licensed to Kill—The Impact of Legalising Euthanasia and Physician Assisted Suicide on the Training of UK Medical Students. *Scottish Universities Medical Journal*, 1(1), 6-13.

² Ni Made Puspasutari Ujianti *et. al.* (2013). “Perlindungan Hak Cipta dalam Perspektif Hak Asasi Manusia”. *Jurnal Kertha Wicaksana*, Vol. 19 (1): 41

³ Sutarno. (2014). *Hukum Kesehatan, Euthanasia, Keadilan dan Hukum Positif di Indonesia*. Malang: Setara Press, pg. 1.

⁴ M. Achadiat. (2007). *Dinamika Etika dan Hukum Kedokteran dalam Tantangan Zaman*, Jakarta; EGC, p. 42

Euthanasia is defined as an act of ending a person life to stop his/her suffering. In general, the debate about agreeing or disagreeing with euthanasia can be classified into 2 (two), namely: *The first*, disagreeing with euthanasia, it based on the consideration that euthanasia is essentially a suicide and it strictly forbidden by various religions, and it is considered a hidden murder and an unlawful act. *The second* agreeing with euthanasia, it based on the consideration that euthanasia is a human right that every human being has to determine his/her life including the right to die that its position in line to his/her right to life. It is reinforced that the decision of euthanasia is self-desirability of euthanasia.

Reviewing from the aspect of human rights that the right to life is a fundamental right owned by every human being. The consequence of this right to life is the duty of every human being to uphold the glory of human life. Universally, in Article 3 of the Declaration of Human Rights states that everyone is entitled to the live, liberty and salvation. While, in the context of Indonesia, Act No. 39 of 1999 on Human Rights in Article 9, paragraph 1 affirms that everyone has the right to live, sustain life and improve their standard of living. The right to life is even attached to the unborn child or the person who is sentenced to death. In exceptional circumstances, for the sake of his/her mother's life in the case of abortion or by a court decision in the case of death penalty, the act of abortion or death penalty in such case may still be permitted. Only in these two ways is the right to life to be limited.

By juridical as the prevailing criminal law in Indonesia, euthanasia has not been clearly regulated. According to the definition of forensic medicine, euthanasia is a form of murder, in which a person is killed with the intention to end the suffering. In Indonesia, Euthanasia both active and passive has not been regulated. Thus, it always creates a polemic and a lengthy discussion with this case, because according to forensic medicine, euthanasia is a form of murder, in which a person is killed to end the suffering of the person.¹

Historically, since the 1970s, euthanasia has become a critical debated topic in the Netherlands. A case begins with a doctor who commits murder with the real intention of "*helping the patient escape from prolonged suffering*," that the patient is suffering illness that makes him/her feel very painful and incurable. This action is done by the doctor at the request of the patient, and euthanasia is done by giving tablets and injections. The case was experienced by Rb Utrecht, on 11 March 1952, NJ 1952, 275. Rb Utrecht imposed a conditional penalty of 1 year. The verdict was reinforced by Hof. Rb who rejected the advocacy of defendant in which he acted on self-motivation by arguing that under article 293 Sr. (Article 344 of the Criminal Code, Article 556, 557, 558 the Draft of the Criminal Code of 2004).²

Euthanasia case occurred in Indonesia is a case of Siti Julaeha, a female patient who has been in a coma for a year. Siti Julaeha was unconscious since undergoing gynecological surgery at a hospital in East Jakarta. Her husband Rudi Hartono proposes to euthanasia to his wife. According to him (Rudi Hartono), euthanasia decision making is a big family decision that feels sad to see his wife tormented constantly. This decision was strengthened after he heard the statement of a doctor at Cipto Mangunkusumo Hospital who stated that his wife has experienced vegetative state, and less hope of Siti Julaeha to heal (Tempo Interaktif, April 15, 2005).

Another case is Agian Isna Nauli, a patient coma due to stroke by her husband Panca Satriya Hasan proposes to euthanasia to his wife in the District Court of Jakarta. The reason for proposes to euthanasia is because of disability and helplessness as a poor man to pay for his wife treatment. (Tempo Interaktif, April 15, 2005). So far, the Indonesian Doctors Association has recommended to the government not to do euthanasia in Indonesia. Taking into account the real conditions in society, many patients who are suffering greatly and financially are not able to be borne by the families of patients, it should be the responsibility of the government to ease the burden of treatment for the patient family (Tempo Interaktif, 2004).

As realities described above shows the existence of cases of euthanasia that occurred in various parts of the world including Indonesia. Euthanasia is a classic debate that is still a hot topic that divides the world in *pros* and *cons*. Indonesia is one of the countries that explicitly have no regulation on euthanasia, whereas some cases have occurred in the social reality of society. Communities and in particular law enforcement officers require strict regulation of euthanasia so as to ensure legal certainty.

2. Identification of the Issue

The issue to be discussed in this paper is how the restrictions imposed by law for euthanasia action requires a review of medical science and criminal law as well as aspects of human rights. In relation with this, we formulate the problem as follows: how is the restriction of euthanasia in terms of medical science and criminal

¹ Abdul Mun'im Idries, (1997). *Pedoman Ilmu Kedokteran Forensik*, First edition. Jakarta: Bina Rupa Aksara, p. 80

² *Ibid.*

law aspects?

3. Euthanasia: A Historical Review

The term *euthanasia* derives from the Greek, *eu* means gracefully and dignity, and *thanatos* means dead or corpse. Etymologically, euthanasia means gracefully death without suffering, so in euthanasia the true meaning is not to cause death, but to reduce or alleviate the suffering of the person facing his/her death. In that sense, euthanasia is not in contradiction with the calling of man to maintain and develop his/her life, so it does not matter in terms of decency or morality. It means that in terms of morality can be accounted for if the person concerned wants it.¹ From various opinions, often euthanasia is described as follows:

1. *Voluntary euthanasia*: when the person who is killed has requested to be killed. (A request of a patient for disorder or physical illness may result in immediate death and his/her condition is aggravated by a non-supportive physical condition).
2. *Non-voluntary euthanasia*: when the person who is killed is made no request and gave no consent.
3. *Involuntary euthanasia*: when the person who is killed made an expressed wish to the contrary (the wishes of patient to die cannot be made a decision or the wish to die on the part of the parent or the responsible).
4. Assisted suicide someone provides an individual with the information, guidance, and means to take his or her own life with the intention that they will be used for this purpose. It is called "physician assisted suicide" (this action is individual in certain circumstances and reasons to eliminate despair by suicide).
5. *Euthanasia by action*: intentionally causing a person's death by performing an action such as by giving a lethal injection (it can also be called an intentional act of inducing death, its reason being to relieve suffering without the individual consent and the right to represent it is actually a murder, in a slightly different sense because it is done on the basis of compassion or humanity).
6. *Euthanasia by omission*: intentionally causing death by providing necessary an ordinary (usual and customary) care or food and water.

In the Netherlands, the definition of euthanasia was formulated by the Euthanasia Study Group of KNMG (the Dutch Doctors Association): euthanasia is intentionally not doing anything to prolong the patient's life or deliberately doing anything to shorten life or end a patient's life, and this is done for the sake of the patient him/her-self.²

Before discussing the types of euthanasia, it will first be explained about the classification of death. According to Abdul Mun'im Idries argues that death can be divided into 3 (three) groups, as follows:

1. Somatic death is a condition where because of something there is disturbance in the three main systems in the human body (nerve, cardiavaskular and respiratory systems) is sedentary. It is a phase of death where not found life signs such as heart rate, respiratory, decreased body temperature and absence of brain electrical activity on EEG recordings.
2. Apparent death, suspended animation is a condition similar to somatic death, but the disturbance in three systems is temporary. It can occur in some circumstances such as in barbiturate poisoning, exposure to electric currents and drowning cases.
3. Biological death or cellular/molecular death is a condition characterized by no longer functioning of organs or tissues in the body and it also characterized by cell death.³

Based on the way it occurs, the science distinguishes death into 3 (three) types: 1. *Orthothanasia*, as deaths that occur due to natural processes; 2. *Dysthanasia*, as an unexpected death; and 3. *Euthanasia*, as deaths that occur with help doctor or not.⁴

4. Assessing Euthanasia from Medical Science Aspect

Above all, it is inevitable that the duty of a doctor is so noble in his/her devotion to fellow men and the responsibility of the doctor is increasingly heavier due to the advances made by medical science. Thus, then every doctor needs to comprehend fully the ethics of medicine, so that the glory of the profession is maintained.

¹ Source: (<http://www.euthanasia.com/definitions.html>, 15 Desember 2008, explained that euthanasia the intentional killing by act or omission of a dependent human being for this or her alleged benefit "The keyword here is 'intentional'. If death is not intended, it is not an act of euthanasia")

² M. Yusuf Hanafiah and Amri Amir. (1999). *Etika Kedokteran dan Hukum Kesehatan, Edisi Ketiga*, Jakarta: Penerbit Buku Kedokteran, p. 105.

³ A'bdul Mun'im Idries, *Op.Cit.*, Page. 55.

⁴ Available online at: http://rudycr.tripod.com/sem2_012/aris_wibudi.ITB.Bogor.2002

In general, the code of ethics is based on the Hippocrates oath it reformulated in the Association of London World Physician in October 1949 and amended by the 22nd Session of August 1968.¹ In Chapter II of Article 9 of the Code of Ethics of Indonesian Medical states that:² “a doctor shall always remember the obligation to protect human beings,” thus in any country of the world a doctor has an obligation to “respect every human life from the moment of conception.” In this case it means that no matter how serious a patient, every physician should still protect and sustain the patients’ life. However, according to *Kode Etik Kedokteran Indonesia* (KODEKI) uses euthanasia in 3 meanings:

- a) Moving into the afterlife calmly and safely, without suffering, for believers in the name of God.
- b) When life will ends, the sufferings of the patient are alleviated by giving a sedative.
- c) End the suffering and life of a person who is intentionally ill at the request of the patient him/herself and his/her family.

As above senses, euthanasia contains the following elements:

1. Do something or nothing
2. End life, speed up death or not prolong the life of the patient.
3. Patients suffer from a disease that is difficult to cure
4. For or without the request of patient and/or family
5. For the sake of the patient and/or his/her family.

In its development, there are still many contradictions with respect to the definition of euthanasia. Since the beginning of medical history, the doctors have been convinced that a medical ethic is based on ethics that governs relationships between people in general. Besides it must have its roots in the philosophy of society that is accepted and developed continuously in the society universally, the obligation of doctor has been stated in the Declaration of Geneva as the result of the World Doctors Association in Geneva in September 1948, in the declaration stated as follows:³ “*I will maintain the utmost respect for human life from the time of conception, even under threat; I will not use my medical knowledge contrary to the laws of humanity.*”

Specifically for Indonesia, such questions are expressly incorporated in the Code of Ethics of Indonesian Medical, which came into force on 29 October 1969, based on the Decree of the Minister of Health of the Republic of Indonesia on the declaration of the effectiveness of the Code of Ethics of Indonesian Medical on 23 October 1969. The Code of Ethics of Indonesian Medical was made based on the Regulation of the Minister of Health of the Republic of Indonesia dated 30 August 1969 No. 55/WSKN/1969.⁴

Also, if seen from by the oath/doctor’ pledge as stated and amended and supplemented, the latest by Act No. 10 of 1951 (State Gazette of the Republic of Indonesia of 1951 No. 46) reads as follows: “I promise that:⁵

- ✓ I will dedicate my life to the interests of humanity;
- ✓ I will perform my duties in a respectful and ethical way, in accordance with the dignity of my work;
- ✓ I will nourish with all my might and noble traditions of medical position;
- ✓ I will keep secret everything I know because of my work and my knowledge as a doctor, the patient health will always be my priority;
- ✓ In fulfilling my duty to the patient, I will endeavor in earnest so that I shall not be affected by the considerations of religion, nationality, tribalism, political parties or social position;
- ✓ I will give to my teachers proper reverence and gratitude;
- ✓ My colleague I will treat them as a sibling;
- ✓ I will honor every human life from the conception;
- ✓ Though threatened, I will not use my medical knowledge for anything contrary to the law of humanity;
- ✓ I pledge this oath seriously and at the risk of my honor.

Indonesia, as a religion and Pancasila state believes in absolute of God almighty. Everything he created, and the suffering inflicted on human beings has meaning and purpose. Therefore, the doctor must exert all his/her intelligence and ability to alleviate suffering and preserve life, not to end life from among human beings. It is the duty of medical science to help alleviate the suffering of the patient, or even cure the disease as long as it is still possible. Thus, it is clear that the Code of Ethics of Indonesian Medical prohibits the active act of euthanasia. In other words, doctors should not act as God (don’t play God). Medical ethics must be pro-life, not pro-death. The

¹ Djoko Prakoso and Djaman Andhi Nirwanto. (1994). *Euthanasia, Hak Asasi Manusia dan Hukum Pidana*. Jakarta: Ghalia Indonesia.

² Code of Ethics of Medical, 2012

³ Andi Sofyan. (2017). Euthanasia: Concept and Rule of Law in Indonesia. *IISTE, Journal of Law, Policy and Globalization*, Vol. 58: 27-32

⁴ *Ibid*

⁵ Source: <http://www.hukumonline.com/pusatdata/downloadfile/parent/21310> Accessed on 30 August 2016, 19:25

doctor is the one who saves or preserves life, not the person who determines life itself (life savers, not life judgers).

It does not require an explanation of how the problem of euthanasia for the parties involved is problematic which does not seem to be simply overcome and surpassed. The application of euthanasia in terminal patients is merely an act that flows from a source of deep humanity and for the sake of respect for the wishes of others. The emotional involvement of doctors is the only reason how they provides the real help to a patient who is in death.¹ But whenever he tends to be positive about the requests of patient while taking active actions, then on her/his threatens the crime. There are also a number of doctors who respect and uphold religious considerations. For them, the life is sacred; the grace of God almighty that gives and takes it back, something that is beyond human power.

Respect for human life has also been motivated into doctor's confidence since he attended medical school, continuously learning to improve the quality and quantity of life. Disease and death are enemies. An action directed against death is essentially inconsistent with the path of medical examination.²

5. Viewing Euthanasia from Criminal Law Aspect

In the Criminal Code regulates the violations and crimes against legal norms concerning the public interest. As for the definition of legal interest are: *Firstly*, Bodies and Legislation Regulations, such as State, State Institutions, State Officials and others. For example, criminal acts: rebellion, humiliation, no-paying taxes, against civil servants who are on duty.

Secondly, the legal interests of every human being, namely soul, body, independence, honor, property and so on. The rules that can be related to euthanasia in the Criminal Code can be found in Chapters XIX Article 338 to 350 of crimes against persons. According to the Criminal Code system, the type of crime against the soul is based on its subjective element is divided into 2 (two) groups: 1. Crimes directed against the human soul deliberately (*dolense misdrijven*), contained in articles 338 to 350 of the Criminal Code. 2. Crimes directed against the human soul that occurs due to negligence (*culponse misdrijven*), contained in article 359 of the Criminal Code.³

Seeing from the target of crime as related to the violated legal interests, crimes against the human soul consists of 3 (three) groups, as follows:

1. Crimes directed against the human soul in general
2. Crimes directed against the soul of a child who is or has not been born
3. Crimes directed against the soul of a child still in the womb of his/her mother

Crime against the human soul consists of 5 (five) types:⁴

1. Deliberate murder (doodslag), contained in Article 338 of the Criminal Code
2. The premeditated murder (moord), contained in Article 340 of the Criminal Code
3. Murder in a form that can exacerbate the sentence (gequalificeerde doodslag), contained in Article 339 of the Criminal Code.
4. Victim-requested murder, contained in Article 344 of the Criminal Code
5. The act of a person who deliberately advocates or helps or empowers others to commit suicide, contained in Article 345 of the Criminal Code.

That in the Criminal Code, there is no article that explicitly regulates the euthanasia. However, if observed then the article used to indicate the prohibition against euthanasia is article 344 of the Criminal Code which is about the victim-requested murder. Article 344 of the Criminal Code states that "whosoever omits another's soul at the request of the individual him/her-self, which he/she explicitly and sincerely mentioned, is imprisoned for 12 years." In the formulation of this article it is required that the request for murder should be stated clearly and earnestly (*ernstig*), if this condition is not fulfilled then the perpetrator will be subject to article 338 of the Criminal Code that is ordinary murder. Other articles which may be related to euthanasia are 304, 306, 340, 345, 356, 359 and 531 of the Criminal Code.

Article 304 of the Criminal Code:

¹ F. Tengker. (1990). *Mengapa Euthanasia?* Bandung: NOVA, p.59.

² Hermanto, Agus. (2017). "Euthanasia from The Perspective of Normative Law And its Application in Indonesia." *Hunafa: Jurnal Studia Islamika*, Vol. 14,(2): 275-300.

³ J. E. Sahetapy, 1976, *The Criminological Aspect of Euthanasia According to The Present Indonesia Penal Code*, Majalah Badan Pembinaan Hukum Nasional. Bina Cipta, Jakarta, 2(7): 1-23

⁴ Zubir Haini. (2001). *Kejahatan Terhadap Jiwa Manusia, Tulisan Pada Pidana Islam di Indonesia Peluang, Prospek dan Tantangan, First edition*. Jakarta: Pustaka Firdaus, p 143.

Anyone deliberately causes or allows a person in misery, while he/she is obliged to give life, care or maintenance to that person because of the law applicable therein or because according to the agreement, then sentenced to imprisonment for 2 years and 8 months.

Article 306 paragraph 2 of the Criminal Code:

If causes death, the act (in article 304 of the Criminal Code) is imposed a maximum imprisonment of 9 years. From 2 articles as mentioned above, affirming that in the context of positive law in Indonesia, leaving the person who needs to be helped is also qualified as a crime. It also means to prohibit the occurrence of passive euthanasia that often occurs in Indonesia.

Article 340 of the Criminal Code:

Anyone who deliberately and planned to omit the souls of others is punished for premeditated murder, by death penalty or life imprisonment for 20 years.

Article 345 of the Criminal Code:

Anyone who deliberately agitates to other to kill themselves, help him/her in the act or give an effort to him/her for it, then if that person killed himself, sentenced to prison for 4 months.

Article 359 of the Criminal Code:

Anyone because wrong and causes the death of a person then he/she sentenced to prison for a maximum of five years. Article 531 of the Criminal Code: anyone who witnesses personally in a state of death danger neglects to provide help to him/her and the helping may give to him/her and not worrying, that him-self or another person shall be subject to the dangers then imprisoned for up to 3 months.

As Article 345 of the Criminal Code give hope or assist to conduct euthanasia may be subject to criminal penalties, especially if conduct euthanasia. In criminal law, for any reason and any person who omits the life of another person without rights, except by others justified by law should be considered a crime (see Articles 48, 49, 50 and 51 of the Criminal Code). Meanwhile, all those who have a direct importance, both those who do, who commits to do, who participate in the act of mobilizing and assisting must be regarded as responsible parties (see Articles 55 and 56 of the Criminal Code).

In general, the law does not provide a strict definition of a person's death, so there is no firm limitation on euthanasia. The formulation of the article in the Criminal Code only mentions that death is the loss of a person's life. Thus, formally the law based on the criminal law applicable in Indonesia mentions that euthanasia action is an act that is prohibited by anyone, including by doctors or medical personnel. Indriyanto Seno Aji expressed his opinion on euthanasia as follows: "that the judge may issue euthanasia determination based on the doctrine of law degree and the limitative-medical requirements. There is a justification for this act of life disappearance, but it must be regarded casually and in a limitative nature. The act of euthanasia as conducted by the help of doctor is justified by the negation of the unlawful nature based on a negative legal approach. These doctrines were justified in the Netherlands on the basis of legal breakthrough, with limitative requirements finally being made euthanasia laws.

For this reason, in juridical perspective, euthanasia is a prohibited action in Indonesia. Given that Indonesia embraces the principle of legality, the absence of strictly legal parameters relating to euthanasia requires an explicit definition of euthanasia legally so that it will be guidance for everyone, especially doctors and medical personnel when it comes to dealing with euthanasia cases.

6. Conclusion

A doctor always remembers the obligation and responsibility to protect human beings, it means that any country of the world a doctor has an obligation to "*respect every human life from the conception.*" In this case it means that no matter how serious a patient, every doctor should still protect and sustain the life of patient. In terms of criminal law, euthanasia is a prohibited act in which the articles in the Indonesian Criminal Code relating to euthanasia are 304, 338, 340, 344, 345, 359, and 531. Social reasons as developed in society to legalize euthanasia is not true. By developments in society today, and it is possible for judges to issue decision on euthanasia based on the doctrine of law degree and the limitative-medical requirements. There is a justification for life disappearance but must be viewed casuistically and in a limitative nature.

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