

Euthanasia: Concept and Rule of Law in Indonesia

Andi Sofyan

Professor on Legal Science

Criminal Law Department, Faculty of Law, Hasanuddin University,
Jl. Perintis Kemerdekaan, KM. 10, Makassar, South Sulawesi, Indonesia

Abstract

Euthanasia can be interpreted as die without suffering. In Indonesia, the act of euthanasia is not justifiable as it involves human life in relation to God, the creator. Rule of law in Indonesia does not allow a person or another person to commit euthanasia. Assistance request to health workers filed by a patient or his family is not a justification or an excuse to euthanasia offender freed from all charges.

Keywords: Concept, Euthanasia, Indonesia, Rule of law

I. Introduction

The development of science and technology in various fields of science is very rapid, in this era of all kinds of human desire almost entirely be met, not least in the field of medicine. The development of these technologies aim to enable people in all things, for example in the field of medicine, the existence medical technology today is very sophisticated, such as the discovery of a digital pill, brain implant that works to restore memory, and pancreas bionic which has a sensor that obtain monitor blood sugar levels through phone and process every five minutes. Discoveries in the field of medical technology have proven that science and technology have transformed and grown so rapidly.

The development of science and technology has been rapidly in recent years that resulted to quick alteration in social and cultural life of mankind. This is caused by the increasing number of discoveries of modern technology, which aim to utilize the lives and interests of mankind with all its consequences. In a further development, with the modern medical equipment, the suffering and pain of a patient can be commuted, until the patient life can be extended for a certain time by using drugs and certain tools. But in reality, even though such advanced technologies in medical field exist, there are still some patients who cannot be prevented from severe suffering. A patient suffering from a particular disease, which is difficult to cure, such as malignant cancer disease, will encounter great suffering. The severe suffering will be ended, if the death has come. But death itself is a mystery that is difficult to guess, because in general, no one can predict for sure when death is coming.¹ Based on that, then human is working hard to figure out how to give the best thing for the patient with serious illness until the suffering he experienced can be terminated immediately.

Some cases presented by Imron Halimi that describes how hard the suffering of a patient with severe disease. One of the cases put forward was about a young man who is 27 years old. At the age of 18, the young man had experienced a car accident that resulted damage to the brain, and medically was not curable anymore. For 4 years he laid in coma, as if he was dead. The entire ability to think and feelings had dispersed from himself.² This disease illustrates that there is certain diseases that are difficult to cure and patients in a prolonged coma. This situation is certainly a cause of suffering for the patient and compassion for others, especially his family. Such conditions are sometimes encouraging family to think whether the patient should not be helped by an injection to speed up his death. Or in other words, whether the action either be "euthanasia" to the patient, trigger to quickly get rid of his misery.³ These thoughts then inspired the development of the concept of euthanasia not limited to certain countries but in all countries of the world, including in Indonesia.

Euthanasia is not a new concept in the world and in Indonesia, the concept of euthanasia has existed since ancient times when humans are confronted about severe illness until prolonged suffering. It has inspired some people views about ways to eliminate or terminate suffering of someone disease to be quickly and easily healed, but ever since the concept of euthanasia has found in long time ago, it become issue of a dilemma because besides confronted by the family of the patient, euthanasia is also confronted with ethical issues and existing law of a country.

Ever since outset indeed human has always faced many challenges and obstacles as problems in their life. Human must strive to settle the challenges and resolve the problems they against in order to survive. Efforts to tackle and resolve the problems and the development of human potential give birth to civilization. The challenges and problems would never end, even increasing. Therefore, civilization constantly experiencing

¹ Ahmad Wardi Muslich, *Euthanasia: Menurut Pandangan Hukum Positif dan Hukum Islam*, Jakarta: Rajawali Pers, 2014, p. 1-2

² Imron Halimi, *Euthanasia*, Solo: Ramadhani, 1990, p. 31; cited by Ahmad Wardi Muslich, *Ibid.*, p. 2

³ Ahmad Wardi Muslich, *Ibid.*, p. 3-4

growth following the development challenges earlier.¹ The attempt to answer the challenge and solve problem that made human life, it has invented a development in science and technology. Thus, the presence of more advanced (modern) science and technology will be easier to overcome the challenges and problems encountered, as well as the necessities of life will be relatively met.² It is like two sides of the coin, whilst have positive impact side on people but another side has negative impact and yet the occurrence of new problems in the field of law and ethics.

With the emergence of new challenges and obstacles, creative people are increasingly compelled to create (develop) science and *up to date* sophisticated technology. However, science and technology also remains spawned new challenges that require an answer. It can be said among the new challenges of the development of science and technology continues to race in the "causality relationship" which will be endless. Therefore, it must be considered that the implications (negative impact) on the development of science and technology itself, which is often difficult to anticipate it.³ Among the discoveries of the technology, technological development in the medical field is rapidly unbeaten. Through very advanced science and technology in this field of medicine, the diagnosis of a disease can be more perfect to do. Treatment of the disease encountered also is more effective. With modern medical equipment, the pain of a person suffering from a disease can be commuted. The life of a patient can be extended for a certain period, by installing a respirator. In fact, the calculation of the death of a person suffering from a particular disease can be performed more accurately.⁴ The sophistication of science and technology are not always lead to something positive, because some viewpoints technological advances may infringe on the rights owned by others because there is limited space and time of these discoveries.

A fact that is very important to highlight is the Criminal Code, which is still being positive law in our country, yet it is a legacy product of the past colonial, hence Criminal Code is probably no longer relevant to society growth and independency today. Based on the facts above, therefore the duty and responsibility is the obligation that shaper of our criminal law. It is also expected, will be able to formulate new criminal law, which can be acknowledged by all layers of Indonesian society, thus expected an improvement and stepping points for the preparation of legislation draft concerning the rights and obligations of citizens in order to practice Pancasila and Constitution of the Republic of Indonesia as consistent and genuine. Hence these aspects require special attention, since it concerns matters to human rights, especially the human rights of citizens of the Republic of Indonesia. Regarding human rights, it is not solely related to law, but including social issue, cultural, economic, political nation. Human basic right is the right to life. In the sense of the right to life is included the existence of right to die. In connection with the discussion of the right to life and the right to die, will be a matter of criminal law that is referred as "euthanasia" in Indonesian Criminal Code.⁵ Based on the explanation, the author feels the need to study the problems concerning how the concept of euthanasia that has developed ever since? And how far the rule of law regarding euthanasia in Indonesia?

II. Research Method

The type of research in this paper is a normative study, using the approach of legislation, and conceptual.⁶ Data collection techniques were through the study of literature. All data collected then analyzed qualitatively later in descriptive⁷ hence the problems in this article can be answered.

III. Result and Discussion

A. The concept of euthanasia and its development

The term euthanasia comes from the Greek, from eu and Thanatos. The word eu means well, without suffering and Thanatos means death. Thus euthanasia can be interpreted as die without suffering. There were also translating as die quickly without pain either. Etymologically means death by euthanasia without suffering, and therefore in conducting euthanasia utterly not to cause death, but to alleviate the suffering of person who is facing his death. Hence substantively that euthanasia is not contradicted to allurement to defend and promote human life, so it does not become a problem in terms of morality. This means that in terms of morality can be justified if the person concerned demand it. But in regards to extended term, euthanasia is likely kills upon

¹ Petrus Yoyo Karyadi, *Euthanasia dalam Perspektif Hak Asasi Manusia*, Bandung: Media Presindo, 2001, p. 1; as cited by Syamsul Hadi, *Euthanasia dalam Perspektif Hukum Pidana dan Etika Kedokteran*, Jurnal Universitas Bangka Belitung, p. 1-2

² Syamsul Hadi, *Ibid*.

³ Petrus Yoyo Karyadi, *Op.Cit.*, p. 2

⁴ Djoko Prakoso and Djaman Andhi Nirwanto, *Euthanasia, Hak Asasi Manusia dan Hukum Pidana*, Jakarta: Ghalia Indonesia, 1984, p. 10

⁵ Andi Sofyan, *Euthanasia dari Aspek Hak Asasi dan Hukum Pidana*, Makassar: Laporan Penelitian Mandiri, Lembaga Penelitian Universitas Hasanuddin, 1996, p. 2-3

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2010, p. 96

⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI-Press, 2012, p. 9

mercy, then according to the current general sense, euthanasia can be described as the systematic murder because life is a misery and suffering. This is the basic concept of euthanasia which has now developed into the meaning of death on the basis of a person's rational choice, as many problems arising. Those problems are getting complex as definition of death itself has become blurred.¹ It certainly should be a concern to many people because the basic concept of euthanasia should be clear before it can prosecute perpetrator whenever a problem occurs.

"Good death" is the literal translation of "euthanasia". The question arises, who would not want to have "good death" at the end of his life? Everyone, whoever, wherever, and whenever, it will always be longed for, at the time of this life must end, to be able to experience "good death". But according to the Indonesian criminal law and the Netherlands, the term "good death" or euthanasia, is always associated with a request from one person to another to do relief termination of life with earnestly spoken, and the request was pronounced under conscious nature, without coercion or fraud.² Here are some of terminologies of euthanasia.³

1. According to result of the abortion seminar and euthanasia in terms of medical, legal and psychological, euthanasia is defined:
 - Deliberately doing something to end the life of a patient;
 - Deliberately not doing anything to prolong a patient's life;
 - Do specifically for the benefit of the patient's own request or without the patient's request.
2. According to Indonesia medical ethic codes, the word euthanasia is used in three senses:
 - The shift into the afterlife with calm and secure without suffering, for the believers upon Allah's name.
 - When life ends, alleviated the suffering of the sick by giving him a sedative.
 - Ending the suffering and pain of living by deliberately conduct it upon the request of patient and his family.

From some of these categories, it can be concluded that the elements of euthanasia are as follows:⁴

- a. Do something or not to do;
- b. End life, hasten death, or not to prolong the life of the patient;
- c. Patients suffering from either hard or incurable disease.
- d. Upon or without the request of the patient or his family.
- e. For the benefit of patient and his family.

The problem of euthanasia is part of the occupation of a doctor who is taking care for the patient or being asked for his help in order to cure the disease suffered by him. In the case of depriving the lives of people, either it is a personal request or family as he suffering illness or medical stated that his disease is incurable, or based on humanitarian grounds, may trigger variety of opinions in the public.⁵ Euthanasia can be viewed from plenty angles, such as the way of its implementation, from where the demand comes, or by the consent of consciousness of patients and others. Broadly speaking, euthanasia is divided into two groups, namely active euthanasia and passive euthanasia exposure as follows:⁶

1. Active euthanasia

Active euthanasia is an act carried out actively by doctors to end the life of a (patient) medically. Commonly conduct with the usage of drugs that work fast and deadly. Active euthanasia is divided into two groups.

2. Direct active euthanasia.

Direct active euthanasia means the termination of life through medical measures calculated to immediately end the patient's life. For example, by giving cyanide tablet or injection of a substance that is immediately shut off.

3. Indirect active euthanasia

Indirect active euthanasia is indicating that the medical action undertaken will not immediately end the patient's life, but it is known that the risk of such action can end a patient's life. For example, unplug the oxygen or other life tools.

4. Passive Euthanasia

Passive euthanasia is the act of stopping or revoking any act or treatment that is necessary to sustain human life, so that patients are expected to die after rescuing action is stopped.

5. *Volunteer* Euthanasia

¹ Dani Triantoro, *Pro dan Kontra Euthanasia*, Article, Universitas Esa Unggul, Jakarta, 2013, p. 5

² Wila Ch. Supriadi, *Euthanasia Berdasarkan Ketentuan Hukum Belanda*, Jurnal Pro Justitia Tahun 19 Nomor 4, Edisi Oktober 2001, p. 1

³ Dani Triantoro, *Loc.Cit.*

⁴ *Ibid.*

⁵ Suwanto, *Perkembangan Euthanasia dan Permasalahannya di Indonesia*, Jurnal Pro Justitia Tahun XVII No. 2, April Edition 1999, p. 1

⁶ Dani Triantoro, *Loc.Cit.*

This type of Euthanasia is cessation of treatment or hastens the death of personal request.

6. Involuntary Euthanasia

Involuntary euthanasia is a kind of euthanasia which is performed on patient in an unconscious state that it is impossible to convey his wish. In this case the family of the patient who is considered responsible for the termination of medical assistance. These acts are difficult to distinguish from crime.

Euthanasia cases have occurred in Indonesia, as reported in Detik news, with following review:¹

Rudi Hartono wanted lethal injection to be given to Siti Zulaeha (his newly 3 months wife). Rudi effort was supported by Zulaeha's family. According to his plan, Rudi and his family would ask permission of lethal injection to the Central Jakarta District Court on Monday, February 21st 2005, there were six people asking Zulaeha euthanized. They were Rudi Hartono (husband), Zaeni (father), Entin (mother), Zunaedi and Dodi Setiawan (brother) and Nur Aliyah (sister). Statements of doctors medical team who handle Zulaeha showed that the survival rate Zulaeha entered the category of plants. Siti Zulaeha was still being treated at Cipto Mangunkusumo Hospital in a coma. Siti Zulaeha lapsed into a coma after undergoing surgery for pregnancy outside the womb. Initially, Siti Zulaeha underwent surgery at Pasar Rebo Hospital. After finished the surgery, she immediately coma. Thus she was moved to Cipto Mangunkusumo Hospital. Treatment in Pasar Rebo has cost more than Rp 100 million. Family possessions had been sold to defray Zulaeha, while the profession Rudi Hartono (husband) was just a security guard.

Health is the most beautiful grace given by God Almighty to every creature on earth, because if the physical (body) in a healthy condition, then all the desired activity almost certainly doable. "Health is an expensive price" according to the perception of most people if he was in unsanitary conditions (sick), while on the contrary, "healthy perception is cheap" is also expressed by most people who are healthy in physical condition. Most people are not aware that health is important to be maintained whilst they ignored all the factors that allowed them to be attacked by various diseases, when they were sick, that's where they would regret and realize that health is the most important thing in their life.² Doctors as one of the main components of health care providers to the society has a very important role because it is directly related to the provision of health services and quality of services delivered. The primary basis for doctors to perform medical actions towards others are science, technology, and competency, acquired through education and training. Their knowledge must be constantly maintained and enhanced in accordance with the progress of science and technology.³ Therefore, regarding the concept and development of euthanasia, the patient, family, and doctors or medical personnel are crucial important component.

B. Euthanasia Rule of Law in Indonesia

Rule of law regarding euthanasia in Indonesia has not yet experienced significant changes, as from the first until the current status barely used Article 344 Criminal Code that prohibits euthanasia for everyone. Article 344 Criminal Code governs "Whoever eliminates the life of another person at the request of the person himself, which he mentions with a real and immerse, sentenced to jail as forever twelve years." According to the provisions of Article 344 of the code, every person, especially a doctor could be prosecuted criminally, when he performs euthanasia, albeit at the request of patients and families concerned, because the act is criminal act. Yet, if it is associated with a more general regulation, then euthanasia may also violate the Law of the Republic of Indonesia Number 39 in 1999 on Human Rights, the Constitution of the Republic of Indonesia Number 36 in 2009 on Health, Code of Ethics, and numerous of other regulations.

So far Indonesia has not regulated concerning euthanasia (*Mercy Killing*) specifically. Euthanasia or expunge life of a person upon the request himself equal with criminal acts of killing someone. And it is still being debated in some circles either that agree on euthanasia and the parties disagree. Parties whom agree toward euthanasia can be executed, it is based on that every human being has the right to life and the right to end his life immediately and this is done with sufficient grounds to support for humanitarian reasons. With the patient condition that is no longer possible to recover or even alive, hence he allowed to request for the immediate end of his life. While some parties that disagree upon euthanasia argued that every man has no right to end his life, because life and death are the absolute power of God that strictly be contested by human. This ongoing debate will never end, since the viewpoints used are clearly contradicted and yet another reason for the debate is the issue of legality of euthanasia act.⁴ Therefore, the issue of euthanasia is not a problem that can be solved simply, but it is an issue that has broad dimensions and the imposition of the concerned suspect must be implemented

¹ See <http://m.detik.com>

² Andi Sofyan, *Malpraktik Medis*, Makassar: Pustaka Pena Press, 2015, p. 2

³ General Commentary, Law Number 29 Year 2004 on Practice of Medicine

⁴ Abdal Rohim, *Euthanasia Perspektif Medis dan Hukum Pidana Indonesia*, Jurnal Sekolah Tinggi Ilmu Kesehatan Kuningan, p. 1

carefully.

Although basically euthanasia actions included in the act a criminal offense under Article 344 Criminal Code. In European countries (the Netherlands) and American, euthanasia action has placed unilaterally and recognized as legal, and followed by Japan. Of course, in carrying out acts of euthanasia must go through the procedures and requirements that must be met in order for euthanasia possible to do. There are three hints to determine the condition of the outstanding facility provisions. First, the existence of medical certainty stated the disease is no longer curable. Second, drug prices and the cost of medical action are way too expensive. Third, it takes extra effort to get drug or medical measures. In cases like these people are no longer required to commercialize a drug or medical procedure. In fact, euthanasia by injecting dead equated with the criminal act of murder. The final alternative that may be taken is the use of means via *extraordinaria*. If doctors gave up and ensure medically incurable diseases and it still took a huge cost if they should be treated, then extra care should be cultivated, then the most possible thing is terminated the process of treatment and medical measures in hospitals.¹ However, although the last alternative that should be conducted is an act of euthanasia, yet still the act of euthanasia remain banned in Indonesia.

Article 344 of Indonesian Criminal Code is the closest article to euthanasia provisions that possible to be applied. The complete formulation of the criminal act of euthanasia is not defined in rule of criminal law. Similarly, legislation in the health sector with criminal sanction, euthanasia issue is not limited to a narrow problem, but a problem linked to vast dimensions, namely concerning the legal dimension, health dimension, socio-economic dimension, the cultural dimension, the dimension of religion, and the human dimension. Stated as extensive dimension, because the correlation of human life and God the creator. Limitations of rule of law specifically in criminal law sector is supposed not to become hindrance in taking action against people who helped a dying patient end his life, the articles of the Criminal Code has enough to prove desire to protect the most fundamental human rights, namely the right to life. Otherwise do not provide opportunities for a person or another person who wanted to commit murder without a legitimate reason. Assistance request to health workers filed by a patient or his family is not a justification or condonation excuse until it cause criminal offender labeled exempt from any criminal prosecution. The issue of human life is not a matter of civil law, but an issue of public law in the field of the criminal law. Public interest and the interests of the individual concerned would take precedence and privileged than economic interests and compassion for patient.² This implies that a person right to life is extremely fundamental and classified as a right that cannot be restricted (non-derogable rights) in the concept of universal human rights. Prosecution is remained possible for anyone who helped to provide assistance, either directly or indirectly, either in the form of distributing facilities or infrastructure and the provision of information that ultimately result in death. The situation and conditions of both parties that assisted (the supplication) and provided assistance to the termination of someone's life does not legally tolerate forever. Security and safety of human life is the most important and its innate nature, impossible to be delegated or mandated to others. The error substance is deemed remain for a person conducting assistance and that action is still seen as evil and despicable. Equality before the law and governance in accordance with the Constitution of the Republic of Indonesia in 1945 is absolute implementation in the country within Pancasila ideology. The rights of other citizens can be regarded as second-class rights when compared to the right to life. The right to life does not mean including the right to die, because God has determined the power to end a person's life as well as the power of God to bring man in this world.³ This implies that the act of euthanasia involving error element that remains for people conduct assistance and action is still seen as evil and despicable acts in Indonesia.

The criminal act of euthanasia can be related to two rules of law or of two or more specific articles, namely Article 338 and Article 344 of Criminal Code. It is also possible to be connected between the Criminal Code Article 344 to Article 55 or Article 56 of the Criminal Code. Discerning from theoretical aspects of the crime of euthanasia can be qualified as criminal *concursum idealis* in which the conferral system can be incorporated as provided in Article 63 of the Criminal Code. Euthanasia remains banned in Indonesia, both in the Criminal Code and Criminal Code's draft concept. A point to be observed by lawmakers in defining the upcoming crime of euthanasia is the sincerity element of the victim. Prosecution and the application of Article 344 Criminal Code should be sought with the earlier application possibilities. Obstacles faced by the public prosecutor and the judge are located on the difficulty of proving these elements considering the development of science and technology in the sophisticated medical sector, especially with the usage of respirators and injections of morphine.⁴ Hence in the future, euthanasia action will be a concern of all parties both lawmakers and law enforcers to coordinate with each other simultaneously and the vision that the act of euthanasia in Indonesia cannot be justified in any circumstances and reasons.

¹ Abdal Rohim, *Ibid.*

² Andi Sofyan, 1996, *Loc. Cit.*, p. 20-21

³ *Ibid.*, p. 21-22

⁴ *Ibid.*, p. 40-41

IV. Conclusion

As closing, Author can explain two important points of this paper, which may noted that euthanasia is interpreted die without suffering. In practice, euthanasia can be classified into six actions, namely active euthanasia, direct active euthanasia, indirect active euthanasia, passive euthanasia, volunteer euthanasia and involuntary euthanasia. In Indonesia, euthanasia is not justifiable, yet euthanasia extensive dimension, because the concerns for human life in relation to God the creator. Limitations of rule of law specifically in criminal law sector would not become an hindrance in taking action against people who helped a dying patient end his life, the articles of the Criminal Code has been enough to prove the desire to protect the most fundamental human rights, namely the right to life. Otherwise do not provide opportunities for a person or another person who wanted to commit murder without a legitimate reason. Assistance request to health workers filed by a patient or his family is not a justification or condonation excuse until it cause criminal offender labeled exempt from any criminal prosecution.

Acknowledgements

Thanks for Kadarudin which has much to contribute in-depth discussion, correspondence and translating this paper.

References

- Abdal Rohim, *Euthanasia Perspektif Medis dan Hukum Pidana Indonesia*, Jurnal Sekolah Tinggi Ilmu Kesehatan Kuningan.
- Ahmad Wardi Muslich, *Euthanasia: Menurut Pandangan Hukum Positif dan Hukum Islam*, Jakarta: Rajawali Pers, 2014.
- Andi Sofyan, *Euthanasia dari Aspek Hak Asasi dan Hukum Pidana*, Makassar: Laporan Penelitian Mandiri, Lembaga Penelitian Universitas Hasanuddin, 1996.
- _____, *Malpraktik Medis*, Makassar: Pustaka Pena Press, 2015.
- Dani Triantoro, *Pro dan Kontra Euthanasia*, Article, Universitas Esa Unggul, Jakarta, 2013.
- Djoko Prakoso and Djaman Andhi Nirwanto, *Euthanasia, Hak Asasi Manusia dan Hukum Pidana*, Jakarta: Ghalia Indonesia, 1984.
- <http://m.detik.com>
- Imron Halimi, *Euthanasia*, Solo: Ramadhani, 1990.
- Petrus Yoyo Karyadi, *Euthanasia dalam Perspektif Hak Asasi Manusia*, Bandung: Media Presindo, 2001.
- Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2010.
- Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI-Press, 2012.
- Suwarto, *Perkembangan Euthanasia dan Permasalahannya di Indonesia*, Jurnal Pro Justitia Tahun XVII Nomor 2, Edisi April 1999.
- Syamsul Hadi, *Euthanasia dalam Perspektif Hukum Pidana dan Etika Kedokteran*, Jurnal Universitas Bangka Belitung.
- Wila Ch. Supriadi, *Euthanasia Berdasarkan Ketentuan Hukum Belanda*, Jurnal Pro Justitia Tahun 19 Nomor 4, Edisi Oktober 2001.