



## Juridical Review Of The Euthanasia Crime In The Indonesian Criminal Law System

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### Abstract

Euthanasia is the act of ending the life of someone who is seriously ill and has a minimal life expectancy intended to relieve suffering. This study aims to identify and analyze the regulation of euthanasia in the Indonesian criminal law system and determine whether euthanasia can be decriminalized under the current Indonesian criminal law system. Patients who are seriously ill and have a minimal life expectancy are often the reason for euthanasia, both on their own and on the wishes of their families. This action is included in Article 344 of the Criminal Code in the Criminal Code. For now, the Indonesian criminal law system is experiencing difficulties in proving euthanasia because there is no detailed criminal formulation applied regarding euthanasia, then decriminalization of euthanasia cannot be justified.

**Keywords:** Legal system, Euthanasia, Decriminalization.

### Abstrak

Ethuanasia merupakan tindakan mengakhiri kehidupan seseorang yang sakit parah dan memiliki harapan hidup yang sangat kecil dimaksudkan untuk menghilangkan penderitaan. Tujuan dari penelitian ini adalah untuk mengetahui dan menganalisis pengaturan euthanasia dalam sistem hukum pidana Indonesia serta mengetahui apakah euthanasia dapat didekriminalisasi berdasarkan sistem hukum pidana Indonesia saat ini. Pasien yang menderita sakit parah dan memiliki harapan hidup yang sangat kecil seringkali menjadi alasan untuk dilakukan tindakan euthanasia baik hal tersebut atas keinginan dirinya sendiri maupun atas keinginan keluarganya. Dalam KUHP tindakan ini masuk ke dalam Pasal 344 KUHP. Untuk saat ini, sistem hukum pidana Indonesia mengalami kesulitan pembuktian euthanasia dikarenakan tidak adanya rumusan pidan secara terperinci diterapkan mengenai euthanasia, kemudian untuk dekriminilasi terhadap euthanasia pun tidak dapat dibenarkan untuk saat ini.

**Kata Kunci :** Sistem hukum, Euthanasia, Dekriminalisasi.

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## I. Introduction

Significant changes in human life brought about by the development of science and technology (science and technology) have made humans successful in making various discoveries and producing quality technology to make their lives easier. The ease of development of science and technology (science and technology) is almost felt in all areas of human life, including in the health sector. Through research and development of science and technology in the health sector, currently, many new drugs and medical equipment are found to assist the treatment and healing of a disease suffered by humans, so that the level of health and life expectancy of humankind is increasing.

One of the most important and related to health services is the death of a person. Until now, death is the greatest mystery, and science has not been able to unravel it. The only answer available in religious teachings, death as the end of the series of human life in this world, is the right of God. No one can delay one second the time of death, including hastening

the time of death.<sup>1</sup> However, with the rapid development of science and technology (science and technology) in the health sector, a person's death can also be diagnosed with appropriate diagnostic criteria based on scientifically accountable diagnostic concepts. It becomes a trigger for euthanasia as a consequence. Euthanasia can be interpreted as dying without suffering, and some translate it as dying quickly without suffering; this is stated by Suetonius, a writer from Greece, in his book entitled "*Vitae sarum*."<sup>2</sup>

The term euthanasia is a debate in almost all countries. America is one of the countries that legalize euthanasia. In the state of Washington, there used to be a ban on physician-assisted suicide. However, after the decision of the Ninth U.S Circuit Court of Appeals in 1997 has overturned the prohibition on physician-assisted suicide, the right to end one's life was allowed. An ad hoc committee was then formed at Harvard Medical School in 1999 and produced recommendations regarding whether or not it is permissible to end the life of a patient with brain death, namely if it meets the following elements<sup>3</sup>: Unreceptivity and unresponsiveness; no spontaneous movements or breathing; no reflexes; flat electroencephalogram (brain damage). Furthermore, in the Netherlands, euthanasia became a debate even though, in the end, it was legalized with its implementation being carried out strictly and had to meet the euthanasia requirements that had been regulated based on the Dutch criminal law system. Here are ten facts about euthanasia in the Netherlands<sup>4</sup>:

1. Euthanasia is a punishable offense under the Dutch Criminal Code.
2. The patient has no right to euthanasia.
3. Doctors have the right to object to euthanasia based on conscience.
4. Doctors may perform euthanasia only if permitted and under strictly prescribed conditions.
5. Euthanasia can only be performed after the patient's own voluntary and well-considered request.
6. Euthanasia can only be done in cases of unbearable suffering and without prospects.
7. There must be no terminal illness and/or limited life expectancy to meet the criteria for appropriate treatment.
8. Euthanasia in Dutch law is based on respect for people and the principle of compassion.
9. The Regional Review Committee on Euthanasia assesses each euthanasia case.
10. In 2016, 6,091 cases of euthanasia were reported, which is equal to 4% of the total increase, and when there are no reasonable alternatives

In Indonesia, requests for active euthanasia have occurred several times. One of them is the case of a request for euthanasia from Mr. Panca Satrya Hasan Kusuma, who begged his wife, Mrs. Agian Isna Nauli, to be given a lethal injection. Mr. Decision. Hasan is not based because Mrs. Agian is dying in the hospital and is no longer cared for by her husband; instead, Mr. Hasan feels very much in love with his wife and can't bear to see the suffering that Mrs. Agian Isna Nauli because she was paralyzed for more than three months after giving birth to her second child by cesarean section at the Bogor Islamic Hospital and could not be cured. It was further explained by Doctor Gunawan Mohamad, who handled the cesarean section of Mrs. Agian, that "Based on the final diagnosis, Mrs. Agian suffered permanent brain damage. The damage occurred in the brain stem, brain nerves, and the left and right hemispheres of the brain. On August 27, 2004, the Jakarta Health Legal Aid Institute director, Iskandar Sitorus, Mrs. Agian, was transferred to Cipto Mangunkusumo Hospital (RSCM) Jakarta at the Stroke Service Unit Suparjo Rustamange the name of the inheritance to which he is entitled after the death of the testator. But to take legal action against what has become his right must be

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<sup>1</sup> Zaeni Asyhadie. *Aspek-aspek Hukum Kesehatan di Indonesia* (Jakarta: Rajawali Pers, 2017), 135.

<sup>2</sup> Khoirudin Manahan Siregar. "Euthanasia Dalam Prespektif Hukum Positif Dan Politik Hukum Pidana Di Indonesia". *Jurnal Hukum Universitas Sumatera Utara*. Vol. 6, No. 3 (2018)

<sup>3</sup> Triwibowo Cecep. *Etika dan Hukum Kesehatan*. (Yogyakarta: Nuha Medika, 2014), 212-213.

<sup>4</sup> Antina de Jong, and Gert van Dijk. "Euthanasia in The Netherlands". *World Medical Journal from World Medical Assosiation*. Vol. 63, Issue 4 (2017)

accompanied by a certificate of inheritance.<sup>5</sup> On October 22, 2004, Mr. Hasan submitted a request to euthanize Mrs. Again to the Central Jakarta District Court. However, the response to the request on November 8, 2004, the Central Jakarta District Court stated that it refused to grant the request for euthanasia on humanitarian grounds.

As in the case above, requests for active euthanasia in Indonesia are almost impossible to be granted. In Indonesian criminal law, especially the Criminal Code, if we look at the implementation of euthanasia as a criminal act, then the things that must be considered are whether the act is an act of murder so that euthanasia can be linked to Article 344 of the Criminal Code. Namely regarding a murder committed at the request of the victim, Article 338 of the Criminal Code, namely ordinary murder, or including Article 340 of the Criminal Code, namely premeditated murder. Often, euthanasia is also considered an act of assisting suicide and is included in Article 345 of the Criminal Code.

This euthanasia, if seen at a glance included in a criminal act of murder because the action takes the life of another person without rights. Even euthanasia can be considered neglecting the patient so that a person dies and is also often considered an act of helping suicide. However, if you look at the reason, with a request from the patient's family or the patient himself to be euthanized and carried out out of compassion, this action is not a crime.

## II. Research Problems

Based on the description above, there are two problems, namely:

1. How is euthanasia regulated in the Indonesian criminal law system?
2. Can euthanasia be decriminalized?

## III. Research Methods

The research method used is normative juridical. Normative juridical research is library research. The approach used in this research, namely<sup>6</sup>:

1. Legislative Approach (Statue Approach)

Philipus M. Hadjon and Tatiek Sri Djatmiati describe the 'statute' approach starting from a constitution in terms of legal principles and legal concepts and accompanying laws or organic regulations.

2. Conceptual Approach

A conceptual approach is an approach used to obtain scientific clarity and justification based on legal concepts that are sourced from legal principles

The research specification used is descriptive-analytical, describing the research results or describing the state of the research object with complete data, both primary and secondary data. Then, an analysis is carried out based on legal theories and the practice of implementing positive law by drawing general conclusions from the problems discussed.

Legal materials to be analyzed consist of three types, namely primary, secondary and tertiary legal materials. The data collection procedure was carried out by employing a literature study. A literature study is a procedure carried out with a series of activities such as reading, reviewing, peering from literature books, and assessing the provisions of laws and regulations related to the problem. Data processing is carried out by analysis, namely identifying data, editing, classifying data, and systematically data. The data obtained from the study were analyzed based on the formulation of the problem that had been determined and

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<sup>5</sup> Sari Sri Dewi Nawang Wulan Arum. *Kebijakan Formulasi Terhadap Tindakan Euthanasia Menurut KUHP dan RUU KUHP*. Skripsi Fakultas Hukum Universitas Lampung (2018).

<sup>6</sup> Muhjad Hadin and Nunuk Nuswardani. *Penelitian Hukum Indonesia Kontemporer* (Yogyakarta: Genta Publishing, . 2012), 46.

then presented descriptively. The research location was conducted at the Banyumas Regency Regional Library, the Purwokerto Muhammadiyah University Library, and the Law Faculty Library, Muhammadiyah Purwokerto University.

#### IV. Research Results And Discussion

##### 1. Euthanasia Regulations in the Indonesian Criminal Law System

An act of shortening the life of someone who is seriously ill intentionally based on humanity is called euthanasia, also known as Mercy Killing. Euthanasia as a form of eliminating a person's life is related to the right to life, which is included in fundamental human freedoms in human rights. In the 1945 Constitution of the Republic of Indonesia, Article 28A states that "Everyone has the right to live and has the right to defend his life and life." Law Number 39 of 1999 concerning Human Rights Article 9 paragraph (1) also states that "everyone people have the right to live, maintain life and improve their lives" so that any form of taking a person's life (right to life) is a violation of human rights which of course has legal consequences if this is done.

There are two kinds of euthanasia in its implementation, namely active euthanasia and passive euthanasia. Active euthanasia is intentionally or indirectly taking action to end a person's life, for example, by injecting lethal substances into a person's body.<sup>7</sup> Meanwhile, passive euthanasia accelerates death by refusing to give or giving usual rescue measures, such as not providing oxygen assistance to patients who have difficulty breathing.<sup>8</sup> Euthanasia, when viewed from the request, there are two, namely voluntary euthanasia, which is a request that comes from the patient himself, and involuntary euthanasia (not at the request of the patient), which is a request that comes from the patient's family where the patient's condition is already unconscious.<sup>9</sup>

The criminal law system is a basic unit or rule to determine which actions should not be accompanied by threats or sanctions in certain crimes for anyone who violates the prohibition.<sup>10</sup> In the Indonesian criminal law system, where the legislation that guides criminal law is the Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP), euthanasia is implicitly included in Article 344 of the Criminal Code. Article 344 of the Criminal Code 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" the article can implicitly be used to regulate euthanasia which is often associated with the actions taken. By a doctor or medical personnel at the request of the patient concerned or the request of the patient's family.

According to R. Soesilo, Article 344 of the Criminal Code is related to Article 35 paragraph (1) section e of the Criminal Code, where it can be concluded that the perpetrator who can be charged using Article 344 of the Criminal Code is someone who has a position and is trusted to eliminate the soul of another person because of his ability that allows doing so, in this case, are doctors and/or medical personnel.<sup>11</sup> Law Number 36 of 2009 concerning Health Article 23 paragraph 3 reads, "In providing health services, health workers are required to have permission from the government" in this case, medical personnel who perform euthanasia have committed an offense in which euthanasia itself is not allowed by the state. Which automatically will not get permission to perform the service, so it will be subject to

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<sup>7</sup> Lilik Purwastuti Yudaningsih. "Tinjauan Yuridis Euthanasia Dilihat Dari Aspek Hukum Pidana". *Jurnal Ilmu Hukum Universitas Jambi*. Vol. 6, No. 1 (2015)

<sup>8</sup> *Ibid*

<sup>9</sup> Abdul Gani Yamco. *Euthanasia Dalam Prespektif Hukum Positif Indonesia Dan Hak Asasi Manusia*. Tesis Ilmu Hukum Universitas Hasanuddin Makasar (2013)

<sup>10</sup> Failin. "Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia". *Jurnal Cendekia Hukum Sekolah Tinggi Ilmu Hukum Putri Maharaja Payakumbuh*. Vol. 3, No. 1 (2017)

<sup>11</sup> Manik. *Kajian Euthanasia Pasif Dalam Prespektif Hukum Pidana Indonesia*. Tesis. Fakultas Hukum Universitas Sumatera Utara (2017)

legal consequences if it is done. Then in Article 344 of the Criminal Code, it is necessary to note that "... at your request which is stated with sincerity..." must be stated clearly and seriously (*ernstig*), which in this type of euthanasia this article only regulates voluntary euthanasia, both active and passive, if it is not considered in the section "... at his request which is stated with sincerity..." then the perpetrator may be subject to ordinary murder as stated in Article 338 of the Criminal Code and may also include premeditated murder as stated in Article 340 of the Criminal Code. That way, it can be said that involuntary euthanasia is included in the form of homicide, both ordinary murder, and premeditated murder

Euthanasia that often occurs in Indonesia without realizing it is passive euthanasia. First, where the doctor stops all drugs given to the patient except for painkillers requested by the patient, and this usually occurs in terminally ill patients.<sup>12</sup> Second, where the family or the patient himself refuses to continue and or receive treatment, which often chooses to force him to be sent home, this can be said to have unconsciously carried out passive euthanasia.

Involuntary passive euthanasia, there are several laws relating to the patient's right to refuse treatment, namely:

- a. Law No. 29 of 2004 concerning Medical Practice Article 52:  
Patients receiving services in medical practice have the right:  
d. refuse medical treatment
- b. Law No. 36 of 2009 concerning Health Article 56 Points 1 and 2, which contain:  
(1) Everyone has the right to accept or reject part or all of the relief measures given to them after receiving and fully understanding the information regarding such actions.  
(2) The right to accept or reject, as referred to in paragraph (1), does not apply to:  
a. Patients with diseases whose disease quickly spreads to the broader community;  
b. The state of an unconscious person; or  
c. Severe mental disorders.
- c. Law No. 44 of 2009 concerning Hospitals in Article 32 point k:  
Every patient has the right:  
k. approving or refusing the action to be taken by the health worker for the disease he is suffering from

In addition to arrangements regarding patient rights, some obligations need to be considered, such as in the following legislation:

- a. Law No. 29 of 2004 concerning Medical Practice Article 53 reads:  
Patients, in receiving services in medical practice, have an obligation:  
b. comply with the advice and instructions of a doctor or dentist;
- b. Law No. 36 of 2009 concerning Health Article 9 reads:  
(1) Everyone is obliged to participate in realizing, maintaining, and improving the highest degree of public health;  
(2) The obligations in paragraph (1) shall include individual health efforts, public health efforts, and health-oriented development.
- c. Law No. 44 of 2009 concerning Hospitals Article 29 Paragraph (1) point k which reads:  
(1) Every hospital has the following obligations:  
k. Refuse the patient's wishes that are contrary to professional and ethical standards as well as statutory regulations;

Based on these three laws, which regulate the rights and obligations of both patients, hospitals, and doctors, it can be said that the patient has the right to refuse medical action that has been informed to him, but medical personnel can reject the patient's decision if the patient's decision is not appropriate and or contradicts with existing laws.

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<sup>12</sup> Dhesinta Rachma Kristika Tsani. "Sikap Terhadap Euthanasia Ditinjau Dari Jenjang Pendidikan Pada Mahasiswa Fakultas Kedokteran". *Jurnal Experientia Fakultas Psikologi Universitas Katolik Widya Mandala Surabaya*. Vol. 5, No. 1 (2017)

Euthanasia is also often misunderstood as an act of suicide, where not a few think that euthanasia is included in Article 345 of the Criminal Code, which reads, "Anyone who intentionally encourages another person to commit suicide, helps him in that act or provides him with means for it, is threatened with imprisonment for a maximum of four years if that person commits suicide," even though the elements between euthanasia and suicide are different. First, the elements of euthanasia, namely<sup>13</sup>:

- a. Do something or not do something
- b. Ending life, hastening death, or not prolonging the patient's life
- c. The patient suffers from an incurable disease
- d. At or without the request of the patient and or his family
- e. For the benefit of the patient and or his family.

Second, the meaning of suicide itself is behavior that has the potential to hurt caused by one's actions with the desire to die<sup>14</sup>, so the elements of suicide can be found, namely:

- a. Do something (hurt yourself)
- b. To end life
- c. Because of desperation and/or depression
- d. On your wish

With the different elements between the two, it can be said that euthanasia is different from suicide, so euthanasia cannot be included in Article 345 of the Criminal Code.

## **2. Decriminalization of Euthanasia**

Criminalization is the determination of an act that was not originally a criminal act to become a criminal act. This process ends with forming a law that threatens the act with criminal sanctions. Meanwhile, decriminalization is the determination of an act which was initially a criminal act to become a non-criminal act. This process ends with forming a law or the pronouncement of a court decision that removes the criminal threat from the act.<sup>15</sup>

Euthanasia, both active and passive, is carried out by medical personnel against a patient of the patient's own volition (volunteer) and the patient's family (involuntary), based on humanitarian reasons, which are also reasons for decriminalizing euthanasia. Here are some factors a doctor performs euthanasia:<sup>16</sup>

- a. There is no life expectancy for the patient

The patient is in a physical and psychological condition that is no longer able to regenerate, and a doctor, with the help of his colleagues, makes a diagnosis of the patient's disease where the patient is in the final stage, then the tools that support the patient's life are seen as not having a good effect (in vain). Under these conditions, it is possible to perform euthanasia in discontinuation of treatment.

- b. The will of the doctor or the patient's family

Even if there is a will to carry out euthanasia, both the doctor and the patient's family are generally pitied to see the patient's suffering in question.

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<sup>13</sup> Lilik Purwastuti Yudaningsih. "Tinjauan Yuridis Euthanasia Dilihat Dari Aspek Hukum Pidana". *Jurnal Ilmu Hukum Universitas Jambi*. Vol. 6, No. 1 (2015)

<sup>14</sup> Avin Fadilla and Tience Debora Valentina. "Ketidakberdayaan Dan Perilaku Bunuh Diri: Meta-Analisis". *Jurnal Fakultas Psikologi Universitas Gajah Mada*. Vol. 24, No. 2 (2016)

<sup>15</sup> Handoko Duwi. "Klasifikasi Dekriminalisasi Dalam Penegakan Hukum Indonesia". *Jurnal HAM*. Vol 10 (2019)

<sup>16</sup> Andi Ainun Jariah. *Tindakan Euthanasia Yang Dilakukan Oleh Dokter Ditinjau Dari Hukum Positif Di Indones*. Skripsi Fakultas Syariah Dan Hukum UIN Alauddin Maassar (2015), 58.

c. Economic factors

The high cost of treatment for seriously ill patients can trigger euthanasia, especially passive euthanasia due to the inability of the patient's family to pay for the treatment.

d. Limited health facilities

Limited hospital facilities and insufficient medical personnel to handle the number of patients can be a factor in the occurrence of passive euthanasia. It happens because the hospital must think of prioritizing medical action for patients who still have a greater life expectancy than patients who are affected by a serious disease and is in its terminal phase.

The various factors mentioned above to perform euthanasia have violated the Code of Medical Ethics Article 9 CHAPTER II, where a doctor must never forget the obligation to protect the life of human beings. Then some laws and regulations have been violated as well, namely Law no. 44 of 2009 concerning Hospitals in Chapter IV Article 6 states the responsibility of the government and local governments in terms of health services which reads, "The government and local governments are responsible for: a. Providing hospitals based on community needs; b. Guaranteeing the financing of health services in hospitals for the poor or people who can't afford it under the provisions of the legislation, "then there should be no reason for euthanasia because of the problem of financing with the state's duty to provide protection and welfare to its people.

However, the humanitarian reasons are in positive Indonesian law; euthanasia is still a criminal act subject to Article 344 of the Criminal Code that anyone is prohibited from taking another person's life even though at the person's request with sincerity. Even though Article 344 of the Criminal Code is difficult to prove because the patient has died and there is no statement from the patient, then this action can be included in the murder article, namely Article 338 of the Criminal Code and Article 340 of the Criminal Code, in other words, euthanasia is impossible to decriminalize based on the existing legislation at the moment.

## V. Conclusions

Euthanasia in the Indonesian criminal law system is regulated in Article 344 of the Criminal Code. In Article 344 of the Criminal Code, it is necessary to note that "... at your request which is expressed with sincerity..." must be stated clearly and seriously (*ernstig*), which in this type of euthanasia, this article only regulates voluntary euthanasia, both active and passive, if it is not considered in the "... at his request which is stated with sincerity..." then the perpetrator is subject to ordinary murder as stated in Article 338 of the Criminal Code and may also include premeditated murder as stated in Article 340 of the Criminal Code. Euthanasia is also often misinterpreted as an act of suicide and is included in Article 345 of the Criminal Code, even though the elements between euthanasia and suicide are different, so euthanasia cannot be included in Article 345 of the Criminal Code.

Euthanasia, both active and passive are, carried out by medical personnel against a patient at the patient's wish (volunteers) or the wishes of the patient's family (involuntary), which is based on humanitarian reasons, still cannot be decriminalized unless there are regulations made to regulate this.

## VI. Suggestions

Suggestions in this study are to provide education to the public regarding the treatment of evidence and the crime scene so that it can change the disclosure of the case

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