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Health and law: Euthanasia in Indonesian legal perspective☆

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Abstract
Objective: The issue in health is dynamic and full of development, although the more sophisticated medical technology does not mean that all diseases can be cured. In certain cases the patient is dying and tortured. Patients and/or their families sometimes ask to be freed the patient from suffering by ending their lives. This demand for euthanasia is a pro and a contra view in Indonesia, especially in terms of legality.
Method: The type of research in this article is normative research, using a statutory and conceptual approach analyzed and presented descriptively.
Results: The euthanasia is a health act that has legal implications. Although the Criminal Code does not explicitly mention the word euthanasia, however, based on the provisions of the Criminal Code it is stated that taking action to eliminate lives should not be carried out, even if the patient's family wishes. According to the law, social, religious and ethical norms of doctors, euthanasia is not allowed.
Conclusion: The euthanasia in Indonesia cannot be carried out formally because the legal basis governing it still prohibits such actions. This can be seen from the court's decision to reject euthanasia requests. In addition, norms and values are a barrier to the legalization of euthanasia practices in Indonesia.

Introduction

The development of science and technology is also reaching advances in health services. The discoveries in the field of medical technology has proven that science and technology has transformed and grown rapidly.[1] One scientific development that has been very helpful and is directly related to issues of health and human lives is medical.[2]

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Medical technology is technology that is directly related to the life and death of humans. Human lives and human deaths are things that occupy a high level in any set of moral values, so every treatment for it will raise questions in terms of morals. This is the basis for the development of genetic engineering and bioethics or biotechnology as a field of science, which is now considered to be a separate discipline in the field of medicine.

In subsequent developments, with modern medical equipment, a patient's suffering and pain can be alleviated, to the extent that their lives can be extended for a certain time using certain medicines and equipment. But in reality, despite advanced technology in the field of medicine, there are a few patients whose severe suffering cannot be prevented. A patient suffering from a specific illness, that is difficult to heal, will experience extraordinary suffering.

This suffering will end when death comes. But death itself is an unpredictable mystery, because generally, no one can accurately predict when death will come.[3] Normal death is human desire. However, if there is a long period of suffering, it will cause the desire of humans to die sooner so that they do not suffer long. This death is what is referred in the medical field as euthanasia as the killing of patients with little hope of recovery. Euthanasia has existed since Ancient Greece. From Greece, Euthanasia recognized to several countries around the world, in Europe, America and Asia. Euthanasia is no longer considered murder but it has been legalized and regulated in Criminal Law.

For this reason, this article will discuss in detail the issue of euthanasia from an Indonesian legal perspective and would contribute to the development of jurisprudence especially in the development of health law in Indonesia.

Methods

The type of research in this article is normative research, using a statutory and conceptual approach[4] analyzed and presented descriptively.[5]

Discussion

Euthanasia in the Oxford English Dictionary is defined as ''the practice (illegal in most countries) of killing without pain a person who is suffering from a disease that cannot be cured''. Another popular term to describe this type of killing is *mercy killing*.[6] Meanwhile according to the Dorland Medical Dictionary, euthanasia has two definition. Firstly, an easy and painless death. Secondly, mercy killing; the deliberate ending of life of a person suffering from an incurable disease.[3]

Conceptually there are three known forms of euthanasia, yaitu:

1. Voluntary euthanasia (euthanasia done at the request of the patient themselves because the illness can no longer be cured and they can no longer bear the pain caused by the illness);
2. Non voluntary euthanasia (here someone else, not the patient, presupposes that, euthanasia is a choice that would be taken by the patient who is not conscious if the patient could have made a request);
3. Involuntary euthanasia (is the ending of a patient's life without their consent).[7]

The emergence of pros and cons around the issue of euthanasia has become a burden for legal experts. Clarity regarding the extent to which positive (criminal) law provides regulation on will assist the community in addressing these issues. Even more so amid cultural confusion because of the rise of pros and cons about its legality.

It should be noted that, that Indonesian positive law recognizes 2 forms of euthanasia, namely euthanasia requested by the patient and euthanasia done intentionally to omit the patient/victim as explicitly regulated in Indonesia Criminal Act (KUHP) Article 344 and 304. Article 344 KUHP states:

> *''Any person who takes the life of another person at his explicit and sincere desire, shall be punished by a maximum imprisonment of twelve years''*

Meanwhile Article 304 KUHP states:

> *''The person who deliberately brings or leaves someone, to whose sustenance, nursing or care he is obliged by virtue of the law applicable to him or by virtue of an agreement, in a helpless state, shall be punished by a maximum of two years and eight months or a maximum fine of three hundred rupiahs''*.[8]

From the text of this Article, it can be concluded that a person is not allowed to kill another person, even though the murder was carried out on the grounds of negligence and at the request of the person themself. Take the life ''of other people is difficult, in the context of Indonesian moral and humanitarian issues''. Moeljatno urge ''is not impossible the problem of taking the life of someone who is very pitiful or who needs to be helped or let their lives be taken at the request of the concerned party, would be difficult to avoid''.[9]

Starting from the provisions of Article 344 and Article 304 KUHP it was concluded, that murder which deliberately causes suffering and at the victim's request is still threatened by with a criminal punishment. Thus, in the context of positive law in Indonesia euthanasia is still considered a prohibited act.

There are also other provisions that can be used to ensnare euthanasia perpetrators, namely provision Article 356 subsection (3) KUHP which states ''A crime committed by administering any substance injurious to life or to healthy''.

In addition, it should also be noted that there are provisions Chapter XV KUHP specifically Article 304 and Article 306 subsection (2). The provisions of Article 304 KUHP states that:

> *''The person who deliberately brings or leaves someone, to whose sustenance, nursing or care he is obliged by virtue of the law applicable to him or by virtue of an agreement, in a helpless state, shall be punished by a maximum of two years and eight months or a maximum fine of three hundred rupiahs''*.

Meanwhile the provisions of Article 306 subsection (2) KUHP set out:

''If one of these facts result in death, he shall be punished by a maximum imprisonment of nine years''.

The last two provisions above affirm, that in the context of positive law in Indonesia, abandoning people who need help is also qualified as a criminal offense. From the history of the formation of KUHP it can be known that, that the legislators at the time (the Dutch East Indies era), also considers the human soul as their most valuable possession, compared to others, their own is the most valuable. Therefore, every act, regardless the motive and pattern so long as the act threatens the safety and security of the human soul, is considered a major crime by the state, and is always protected by the state. In this case, two interests may not be forgotten, namely the interests of society and of the individual being prosecuted.

The interests of the community, that someone has violated a rule of criminal law, must be get a punishment commensurate with their error, for the safety of society and the interests of the prosecuted, that they must be treated in such a way that an innocent person is not punished, or if they have committed a crime, they must not get a sentence that is too severe, one that is not equal to their mistake.[10]

The view of the forming of the Dutch East Indies Law apparently was still adhered to by the present-day New Order government. This is proven that in the KUHP, the safety and security of the human soul is still guaranteed with no changes whatsoever. It is a fact that up to now, regardless of religion, race color and ideology, the safety and security of the Indonesian human soul is guaranteed by law. This is also a reflection of the principle of equality before the law which of course must also be applied to the security and safety of the human soul.

The sentence ''at his explicit and sincere desire'' must receive attention, because this element will determine whether the person who committed it can be convicted based on Article 344 KUHP. So that this element is not misused, then in determining whether or not someone has committed murder out of pity, the element of an element of explicitness (*unitdrukkelijk*), and an element of sincerity (*ernstig*), must be proven both by witnesses and by other forms of evidence, as stated in Article 295 HIR.

The Article 344 KUHP as mentioned someone can be said to have fulfilled that Article, then public prosecutors must be able to prove that there is an element of ''own request stated with sincerity''.[11] With the rapid advancements in technique, especially in the field of medicine, the matter of ''taking lives'' or allowing people whose lives are taken by death, either at their own request because of a disease that is impossible to cure, or on the basis of humanity for not being able to see the person suffer, certainly cause various complications, including those involving not only medical ethics issues, or even more so concerning criminal law, which are related to the issue of Euthanasia or ''Mercy Killing''.

In this case Bruce Vediga in his writing ''*Euthanasia and the right to die, moral and legal perspective*'' revealed that the Euthanasia problem was not only an issue of semantics but also a matter of substance. In connection with this Euthanasia problem, then J.E, Sahetapy distinguishes Euthanasia into three types namely[12]:

1. Action to permit death to Occur
2. Failure to take action to prevent death
3. Positive action to course death

It can be explained that the first type of euthanasia, death occurs because the patient sincerely and quickly wants to die. In this case the patient is aware and knows that the disease they suffer from cannot be cured despite proper treatment and care. Therefore, that patient then asks the doctor that they no longer need to give the patient medicine to cure the illness. In this case, permission is granted through the patient's request. So the death of the patient occurs as if it was collaboration between the patient and the doctor who originally treated them. This type of euthanasia is called passive euthanasia (*Permission*).

Unlike the first type of Euthanasia, the second type of Euthanasia, death occurs due to negligence or the failure of a doctor in taking action to prevent death. This happens when the doctor should have taken steps to prevent death, but they not do anything, if provide treatment but is meaningless. For the second euthanasia, one party, the doctor treating the patient, conducts the action. The third type of euthanasia, is a positive action from the doctor to accelerate the occurrence of death. This involves active action (causation), a patient will immediately die peacefully, for example by giving an injection with a drug that causes death, a drug that removes awareness in high doses, and others.

Between the first and third types of Euthanasia, both are based on requests/pressures from the doctor from the patient or from his family. It's just that in the first type doctors are passive, while in the third type doctors are more active in taking action to accelerate the process of death. If related to the three types of euthanasia mentioned above, the formulation contained in Article 344 KUHP is in accordance with the third type of euthanasia, which is active euthanasia. But the problem now is whether Article 344 KUHP can be applied or used as a basis for prosecution by prosecutors. But when the Article was created by the colonial Dutch government, the medical world, is not as developed as it is now. Even the Article states clearly that ''Any person who takes the life of another person at his . . .desire'' in addition to the words ''explicit and earnest desire'' (*lopdiens uitdrukkelijk en ernsting verlange)*.

This formulation has caused difficulty in the verification process, because it can be imagined that the person who expressed their sincerity would have had passed away. Therefore, the sincere statement cannot be spoken verbally, preferably in written form and signed by witnesses so that in the process of proving it in court later, this statement can be used as evidence. On the other hand, for groups who agree with the existence euthanasia, accompanied by arguments that such actions must be done on the basis of humanity. They cannot bear to see the suffering experienced by their patients and have repeatedly asked the doctor to end their suffering. All of that type above as yet prohibited by Indonesia criminal law. The issue of euthanasia involves two rules, namely Article 338 and Article 344 KUHP. In this case there is what is referred to as concursus idealis, which is a system where more than one criminal act is committed which is included in several legal regulations. *Concursus ideals* is regulated under Article 63 KUHP, which states that:

1. If an act falls within more than one penal provision, only one of those provisions shall apply whereby, in case of difference, the most severe basic punishment shall be imposed.
2. If for an act that falls under a general penal provision there exists a special penal provision, only the special penal provision shall be considered.

Article 63 subsection (2) KUHP contains the principle of *Lex Specialis de rogat legi generali*, namely that specific rules will push or override general rules.

Conclusion

Euthanasia in Indonesia is still an unlawful act and prohibited to be carried out for humanitarian reasons. The euthanasia in Indonesia cannot be carried out formally because the legal basis governing it still prohibits such actions. This can be seen from the court's decision to reject euthanasia requests for a patient who had been in a coma for 4 months. In addition, norms and values are a barrier to the legalization of euthanasia practices in Indonesia.

Conflict of interest

The authors declare no conflict of interest.

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