

Analysis Of The Urgency Of Euthanasia Regulation In Indonesia

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Abstract

This study aims to discuss the urgency of regulating euthanasia in Indonesia. This study uses a type of normative legal research using research methods on laws and regulations, conceptual approaches and comparative legal approaches. The results of this study show that various arrangements for euthanasia in Indonesia are very embraced, to realize laws and regulations, not only in the field of criminal law, but also regulated in health law about euthanasia in accordance with the circumstances and situations that will occur in the future

Keywords: *Criminal law, Euthanasia, Justice theory*

INTRODUCTION

The State of Indonesia is a state of law as mentioned in article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). The affirmation in this constitution that the state of law has elements that there is a guarantee of human rights (ISOemantr, 1992). The guarantee of the importance of upholding human rights is contained in article 27 of the 1945 Constitution of the Republic of Indonesia which states that "every citizen has an equal position before the law and government without exception". As in article 28A of the 1945 Constitution of the Republic of Indonesia, namely "everyone has the right to live and has the right to defend their life and livelihood and article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely "everyone has the right to recognition, guarantee, protection and certainty of the law as well as equal treatment before the law."

Very basic rights are part of the supreme right, including the right to life that is inalienable from the birth of a human being and cannot be reduced under any circumstances (Amelia, 2019). These rights must be accompanied by obligations for every citizen. One of these commitments is to comply with all laws and regulations set by the government to ensure that the community lives prosperously in accordance with the limits of the regulations that have been set.

There is a right to life as a form of mutual respect between fellow human beings as creatures created by God and human values as a form of recognition of fellow human beings. Thus, fellow human beings are prohibited from taking the life of another person in any form. Life and death are the nature of every human being that cannot be avoided. Everyone will definitely experience death that should not be intervened by anyone and in any form.

An event that is certain but the time cannot be ascertained is called death. There are two philosophical views about death, namely, death is the final part of the human cycle and is the beginning of the next life. The differences in views on death each have different philosophical foundations. The first view explains that death begins with the gradual weakening of the body. Like experiencing the suffering of illness, and ending with the process of death. On the other hand, it is said that death is the beginning of another life, a better, more beautiful and eternal life. Therefore, there is no need to fear death, but rather face it calmly, peacefully, and sincerely (I Made Wahyu Chandra Satriani, 2020).

However, not everyone can face death calmly, peacefully and sincerely due to several reasons. First, because of attachment to things attached to one's body, such as valuables, wealth, power, and other worldly objects, that bind the mind of a person who is struggling with death. In addition to the attachment of these worldly objects, the disorder of diseases that are thought to be medically incurable and which causes immense pain is felt by a person who is facing death. The suffering of a person who is facing such a death, then causes a sense of emotion and pity for both the patient's immediate family and the medical community such as doctors, nurses and the hospital. Seeing such suffering, then the desire of the family to submit a request to the doctor or the party who is considered to have the authority to carry out the action is then called euthanasia (I Made Wahyu Chandra Satriani, 2020).

In the Great Dictionary of Indonesian (KBBI), euthanasia is the act of deliberately ending the life of a person "be it a person/animal" who suffers from serious illness or severe injury by means of a calm and easy death based on humanity. The opinion of euthanasia according to the Dutch Doctors Association Study, states that it is deliberately to commit an act that aims to prolong or shorten the life of a patient who is supposed to be for the needs of the patient (Supriadi, 2001).

Euthanasia was born from the view that a person has the *right to self-determination*, meaning that if everyone has the right to live, then everyone also has the right to determine a good death for him. From this view, it appears that euthanasia is the same as suicide, but there is a fundamental difference between euthanasia and suicide. Suicide is a death caused by oneself that is carried out with an element of intentionality, not due to accident or negligence. Meanwhile, euthanasia is carried out with the help of others, especially doctors to end suffering due to certain medical conditions (Yusuf, 2020).

It is inseparable from the so-called right of *self-determination* in patients. This right has become a key element of human rights and along with a new awareness of these rights. Likewise, various developments in science and technology, especially in the field of medicine, have resulted in dramatic changes in the understanding of euthanasia. However, uniquely, this rapid progress and development apparently was not followed by developments in the field of law and ethics. Medical law expert *Separovic* stated that the concept of death in today's medical world is faced with a contradiction between ethics, morals, and law on the one hand, and such advanced medical capabilities and technology on the other (P.Y, 2001).

The debate over one's right to determine a good death has been going on since ancient times. Based on history, the debate about euthanasia has been going on for a long time. For those who oppose euthanasia, the basis of the debate is whether a person has the right to determine his or her own death, because that right is contrary to religious, moral, and moral values that prohibit a person from committing suicide by any means. On the other hand, the opinion of those who support euthanasia is that when everyone has the right to live, then as a logical consequence of the existence of the right to life is the right to determine one's own death. Therefore determining one's own path to a good death is also a human right.

From the perspective of Indonesian criminal law, euthanasia is a prohibited or illegal act. The Criminal Code does not specifically regulate related to euthanasia which is included in the category of crimes against the body and life. This is based on the provisions in Article 344 of the Criminal Code. Article 344 of the Criminal Code is a provision that is currently still in force, the provisions of article 344 of the Criminal Code are as follows:

"Whoever takes the life of another person at the request of the person himself, which is clearly stated with sincerity, is threatened with imprisonment for a maximum of 12 (twelve) years."The same thing is also contained in the latest criminal law rules regulated in Law Number 1 of 2023 concerning the Criminal Code (Criminal Code Law) Article 461 of the Criminal Code Law is a criminal provision that will replace Article 344 of the Criminal Code and is valid for 3

(three) years since it was passed into law, as in article 461 of the Criminal Code Law which regulates active euthanasia, as follows:

"Every person who takes the life of another person at the request of his own person which is clearly stated with sincerity, shall be sentenced to imprisonment for a maximum of 9 (nine) years."

In addition, Article 345 of the Criminal Code and Article 362 of Law Number 1 of 2023 concerning the Criminal Code (Criminal Code Law) which regulates passive euthanasia. In the provisions in the Criminal Code, Indonesian criminal law recognizes two types of euthanasia, in general terms from the way it is done, euthanasia is divided into two groups, namely active euthanasia and passive euthanasia. Active euthanasia occurs if there are still signs of life in the patient when euthanasia is performed. The action referred to in this case is to accelerate the death of a person by giving injections or removing assistive devices used by patients. Meanwhile, passive euthanasia is an action taken at the request of both the patient himself and the patient's family to deliberately no longer provide the assistance of tools that can prolong the patient's life (Rada, 2013).

The arrangement of euthanasia in each country is very diverse, and often undergoes changes, along with the development of the times and the change of conditions and readiness of all parties. There is a debate around the world related to euthanasia from the legal aspect or the legal aspect of health. There are many parties who debate whether the legalization of euthanasia is included in the crime of murder. Over time, there are countries that have finally legalized the use of euthanasia with strict procedures, including the Netherlands, Luxembourg, Belgium, Switzerland, Germany, the United States and Japan (Sugama, 2023).

The rule of law is usually interpreted as a rule of life that determines how a human being should behave and behave in society so that his interests and the interests of others are protected. Rules are essentially the formulation of an objective view of attitudes that should or should not be done, which are prohibited or recommended to be carried out (Mertokusumo, 2010). Basically, the purpose of law is the protection of human interests which is used to realize protection to be responsible creatures in the form of norms or rules. To ensure that the law can run in accordance with legal and non-legal rules, it is necessary to have a coercive force on the application of the law and other social rules. In some ways, the law can be different from other social rules, that is, the arrangement of its provisions can be imposed in an orderly way.

Based on the background that has been explained above, the formulation of the problem that will be examined in this study is how urgent is the regulation of euthanasia in Indonesia.

RESEARCH METHODS

This research uses the normative legal research method, which is a scientific research method to find the truth based on the scientific logic of the normative system, by discussing doctrines or principles in legal science. The approach used in this research method is a legislative approach (consisting of the 1945 Constitution of the Republic of Indonesia (1945 NRI Constitution), Law Number 39 of 1999 concerning Human Rights, Criminal Code Criminal Code, Law Number 29 of 2004 concerning Medical Practice, Law No. 1 of 2023 concerning the Criminal Code, Law Number 17 of 2023 concerning Health, Universal Nation Declaration of Human Rights or Universal Declaration of Human Rights), a conceptual approach, which is based on views and doctrines developed in legal science, as well as a comparative approach to law is carried out by comparing the laws of one country with the laws of one or more other countries regarding the same matter.

RESULT AND DISCUSSION

Indonesia's Positive Laws Related to Euthanasia

The 1945 Constitution of the Republic of Indonesia and Human Rights

Law Number 39 of 1999 concerning Human Rights, divided into ten categories. The right to life in this law is regulated in Chapter II article 4, which states that the right to life is a right owned by every person and should not be deprived of part or all under any circumstances and by anyone, in Chapter III article 9 paragraph (1), which states that everyone has the right to live and maintain his life and in article 33 paragraph (2), which states that everyone is free from the fear of enforced disappearance and loss of life. If associated with euthanasia, this act of euthanasia is very contrary to article 4, article 9 paragraph (1), and article 33 paragraph (2) of Law Number 39 of 1999 concerning Human Rights. There are several articles in the 1945 Constitution of the Republic of Indonesia that regulate human rights and are related to euthanasia, namely article 28A, article 28G paragraph 2, and article 28I of the 1945 Constitution of the Republic of Indonesia

Criminal law

The implementation of euthanasia in criminal law must be considered if it is categorized as a criminal act. There is a distinction in categorization, whether the act of euthanasia is included in murder, persecution or even an act of neglect of the patient that results in death. If it is included in the punishment, it must be able to be separated whether it includes ordinary murder (article 388), murder with aggravation (339 of the Criminal Code) or premeditated murder (article 340 of the Criminal Code). Euthanasia can also be associated with article 344 of the Criminal Code regarding murder committed at the request of the victim, or article 345 of the Criminal Code as an aide to suicide. As persecution, it can be linked to article 351 of the Criminal Code (ordinary persecution), article 352 of the Criminal Code (persecution with the death of the victim) or article 353 of the Criminal Code (premeditated persecution).

The same thing is also contained in the latest criminal law rules regulated in Law Number 1 of 2023 concerning the Criminal Code (Criminal Code Law), article 461 of the Criminal Code Law (murder at the request of the victim) or article 462 of the Criminal Code Law (as an aid to suicide). There is a difference between the Criminal Code and the Criminal Code Law lies in the threat of punishment.

Health Law

The governing law is Law Number 17 of 2023 concerning Health. This law is organized based on the principles of humanity, balance, benefits, science, equity, ethics and professionalism, protection and safety, respect for rights and obligations, justice, and so on. In this law, there is no regulation on *euthanasia*. In article 60 of the Health Law, this regulates allowing abortion to be carried out with strict conditions based on the criteria set out in the Criminal Code, which is carried out by medical personnel who have competence and authority as well as the consent of pregnant women and the consent of their husbands, except for rape victims.

Medical practice

Regulations on the practice of medicine are regulated in Law Number 29 of 2009 concerning Medical Practice. In this law, there is no legal protection for patients and doctors in terms of euthanasia, forced discharge of patients is not yet in this law. There are principles and goals that state that medical practice is one of the principles of humanity. However, the issue of euthanasia is not mentioned even though there is a humanitarian basis.

The Universal Nation Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Civil and Political Rights.

Human rights arrangements around the world refer to the *Universal Nation Declaration of Human Rights* or the Universal Declaration of Human Rights (DUHAM). This arrangement regulates the existence of the right to life in *Article 3* of the Human Rights Act, that "*everyone has the right to life, liberty, and the security of person*". Everyone has the right to life, liberty, and personal security). The DUHAM is one of the ones that regulates human rights. The regulation of *the right to self-determination* is not specifically stipulated in the Human Rights Convention, but is specifically regulated in *the International Covenant on Civil and Political Rights (ICCPR)* or the International Covenant on Civil and Political Rights.

The fundamental rights of individuals to determine their own fate in the ICCPR which cannot be infringed upon, including the right to certainty which cannot be infringed upon by anyone, are contained in several articles, namely:

Article 1 "Everyone has the right to self-determination"

Article 9 "Everyone has his or her own security and security"

Article 17 "no one shall be harassed for the certainty or confidentiality of his correspondence"

Article 18 "Everyone has the right to freedom of voice and heart"

The right to determine one's own destiny is essentially a human right that includes certain basic rights such as the right of a patient to choose health services. If the patient chooses to euthanize, then it is the right to determine his own fate. In the aforementioned article, it provides clarity about what focuses on the right to freedom (*right to be free*) and its security (*right to be freedom*) for oneself which is used to support the act of euthanasia. When analyzed from human rights, euthanasia is said to violate the right to life, but seen from the other side it is also a person's right to determine his fate for all the events that occur in his life. The thought of asking for euthanasia by a patient is his right to ask for something about the circumstances that exist in him and his life.

Analysis of the Urgency of Euthanasia Regulation in Indonesia in the Future

The rule of law is usually interpreted as a rule of life that determines how a human being should behave and behave in society so that his interests and the interests of others are protected. Rules are essentially the formulation of an objective view of attitudes that should or should not be done, which are prohibited or recommended to be carried out (Mertokusumo, 2010). Basically, the purpose of law is the protection of human interests which is used to realize protection to be responsible creatures in the form of norms or rules. The purpose of the law is none other than public order, where human interests are protected, then the state of society will be orderly. The rule of law is tasked with trying to balance the order in society and legal certainty so that the goal of law can be achieved, namely public order (Mertokusumo, 2010).

To achieve order in this society, it is necessary to have certainty in the association between people in society. Without the certainty of law and order in society, it is impossible for man to develop the talents and abilities given to him optimally in the society in which he lives (Kusumaatmadja, 2006), there is certainty in realizing this order, so that he is able to realize justice in social life.

To realize justice is inseparable from the function of law. In essence, the function of the law is to protect the interests of humans or groups of people. To realize the purpose and function of the law in society, the human being is judged by other human beings in his actions or behavior. Guidelines, benchmarks or measures to assess human actions or behaviors are in the form of rules or norms. Judgment of good or bad human actions or behavior is called morality. While ethics is a science that investigates morality which is a science whose object is morality (Komalawati, 1989). In social life, it does not mean that the association between people in society is only regulated by law, because human life in society is not only guided by human morality

itself, but also regulated by religion, moral principles, politeness, customs and other social rules. Between these laws and other social rules, there is a close relationship between each other.

To ensure that the law can run in accordance with legal and non-legal rules, it is necessary to have a coercive force on the application of the law and other social rules. In some ways, the law can be different from other social rules, that is, the arrangement of its provisions can be imposed in an orderly way. This means that coercion to ensure the arrangement of legal provisions itself is subject to certain rules, both regarding the form, method, and implementation of them. This can be seen in a country, coercion is usually in the hands of the state with its equipment. The enforcement of the law requires coercion in its structuring, and the law requires power for its enforcement. The power must be limited by the law, because the law without power is wishful thinking, while the power without law is cruelty (Paulus P.K.P, 2013).

In the sociology of law there is a concept that society is moving, and moving much faster than law, which means that there is a possibility that each part of the law needs to be re-examined to determine whether there is still a suitability in society. There is a conception that the law is always flowing, the law is always moving, this shows that it is society that gives birth to law and not law that gives birth to society. According to W.J. Van der Meulen SJ, the world is bound by this matter, everything is always changing, changing, moving. The movement is continuous, meaning that each movement is born and determined by several previous movements (SJ, 1987). This shows that the law moves to follow the developments in society. The measure of good or bad an action in society can change along with the development of science and technology, especially information technology which will continue to affect according to the times (Sutarno, 2014). In Indonesia, after the end of the New Order government, efforts to reform the law have resulted in a wide space, obtaining supporting facilities such as press freedom, pulpit facilities that are already available (Trisasongko, 2004). Likewise with the law related to euthanasia, which should follow the developments in society.

Likewise with the law related to euthanasia, which is lagging behind the community when looking at developments in the field of health science and technology, the development of health law or medical law itself is very fast occurring in Indonesia. Implementing the politics of criminal law *euthanasia* means that there is an effort to realize criminal laws and regulations on *euthanasia* in accordance with the circumstances and situations that will occur in the future. The making of laws and regulations is a very important political and social process that will have a wide influence with the aim of shaping and regulating society.

One of the theories that can be used as a reference to make a law is the theory of justice by John Rawls. In his book entitled *A theory of justice*, there are 2 principles of justice, namely the principle of equal freedom and the principle of inequality, while the 4 interpretations proposed are natural freedom, free equality, natural aristocracy, and democratic equality. Although John Rawls' theory is related to socio-economics and politics, when it is connected to the issue of euthanasia is very relevant, because John Rawls' theory is derived from John Lock's theory (individual rights), Rousseau's theory (social contract) and Immanuel Kant's theory (emphasis on ethics). John Rawls in his theory of justice intended as a correction to previous theories of justice which according to him were greatly influenced by utilitarianism.

According to Siedman, in the theory of how the law works, legislators pay attention to what is happening in society and can then make regulations that function to regulate. In addition, according to Fredman, in making regulations on euthanasia, it is also necessary to pay attention to 3 things in the legal system, namely the substance, structure and legal culture.

According to F. Tengker, community traffic is not only controlled by legal rules, but also by a diversity of rules, which can be covered by the designation of moral rules and manners. Obeying these rules essentially has sanctions, both negative and positive for deviant or following behavior.

If you look at the criminal law, if euthanasia will be regulated in positive law in Indonesia, then the most likely regulation is not included in the Criminal Code, but is regulated separately which can be called a criminal act outside the Criminal Code or can also be called a special criminal act. According to M. Sudrajat Basar, special crimes are criminal acts contained in several laws and regulations made by the government, because they have not been regulated in the Criminal Code. Criminal acts outside the Criminal Code, which Wirjono Prodjodikoro argues, in principle, must be included in the Criminal Code, however, this is only done if the new criminal act has a qualitative relationship with the types of criminal acts in the Criminal Code.

In addition to discussing the regulation of euthanasia in criminal law, laws and regulations in the field of health and hospitals must be considered, considering that there is no regulation that specifically regulates euthanasia, even though the 1945 Constitution has adopted many human rights in its opening, the word humanity still remains as the spirit of one of the provisions of this constitution. Patients and health workers in matters related to euthanasia Regulations on euthanasia can be enforced with strict requirements, with the aim of providing protection to patients and health workers, by paying attention to the principles of good governance such as the principle of legal certainty, balance, careful action, the principle of justice, the principle of responding to reasonable expectations, the protection of the outlook on life, and the principle of wisdom.

CONCLUSION

In addition to discussing the regulation of euthanasia in criminal law, laws and regulations in the field of health and hospitals must be considered, considering that there is no regulation that specifically regulates euthanasia, even though the 1945 Constitution has adopted many human rights in its opening, the word humanity still remains as the spirit of one of the provisions of this constitution. patients and health workers in matters related to euthanasia. If you look at the criminal law, if euthanasia will be regulated in positive law in Indonesia, then the most likely regulation is not included in the Criminal Code, but is regulated separately which can be called a criminal act outside the Criminal Code or can also be called a special criminal act. Arrangements on euthanasia can be enforced with strict requirements, by paying attention to the principles of good governance such as the principle of legal certainty, balance, careful action, the principle of justice, the principle of responding to reasonable expectations, the principle of protecting the outlook on life, and the principle of wisdom

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