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Formulation Policy of Euthanasia Criminal Action in the Indonesian Criminal Law System

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Abstract

Introduction: Euthanasia is considered to be contradictory to the 1945 Constitution of the Republic of Indonesia, which is contained in Chapter XA, second amendment about human rights which are concerning about the right to live and the right to be protected. There are no specific laws and regulations which regulate Euthanasia in Indonesia; therefore, it is important to research the laws and regulations that have to possibility to regulate Euthanasia, especially in the Indonesian criminal law system at present time.

Purpose of Research: This research aims to acknowledge and analyze the Euthanasia criminal action formulation policy in the criminal law system at present time.

Research Methodology: This research is a normative juridical legal research with a statute approach.

Discussion: The practice of Euthanasia is prohibited by Article 344 of the Criminal Code; therefore, the regulations must be based on the court order, either the active Euthanasia which is stated real and sincere by the victim or the passive Euthanasia which is stated by other parties other than the victim.

Keywords: Formulation Policy; Criminal act; Euthanasia.

Introduction

Euthanasia is considered to be contradictory to the 1945 Constitution of the Republic of Indonesia, which is contained in Chapter XA, second amendment about human rights which give clarification and regulations that state every human being has the right to live and the right to be protected. Article 28A in the second amendment which states that “everyone has the right to life and the right to defend their life”, declares clearly that everyone has the right to live and to defend their life. In Article 28I paragraph (1) the second amendment emphasizes that “the right to life cannot be reduced into any form, and the right to live is also stated and regulated in Article 28J paragraph (1) in the second amendment

which states that “everyone is obliged to respect the human rights of others in an orderly society, nation and state, including the right to life”¹.

Currently, the regulation concerning active euthanasia crime is regulated in Article 344 of the Criminal Code which is the act of taking the life of another person at their request which is expressed with sincerity². Article 11 Decree of the Executive Board of the Indonesian Doctors Association Number 111/PB/A.4/02/2013 concerning the Application of the Indonesian Medical Code of Ethics³, the Executive Board of the Indonesian Medical Association explained that every doctor is obliged to remember their obligation to protect other human beings’ lives because the doctor’s obligations are explained as the principle of “Aegrotisalus lex suprema”, which means patient’s safety is the highest or main law and the principle of “Sa science et sa conscience” also applies, which is science and conscience⁴.

Law Number 36 of 2009 concerning Health does not explain Euthanasia, however it explains the definition

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of death which is stated in Article 17 concerning the definition of death, which states that a person is declared dead when the function of the heart and respiratory system has stopped or the brain stem dies⁵.

Based on these facts, Indonesia has not had the regulations concerning passive euthanasia crime. However, Indonesia is only using articles in the Criminal Code as a reference for the punishment of the perpetrators of the crime of euthanasia.

Several countries in the world have legalized the crime of euthanasia, such as the Netherlands, Belgium, and Switzerland, based on the laws of these countries humans have the right to terminate their life or the right to die⁶. However, in Indonesia, this act is prohibited due to several considerations, namely that it is not under the formulation of articles in the Criminal Code and the declare of the Indonesian Medical Oath. Therefore, it is important to research euthanasia crime formulation policies in the Indonesian criminal law system.

Based on the previous background, therefore the purpose of this research is to acknowledge and analyze the Euthanasia criminal action formulation policy in the criminal law system at present time.

Research Methodology

This research is a normative juridical legal research with a statute approach because it is conducted to examine all the laws and regulations⁷ relevant to the legal issues being handled, which in this case is the issue of Euthanasia based on the policy formulation of criminal law in Indonesia at this time.

Discussion

Terminologically, the word Euthanasia comes from the Greek language, which is from the word "eu" which means good without suffering, and "Thanatos" which means death. Etymologically, euthanasia can be defined as "good death", meanwhile "ethanatos"(adjective) means dead with ease⁸. Euthanasia is broadly defined as the practice of accelerating one's death who is in pain and suffering that cannot be healed⁹.

In medieval times, it was emphasized that euthanasia was a painless death. At the beginning of the 20th century, euthanasia was under the influence of Nationalist-Socialist politics where euthanasia could be used as a legalized act of killing people who were considered unworthy of life. In its development,

currently, the definition of euthanasia is narrowed down, where the euthanasia action can only be carried out by a doctor on the willingness of the patient concerned¹⁰.

There are currently no new and complete regulations in Indonesia regarding this euthanasia. However, because the issue of Euthanasia concerns the safety of human life, it is necessary to look for a regulation or article which is at least relevant to the elements contained in the practice of Euthanasia.

The practice of euthanasia is prohibited by Article 344 of the Criminal Code; therefore, the regulations must be based on the court order, either the active Euthanasia which is stated real and sincere by the victim or the passive Euthanasia which is stated by other parties other than the victim. In Article 344 of the Criminal Code, it only regulates active Euthanasia, which is the victim declares in a real and sincere manner to accelerate the death of the victim and without force from any party. As it is formulated as follows: "whoever takes the life of another person at his request, which is clearly stated with sincerity, shall be punished with a maximum imprisonment of 12 (twelve) years".

And the elements are as follows: the first is whoever. The formulation of offense in regulations usually begins with the words "whoever is", the word "whoever" cannot be interpreted other than "a person". The element "whoever" is subjected to anyone who is the legal subject to whom that person can be accountable for the committed act. According to Sudikno Mertokusumo¹¹: A legal subject (Subjectum Juris) is anything that can obtain, have or bear rights and obligations from the law, which consists of persons (Natuurlijkeperson): Legal entity (Rechtperson); People in the conditions of punishment must be in the elements of a criminal act (strafbaarfeit), namely being able to take responsibility and the existence of mistakes (culpa); Article 344 of the Criminal Code as stated above explains that "whoever" is a person who commits a criminal act, however Article 344 of the Criminal Code does not explain that a doctor or medical officer has committed the crime of euthanasia.

The second element is taking other people's lives, is an objective element, namely the act of a person is the connecting point and basis of giving punishment. These actions include doing and not doing, the act of taking someone else's life must cause the death of a person, a dead person is someone else and not himself. The act of taking someone else's life must fulfill the subjective

element of strafbaarfeit, that is, the action must be done wrongly. Death does not always occur immediately, but it may occur later. According to Article 117 of Law Number 36 of 2009 concerning Health, a person is declared dead if the function of the circulatory heart system and respiratory system is proven to have stopped permanently, or if the death of the brain stem has been proven.

The third element is the person's intentional sincere request. Their request element is a request made by someone without forces from other parties aimed to make the perpetrator convinced to quickly do the practice that can finish their life. Sincerity here means that the request is continuously made by the victim by showing their intentions to convince the perpetrator. To decide that Euthanasia is a convictable practice, it must be proved to have material unlawfulness, which means not only contradicting to the applicable legislation but also contradicting to the customs. The practice of Euthanasia is highly disapproved by moral teachings as well as religion because it is only God who can decide whether someone should be alive or dead, not another man, even a doctor. The real motive of Euthanasia is "the feeling of giving up". It is a disgraceful practice and it is prohibited by religious teachings, moreover if the feeling of giving up is expressed in a form of an action that may harm someone's security and life.

The existence of the person's request that is showed sincerely (Active Euthanasia) element is also found in the form of voluntary Euthanasia, therefore this type of Euthanasia can also be reached by Article 344 of the Criminal Code. The subject matter of Euthanasia, especially the active form, can also be related to suicide which is related to Article 346 of the Criminal Code, that is: "Any person who with deliberate intent instigates another to commit suicide, aids him thereby or provides him with the means thereto, shall, if the suicide ensues, be punished by a maximum imprisonment of four years."

Article 345 of the Criminal Code implies meaning that even though not practicing active Euthanasia which according to most people is murder, helping or providing with the means towards it is going to be criminalized. The word 'aids' or 'provides ... with the means' can be related to the intention to get Euthanasia. A patient or their family must be clueless about the ways to get rid of their sufferings. Medical and other health care workers know more about it if it is related to Euthanasia. In a condition where a patient's health condition is becoming

worse, a doctor will advise the patient's family. The family chooses to take Euthanasia to solve the problem. The doctor agrees to the patient's family's request. What is done by the health care workers can be considered as a practice that 'aids' or 'provides ... with the means'. This regulation should be recognized by medical and health care workers because even though there are many reasons to help a patient in suffering, they are still going to face criminalization because of it.

Article 338 of the Criminal Code stated that "The person who with deliberate intent takes the life of another person, shall, being guilty of manslaughter, be punished by a maximum imprisonment of fifteen years." Also, Article 340 of the Criminal Code stated that "The person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished by capital punishment of life imprisonment or a maximum imprisonment of twenty years."

The main purpose of Euthanasia is to help to get rid of or to stop the suffering which according to the perpetrator there is no other way besides death. Knowing the purpose behind an action is very important, remembering the articles in the Criminal Code related to violence regarding wealth and life, mainly about abuse should be looked by the purpose of them. Even though a person is hurting others, if the real purpose is not to abuse them but for a good purpose such as when a doctor is taking a surgery for the patient or a teacher hits their students to educate them, it is not considered to be unlawful. Euthanasia in hospitals is clearly planned and it must have been through thorough consideration, and perhaps the person considering Euthanasia has been through some discussions with their friends.

In indirect active Euthanasia, a doctor whose main purpose is to relieve the patient's suffering by injecting analgesic at high doses must already know that the high dose will kill the patient. This kind of Euthanasia is not an error, but rather an intention, remembering there are three types of intention: intention with purpose, intention with certain awareness, and legal intent.

Elisabeth Kubler-Ross in her book *Questions and Answers on Death and Dying*¹² stated that some patients tend to commit suicide when facing the reality of dying. For these patients, if the nurse or the doctor gives them advice or suggestions leading to Euthanasia, they will tend to agree. In this case, health care workers are considered to help them commit suicide. Therefore, this

case applies ⁴ Article 304 of the Criminal Code, which stated that “The person who deliberately brings or leaves someone, to whose sustenance, nursing or care he is obliged by the law applicable to him or under an agreement, in a helpless state, shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of four thousand and five hundred rupiahs.”

The practice of passive Euthanasia can also be linked to this article, even for the case of when a very ill patient is forced to go home, which then is allowed by the doctor or usually called pseudo Euthanasia¹³. In this circumstance, the health care workers will say that they are respecting the patient’s rights, when in fact the one who knows more about the effect of the patient being sent home is the doctor. This condition can be relieved by doing at-home treatment. If this happens, it will be considered as passive Euthanasia or pseudo-Euthanasia and it means the patient is being left alone without care until the patient dies. This case will be charged with Article 304 of the Criminal Code, meanwhile for the case regarding the violation of someone in need of help will be charged with Article 531 of the Criminal Code stating “Any person who, witnessing the immediate danger of life that befalls another, fails to extend or provide the assistance which he is capable to extend or provide to him ³ without reasonable danger for himself or another, shall be punished by a maximum light imprisonment of three months or a maximum fine of Rp 4.500”. If the death of the destitute person follows, charged with the Criminal Code 45, 165, 187, 304s, 478, 525, 566.

According to HermienHadiatiKoeswadji, in the conclusion of his writing about Hospital Ethics and Laws for Hospital, law source for health and/or medical law is taken from written regulations, unwritten customs, permanent court judgments, and science doctrines or teachings¹⁴. A legal practitioner will face difficulty in analyzing law sources from medical science; therefore it is better if the legal practitioner is accompanied by a doctor in facing the work. For Euthanasia or malpractice by a doctor in Indonesia, it is not enough to regulate it based only on the Criminal Code, but many legal considerations are taken from science doctrines or teachings, including medical science.

Conclusion

Formulation policy of Euthanasia criminal action in the current Indonesian criminal law system is that the

practice of Euthanasia is prohibited by Article 344 of the Criminal Code; therefore, the regulations must be based on the court order, either the active Euthanasia which is stated real and sincere by the victim or the passive Euthanasia which is stated by other parties other than the victim. Article 345 of the Criminal Code implies meaning that even though not practicing active Euthanasia which according to most people is murder, helping or providing with the means towards it is going to be criminalized. Regarding health care workers that are considered helping the patient to commit suicide will be charged with Article 304 of the Criminal Code, meanwhile, the case regarding the violation of someone in need of help will be charged with Article 531 of the Criminal Code.

Ethical Clearance: Yes.

Conflict of Interest: No

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