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REGULATIONS FOR IMPLEMENTING PASSIVE EUTHANASIA IN THE TERMINAL STAGE PATIENTS (END OF LIFE) WHICH IS IN ACCORDANCE WITH JUSTICE AND LEGAL CERTAINTY IN INDONESIA

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ABSTRACT

Euthanasia is an act of intentionally not doing something aimed at prolonging someone's life or intentionally doing something to shorten or also end the life of a patient which is carried out to hasten his death, while enabling a good death without unnecessary suffering. Thus, in practice, in a terminal condition, a doctor may or may not perform an act that may result in the death of a patient in accordance with the written request of the patient/family. This dilemmatic condition requires legal certainty in order to uphold justice and humanity as well as legal protection. The problems are 1) How is passive euthanasia applied for terminal patients? 2) How is legal certainty in the application of euthanasia in Indonesia? 3) How is the implementation of euthanasia that meets the community's sense of justice? To answer these problems, a research using normative juridical methods is needed through primary data collection in the form of empirical data from interviews and filling out questionnaires about knowledge and level of agreement on euthanasia. Secondary data in the form of research on primary, secondary and tertiary legal materials. 8The results of the study show that the implementation of regulations in the Act and Ministerial Regulations that lead to the implementation of euthanasia has so far been applied, especially to terminal patients. However, the legal certainty of the act has not been clearly described because there are rules that are not in line. Euthanasia cannot be equated with ordinary homicide. To fulfill justice and humanity as well as legal protection, euthanasia regulations are needed in a harmonious positive law

KEYWORDS *euthanasia, informed consent, withdrawing/withholding life support, humanity, legal certainty, legal protection*

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INTRODUCTION

Life is a gift from God Almighty that should be grateful for. In Indonesia the right to life is constitutionally guaranteed in the 1945 Constitution of the Republic of Indonesia, Article 28A paragraph (1), which states that "Everyone has the right to live and defend his life and existence". In addition, the law guaranteeing the right to life is contained in Law Number 39 of 1999 concerning Human Rights, Article 9:

(1) Everyone has the right to life, to maintain life and to improve their standard of living.

(2) Everyone has the right to live in peace, security, peace, happiness, physical and spiritual prosperity.

(3) Everyone has the right to a good and healthy environment.

New discoveries in the field of medicine and pharmacy include the discovery of drugs that are considered effective and sophisticated medical equipment that allows a patient's life to be longer for a certain time. But death itself for humans is a mystery and is a divine secret, where one cannot be sure when death will come.

` In patients who experience suffering and have little chance of being cured, they often experience despair which encourages them to end their suffering by accelerating the process of their death, which is referred to as 'euthanasia'. Euthanasia is generally done out of compassion, not having the heart to see unbearable suffering (Vaibhav, 2008). Patient mortality relatively being "good".

As early as the seventeenth century, Francis Bacon described the phenomenon of euthanasia. Broadly speaking, there are 2 (two) types of euthanasia, namely active euthanasia and passive euthanasia. Active euthanasia refers to intentional acts, for example by administration of lethal drugs. While passive euthanasia refers to reducing or withdrawing the treatment needed to maintain life (Annadurai et al., 2014).

In the modern medical world, it still requires ethical, moral and legal demands in its implementation. Several countries that have passed laws that allow voluntary euthanasia include the Netherlands, Belgium, Luxembourg, Canada and Columbia.

Active euthanasia actually occurs in Indonesia, in the context of a doctor having to choose between saving a mother and her baby to be born, when it is known that the process of giving birth to a baby will result in the death of the mother. Usually in this case the choice is to save the mother's life by killing the baby's life. While active euthanasia of adults has never been heard of being carried out in Indonesia (Kartono, 1992). Medical ethics is still debating between pro-life and pro-choice groups in determining death. Life support has the consideration that people who experience pain, however severe, still have the right to live. There is debate about euthanasia in Indonesia, due to various perspectives on euthanasia. There are some parties who think that euthanasia is a murder that is prohibited by positive law or religion. In terms of Indonesian Criminal Law, murder is defined as "an act that results in the death of another person". This formulation comes from Article 338 of the Criminal Code which reads: "Whoever deliberately takes the lives of other people, is punished, for ordinary murder with a maximum prison sentence of fifteen

years". Similarly, religion prohibits intentional killing as a form of killing people. While other parties argue that euthanasia is contrary to human rights, namely the right to life of a patient that must be protected.

Requests from patients and/or their families who refuse not to take medical action can be categorized as a form of passive euthanasia. To this problem doctors find it difficult to react. On the one hand, they have the obligation to provide medical services according to patient needs as stipulated in Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2009 concerning Health, and Law Number 44 of 2009 concerning Hospitals. Based on these regulations, doctors should not be allowed to stop services for returning patients because it can accelerate their death. If approved, this is a violation of the law with quite severe sanctions. On the other hand, patients have the right to refuse medical treatment which has also been regulated and guaranteed in the applicable laws and regulations. This should also be appreciated by doctors and other health workers.

The culture that is inherent in the Indonesian nation is the national values contained in Pancasila, namely the values of religiosity, family values, harmony values, social values and justice values. Based on these values, in Indonesia there is a paradigm or understanding that it is better for patients to die safely at home. In this way, the family can gather and pray for the patient based on their religion and belief until the patient dies. Because there are local customs that believe that according to the patient's family it is better to die at home. In this condition, doctors can't do anything. Especially if the character of the people is very hard. Family requests that are rejected can result in doctors and other health workers becoming victims of physical violence due to the emotional consequences of the patient's family. It's just that society in general thinks that this is not a form of passive euthanasia. Thus, in the end, the doctors used their own understanding in addressing this problem.

A. Problem Formulations

Based on the background above, the research problems are arranged as follows:

1. How is passive euthanasia implemented for patients in terminal stages?
2. What is legal certainty in implementing euthanasia in Indonesia?
3. How is the implementation of euthanasia fulfilling a sense of justice based on Pancasila values in society?

B. Theoretical Framework

1. Euthanasia Theory

Etymologically, the word euthanasia comes from the Greek words, 'Eu' (good) and 'Thanatos' (death) and means "good death", "gentle and easy death". every country in the world. In essence, euthanasia is the act of intentionally ending someone's life to relieve pain and suffering (Brenna, 2021).

The Euthanasia Society of America was founded in 1938 and according to the Center for Health Ethics, School of Medicine, University of Missouri, in practice there are several types of euthanasia with different versions, including: (Van De Walle & Kuby, 2022)

a) Active euthanasia: killing the patient by means of an active, for example, injecting the patient with a lethal dose of a drug. Sometimes called "aggressive" euthanasia.
b) Passive euthanasia: deliberately letting a patient die by withholding artificial life support such as a ventilator or feeding tube. Some ethicists distinguish between withholding life support and withdrawing life support (the patient was on life support but was later removed from it).
c) Voluntary euthanasia: with the consent of the patient.
d) Involuntary euthanasia: without the patient's consent, for example, if the patient is unconscious and his wishes are not known. Some ethicists distinguish between "involuntary" (against the patient's wishes) and "involuntary" forms (without the patient's consent but unknown will).
e) Self-administered euthanasia: the patient arranges the manner of death.
f) Euthanasia performed by another person (other-administered euthanasia): a person other than the patient who arranges the manner of death.
g) Assisted euthanasia: the patient manages the manner of death but with the help of another person, such as a doctor.

While Kartono Muhammad divides euthanasia into 4 (four) groups, namely:

a) Passive euthanasia, the act of accelerating death, namely refusing to provide ordinary assistance, or stopping ongoing assistance.
b) Active euthanasia, by actively carrying out actions that result in death, either directly or indirectly.
c) Voluntary euthanasia, actions to hasten death carried out at the patient's consent or request. Conversely, involuntary euthanasia is carried out without the patient's request or consent, often also called mercy killing.
d) Nonvoluntary euthanasia, actions to hasten death are carried out according to the will of the patient conveyed by or through a third party, or at the discretion of the government.

2. Theory of Justice

Justice comes from the word fair, according to the Indonesian Dictionary fair is an adjective (action, treatment, and so on) that is fair: he only defends his rights and ~; The government creates ~ for the community not arbitrarily, impartially, not one-sided. Fair especially means that decisions and actions are based on objective norms. Justice is basically a relative concept, everyone is not the same, fair according to one is not necessarily fair to the other, when someone asserts that he is doing justice, it must be relevant to public order where a scale of justice is recognized. The scale of justice varies greatly from one place to another, each scale is defined and fully determined by society according to the public order of that society (Santoso, 2012).

Law is very closely related to justice, even law must be combined with justice, so that it really means as law, because the purpose of law is to achieve a sense of justice in society. In the concept of a rule of law, law is the main pillar in administering the state and guaranteeing the protection of people's rights. To achieve this, synchronization is needed between existing norms, or

institutions that implement or enforce the law and people's attitudes in responding to the law. In Lawrence Meir Friedman's view it is said to be a legal system consisting of: (Friedman, 2009)

1) Legal Structure; which concerns institutions rather than law, the institutional body of the system.
2) Legal Substance; composed of rules and regulations regarding how these institutions should behave.
3) Legal Culture; concerning the elements of social attitudes and values.

The most important goal of law enforcement is to guarantee justice without neglecting aspects of the benefits and legal certainty for the community. Gustav Radbruch (1878-1949) called justice, benefit and legal certainty as the pillars of law enforcement. All three are needed to arrive at an adequate understanding and implementation of law. Specifically, the aim of justice or finality is to emphasize and determine the contents of the law, because the contents of the law are in accordance with the objectives to be achieved. However, Satjipto Rahardjo reminded that the problem of legal certainty is not merely a matter of law, but rather a matter of human behavior. Legal certainty has become a big problem since the law was written. Before that, for thousands of years, when we talk about law, we talk more about justice (Sumirat, 2020).

3. Theory of Legal Certainty

Three elements of legal goals or ideals that must exist proportionally, namely legal certainty (rechtssicherkeit), justice (gerechtigkeit), and expediency (zweckmasigkeit). If it is associated with law enforcement theory as conveyed by Gustav Radbruch in *idee des recht*, namely law enforcement must fulfill these three principles (Wantu, 2007).

In fact, the existence of the principle of legal certainty is interpreted as a situation in which the law is certain because there is concrete power for the law in question. The existence of the principle of legal certainty is a form of protection for justice (seekers of justice) against arbitrary actions, which means that a person will and can obtain something that is expected in certain circumstances (Mertokusumo, 2007). This statement is in line with what Van Apeldoorn said that legal certainty has two aspects, namely the ability to determine the law in concrete matters and legal security. This means that the party seeking justice wants to know what is the law before starting a case and protection (Julyano & Sulistyawan, 2019).

Gustav Radbruch conveyed 4 (four) fundamental questions about the importance of legal certainty, namely: First, this law is positive, meaning that positive law is statutory regulations. Second, this law is factual, meaning that it is based on reality. Third, facts must be clearly stated to avoid useful misunderstandings, and also easy to apply. Fourth, positive law should not be easily changed.

The opinion of Gustav Radbruch considers that legal certainty is certainty about the law itself. Legal certainty is a legal product, positive law that regulates the interests of people in society must always be considered, even if positive law is unfair.

4. Criminal Law Theory

The term "criminal law" began to be used during the Japanese occupation to mean *strafrecht* from Dutch, and to distinguish it from the term "civil law" to mean *burgerlijk recht* or *privaatrecht* from Dutch (Prodjodikoro, 1984).

According to W.L.G Lemaire, criminal law consists of norms that contain what may and may not be done, to which (by the legislature) criminal sanctions are affixed, namely special suffering (Lamintang, 2014).

The principle of legality is a very central principle of criminal law, the main objective of which is to achieve legal certainty in its application and to prevent the arbitrariness of officials. In contrast to other legal principles which are abstract in nature, the principle of legality is even expressly formulated in criminal law. In general, legal principles are abstract in nature and instead form the background for the formation of concrete rules which are included as articles in statutory regulations. The principle of legality in Indonesia is explicitly stated in Article 1 paragraph (1) of the Criminal Code: "No act may be punished, except for the strength of the criminal provisions in the law that existed before that act", in Latin: "*nullum delictum, nulla poena , sine praevia lege poenali"*

The definition of a crime in the Criminal Code (KUHP) is known as "*strafbaar feit*" and in the criminal law literature often uses the term delict, while legislators in formulating a law use the term criminal act or criminal act or criminal act (Wahyuni, 2017). Whereas etymologically the origin of the word crime is "strafbaar feit", which according to Simons means behavior (handeling) which is punishable by crime, which is against the law, which is related to mistakes and which is carried out by people who are capable of being responsible. An act that is punishable by criminal sanctions and/or acts by laws and regulations that are against the law or contrary to the laws that live in society so that it is referred to as a crime. Every criminal act is always against the law, unless there is justification (Chazawi, 2011).

5. Human Rights Theory

The definition of human rights according to the United Nations (United Nations) is: rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or other status. Human rights include the right to life and freedom, freedom from slavery and torture, freedom of opinion and expression, right to work and education, and many more. Everyone is entitled to these rights, without discrimination

Meanwhile, according to the United Nations Children's Fund or UNICEF human rights are: standards that recognize and protect the dignity of all human beings. Human rights govern how individual human beings live in society and with each other, as well as their relationship with the state and the obligations that the state has towards them. Human rights law obliges governments to do some things, and prevents them from doing others. Individuals also have a responsibility: in exercising their human rights, they

must respect the rights of others. No government, group or individual has the right to do anything that violates the rights of others.

The Iceland Human Rights Center states that the characteristics of human rights differ from other rights in two respects:

First, human rights are characterized:

a) Inherent to all human beings based on humanity.
b) Cannot be revoked (inalienable) within the legal limits that meet the requirements.
c) The same applies to all (equally).

Second, the main duties deriving from human rights rest with the state and its authorities or agents, not with individuals. One important implication of this characteristic is that human rights themselves must be protected by law (the rule of law). Any dispute about human rights must be brought to trial by a competent, impartial and independent court, employing procedures that ensure full equality and justice for all parties. Human rights in this category are 'fundamental freedoms'. Since human rights are seen as a prerequisite for leading a dignified human existence, they serve as a guide and touchstone for legislation.

6. Theory of informed consent

Informed Consent consists of two words, namely "informed" which means information or information and "consent" which means approval or giving permission. so the notion of Informed Consent is an agreement given after receiving information. Thus Informed Consent can be defined as a patient's statement or a legitimate representative of it whose content is in the form of approval of a medical action plan submitted by a doctor after receiving sufficient information to be able to make an approval or refusal.

According to Permenkes no 290/MenKes/Per/III/2008 and Law no 29 of 2004 Article 45 and the 2008 KKI Medical Action Approval Manual. Informed consent is approval for medical action given by the patient or his/her next of kin after receiving a complete explanation regarding the procedure. medicine to be performed on the patient. According to the Appendix of SKB IDI No.319/P/BA./88 and Permenkes no 585/MenKes/Per/IX/1989 concerning Approval of Medical Actions Article 4 paragraph 2 states that in providing information to patients/families, the presence of a nurse/other paramedic as witness is important. The agreement signed by the patient or his closest family does not release the doctor from criminal charges if the doctor commits negligence. Approval of the action to be carried out by the doctor must be carried out without any element of coercion

Approval of Medical action has been regulated in Article 45 of Law No. 29 of 2004 concerning Medical Practice. As stated any medical or dental procedure performed on a patient by a doctor or dentist requires approval. Such consent is given when the patient has received complete information, including at least the following: the diagnosis and course of medical intervention, the purpose of the medical intervention performed, alternative procedures and their risks, possible risks and complications, and the prognosis of the intervention performed. Consent can be given in writing or verbally. It

states that risky medical or dental procedures should be carried out only with written consent signed by a person authorized to give consent.

RESEARCH METHOD

This research is a normative research, namely research that uses legal principles, and legal doctrine, to answer legal issues regarding the regulation of the implementation of passive euthanasia in end-of-life patients who fulfill justice and legal certainty in Indonesia. For this reason, it is necessary to understand the various regulations governing the management of terminal patients in hospitals.

This research is included in the type of normative legal research, namely legal research based on applicable laws and regulations. This normative legal research focuses on the provision of patient care at the end of life which must be pursued in accordance with statutory regulations.

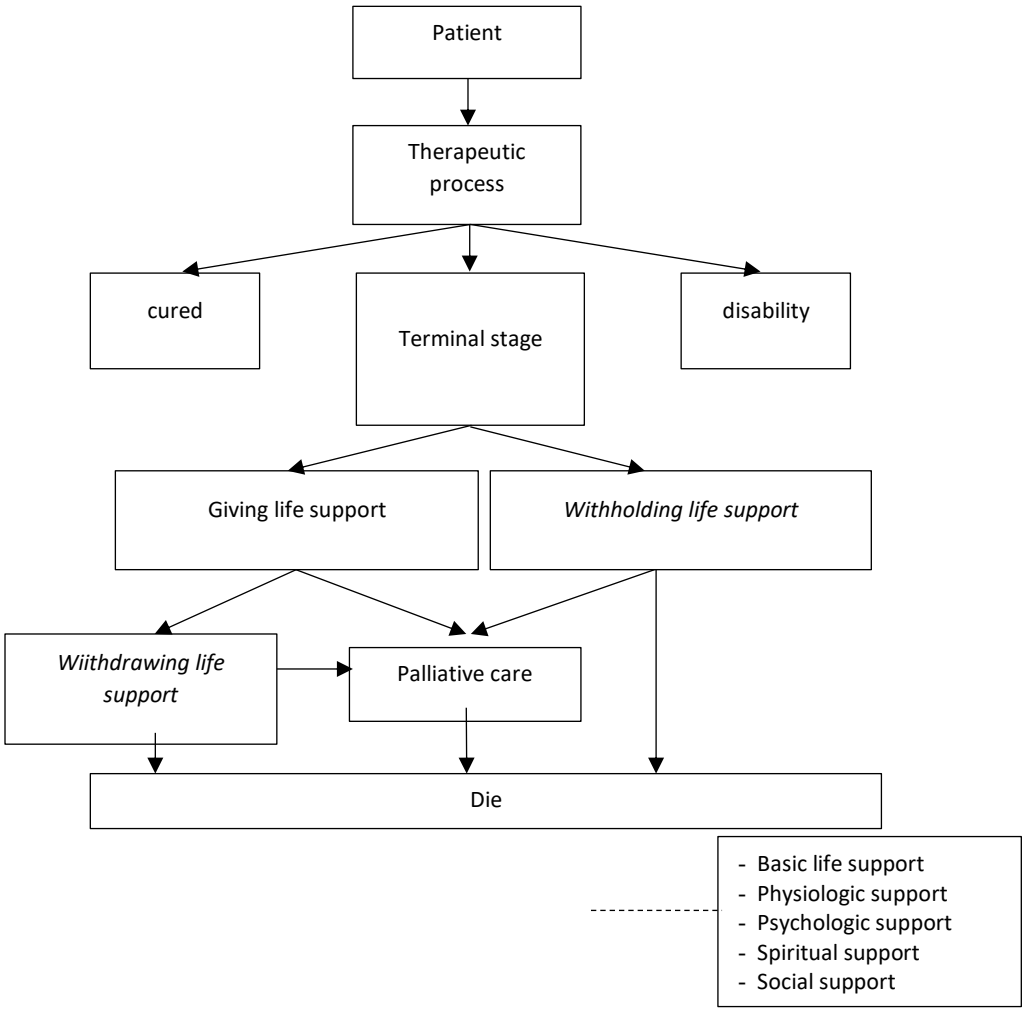
This normative legal research begins with articles of positive law which contain explanatory concepts regarding ending of life that must be conveyed by health service providers, palliative service standards for terminal stage patients, professional discipline in carrying out medical practice in accordance with the principles of justice and humanity, so that there is legal protection for health workers as humanitarian servants based on the 1945 Constitution of the Republic of Indonesia and the national values of Pancasila. The source of data used in this writing is secondary data obtained from the literature to search, study and collect information, concepts, theories and related laws and regulations

RESULTS AND DISCUSSION

Application of Euthanasia for Terminal Stage Patients in Indonesia

Patients who seek treatment can end up cured, disabled or dead. With the development of science and technology in the field of medicine, patients in this condition can extend their lives through the use of medical devices and various therapeutic methods. Even though various rescue efforts are made, patients with chronic diseases may one day experience a terminal stage of their illness. For example, people with cancer, heart, lung or other organs as well as complications from various diseases. Terminal conditions can no longer be cured and generally patients experience various physical problems such as pain, shortness of breath, weight loss, impaired activity and others. In this condition, patients and families are faced with difficult choices. If in this condition treatment is still given to prolong his life or delay the patient will still die.

Figure 1
Life Journey Chart in Patients Until the End of Life
(Source: modified from Sutarno)



Death is generally thought of as a very scary thing, but it happens to everyone. Death is a process that cannot be postponed, but most people don't want it to come quickly. The thing that is feared by death is not only death itself but also the state after death occurs. But it's a different story for people who suffer from incurable diseases and are hopeless about their lives. Instead, they want death to come, even if they are not necessarily ready for it.

In medical science, the notion of "dead" is always evolving, especially in complicated times, namely in end-of-life care in the intensive care unit (ICU). The simplest definition of death is the cessation of blood flow which is characterized by a permanent cessation of heart rate and respiratory arrest (physical/somatic death). Apart from somatic death, there are also terms brain death, brainstem death, and cellular death (Maryati & Prahmana, 2020).

The Criminal Code itself does not provide provisions regarding what is meant by "death" namely "as a result of murder". The crime of murder is said to be successful if the person who is killed "suffers death". Therefore it becomes very important when someone can be said to have died or "is still alive" (not experiencing death). The criminal law does not have an operational definition of what it means to "die" or "suffer death". The "dead" element is the defining element. Therefore it really determines what the criteria for death or death in criminal law are (Sjahdeini, 2020).

Many opinions are pro-euthanasia and counter-euthanasia. There are arguments against this opinion. Euthanasia support groups argue that:

1) Euthanasia is a way to relieve intense pain.
2) Euthanasia is a legal way when a person's quality of life is low.
3) Reducing the financing burden on conditions that are no longer possible to cure.
4) Respect the patient's right to autonomy for survival.

Meanwhile, the opinion that prohibits euthanasia has reasons that:

1. Euthanasia reduces the value of human life.
2. It is not moral if euthanasia is the basis for controlling health care costs.
3. Doctors and other medical care providers may not be directly involved in causing death.
4. There is a "slippery slope" effect that has occurred, if euthanasia is allowed it will expand into actions for other people and can even be done non-voluntarily.

This shows that there are strong arguments for both supporters and those who oppose the implementation of euthanasia. Like Indonesia, the majority of countries still enforce euthanasia bans. However, in some countries euthanasia is a legal medical practice and has legal protection. The following countries have fully legalized euthanasia (Gracia et al., 2022).

Table 1
Legal Basis in Countries Legalizing Euthanasia

No.	Country	Legal Basis	Description
1.	The Netherlands	*Wet van 12 april 2001, houdende toetsinhg van levensbeëindiging op verzoek en hulp bij zelfdoding en wijziging van het Wetboek van Strafrecht en van de Wet op de lijkbezorging (Wet toetsing levensbeëindiging op*	Euthanasia can be criminalized (1) unless it passes strict requirements and gets a doctor's approval

		verzoek en hulp bij zelfdoding), 2001	
2.	Belgium	*The Belgian Act on Euthanasia,* 2002	Euthanasia is permitted for patients in very serious medical conditions with constant physical suffering and unbearable pain which will not be relieved and will result in death in the short term.
3.	Luxembourg	*Proposition de loi No. 4909 sur le droit de mourir 60nd ignité* or the Law on the Right to Die with Dignity No. 4909, 2009	Submission of euthanasia is consulted to the medical college. The patient is in a terminal stage, suffering, and the disease is incurable. The patient also had repeated wishes of death.
4.	Spain	*Organic Law for the Regulation of Euthanasia,* 2021	The submission process passes through strict requirements from the government. The state health system must guarantee this right to anyone who wants and meets the requirements.
5.	United Sates	*Oregon death with dignity act*, 1997 (Oregon)	The state's role includes respecting and protecting human rights, euthanasia is considered as its implementation by giving morphine to patients who have very little chance of recovery and are just waiting to die, but the right to die is not absolute.
6.	Canada	*Medical Assistance in Dying (MAID) Act,* 2016	The Supreme Court of Canada decided unanimously to allow euthanasia by establishing criteria and conditions that must be met before euthanasia is carried out.
7.	Colombia	*Right to dignified death*, 1997	Initially it was only allowed to be carried out in terminal stage patients, then expanding to non-terminal stage patients in 2021. In 2018, Colombia also legalized euthanasia for children
8.	Australia*	*Right of the Terminally ill Bill* atau UU tentang Hak Pasien Stadium Terminal	*) Australia adalah negara pertama di dunia yang mengizinkan eutanasia pada tahun 1995, namun 2 tahun kemudian UU tersebut ditiadakan oleh senat Australia.

On April 10, 2001, the Netherlands passed a law permitting euthanasia, namely *wet van April* 12, 2001, *hondende toetsing van levensbendiging op verzek*

en hulp bij lijkberzorging or Review procedures for the termination of life on request and assisted suicide and amendment of the Criminal code and the Burial and Crime Act. This law came into effect on April 1, 2002, making the Netherlands the first country in the world to legalize euthanasia. Prior to that date active euthanasia was a criminal offense, whereas currently euthanasia in the Netherlands is protected by law based on article 293 of the Dutch penal code (article 293 of the Dutch Criminal Code), which reads:

Section 293

1. Any person who terminates the life of another person at that other person's express and earnest request, shall be liable to a term of imprisonment not exceeding twelve years or a fine of the fifth category.

2. *The offence referred to in subsection (1) shall not be punishable, if it is committed by a medical doctor who meets the requirements of due care referred to in section 2 of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act [Wet Toetsing Levensbeëindiging op Verzoek en Hulp bij Zelfdoding] and who informs the municipal forensic pathologist in accordance with section 7(2) of the Burial and Cremation Act [Wet op de Lijkbezorging].*

Currently in medical practice in Indonesia, passive euthanasia is often carried out by hospitals. Requests for forced discharge of patients at the request of themselves or their families are often submitted by patients. Although this behavior will result in faster death because the health services that should be provided to patients are cut off. Various reasons for this decision include the inability to pay medical bills which causes the patient to die naturally as a result of his illness.

Based on data obtained from the Gatot Soebroto Army Hospital ICU, in 2020 there were 282 deaths out of 1322 patients, with a mortality rate of around 21%. Whereas in 2021 there were 309 deaths out of 1924 patients with a mortality rate of 16%. If calculated on average, the data also proves that the number of days a patient stays in the ICU is around 4 days. This can happen because when the patient's condition decreases, the patient is transferred to the palliative room and life support is stopped, while continuing to provide basic assistance in the form of fluid infusion, oxygen, food intake through a sonde. In general, in terminal stage patients, the patient will die between 1-3 days after life support is stopped.

Table 2
Visits and Deaths in the Gatot Soebroto Army Hospital ICU

No	Year	Number of visit	Number of Death	Percentage of death	Total days hospitalization	Average days of hospitalization
1	2020	1322	282	21%	4851	3,669
2	2021	1924	309	16%	6740	3,503

Questionnaires were also distributed to 270 respondents, consisting of 105 (39%) male respondents and 165 (61%) female respondents. Based on age, the

respondents in this study consisted of 94 people from the age group ≤ 25 years, 98 people from the age group 26-40 years, 44 people from the age group 41-50 years, and 34 people from the age group > 50 years. Meanwhile, based on the level of education, there were 70 respondents with D3 education, 139 with S1 education, 53 with S2 education, and 8 respondents with S2 education. Respondents with a Masters degree included doctors, masters in health law, and doctors with masters in health law.

Tabel 3
Calculation of Respondent's Score on the Euthanasia Consent Statement

No.	Statements	Score number*	Percentage (score number/maximum score)	Category
1.	If the patient feels that he will not live long, he may refuse treatment at the hospital and wish to die accompanied by his family	1039	**77%**	**Agree**
2.	Standard requests for termination/delay of life support in terminal patients must be stipulated in legislation, not only based on the doctor's considerations	1130	**84%**	**Agree**
3.	Passive euthanasia must be strictly regulated in law because it is not a crime	1090	**81%**	**Agree**
4.	Doctors must receive protection when a patient or family asks to stop life-sustaining medical treatment for a terminal patient, because it is not the same as murder	1195	**89%**	**Totally agree**
5.	Euthanasia, especially passive euthanasia, can be applied as a form of justice for society	904	**67%**	**Neutral**
6.	Because cancer has so far not been able to be treated with the expected results, treatments that are futile may be rejected by patients/families	798	**59%**	**Neutral**
7.	Patients in the ICU whose life expectancy is low can be replaced by patients who still have a greater chance of survival due to limited beds	775	**57%**	**Neutral**
8.	Palliative care is an integrated service to prevent and reduce the suffering of terminal patients without taking treatment which is considered useless. This is the same as passive euthanasia	915	**68%**	**Neutral**

9.	It is necessary to reform the criminal law (Article 344) concerning death at the request of the person himself	1051	**78%**	**Agree**
10.	Between the Criminal Code and the Law on Hospitals and the Law on Medical Practice, harmony is needed for legal certainty	1189	**88%**	**Totally agree**

*) Maximum score = 1350.

2. Legal certainty and protection in implementing euthanasia in Indonesia

Changes in society require the existence of a legal system that has been in a static state. Changing the laws of nature through natural selection means changing itself. If the law is not changed, then there will be many obstacles, both those directly related to the people's sense of justice and law enforcement issues. As long as legal changes are responsive and follow the legal rhythms that live in society, the law will always be in harmony with people's lives. Law is essentially a living organism (*es ist und wird mit dem volke*) as Von Savigny said that law will continue to live and develop along with the development of society, on the basis of its own authority (Soekanto, 2006).

The general principle of the Criminal Law Act (KUHP) relating to the problem of the human soul is to provide protection so that the right to live normally as human dignity is guaranteed. Under Indonesian law, euthanasia is an act against the law. Indonesian positive law does not explicitly regulate euthanasia. Article 344 of the Criminal Code which states that perpetrators can be sentenced for a long time. This article says that those who end someone's life at a sincere request will be punished with 12 years in prison and plus 1/3 if the person who did it is a doctor. This article is considered legal and serves as a basis for those assisting in ending one's life as a sincere request. This means that euthanasia is also regulated in that article. Even so, euthanasia must be seen as a whole from a legal perspective, not just based on one article.

According to the pro euthanasia group. In patients who are gravely ill or in unbearable pain, they should be given the honor of choosing the manner and time of their death with the necessary assistance. According to Peter Singer, the progress of human civilization today in the field of medicine has misunderstood the sanctity of life that can keep patients alive with the help of instruments. Whereas in permanent brain damage a person has lost his human nature. Having no awareness, unable to communicate let alone enjoy life. Precisely maintaining life like this means prolonging the suffering because the patient has no quality of life anymore. Under these conditions Singer's Utilitarian Philosophy emphasizes that there is no moral difference between killing and allowing death to occur. The right to (decent) life implies the right to (decent) death. Death is a private matter, and others have no right to interfere if it does not harm other people or society. However, euthanasia

needs to be regulated with the right law to avoid a slippery slope. Euthanasia can avoid illegal acts, given that euthanasia can still occur (utilitarian or consequentialist arguments) and save extreme hopelessness from suicide or murder. Death is not necessarily a bad thing, due to the nature of the phenomenon, whatever the cause. Euthanasia can meet the criteria that a moral code must be universal, although it is not sufficient for a rule to be morally good. Medical resources can be better managed, who is in charge and to whom they can be applied (Calabrò et al., 2016).

CONCLUSION

In practice, the act of discontinuing/delaying life support (withdrawing/withholding life support) in terminal stage patients is an action that can be carried out based on statutes in medical law. However, this is a dilemmatic condition and a problem in Indonesia. On the one hand it relates to choices that require rational and practical considerations while on the other hand it relates to the "right to life". The governing regulations are Law no. 29 of 2004 concerning Medical Practice, Law no. 36 of 2009 concerning Health, and Law no. 44 of 2009 concerning Hospitals. When viewed from the type of euthanasia that is carried out in various hospitals, it is passive euthanasia in terminal stage patients at the request of the patient or family in writing. That is in the form of discontinuing life assistance which is considered useless (futile) by not stopping the basic needs of life. In professional practice, doctors must still uphold the principles of Sa science et sa conscience (the intelligence of a health professional must not conflict with his conscience and humanity), Agroti Salus Lex Suprema (patient safety is the highest law), Deminimis noncurat lex (the law not interfering in trivial matters) and Res ispa liquitur (if the facts have been spoken there is no need for further proof).

Active euthanasia which aims to kill life by committing an act against a patient under any circumstances is still a criminal act (strafbaar feit) which is punishable by sanctions according to the applicable Criminal Code. Even though there are many cases of families of patients who are in a vegetative state asking for the termination of their life support to be revoked, it still makes the health workers who do it vulnerable to threats of criminal law. Because there are no statutory regulations that explicitly allow it. The Pancasila legal state must provide legal protection for its citizens who do not have malicious intent (mens rea) against the souls of their patients. Precisely this action is a manifestation of humanity which does not have the heart to see prolonged suffering by making vegetative patients die naturally without any effort to prolong their suffering. In order to provide clear legal certainty for doctors, patients and their families, legal regulations regarding euthanasia must be made specifically because euthanasia is included in the legal principle of lex specialis or included in one of the articles of positive law in Indonesia. Because there is a principle "Nulum crimen sine lege stricta" or no offense without clear provisions. Even though until now no doctor has been charged with Article 344 of the Criminal Code due to euthanasia. The article does not contain an element of intention that is different between ordinary murder and

euthanasia. Euthanasia is not an act that arises instantly, but is a process that begins with a decrease in health and even awareness.

In order for the implementation of passive euthanasia on terminal stage patients who fulfill human values based on Pancasila as the fundamental principles of the staatsfundamentalnorm state to be implemented in Indonesia, stringent requirements must be met. There needs to be a legal regulation on euthanasia as an ius constituendum which is made specifically so that doctors and other health workers have legal certainty so that there is no doubt in taking action in providing medical services. Because the function of law is necessary for the integrity of society. Passive euthanasia and certain euthanasia of patients with terminal conditions require strict management. The established regulations will provide certainty which behavior is permitted and which is prohibited.

REFERENCES

Annadurai, K., Danasekaran, R., & Mani, G. (2014). Euthanasia: Right To Die With Dignity. *Journal Of Family Medicine And Primary Care*, *3*(4), 477–478.

Brenna, C. T. A. (2021). Regulating Death: A Brief History Of Medical Assistance In Dying. *Indian Journal Of Palliative Care*, *27*(3), 448.

Calabrò, R. S., Naro, A., De Luca, R., Russo, M., Caccamo, L., Manuli, A., Bramanti, A., & Bramanti, P. (2016). The Right To Die In Chronic Disorders Of Consciousness: Can We Avoid The Slippery Slope Argument? *Innovations In Clinical Neuroscience*, *13*(11–12), 12.

Chazawi, A. (2011). *Percobaan Dan Penyertaan Pelajaran Hukum Pidana Bagian 3*. Rajawali Pers, Jakarta.

Friedman, L. M. (2009). *Dead Hands: A Social History Of Wills, Trusts, And Inheritance Law*. Stanford University Press.

Gracia, G., Ramadhan, D. A., & Matheus, J. (2022). Implementasi Konsep Euthanasia: Supremasi Hak Asasi Manusia Dan Progresivitas Hukum Di Indonesia. *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, *2*(1).

Julyano, M., & Sulistyawan, A. Y. (2019). Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum. *Jurnal Crepido*, *1*(1), 13–22.

Kartono, M. (1992). Teknologi Kedokteran Dan Tantangannya Terhadap Bioetika. *Jakarta: Gramedia Pustaka Utama*.

Lamintang, P. A. F. (2014). *Lamintang, Dasar-Dasar Hukum Pidana Indonesia*. Sinar Grafika, Jakarta.

Maryati, M., & Prahmana, R. C. I. (2020). Designing Learning Rotation Using The Context Of Bamboo Woven Motif. *Prima: Jurnal Pendidikan Matematika*, *4*(2), 100–108.

Mertokusumo, S. (2007). *Penemuan Hukum: Sebuah Pengantar*.

Prodjodikoro, W. (1984). Perbuatan Melawan Hukum. *Jakarta: Sumur Bandung*.

Santoso, A. (2012). *Hukum, Moral Dan Keadilan: Sebuah Kajian Filsafat Hukum*.

Sjahdeini, S. R. (2020). *Hukum Kesehatan Tentang "Hukum Malapraktik Tenaga Medis" Jilid 2*. Pt Penerbit Ipb Press.

Soekanto, S. (2006). *Sosiologi: Suatu Pengantarjakarta: Raja Grafindo Persada*.

Sumirat, I. R. (2020). Penegakan Hukum Dan Keadilan Dalam Bingkai Moralitas Hukum. *Al Qisthas: Jurnal Hukum Dan Politik Ketatanegaraan*, *11*(2), 86–100.

Vaibhav, G. (2008). Euthanasia Â€“A Dignified End Of Life! *International Ngo Journal*, *3*(12), 224–231.

Van De Walle, J.-P., & Kuby, S. (2022). *The Legalization Of Euthanasia And Assisted Suicide*.

Wahyuni, F. (2017). *Dasar Dasar Hukum Pidana Di Indonesia*. Pustaka Data.

Wantu, F. M. (2007). Antinomi Dalam Penegakan Hukum Oleh Hakim. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, *19*(3).