

CHAPTER III

EUTHANASIA UNDER INTERNATIONAL HUMAN RIGHTS LAW AND INDONESIA LAW

A. Euthanasia Under The International Human Rights Law

1. Euthanasia On Debates In International Human Rights Law

None of the International Human Rights Instruments addresses euthanasia directly. However, this does not mean that euthanasia will be incompatible with International Human Rights Law. The perspective that international law is entirely a decision making process and not just a reference to past decision trends referred to as 'rules', makes it possible to address relevant articles of the International Covenant on Civil and Political Rights (ICCPR)¹⁹⁷ and the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR)¹⁹⁸, which can provide a consensual basis for an open debate on euthanasia. Proponents of euthanasia, often use the argument of the 'principle of human self-determination', which contend that human self-determination is not derived from the state and that the state in principle is not entitled to impose on its citizens ethical rules which interfere with their private lives. For an encroachment upon individual rights strong arguments must be available, leading to the inevitable conclusion that, without such rules, essential values of the society would be endangered.

¹⁹⁷ United Nations International Convention on Civil and Political Rights. In: A Compilation of International Instruments. 1994, New York, United Nations, volume 1.

¹⁹⁸ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms. In: European Convention on Human Rights: Collected Texts. 1994, Strasbourg, Council of Europe Press.

According to opponents of euthanasia, the right to self-determination is a hybrid right^{199, 200}. It is not mentioned in the ECHR but the ICCPR explicitly refers to Article 1, the General Comment which states that:

“The right to self-determination is very important because its realization is an essential condition for effective guarantees and observance, human rights and for the promotion and strengthening of human rights”²⁰¹.

This implies that an individual cannot make a claim to protect his/her right to self-determination but a country must consider the individual's self-determination while interpreting other rights in the Covenant²⁰². It can be said that the essential values of this society will not be in danger when there are no other alternatives. Denying the right to euthanasia in that case will force people to suffer because of their will, which will be cruel and against their human dignity. On the other hand it can be questioned whether it is not the right of self-determination as a duty to prevent suffering which is very important.²⁰³ The right to life is the supreme right from which no derogation is permissible even in time of public emergency, which threatens the life of the nation²⁰⁴. However, it is not an absolute

¹⁹⁹ A “hybrid right” is one that involves both the Free Exercise Clause and another constitutional right.

²⁰⁰ Sharma BR. http://www.icfmt.net/ijfmt/vol3no4/international_human_rights.htm. Accessed October 09 2019.

²⁰¹ United Nations General Comment on Article 1. In: International Human Rights Instruments 1994, UNdoc. HRI/GEN /1/ Rev.1 nr. 12. p 12 - 14.

²⁰² Hurst Hannum, “*Legal Aspects of Self-Determination*”. <https://pesd.princeton.edu/?q=node/254>. Accessed 09 October 2019.

²⁰³ Boudreau JD and Somerville M, “*Euthanasia and Assisted Suicide A Physician and Ethicist*”. <https://www.dovepress.com/euthanasia-and-assisted-suicide-a-physicians-quos-and-ethicists-quos-p-peer-reviewed-fulltext-article-MB>. Accessed October 09 2019.

²⁰⁴ European Court Of Human Rights, “*Derogation in Time of Emergency*”. https://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf. July 2019. Accessed October 09 2019.

right, like the right not to be tortured²⁰⁵. There are some limitations. According to ICCPR, the interpretation of the right to life should be broad and should for instance include the duty of states to reduce infant mortality and to increase life expectancy. However, the traditional approach to the right to life is focused more on the limitations explicitly mentioned in Article 6 of the ICCPR and Article 2 of the ECHR. The word ‘arbitrary deprivation’²⁰⁶ in Article 6 can be considered as justifying the putting to end of someone’s life. According to the General Comment on Article 6, the only explicitly mentioned justifiable limitation of the right to life is the death penalty. As far as other limitations are concerned, the General Comment only states that “the deprivation of life by the authorities of the State is a matter of utmost gravity”²⁰⁷. According to Ramcharan, “contemporary issues such as abortion, euthanasia and the death penalty can affect the realization of the right to life”²⁰⁸.

The right to life can be used as an argument in favor as well as against euthanasia. Those opposed to euthanasia argue that ‘the right to die’ would be in contradiction to the right to life. According to them, the right to life is a supreme right in which human dignity and self-determination (and also other rights) are

²⁰⁵ Equality Human Rights Commission, Article 3: Freedom from torture and inhuman or degrading treatment, it is protect from the torture (mental or physical), inhuman or degrading treatment or punishment, and deportation or extradition (being sent to another country to face criminal charges) if there is a real risk you will face torture or inhuman or degrading treatment or punishment in the country concerned.

²⁰⁶ Arbitrary deprivation constituted an unjustifiable limitation of the property right because there were less restrictive means to achieve the purpose of preventing and punishing unlawful credit agreements to protect consumers.

²⁰⁷ United Nations General Comment on Article 6. In: International Human Rights Instruments 1994, UN doc. HRI / GEN / 1 / Rev. 1 nr. 20. p 6 – 7.

²⁰⁸ Ramcharan BG. *The concept and dimensions of the right to life*. In: Ramcharan BG. (Ed.) *the Right to Life in International Law 1985*, Dordrecht. Martinus Nijhoff Publishers. p 6 - 8.

grounded.²⁰⁹ They emphasize that International Law has not addressed this issue and that Articles 6 and 2 do not provide the possibility of making euthanasia justified. The argument in favor of euthanasia is that the right to life is the right to a life worth living²¹⁰. This is a more subjective interpretation and presents a more liberal approach to self-determination and human dignity. In this case, the patient's request is very important. The right to life is a right of freedom and also a positive right, because it gives patients the opportunity to exercise restraint²¹¹. According to Nowak, "the State's duty to ensure does not go so far as to require that life and health be protected against the express wish of those affected. An obligation to sanction suicide with Criminal Law cannot be derived from Article 6. As a result of the accessory character, this conclusion is also applicable to the offence of aiding a suicide"²¹².

²⁰⁹ Snyder Sulmasy, "Ethics and the Legalization of Physician-Assisted Suicide: An American College of Physicians Position Paper". <https://annals.org/aim/fullarticle/2654458/ethics-legalization-physician-assisted-suicide-american-college-physicians-position-paper>. October 2017. Accessed October 09 2019.

²¹⁰ Josef Kuře, "Everything Under Control: How and When to Die - A Critical Analysis of the Arguments for Euthanasia". <https://www.intechopen.com/books/euthanasia-the-good-death-controversy-in-humans-and-animals/everything-under-control-how-and-when-to-die-a-critical-analysis-of-the-arguments-for-euthanasia>. September 2011. Accessed October 09 2019.

²¹¹ Leon R. Kass, "The Right to Life and Human Dignity". <https://www.thenewatlantis.com/publications/the-right-to-life-and-human-dignity>. 2007. Accessed October 09 2019.

²¹² Nowak M. UN Covenant on Civil and Political Rights. ICCPR Commentary 1993, Kehl am Rhein, NP Engel. p 124.

2. The Right Not To Be Subject To Cruel, Inhuman or Degrading Treatment

The aim of Article 7²¹³, according to General Comment is “to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7”. Since most of the cases, concerning Article 7 and 3²¹⁴ deal with the treatment of persons in detention, so their application in this context could be questioned. However, the fact that no Article contains definitions of the concepts covered or prohibited actions, does not permit restrictions that might suggest that cruel, inhuman or degrading treatment is permitted in any case. This presupposes that Article 7 can be broadly interpreted that failure to provide, or not provide, palliative care to someone suffering unbearably is a lack of appropriate medical care.²¹⁵

The practice of euthanasia has arisen against a background of developing medical technologies. Arguably, medicine itself shares responsibility for legalized Dutch euthanasia practice.²¹⁶ High-tech medicine can disproportionately provide cruel, inhuman or degrading treatment and disproportionately lengthen a patient’s

²¹³ International Covenant on Civil and Political Rights, Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. Adopted by the General Assembly of the United Nations on 19 December 1966.

²¹⁴ International Covenant on Civil and Political Rights, Article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant. Adopted by the General Assembly of the United Nations on 19 December 1966.

²¹⁵ Center for Justice and International Law, *Torture in International Law, a guide to jurisprudence*. Jointly published in 2008 by the Association for the Prevention of Torture (APT) and the Center for Justice and International Law (CEJIL). Connecticut USA, 2008. p 128.

²¹⁶ Pauline S. C. Kouwenhoven, “*Developments in euthanasia practice in the Netherlands: Balancing professional responsibility and the patient’s autonomy*”. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6394318/>. November 2018. Accessed October 09 2019.

suffering. Invasive medical treatment and its side effects may well lead a patient to request euthanasia²¹⁷. As to the duty of States, Articles 7 and 3 imply that States have much responsibility to protect persons against cruel, inhuman and degrading treatment. This would plead for a further development of palliative care²¹⁸.

3. Distinguishing The End Of Life Decisions

It is important that a clear demarcation is done in the withdrawal of life support, physician assisted suicide and euthanasia. Euthanasia is defined as the administration of drugs with the explicit intention of ending the patient's life, at the patient's explicit request²¹⁹. It means the direct killing of a patient at his request. Physician-assisted suicide is defined as the prescription or supplying of drugs with the explicit intention of enabling the patient to end his/her own life. Physician-assisted suicide means the intentional killing of oneself with the indirect aid of a physician²²⁰. These definitions exclude the concept of allowing death to occur by withdrawing or withholding life-supporting treatment²²¹. In the

²¹⁷ Bert Broeckaert, "Treatment Decisions in Advanced Disease: A Conceptual Framework". <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2886212/>. June 2009. Accessed October 09 2019.

²¹⁸ United Nations General Comment on Article 7. In: International Human Rights Instruments 1994, UN doc. HRI / GEN / 1 / Rev. 1 nr. 20 p 30 - 33.

²¹⁹ J Bioeth, "Two Decades of Research on Euthanasia from the Netherlands. What Have We Learnt and What Questions Remain?". <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2733179/>. September 2009. Accessed October 09 2019.

²²⁰ Timothy E. Quill and Bernard Sussman. "Physician-Assisted Death". <https://www.thehastingscenter.org/briefingbook/physician-assisted-death/>. Accessed October 09 2019.

²²¹ Sharma BR. To legalize physician assisted suicide or not - a dilemma. *J Clinical Forensic Medicine* 2003; 10 (3): 185 – 190.

Netherlands, Article 293 Dutch Penal Code²²² makes it an offence, punishable with up to twelve years imprisonment, for a person to cause the death of another person at the latter's express request. It covers what is called active voluntary euthanasia²²³. Article 293 Dutch Penal Code makes it an offence, punishable with up to three years imprisonment, for a person to intentionally incite, assist, or procure the means for another to commit suicide. It covers what is known as physician-assisted suicide. However, physician-assisted suicide and euthanasia are ethically/morally inseparable acts because in both instances the physician's intent is the same, he/she is a necessary element in the causal chain of events, and the consequences are the same²²⁴. The consequences, though same in cases of withholding or withdrawing life support measures but the physician's intent and the chain of events are different.

Many courts have approved requests to end lifelong assistance for people in countries that agree. Permanent unconsciousness is a convincing justification for ending life support. Legal controversies usually center on whether life assistance can be legally withdrawn from individuals whose preferences are unknown or unknown²²⁵. Under the Conroy court's formula²²⁶, life support can be

²²² Article 293 Dutch Penal Code: 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*).

²²³ Gordijn and Rien Janssens, "New Developments in Dutch Legislation Concerning Euthanasia and Physician-Assisted Suicide". *Journal of Medicine and Philosophy* 2001. Vol 26, No. 3. p 300 - 301.

²²⁴ *In re Conroy*; 464 A 2d 303; NJ Super. Ct., App. Div., 1983.

²²⁵ Douglas O. Linder, "The Other Right-To-Life Debate: When Does Fourteenth Amendment "Life" End?". <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/Lifedebate.html>.

stopped if there is “clear and convincing” proof that the burdens of sustaining exceed the benefits of continuing survival²²⁷. In making this “objective” determination, the court indicated that physical pain was the burden of surgery and that evidence of pain that was inevitable was needed before the burden of life had to be taken as greater than the benefits of staying alive. A patient thus requires sufficient awareness to experience unbearable pain that can be proven before life support can be stopped under the “objective” branch of Conroy’s²²⁸ formula, a requirement that clearly excluded individuals in the agreeing State²²⁹. The liberal debate on euthanasia and its legalization, in the Netherlands has been criticized in many countries. However, considering euthanasia as a taboo or taking secretive measures to hasten a patient’s death are equally unacceptable²³⁰. Although the

Arizona Law Review. Winter 1995. Accessed October 09 2019.

²²⁶ Under the Conroy court’s formula, life support could be stopped if there is “clear and convincing” evidence that the burdens of sustaining life exceed the benefits of continuing survival. In making this “objective” determination, the court indicated that physical pain is the operative burden and that proof of intractable pain is necessary before the burden of survival should be taken as outweighing the benefits of remaining alive. An individual would thus need enough awareness to experience demonstrably intractable pain before life support could be stopped under this “objective” prong of the Conroy formula, a requirement that obviously excludes individuals in a PVS.

²²⁷ Terry PB. *Euthanasia and Assisted Suicide: Ethics and Politics Chest* 1993. p 103 (4): 1259-63.

²²⁸ Claire Conroy, an 84 year old woman, appealed a New Jersey Superior Court, Chancery Division, Essex County order authorizing the removal of the nasogastric tube on which she depended for nutriment and fluids. The patient suffered from severe organic brain syndrome and numerous other physical problems, but still responded to external stimuli. The appellate court, in a decision that was later reversed, overruled the lower court, arguing that the state’s interest in preserving life outweighed the patient’s right to be free from bodily invasion. Distinguishing Conroy’s situation from Quinlan and other right-to-die cases, the court held that, when nutrition will continue the life of a patient who is not comatose, brain dead, or vegetative, and whose death is not imminent, its discontinuation cannot be permitted on a theory of right to privacy or any other theory.

²²⁹ Keith M. Swetz, “*Ethical Decision Making With End-of-Life Care: Palliative Sedation and Withholding or Withdrawing Life-Sustaining Treatments*”. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2947968/>. October 2010. Accessed October 09 2019.

²³⁰ D Harris, B Richard, and P Khanna, “*Assisted dying: the ongoing debate*”. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2585714/>. August 2006. Accessed October 09 2019.

International Human Rights Law Instrument does not directly address euthanasia, taking into account not only the rules but the entire decision-making process allows euthanasia to be discussed at the international level²³¹. Nowadays, morality is more and more pervaded by the liberal notion of autonomy. The transition to a more liberal morality is also demonstrated by the doctrine of ‘a margin of appreciation’^{232,233}. This means that the state is allowed a certain measure of discretion on account of the non-existence of consensus, with regard to what is necessary for the protection of morality²³⁴. With regard to euthanasia, a State needs to balance the protection of vulnerable people (for example, the dying) with the protection of the right to freedom of others²³⁵. A country has a duty to provide a place/center for treatment and to prevent at least excesses related to euthanasia, which is thought to occur not only in the Netherlands but also in many other countries. In this case it is very important that the International Debate begins with the practice of euthanasia²³⁶. Openness of both proponents and opponents will be vital if they are to constructively criticize each other on such topics as

²³¹ Daria Sartori, “End-of-life issues and the European Court of Human Rights. The value of personal autonomy within a ‘proceduralized’ review”. <http://www.qil-qdi.org/end-life-issues-european-court-human-rights-value-personal-autonomy-within-proceduralized-review/>. June 2018. Accessed October 09 2019.

²³² The margin of appreciation (or margin of state discretion) is a legal doctrine with a wide scope in international human rights law. It was developed by the European Court of Human Rights, to judge whether a state party to the European Convention on Human Rights should be sanctioned for limiting the enjoyment of rights. The doctrine allows the Court to reconcile practical differences in implementing the articles of the Convention. Such differences create a limited right, for Contracting Parties, “to derogate from the obligations laid down in the Convention”.

²³³ Lubomira Radoilska, “Public Health Ethics and Liberalism”. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2720172/>. July 2009. Accessed October 09 2019.

²³⁴ Onder Bakircioglu, The Application of the Margin of Appreciation Doctrine in Freedom of Expression and Public Morality Cases. *German Law Journal*, Vol. 08 No. 07. 2007. p 712.

²³⁵ *Dudgeon v. UK*, A 45 1981, paragraph 47.

²³⁶ Margaret Sleeboom, “The Limitations of the Dutch Concept of Euthanasia”. <https://www.eubios.info/EJ131/ej131j.htm>. *Eubios Journal of Asian and International Bioethics* 13 (2003). Accessed October 10 2019.

good terminal care, self-determination and the right to life versus the duty to live. With regard to the pros cons it has been often argued that the Netherlands has had a development in which assisted suicide, then voluntary euthanasia, then non-voluntary euthanasia and finally involuntary euthanasia were successfully accepted²³⁷. Many argue that legalizing euthanasia would plant in the minds and hearts of severely ill, but still conscious patients a seed of despair; a sense of defeat before the end of battle that would, in turn, complicate their collaboration in their own treatment. In the lay community and among “less productive” or “non-productive”, old, or incapacitated people, there would be a fear of being put on a “death list” as a result of a not-very-clear process. All these would damage the medical profession’s standing and image in the community²³⁸. It is important to distinguish between treatment aimed at ending the patient’s life and medical treatment around the life, or between decisions aimed at ending the patient’s life (which are non-medical) and decisions that treatment would be disproportionately burdensome to the patient, as death seems inevitable²³⁹. Good care aims at ending patient’s suffering, not their life²⁴⁰.

²³⁷ Hendin H, Ruthenfrans C and Zylicz Z. *Physician-assisted suicide and euthanasia in the Netherlands: lessons from the Dutch*. JAMA 1997; 277: 1720 – 1722.

²³⁸ Sharma BR. *The end of life decisions: Should physicians aid their patients in dying?*. J Clin Forensic Med 2004; 11 (3): 133 – 140.

²³⁹ Sharma BR. *Ethical and practical principles underlying the end of life decision*. American Journal of Forensic Medicine and Pathology 2004; 25 (3): 216 – 219.

²⁴⁰ Sharma BR *Withholding and withdrawing of life-support - a medicolegal dilemma*. Am J Forensic Med Path 2004; 25 (2): 150 – 155.

In the debate about euthanasia, the main disagreement is related to the focus on determining the patient's own destiny. It was also said that denying the right to euthanasia would be the same as forcing people to suffer against their will, which would be cruel and contrary to their human dignity (because as far as euthanasia, the greatest demand for patients who suffer terribly, disease or paralysis). The view of supporters of euthanasia seems to be a consequence of community infrastructure and its interaction with the aspirations of people where humans must be left to determine their own destiny from the right to life to the right to die. even in international human rights law there is no single rule that explains the existence of the right to die, there is only the right to self-determination is the right of everyone to freely determine their own will, especially in terms of principles regarding political status and freedom to pursue progress in the economic, social and cultural fields. The interest will determine one's own destiny, therefore lies in the freedom to make choices. At present, for most pro-euthanasia, the right to self-determination is included in the right to determine death as well, even though euthanasia is a crime that violates suicide due to aid, and the person who helps it will become a suspect. Because it was considered killing other humans, in the Parliamentary Assembly of the European Council (PACE) in resolution 1859 (2012), paragraph 5, offers a very clear position about euthanasia:

“Euthanasia, in the sense of deliberate killing by human actions or negligence depending on it or the alleged benefit, must always be prohibited”.

And clearly in the European Parliament's parliamentary assembly, euthanasia is strictly prohibited. Therefore international human rights law submits euthanasia issues to the problems of each country, such as the Netherlands and Canada which have arranged suicide requests assisted by medical personnel with several terms and conditions in the rules of each of these countries.



B. The Position Of Euthanasia Under Indonesian Law In The Perspective Of International Human Rights Law

The Human Rights Law and the UN Charter explain the right to life which is a human right related to active euthanasia, so they are interrelated, because in both active euthanasia²⁴¹ and passive euthanasia²⁴², whatever is involved is related to the right to human life.²⁴³ If the doctor grants the patient's request to deny euthanasia, the doctor must indirectly reject Human Rights must act, the doctor must take responsibility for his actions in the Human Rights Court or the National Human Rights Commission.²⁴⁴ This is based on the nature of euthanasia itself which returns humans at their own request or not. However, on the other hand euthanasia is the only way out of problems related to human life in this case the patient²⁴⁵. Euthanasia can also be questioned by human rights, so it cannot be separated from the right to self-determination, to the patient. This right belongs to one of the main things in human rights. however in international human rights law it is explained that humans only have the right to life and especially in Indonesia it is strictly prohibited from the practice of euthanasia, so even for its urgency it is clearly regulated in the Indonesian criminal article and doctors also have a code of

²⁴¹ Active euthanasia, which is defined as the intentional act of causing the death of a patient experiencing great suffering, and allowing patients to die is authorized by law under certain conditions.

²⁴² Passive euthanasia is when death is brought about by an omission, when someone lets the person die. This can be by withdrawing or withholding treatment: Withdrawing treatment: for example, switching off a machine that is keeping a person alive, so that they die of their disease.

²⁴³ Josef Kuře. *Loc. Cit.*

²⁴⁴ Roger Woodruff, "Euthanasia And Physician Assisted Suicide Are They Clinically Necessary Or Desirable?." <https://hospicecare.com/policy-and-ethics/ethical-issues/essays-and-articles-on-ethics-in-palliative-care/euthanasia-and-physician-assisted-suicide-are-they-clinically-necessary-or-desirable/>. 2019. Accessed October 10 2019.

²⁴⁵ James Fieser, "Euthanasia, From Moral Issues that Divide Us". <https://www.utm.edu/staff/jfieser/class/160/6-euthanasia.htm>. September 2017. Accessed October 10 2019.

ethics, and doctors in Indonesia in must reject if for example the request of a patient who wants euthanasia and that does not violate international human rights law because even the right to die is not mentioned in the article in international human rights law²⁴⁶.

1. Euthanasia in Indonesian Positive Law²⁴⁷

The Republic of Indonesia is a state based on the *Pancasila* and the 1945 Constitution as the foundation of the State constitution. The state upholds human rights and guarantees equal rights and position in law and government, and is obliged to uphold law and government without exceptions. A statement regarding the guarantee of the right to legal protection for every citizen is contained in the 1945 Constitution.

Article 27 (1)

“All citizens, together with their legal and governmental positions, are obliged to uphold that law and government without exception”²⁴⁸.

Article 28 D (1)

“Everyone has the right to recognition, guarantees, protection and certainty of law that is just and equal treatment before the law”²⁴⁹.

Based on the rights of citizens in general in terms of obtaining appropriate legal treatment and legal protection and the arrangement of a system that can

²⁴⁶ Pudjiarto, Harum. “Perkembangan Pemikiran Euthanasia terhadap Pengaturan Hukum di Indonesia (Perspektif Politik Hukum Pidana)”, *Jurnal Hukum*. No.17 Vol 8. Juni 2001: 139 - 152. p 144.

²⁴⁷ Positive Law (Latin: *ius positum*) is a law made by humans that requires or regulates an action. This term also describes the determination of certain rights for individuals or groups.

²⁴⁸ Pasal 27 (1) Bab X: Warga Negara Dan Penduduk, Undang – Undang Dasar Tahun 1945.

²⁴⁹ Pasal 28 D (1) Bab XA: Hak Asasi Manusia. Undang – Undang Dasar Tahun 1945.

accommodate a variety of conditions in medical practice, it is hoped that the improvement of a set of laws or implementing regulations that do not yet exist can be immediately made so that they become indifferent reference and basis in upholding various problems in medical practice²⁵⁰.

The development and advancement of medical science which is rapidly increasing lately has brought the medical world to deal with complicated problems, including euthanasia. In addition to the medical field itself, these developments and advances must deal more with human rights, ethics and law issues²⁵¹. Euthanasia can put doctors in a difficult position, on the one hand doctors must respect the rights of patients to determine themselves but on the other hand doctors must deal with ethical, moral and legal factors to be obeyed, like it or not, intentionally or unintentionally in the present doctors seemed to be dealing with cases of euthanasia or something similar²⁵². The emergence of pros and cons around the issue of euthanasia becomes a burden on the legal community, because in this legality issue the issue of euthanasia will end. Clarity regarding the extent to which the positive criminal law provides regulations/regulations on the issue of euthanasia will greatly help the community in addressing the issue, especially because of the emergence of pros and cons about its legality²⁵³.

²⁵⁰ Michelle M. Mello, “*Making the Case for Laws That Improve Health: A Framework for Public Health Law Research*”. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2980343/>. June 2010. Accessed October 10 2019.

²⁵¹ Peter A Singer, “*Medical ethics*”. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1118276/>. July 2000. Accessed 10 October 2019.

²⁵² Novita Listyaningrum, “*Informed Consent Dalam Perlindungan Dokter Yang Melakukan Euthanasia*”. <https://media.neliti.com/media/publications/72750-ID-none.pdf>. p 36. Accessed October 10 2019.

²⁵³ Fuadi Isnawan, “*Kajian Filosofis Pro Dan Kontra Dilarangnya Euthanasia*”,

Formally in positive criminal law in Indonesia there is only one known form of euthanasia, euthanasia at the request of the patient/victim (voluntary euthanasia). Stating who took the lives of others at the request of the person who was clearly stated sincerely was threatened with a maximum prison sentence of 12 years²⁵⁴. Starting from the provisions of Article 344²⁵⁵ of the Criminal Code, it can be concluded that the murder at the request of the victim even though he was still threatened with criminal offenses. Thus, in the context of positive law in Indonesia euthanasia is still considered a prohibited act, thus in the context of positive law in Indonesia it is not advisable to terminate one's life even at the request of the person himself. The act is still qualified as a criminal act that is as an act that is threatened by criminal for those who violate the prohibition.

Meeting the elements of offense in the act of euthanasia in addition to those contained in articles other than those in Article 344 of the Criminal Code also appear in the provisions of Articles 338, 340, 345 and 359 of the Criminal Code. The provisions in Article 338 of the Criminal Code are explicitly stated:

“Whoever intentionally takes another person’s life is threatened for murder with a maximum imprisonment of fifteen years”²⁵⁶.

While Article 340 of the Criminal Code stated:

“Anyone who intentionally and with prior plans seizes the lives of others is threatened due to premeditated murder by death sentence or life

Mahkamah, Vol. 2 ,No.1, Desember 2016. p 353 - 354.

²⁵⁴ Rospita A. Siregar, “Euthanasia Dan Hak Asasi Manusia”. *Jurnal Hukum*. Vol. 1 No. 3, Desember 2015. p 197.

²⁵⁵ Article 344 Indonesia Criminal Code stated that: “Anyone who takes back the soul of another person at the request of that person, who is asked clearly and truly challenges the prison for twelve years”.

²⁵⁶ Article 338 Indonesia Criminal Code stated that: “Whoever intentionally takes another person’s life is threatened for murder with a maximum imprisonment of fifteen years”

*imprisonment or for a specified period of time of at most twenty years*²⁵⁷.

Article 345 of the Criminal Code is stated:

*“Whoever intentionally incites others to kill themselves, helps them in the act or allows the effort to commit suicide, is sentenced to prison for up to four years”*²⁵⁸.

Article 359 of the Criminal Code is stated:

*“Whosoever because of his/her wrong causes someone to die sentenced to imprisonment for up to five years or confinement for one year”*²⁵⁹.

This provision must be kept in mind by the medical community because although there are some compelling reasons to help patients end or shorten the life of the patient this threat must be overcome.

Performing Euthanasia needs to go through or go through a legal process first. This is done so that no party is harmed and this action is taken in the interests of the patient. Examples of cases of Euthanasia requests that occur in Indonesia are Mrs. Agian Isnani Nauli. Mrs. Agian Isnani Nauli was unconscious after giving birth. She on August 20, 2004 gave birth to a child through a cesarean section²⁶⁰ led by Dr. Gunawan Muhammad, SpOG at RSI. The condition of Agian

²⁵⁷ Article 340 Indonesia Criminal Code stated that: “Whoever intentionally and with prior consent eliminates another person is approved for approval (moord), with a death sentence or life imprisonment or a temporary prison term of twenty years”.

²⁵⁸ Article 345 Indonesia Criminal Code stated that: “Whoever intentionally incites others to kill themselves, helps them in the act or allows the effort to commit suicide, is sentenced to prison for up to four years”.

²⁵⁹ Article 359 Indonesia Criminal Code stated that: “Whosoever because of his/her wrong causes someone to die sentenced to imprisonment for up to five years or confinement for one year”.

²⁶⁰ Cesarean delivery (also called a cesarean section or C-section) is the surgical delivery of a baby by an incision through the mother’s abdomen (belly) and uterus (womb). This procedure is done when it is determined to be a safer method than a vaginal delivery for the mother, baby, or

who was in a coma and suffered permanent brain damage was thought to be due to malpractice. So Agian Isna Nauli's family, Hasan Kusuma (husband), submitted an application for the determination of Euthanasia for his wife to the Central Jakarta District Court. Hasan Kusuma submitted an application for the determination of Euthanasia or lethal injection accompanied by the Chairman of the Health Legal Aid Foundation Iskandar Sitorus. The request was received by the Deputy Chairperson of Central Jakarta District Court. Agian Isna Nauli conditions has not progressed significantly and has been in a coma for four months after caesarean section and is now being treated at the RSCM. According to Hasan, this very shocking situation had affected the normality of his and his two children's lives. As a result of having to take care of his wife, his two children, Ditya Putra and Raygie Attila became displaced. The appeal to the court was the second attempt taken by Hasan to have his wife injected to death. Previously, Hasan had submitted this request before the temporary leadership of the Bogor DPRD²⁶¹. Hasan's request jolted a number of DPRD members who were present at the coordination meeting chaired by Tb. Tatang Muchtar was in the room of the local DPRD session. Hasan stammered before the leadership of the local DPRD and participants said, as a husband at this time only wanted to share his feelings. Hasan Kusuma admitted that he was helpless in facing his wife's condition. After the coma that her husband had proposed to get Euthanasia, she began to talk. His improved condition was proven when Minister of Health

both.

²⁶¹ Regional People's Representative Council (DPRD) is a regional people's representative body that is domiciled as a non-regional government organizer in provinces/districts /cities in Indonesia.

Siti Fadhilah Supari visited him at the Jakarta CMC on January 6, 2005 and Mrs. Agian Isna Nauli also seemed to communicate fluently.

According to the then Minister of Health, Euthanasia was not available, except at the request of the patient himself. The Minister also said that the efforts of her husband. Agian According to Dr. Yusuf Musbach who is the head doctor in the Suparjo Rustam pavilion who handled the case directly, the condition of Mrs. Agian Isna Auli has gradually improved since the last two months. Initially, she said she could speak a word or two, to be able to communicate smoothly even though sometimes a little choked up. Previously it had indeed predicted that the coma Mrs. Agian can be cured. While there is also hope that paralysis of the feet and hands can be cured, although not 100 percent. Mrs. Agian also actually can be brought home for treatment at home. Euthanasia's request submitted to the District Court by a large family from Mrs. Agianini was finally unable to be granted by the Central Jakarta District Court on the grounds that the court institution explained that the court institution could not simply issue a decision without examining a case filed by a justice seeker (the applicant) with all evidence that has been prepared to support the arguments of the petition in accordance with applicable law.²⁶²

Euthanasia is a new Indonesian term and in the history of the founding of this country has never heard of anyone implementing it. Article 344 of the Criminal Code regarding the taking of a person's life at the request of the victim.

Because this article is the rule that Euthanasia is at least concerned about in fact in

²⁶² Detik News, "Hasan Mohonkan Penetapan Euthanasia atas Agian ke PN Jakpus", <https://news.detik.com/berita/d-228879/hasan-mohonkan-penetapan-euthanasia-atas-agian-ke-pn-jakpus>. October 2004. Accessed 18 January 2020.

Indonesia, it does not need to be here including injection can be cured. At first Siti Julaeha underwent surgery at Pasar Rebo Regional Hospital in October 2004 with a diagnosis of pregnancy outside the womb, but after surgery it turned out that there was fluid around the uterus. After being appointed, the operation resulted in Siti Julaeha experiencing a coma with a level of consciousness below the level. None of the doctors and management of Pasar Rebo Regional General Hospital cared for and were responsible for handling the case. And they considered that they had finished the procedure, whether wrong or not, according to the procedure or not, Siti Julaeha had already suffered. Human values should be prioritized. On January 20, 2005 Rudi Hartono together with media colleagues and the Health Legal Aid Institute (LBHK) moved Siti Julaeha to Cipto Mangunkusumo Hospital (RSCM) in Central Jakarta. Siti Julaeha's condition, which has been undergoing treatment at the RSCM since a month ago, did not improve her condition and even worsened. Besides that, a hole was drilled in the chest and right ribs of Siti Julaeha's body to help with breathing due to contracted lungs and plan to have another operation in the throat to help with breathing as well. The Health Legal Aid Institute (LBHK) itself previously claimed to have reported a case of alleged malpractice to the Metro Jaya Regional Police on January 20, 2005. Because Siti Julaeha, according to Sitorus, was a victim of alleged malpractice in an obstetrical operation carried out at a hospital in East Jakarta, on November 6, 2004. According to Sitorus, the operation was carried out on the basis of a doctor's diagnosis stating to the family that Siti was pregnant outside the womb. Until

finally Siti Julaeha never woke up again after the operation.²⁶³ Because at the time of the operation, oxygen could not flow to the nerve center of the brain for 20 minutes. Resulting in brain stem damage. In February 2005 the family of Siti Julaeha, officially filed an application for the determination of Euthanasia to the Central Jakarta District Court on Jalan Gajah Mada, Central Jakarta. Siti Julaeha's husband, Rudi Hartono delivered the Euthanasia request and was received by I Made Karna, S.H. On that occasion, he was accompanied by a number of legal counsel from the Health Legal Aid Institute (LBHK) including Pundrat Adriansyah, S.H. Euthanasia decision making is the decision of the whole extended family, and is a decision of a large family. The decision was made stronger after he heard the statement of a RSCM doctor who stated his wife was experiencing a vegetative state²⁶⁴ and according to the doctor, there was a slim possibility of recovery for Siti Julaeha. The Euthanasia submission, which is recognized by Rudi, involved parties had spent a lot of money on the costs of the treatment. Every day it takes around Rp. 1.2 million to Rp. 2.5 million to pay for medicines. This Euthanasia request is made not only on the basis of the proposed maintenance costs mentioned earlier. This decision is truly the best way for all. The Euthanasia submission by Siti Julaeha's husband, Rudi Hartono was based on a medical inability to overcome the impact of malpractice due to surgery on my wife in Pasar Rebo Regional Hospital, East Jakarta. Rudi explained in accordance with the doctor's diagnosis that his wife, Siti Julaeha is now at the stage of

²⁶³ *Ibid.*

²⁶⁴ A vegetative state is the absence of responsiveness and awareness due to overwhelming dysfunction of the cerebral hemispheres, with sufficient sparing of the diencephalon and brain stem to preserve autonomic and motor reflexes and sleep-wake cycles.

paralysis or vegetative stage, but the Central Jakarta RSCM actually moved Siti Julaeha to a class III ward. Therefore, Siti Julaeha's husband and family asked the state through the Central Jakarta District Court that Siti Julaeha could be injected to death immediately. Responding to Euthanasia's request for action, the head of the Indonesian Health System Victims' Brotherhood, Rudi Hartono stressed, the request was far better than having to struggle with endless suffering. Euthanasia is the best way to reduce the suffering of Siti Julaeha as long as the government does not care about her health. Law in Indonesia is not ready with euthanasia's request as proposed by Siti Julaeha. In his petition, Rudi Hartono stated that his party submitted an application to the Central Jakarta District Court in order to determine whether euthanasia could be taken against his wife. The request was made because according to the neurology specialist, his condition would never return to its original state as it was before he was paralyzed or vegetative state. In fact, starting from November 6, 2004 until I submitted the petition, Siti Julaeha's health condition was still in a coma and very alarming. The petition was also sent to the President of the Republic of Indonesia, the Minister of Health, and the Founding Chair of the Health Legal Aid Institute and the Chairperson of the Health Systems Fraternity. The letter was also signed by Zaini and Etin, Siti Julaeha's parents and her siblings, Junaedi, Dodi Setyawan and Nur Aliyah. Until that time Siti Julaeha was still being treated at the RSCM, Central Jakarta in a very critical condition. Previously, Siti Julaeha was treated at Pasar Rebo District Hospital, East Jakarta. Rudi Hartono's wife was taken to Pasar Rebo Regional Hospital on November 6, 2004 and was handled by Dr. Teguh Supriyandono and

Dr. Bob SpOG. Finally, Dr. Vina Nanci and Dr. Doni Hamid also helped care for Siti Julaeha.

Euthanasia's request submitted to the District Court by the extended family of Siti Julaeha cannot be granted by the Central Jakarta District Court on the grounds that the court institution explains that the court institution cannot just issue a decision without examining a case filed by a justice seeker (the applicant) with all evidence that has been prepared to support the arguments of the petition in accordance with applicable law, the contents of the application letter that is registered through the court case administration consists of the address and principal of the letter, the identity of the applicant, the arguments of the application to be proven and ended with the petitum or demand the principal application as a closing, other than that the application letter submitted to the Chairperson of the Central Jakarta District Court is an ordinary individual letter that cannot be said to be application letter which submission must go through the applicable judicial administration procedures. The family of Siti Julaeha has also made a copy to the President of the Republic of Indonesia, Chairperson of the Supreme Court of the Republic of Indonesia, Minister of Health, Chairperson of LBH Health Founder, Chairperson of the Health System Brotherhood, and Advocates from the LBH Health Office.

Regarding the implementation of euthanasia in Indonesia is a polemic that must be resolved. On the one hand, euthanasia can be subject to the same sentence as murder under Article 344 of the Criminal Code, but on the other hand euthanasia does not depend on Article 344 of the Criminal Code because there is

no element of Article 344 of the Criminal Code, namely compassion, relief, and economic factors.

Criminal liability regarding euthanasia's actions according to Dr. Tammy J Siarif S.H., M.H. Kes. when referring to the Criminal Code, Article 344 is the closest to the elements of euthanasia's actions even though the article does not mention that the article is euthanasia's rule. But even a doctor can take refuge in that article, meaning that if a patient or the patient's family requests an euthanasia act against a doctor, a doctor can also request an Euthanasia request to the court, if his euthanasia request is granted then there is no criminal liability for the euthanasia act. Medical Ethics Code according to Dr. Tammy J Siarif S.H., M.H. Kes. basically does not impose sanctions on doctors who commit euthanasia. Because in the Medical Ethics Code there are no rules regarding euthanasia. Regulation of the Minister of Health No. 37 of 2014 referred to is a regulation that explains the determination of death and utilization of donor organs. In Article 1 of the Minister of Health Regulation No.37 of 2014 states that:

“The termination of life assistance therapy (with-drawing life supports) is to stop some or all life assistance therapy that has been given to patients.”

This is different from the understanding of passive euthanasia; passive euthanasia is the act of a doctor stopping the treatment of patients suffering from severe illness, which is medically impossible to cure. Termination of this treatment means accelerating the death of the patient. Based on Minister of Health Regulation No.37 of 2014, the determination of a person with brain stem death can only be done by a team of doctors consisting of three competent doctors.

Because according to Dr. Tammy J Siarif S.H., M.H. Kes. Euthanasia is done due to the death of one's brain stem.

In the explanation of the religion of Islam also forbids the name of suicide mentioned in the Qur'an and do not kill yourself, in fact Allah is the Most Merciful to you. (An-Nisa: 29), in the same hadith From Jundub bin Abdullah, he said: Rasallallah sallallaahu 'alaihi wa sallam said:

“There used to be a man before you who was injured, then he lamented, then he took a knife, then he cuts his hand. Then the blood doesn't stop flowing until he dies. Allah Azza wa Jalla said, 'My Servant preceded me against him, I forbid heaven to him'”. (Bukhari, no. 3463).

In urgency the Indonesian government must clarify the rules on suicide assisted by medical staff because so far there has been a dilemma for medical staff although the incidence of euthanasia is not so vocal in European countries but the clear urgency is passive euthanasia where doctors sometimes can provide patient request by releasing patient's life aids, and the state must immediately take action in this case, no matter how euthanasia is included in murder even with medical assistance, because after all human safety must be upheld by medical personnel, as guardians of the survival of patients affected by the disease patient, and Indonesia government step is right to deny the existence of euthanasia practices as in international human rights law, there is no mention of the right to die.