International Journal of Social Science And Human Research

ISSN(print): 2644-0679, ISSN(online): 2644-0695

Volume 04 Issue 05 May 2021

DOI: 10.47191/ijsshr/v4-i5-31, Impact factor-5.586

Page No : 1130-1139

Euthanasia Formulation Policy in Indonesia's Criminal Legislation and Implications for Patient Life

Indira Inggi Aswijati[1], Nur Rochaeti[2]

[1,2]Master of Law Studies Program, Faculty of Law Diponegoro University
Imam Bardjo, S.H. Street, No. 1 - 3, Kampus Pleburan,Semarang 50241

ABSTRACT: No religion is recognized in Indonesia that allows euthanasia to be carried out. Because indeed an action in English called mercy killing or murder based on mercy can also be said to be contradictory to its name, where in carrying out the manifestation of mercy it is precisely what is done is to take the life of man, the gift of the Almighty and should be respected and guarded. Formulation of Article 344 of the Criminal Code concerning euthanasia has a weakness, among others: The existence of elements: at the request of the person himself expressed with sincerity, which makes it difficult to prove and prosecute. Article 344 of the Criminal Code is about active euthanasia, whereas the law of passive euthanasia is not regulated. Delict euthanasia is an ordinary offense, and is not an offense, so it is demanded the tenacity and sharpness of the investigating apparatus and investigators to reveal whether an act of euthanasia has been committed.

KEYWORDS: Euthanasia, Medical Malpractice, Patient Life Rights, Health Law.

A. INTRODUCTION

There are many problems that doctors face in treating patients, as well as patients who are no longer expected to be cured or live a healthy life because the medicine has not been found, so the patient feels continuous pain, in this case the doctor must eliminate the patient's life or euthanasia with existing techniques or just leave the patient or tell him to go back to the middle of his family. Realizing that the duty of the doctor is to respect and protect every human being by carrying out their duties solely to heal and reduce the suffering of patients with their knowledge and based on their oath of office and medical ethics.

In some European countries, especially the Netherlands, it has been allowed to help end human life. The implementation can be carried out with certain conditions, including:

1. The person who asks for help so that his life ends is a person who is sick who cannot be cured, such as cancer. Furthermore, the patient is in a terminal state, namely the possibility of his life is only a few months away, so just waiting for death.
2. The patient must suffer very severe pain, so that the sufferer can only be reduced with the help of giving morphine. There are no other drugs that can reduce the patient's pain and if the patient is not given morphine, the patient is not likely to suffer the pain.
3. Those who may implement (provide) assistance to terminate the life of the patient, are only the family doctor who treats the patient and also needs a basis for the assessment of the two specialists who determine that euthanasia can be implemented.
4. All the above conditions must be met, then euthanasia can be implemented.
5. Uruguay, America, Japan is an example of a country that agrees with Euthanasia, but there are also countries that until now do not agree or have not fulfilled its legal rules regarding Euthanasia, like Indonesia and the Netherlands.

So far Indonesia has not specifically regulated euthanasia (Mercy Killing). The legal basis for the ban on euthanasia is Article 344 of the Criminal Code which reads:

> "*Barangsiapa menghilangkan nyawa orang atas permintaan sungguh-sungguh orang itu sendiri, dipidana dengan pidana penjara selama-lamanya dua belas tahun*".

As stated earlier, euthanasia is divided into euthanasia on request / voluntary and euthanasia not on request. Euthanasia on request is an euthanasia action performed by a doctor without the request or consent of the patient or his family. If the distribution of euthanasia is linked to the sound of Article 344 of the Criminal Code above, then voluntary euthanasia or euthanasia on request fulfills the elements contained in Article 344 of the Criminal Code, R. Soesilo in comments on the article states:

> "*Permintaan untuk membunuh itu harus disebutkan dengan nyata dan sungguh-sungguh (ernstig), jika tidak maka orang itu dikenakan pembunuhan biasa*".

In Indonesia, there was a request to euthanize in 2005, a patient named Siti Julaeha, who is likely to be a malpractice victim, had been unconscious since after undergoing obstetrical surgery in a hospital in East Jakarta. Her husband named Rudi Hartono with his big family Siti Julaeha asked the Health Legal Aid Institute to submit an euthanasia application. "This decision is truly the best way for all," he said.

In proving the prosecution of a doctor it is difficult to prove that the doctor has carried out euthanasia, this is due to the element of the person's own request expressed sincerely, especially if the patient is in an incompetent state to say what he wants, reject or approve his soul was removed, and the state of In Persistent Vegetative State, how is it possible to prove the request of the person himself expressed sincerely.

Indonesia is a Faithful Country that recognizes the existence of six religions, and all religions view that death is not a human will alone, but a certainty that must be lived for the living and all living humans will surely lead to death. Because death itself is part of life. The Creator has the power to give and take the soul of every human being created. This is also a question when talking about the death penalty which is ironically enforced in Indonesia.

Acts of ending life for patients suffering from brain stem death have often been carried out in Indonesia, this action is not included in actions that fulfill the elements in article 344 of the Criminal Code, because there is no real demand element and seriously from the patient, consideration is stopped for patient assistance because the patient does not have the possibility of recovery and with death from the brain stem, it can be said that the patient has died clinically. This leaves a dilemma problem, on the one hand the need for certain actions, on the other hand there is fear of health workers or hospitals against lawsuits from the patient's family or law enforcement, that the hospital / doctor has committed murder?

1. Theoretical Framework

The theory that I use is Social Utilitarianism from Rudolf von Jhering known as the originator of the theory of Social Utilitarianism or Interessen Jurisprudence (interest). The theory is a merger between the theories of Bentham and Stuart Mill and legal positivism from John Austin. The focus of Jhering's legal philosophy is about purpose, as in his book which states that the goal is the creator of all laws, there is no legal rule that does not have its origin in this goal, that is, in practical motives. Jhering further stated that the purpose of the law is the maximum welfare for the people and legal evaluation based on the consequences resulting from the process of applying the law, based on this orientation the contents of the law are provisions concerning state welfare creation arrangements.

Jhering rejects the view of Von Savigny who argues that law arises from the spirit of the nation spontaneously, because the law is always in accordance with the interests of the state, so of course the law is not born spontaneously, but is developed systematically and rationally, according to the development of the country's needs. Jhering acknowledges that there is an influence of the nation's soul, but it is not spontaneous, which is important is not the soul of the nation, but management in a rational and systematic way, in order to become a positive law. The law is deliberately made by humans to achieve certain desired results. Law experienced a historical development, but Jhering rejected the opinion of the theorists of historical flow that law is the result of pure historical forces that are not planned and not realized but the law is mainly made with full awareness by the state and aimed at certain goals.

Jhering legal theory based on the idea of benefits. Bentham's thesis about human hunters of happiness arises in Jhering thinking, which according to him, whether the state, society or individuals have the same goal, is to pursue benefits. In pursuing that benefit, an individual puts self love as the cornerstone. No one when doing something for someone else without at the same time wanting to do something for themselves. Furthermore according to Jhering, my position in the world rests on three propositions: First, I am here for myself, Second, the world is for me, and Third, I am here for the world without harming me. Then Jhering then introduced objective suitability theory in response to individual interests in social life. Conformity of objectives or more precisely adjusting these objectives is the result of uniting interests for the same purpose namely benefit. So that the law functions in addition to guaranteeing the freedom of individuals to achieve their goals, namely pursuing benefits and avoiding losses, the law is also tasked with organizing individual goals and interests so that they are related to the interests of others.

Jhering also developed aspects of John Austin's Positivism and developed it with the principles of Utilitarianism put in place by Bentham and developed by Mill, as well as making an important contribution to explaining the characteristics of law as a form of will. Jhering began to develop his legal philosophy by conducting in-depth studies of the soul of Roman law which made him very aware of the need for law to serve social goals. The basis of Utilitarianism philosophy Jhering is the recognition of purpose as a general principle of the world which includes both creatures which are lifeless and lifeless. For Jhering the purpose of law is to protect interests namely pleasure and avoidance of suffering, but individual interests are made part of social goals by connecting one's personal goals with those of others. With the unification of interests for the same purpose, society is formed, the state is the result of uniting interests for the same purpose. According to Jhering, there are four interests of the people who are targeted in the law, both egoistic, are rewards and benefits which are usually dominated by economic motives. Whereas moralistic ones are obligation and love. Law is in charge of arranging in a balanced and harmonious manner between these interests.

2. State Of The Art Previous Research

The previous relevant research was carried out by 1) James Marihot Panggabean with the title of the Criminal Law Formulation Policy in the Prevention of Indonesian Criminal Law Renewal; 2) Sri Sumiati with the title of Criminal Legal Protection Policy Against Medical Crime Victims; and 3) Aspi Riyal Juli Indarman with the title of Criminal Legal Protection Policy Against Medical Malpractice Victims. All of these studies, although relevant, however, do not discuss, review and analyze the problems that the author adopted.

3. Problems And Gap Analysis

Problems to be discussed in this study include: First; why should Indonesia explicitly ban the possibility of euthanasia in the renewal of Indonesian criminal law?Second; What are the consequences if Euthanasia has been explicitly banned in Indonesian Criminal Law? And Third; What should be the formulation of the policies governing the issue of Euthanasia in Indonesian Criminal Law?

B. RESEARCH METHODS

The research approach used is normative legal research or library legal research that is legal research conducted by examining library materials or mere secondary data and this research is conducted to identify concepts, principles and legal principles. In this study, the statutory approach, the conceptual approach (conceptual approach), the historical approach, and the comparative approach will be used.

The research specifications used are analytical descriptive. The data used in this research is secondary data. Secondary data itself consists of primary legal materials, secondary legal materials and tertiary legal materials. Data collection techniques used in this study are the study of documents or library materials, which then the data used is secondary data as a logical consequence of normative legal research or legal research literature used.

C. RESULTS AND DISCUSSION

1. Indonesian Requirement to Prohibit Explicitly the Possibility of Euthanasia in Indonesian Criminal Law Renewal

a. Indonesian Requirement To Prohibit Explicitly The Possibility Of Euthanasia In The Renewal Of Indonesian Criminal Law Based On The Medical Expert Perspective

Penulis melakukan wawancara dengan ahli medis yakni salah seorang dokter yang memiliki keahlian mengenai eutanasia yang bernama dr. Sofwan Dahlan, SpF (K). Beliau saat ini sebagai Kepala Satuan Pengawasan Intern (KSPI) di RSUD Tugurejo Semarang. Dalam wawancara yang berlangsung kurang lebih setengah jam itu penulis menggali hal-hal mengenai eutanasia dari perspektif sang dokter yang sudah familiar dengan eutanasia.

dr. Sofwan Dahlan, SpF (K) mengatakan bahwa saat ini pembagian eutanasia aktif dan pasif sudah tidak relevan lagi. Eutanasia aktif lah yang merupakan eutanasia, sementara yang sebelumnya disebut eutanasia pasif merupakan bagian dari melaksanakan tanggung jawab sebagai tenaga medis. dr. Sofwan Dahlan, SpF (K) menekankan bahwa tanggung jawab profesi mereka tidak hanya *curing* namun juga *caring*, yang selama ini digolongkan sebagai eutanasia pasif itu merupakan tindakan *caring*. Membuat nyaman mereka yang sudah berada pada kanker stadium akhir atau tak tersembuhkan lagi merupakan tindakan yang semestinya, itulah bagian dari melakukan tanggung jawab *caring* yang disebut perawatan paliatif. Karena memang para dokter dan tenaga medis lainnya bukanlah tabib pembuat keajaiban, mereka para profesional yang mengandalkan metode dan pengetahuan dalam usahanya menangani para pasien.

dr. Sofwan Dahlan, SpF (K) menyebutkan bahwa di luar negeri sudah banyak disediakan tempat khusus untuk perawatan paliatif yang disebut *Hospice Home Care* (HHC) Di tempat-tempat itu mereka yang sudah mendekati ajalnya atau tak tersembuhkan lagi dirawat dan diberi kenyamanan maksimal agar penderitaan mereka berkurang dan diusahakan agar semakin siap baik secara jasmani maupun rohani untuk mencapai garis akhir hidupnya. Perawatan ini tidak sebatas pada pemberian obat-obatan saja namun juga meningkatkan kualitas hidup pasien secara besar karena meliputi juga segi spiritual dengan melibatkan rohaniwan yang sesuai dengan masing-masing pasien. Di Indonesia *Hospice Home Care* pun sudah mulai ada meskipun apabila melihat tulisan-tulisan akademis dari kampus ternama di Indonesia belum optimal.

Pendapat dr. Sofwan Dahlan, SpF (K) tadi apabila diambil maka tidaklah menyimpang dari pengaturan yang sudah ada di Indonesia, sebagaimana Pasal 344 KUHP yang hanya dapat dikenakan pada eutanasia aktif. Maka adalah masuk akal apabila dr. Sofwan Dahlan, SpF (K) mengatakan bahwa penyebutan eutanasia aktif dan pasif itu tidak relevan, yang ada hanyalah eutanasia saja. Dan yang dilarang oleh agama-agama pun sebenarnya adalah eutanasia aktif, sebab eutanasia aktif itulah yang merupakan intervensi langsung yang dapat pula dikatakan sebagai mendahului takdir. Sebab bukan kuasa dari manusia untuk mempercepat berakhirnya hidup manusia lainnya.

Menurut penulis Indonesia ke depannya harus mengakomodir pandangan seperti yang disebutkan oleh dr. Sofwan Dahlan, SpF (K) diatas, bahwa yang dimaksud dari eutanasia itu adalah eutanasia aktif, dan bahwa perbuatan tersebut haruslah dilarang secara tegas. Sanksi pidana dapat dipertimbangkan untuk semakin diperberat agar mengurangi kemungkinan terjadinya tindakan

eutanasia. Sudah sepatutnya sebagai dokter atau tenaga medis lainnya yang memeluk suatu agama dalam menjalankan tugas dan tanggung jawabnya terhadap pasien senantiasa berpegang pada apa yang diajarkan oleh agama mengenai penghargaan terhadap nyawa manusia.

The author conducted an interview with a medical expert, one of the doctors who had expertise in euthanasia named Dr. Sofwan Dahlan, SpF (K). He is currently the Head of the Internal Control Unit (KSPI) at Tugurejo Regional Hospital Semarang. In the interview that lasted about half an hour the author explored things about euthanasia from the perspective of the doctor who was familiar with euthanasia.

dr. Sofwan Dahlan, SpF (K) said that currently the distribution of active and passive euthanasia is no longer relevant. Active euthanasia is euthanasia, while what was previously called passive euthanasia is part of carrying out responsibilities as medical personnel. dr. Sofwan Dahlan, SpF (K) emphasized that their professional responsibilities were not only curing but also caring, which had been classified as passive euthanasia which was a caring action. Making it comfortable for those who are already at end-stage or incurable cancer is the right thing to do, that's part of doing caring responsibilities called palliative care. Because indeed doctors and other medical personnel are not miracle-making physicians, they are professionals who rely on methods and knowledge in their efforts to handle patients.

dr. Sofwan Dahlan, SpF (K) stated that abroad there are already many special places for palliative care called Hospice Home Care (HHC). In those places those who are nearing their end or not cured are treated and given maximum comfort so that their suffering reduced and sought to be more prepared both physically and spiritually to reach the end of his life. This treatment is not limited to the administration of drugs but also increases the quality of life of patients in a large way because it also includes the spiritual aspect by involving clergy who are in accordance with each patient. In Indonesia, Home Care Hospice has begun to exist, even though seeing academic writings from famous campuses in Indonesia is not optimal.

Opinion of Dr. Sofwan Dahlan, SpF (K), when taken, it does not deviate from existing arrangements in Indonesia, as Article 344 of the Criminal Code can only be imposed on active euthanasia. Then it makes sense if Dr. Sofwan Dahlan, SpF (K) said that the mention of active and passive euthanasia was irrelevant, only euthanasia. And what is prohibited by religions is actually active euthanasia, because active euthanasia is the direct intervention that can also be said to precede fate. Because it is not the power of man to accelerate the end of another human life.

According to Indonesian writers in the future, they must accommodate the views as stated by Dr. Sofwan Dahlan, SpF (K) above, that what is meant by euthanasia is active euthanasia, and that the act must be strictly prohibited. Criminal sanctions can be considered to be further aggravated to reduce the possibility of euthanasia. It is fitting that doctors or other medical personnel who embrace a religion in carrying out their duties and responsibilities to patients always adhere to what religion teaches about respect for human life.

Apart from respect, doctors and medical personnel as well as those who understand and understand the problem should properly guide patients and their families to understand what is best for them. Doctors and other medical personnel may not be the same as cooks in restaurants that make exactly what their customers want, because they know better what is best for patients themselves based on their professional judgment. dr. Sofwan Dahlan, SpF (K) said that in this case the doctor should not even need permission from the family, but is obliged to tell only the actions he will take in handling the patient.

dr. Sofwan Dahlan, SpF (K) said that it was often the patient's family who asked for euthanasia of patients, often the main factor was the economy. If the patient feels that it is no longer possible to be saved and if continually given care to seek an extension of life then that will only be a waste of expenditure.

The author believes that economic considerations should not be the only consideration in deciding to behave related to the patient's condition. Families also have to pay attention to the physical and spiritual needs of patients, they must always encourage and pay attention to patients while still being able. The role of the family is not only limited to those who bear the costs but also those who actively save patients with the love that is expected to continue to be given. Like the story of a patient at Dr. Sofwan Dahlan, SpF (K) who has been in a coma for a dozen years but the family always gives the best care to him where the anticipated miracle finally arises, the patient awakens and recovers from his illness after a dozen years of coma. Isn't that the belief that we should exemplify? Enthusiasm to fight for people's lives, not to end it sooner.

b. Indonesian Requirement To Prohibit Explicitly The Possibility Of Euthanasia In The Renewal Of Indonesian Criminal Law Based On *Law Making Institution* Perspective

The view based on the perspective of the making institution law was stated by Drs. H. Romli Mubarok, S.H., M.H. as a member of Commission A (in Law and Government) at the Regional Representative Council of Central Java Province which is a regulatory element concerned with the legal field especially criminal law itself and follows the issue of euthanasia in the policy formulation of the Criminal Procedure Code. He believes that good or active euthanasia must be banned or not allowed.

His view is based on theological philosophy by elaborating on the first meaning of the Pancasila which reads "One Godhead". He based that Indonesia, though not as a religion state that recognized and accepted one religion as an official religion which had implications for the rules of the scriptures, was also not a secular state that separated state affairs from religious affairs. However, as a country that recognizes the Godhead, he argues that euthanasia must be banned because the right to take away life is the power

of God and the state has no legality to allow taking someone's life with euthanasia both active and passive. His philosophical view that the views of religious values should be used as references and legal sources in looking at euthanasia. Specifically, he alludes to as a Muslim, that everything should be carried out / sought because the one who determines the will is Allah SWT or God Almighty.

His view, which is based on theological philosophy, is elaborated with legal arguments. The legal argument that he put forward is that the law is "black and white" and in the context of euthanasia doctors treat patients on an informed consent basis. He is concerned with passive euthanasia, which is the subject of remembering standing against active euthanasia, which is understood that it is not allowed. According to him, the omission of patients to stop all forms of treatment as passive euthanasia is a violation of the provisions of the Health Law that patients must be treated. Sociologically supported that the absence of treatment by hospitals or medical personnel ignores the handling of patients due to the patient's economic inability. In addition, in the context if the medical staff conveyed to the patient or family the agreement to conduct euthanasia even though it was passive then a legal event had occurred, this could be a criminal offense. He is of the view that he agrees with the status quo regulated in Article 344 of the Criminal Code and ius constituendum which is being initiated through Article 588 of the Criminal Procedure Code.

The response to the statement from Mr. Romli was that the author agreed that Indonesia was not a religious country nor a secular state, however, interpreting the Most Powerful Sila Ketuhanan needs to elaborate on what the founding father meant so that it became the first principle and became a guideline in nation and state in this context punish. In addition, it should open the eyes of how relevance with other principles such as just and civilized humanity. Whether euthanasia is civilized or not.

In fact, the law must be able to work up to the level of practice, the powerlessness of medical science, however sophisticated, accompanied by the emergence of incurable diseases or the slight probability of recovery or the constraints of financial capacity, causes healing of patients to be limited, this fact is inevitable. In the end, it should be contextualized by the existing conditions, not meaning to derogate meaning, but as a form of contextualization and looking for a midpoint to accommodate legal needs in society.

For the author, passive euthanasia cannot simply be rejected in such a way, perhaps what should be contemplated is how to make standards, criteria and critical rules so that passive euthanasia is innocent to use. Passive euthanasia will be effective for patients with certain conditions.

c. Indonesian Requirement To Prohibit Explicitly The Possibility of Euthanasia To Be Done In Indonesian Pidana Legal Reform Based On Law Sanctioning Institution

The perspective of the judge interviewed was Mr. Jhon Halasan Butar Butar, S.H., M.H., Msi. from the West Kalimantan High Court. Before explaining how his views on euthanasia in the judge's perspective, he explained beforehand the context of Euthanasia. Euthanasia arises from a long debate in several countries in the world. The context of the debate culminated in a long, melancholy discourse. Some prominent experts like Dr. Van den Berg, through his book published in 1969, changed the Dutch public perspective to be more inclined to approve and get support for euthanasia to an active level. His influence peaked with the precedent of the case of Leeuwaarden, who was charged with trial for carrying out active euthanasia against his mother who had been seriously ill with cancer, was sentenced for guilty but the court gave a suspension. Since then it has been a precedent that euthanasia is permissible and gave birth to the pro-euthanasia movement under the name of the pro-euthanasia of the Dutch Voluntary Euthanasia Society and stimulated the Royal Dutch Medical Association to make a guideline for euthanasia.

In other parts of the world, the Supreme Court of the United States of America in 1997, unanimously (9 votes) decided that the federal government has the right to revoke legal protection against doctors or medical personnel who carry out euthanasia. Violent reactions arose from the public over the decision to the opposition between pro and contra euthanasia medical personnel. The polemic reminded me that the credible world polling agency Gallup conducted the largest poll in the United States and 72% in 1991 stated that the United States community agreed with euthanasia.

He stated that he understood very well that it was indeed less appealing to compare it with Indonesia. But the goal is how lessons are learned from two precedents with differences in dynamics in the two countries. In his eyes as a judge, the precedent of the two countries is very important for learning from judges from around the world. He stated, for him it was very hard for the judge to decide the case by considering "the legal sense that prevails in the community" considering the judge was not a mouthpiece of the law besides the need to prioritize benefits and justice.

Looking at euthanasia needs to see from several dimensions, especially the substance and condition of society. The debate over the substance of euthanasia, both passive and active, has its own reinforcing arguments and is almost equal in balance, only the political decision will determine what will become the law (de facto). From the condition of the community, the validity of the law will be tested, is it in accordance with the sense of justice owned by the community.

In the case of the Netherlands how judges can change the law by finally becoming a precedent that legalizes euthanasia. The judge photographed the phenomenon of how the law felt for Dutch society at that time. The phenomenon of responses arising from euthanasia with the touch of a case that is indeed dilemmatic makes euthanasia indirectly legal. It became a major change among medical staff and civil society to promote euthanasia, to make a big change that euthanasia must be ensured by establishing procedures and guidelines by the association of medical personnel.

In cases in the United States, it is very inverse. The judge with his standing against popular opinion in the public about euthanasia in full unanimous opposition to euthanasia. The two precedents above will test the judge in deciding and taking sides.

The judge has provided what will be a guideline in deciding, however the views and philosophy adopted will determine how the judge decides the case, including in the context of euthanasia. In the Belgian context at least it can be read Savigny's influence is strongly adhered to "sweet potato societas uibi ius". Whereas America could be very influenced by a variety of thoughts including when it developed the thought of Roscoe Pound "law is a tool of social engineering" which was echoing at that time.

He added, Indonesia has a legal source called Pancasila which contains the views and philosophy of the nation included in law. Justifying euthanasia must be seen from how Pancasila provides references and guidelines and how the body in the Constitution translates and embodies the norm. the big question for him is whether euthanasia has a place in the legal philosophy in the country of Indonesia. He explained that passive euthanasia is still within the corridor of the Indonesian legal philosophy as a nation and is certainly relevant, with a note:

1. All efforts have been made to treat patients;
2. In medical justification there is no hope of recovery;
3. Not carried out on the basis of economic or financial limitations except on the basis of the agreement of the patient's family; and
4. There is no suggestion or suggestion from medical personnel to do passive euthanasia.

Basically, respect for the right to life and to exercise the right to life deserves to be upheld and has a noble position and dignity as the right given by the Almighty God.

Mr. Jhon's elaboration of arguments gives a broad perspective to the author. Moreover, deepening the science of justice is in accordance with its capacity as a judge, contextualizing science, rules and conditions in society. Perspectives that try to draw the midpoint to take a balance between certainty, justice and expediency. His opinion was related to how the criteria and standards of euthanasia applied were appropriate and at least worthy of being an argument proposition at least if passive euthanasia was applied in Indonesia in RKUHP.

2. As a result of Euthanasia Has Been Prohibited Explicitly in Indonesian Criminal Law

a. Affirming the meaning of the Right to Life (Right to Life) in the Constitution and Life View of the Indonesian Nation

The second amendment gave birth to something fundamental in the state that the right to life was recognized, guaranteed, protected and fulfilled by the state as contained in Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia which read: "The right to life, the right not to be tortured, the right to independence mind and conscience, religious rights, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on a retroactive basis are human rights which cannot be reduced under any circumstances. " The formula also states that the right to life (one of them) is a right that cannot be reduced in any form or nondegorable rights.

The right to life is already an awareness of the international community and is a recognition as a civilized nation and state. The Universal Declaration of Human Rights stipulates in article 3 which reads "everyone has the right to life, liberty and security of person". Which literally means that everyone has the right to the right to life. As with the Cairo Declaration on Human Rights in Islam, contained in article 2 letter (a): "Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to safeguard this right against any violation, it is prohibited to take life except for a prescribed reason. Literally it can be interpreted that life is a gift from God and the right to life is guaranteed to all humans, it is an obligation for individuals, communities and countries to protect this right from all forms of violence and are prohibited from taking life except for reasons determined by the Shari'a.

The fundamental difference between the Universal Declaration of Human Rights and the Cairo Declaration on Human Rights in Islam concerning the right to life is not the location of the right to die but to the understanding of death penalty. For adherents of The Universal Declaration of Human Rights, which is practiced in many countries, especially the west, the death penalty should not be carried out, whereas the Cairo Declaration on Human Rights in Islam allows the death penalty with very strict restrictions, based on the reasons determined by sharia.

The problem is how is the right to die? In the comprehensive text of book VIII as a document discussing changes to the 1945 Constitution of the Republic of Indonesia which contains human rights, the ratio of the right to life is not found. It has become a common sense other than that it has been recognized by the two declarations previously mentioned. Right to die is based on the statement of the American Civil Liberties Union (ACLU) which says that:

> "*The right of a competent, terminally ill person to avoid excruciating pain and embrace a timely and dignified death bears the sanction of history and is implicit in the concept of ordered liberty. The exercise of this right is as central to personal autonomy and bodily integrity as rights safeguarded by this Court's decisions relating to marriage, family relationships, procreation, contraception, child rearing and the refusal or termination of life-saving medical treatment*".

Literally means the right of a competent person, a person who is seriously ill to avoid extraordinary pain and pick up death in a timely and dignified manner as a historical sanction and implied as ordered by the concept of freedom. The exercise of this right

is as a center of personal autonomy and body integrity as rights are protected by Court decisions like marriage, family relations, procreation, limitation of offspring, raising children and refusing or stopping life-saving medical care.

It should be realized that the right to die departs from a liberal philosophy which considers life to be its autonomy and needs to get legal guarantees or court decisions. Based on this basis, it is appropriate to confuse this understanding with the 1945 Constitution of the Republic of Indonesia as the highest source of law. Human rights are not absolutely free, not on the basis of state arbitrariness but are based on:

> "*dalam menjalankan hak dan kebebasannya, setiap orang wajib tunduk kepada pembatasan yang ditetapkan dengan undang-undang dengan maksud semata-mata untuk menjamin pengakuan serta penghormatan atas hak dan kebebasan orang lain dan untuk memenuhi tuntutan yang adil sesuai dengan pertimbangan moral, nilai-nilai agama, keamanan, dan ketertiban umum dalam suatu masyarakat demokratis*".

These restrictions are carried out solely for the sake of (1) guaranteeing recognition and respect for the rights and freedoms of others and (2) to fulfill fair demands in accordance with moral considerations, religious values, security. It is noteworthy that consideration of moral and religious values is an element of measurement in carrying out human rights. As stated earlier that the right to die has no position or is not a legal flavor that applies to Indonesian society.

In the context of the meaning of the right to life, it can adapt how the speakers explained their arguments regarding this matter. dr. Sofwan Dahlan, SpF (K) rejects the logic of a contrario which states that the right to life also means the right to die, the reason is based on that because it is contrary to the teachings of religion in Islam there are verses in the Koran which states that never drop yourself with your own hands into misery. In the context of Dr. Sofwan Dahlan, SpF (K) rejects the recognition of the right to die as part of the right to live and rejects its existence.

Drs. H. Romli Mubarok, S.H., M.H. different views by stating that the right to die and the right to live is the power of God (Allah SWT). However, he underlined that the right to die can be carried out by individuals because it depends on personal will and the law does not exist in that realm because it enters the personal and state domains need to limit themselves not to interfere too much with individual personal life . He analogized it to one's worship activities which cannot be forced by the state.

The view of Jhon Halasan Butar Butar, S.H., M.H., Msi. states that human rights can be restricted and should be subject to Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia which regulates it. What he believed was the limitation did not derogate the meaning of the right to life itself, but also reflected the view as a nation that it still adhered to and recognized religious and moral values as benchmarks. Understanding the right to die is not part of the right to live and it has no place in Indonesia's view as a Nation especially in the judiciary.

The opinion of the speakers illustrates the diversification of real views. dr. Sofwan Dahlan, SpF (K) in his view of his refusal of the right to die was based not on his expertise as an expert or medical personnel, but his view as a Muslim with the guidance of scripture and his religion was at least strongly influenced by his theological views. Likewise with Drs. H. Romli Mubarok, S.H., M.H., he also refused by using the theological theorem. However, it still uses a human rights approach in justifying the right to die that it is a personal and state right not to interfere with the desire or attempt to commit suicide.

Such a view states that religious values and morality as referred to in Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia in addition to being a juridical benchmark in limiting human rights, are also tested sociologically. Thus, the policy of formulation regarding euthanasia in the Indonesian Criminal Law and Renewal of Indonesian Criminal Law has implications for strengthening, purifying and strengthening the nature of the right to life guaranteed by the constitution. Not only that, it also affirms the view of the life of the Indonesian Nation that adheres to religious and moral values in terms of their lives. A liberal view does not get its place in the constitution as the highest law in this country.

In the end, respect for human rights must be upheld, therefore the state must be consistent in addressing the right to life of patients. Patients as humans have the right to live must be held firm, that right must be maintained even though the patient no longer feels stable to look after him. There is nothing wrong with trying to maintain the patient's hopes and confidence to continue to survive and seek healing. Make the patient comfortable to give up his condition to his physical and spiritual abilities to heal and always surrender to the will of the Creator, not to overtake his decision.

b. Affirming Aspects of Legal Certainty Against the Status of Euthanasia

Explicit prohibitions as outlined in clear formulas which contain primary norms in the form of subjects, objects and prohibition elements (fulfilling the rules of lex certa, lex stricta and lex scripta) and contain secondary norms to sanction those who violate them will provide multiple effects. Both patients, patient families and medical personnel will increasingly pay attention to this rule that active euthanasia is legally prohibited and sanctions will be imposed if violated. Whether even if the patient or the patient's family requests, medical personnel are not allowed to take any action that can be categorized as active euthanasia.

Euthanasia in general is not the realm of private law which fulfills the principle of consensus or an agreement to eliminate the life of the patient then becomes permissible. Euthanasia is in the realm of public law so consecration will violate the legal status that euthanasia in particular which is active is clearly prohibited by its philosophical, theoretical and sociological ratios. This

indicates the clarity of the legal status of euthanasia as well as strengthening the oath and code of ethics of medical personnel to constantly seek health / healing of patients, which of course in this case the integrity of the patient's life.

In the context of law enforcement officials (police and prosecutors) will get clarity to carry out tasks in the case of investigations and investigations of the police and prosecution and indictments of the prosecutor's office on an active euthanasia event. There is a strong basis based on regulations that contain explicitly so that law enforcers will continue on their corridors in carrying out their duties, not confusing or exceeding their authority or in carrying out their duties given that there are explicit regulations.

For the judge himself, it will be increasingly facilitated if the arrangement is done explicitly because the judge has clear legal guidelines / references in deciding cases so that the law is always linear and becomes a solution and adjudicator against anyone who violates the rules explicitly with the provision of sentencing that does not exceed its authority because it is clearly stated. This will further reduce the expiration of the final period of time for a verdict (inkracht van gewijsde) against legal remedies based on the presumption that the judges have wrongly applied the law. The impact is broadly that the case of euthanasia will not add to the burden of the Supreme Court case which is still mounting and has become a protracted problem to date.

3. Formulation of the Euthanasia Policy in Indonesian Criminal Law

Article 344 of the Criminal Code and the Criminal Code as a whole are products of the Dutch nation which ironically becomes the first country to legalize euthanasia. The country of origin of Indonesian law which prohibits the practice of euthanasia itself now makes it possible to do euthanasia even with a number of strict conditions. The Indonesian context, requests for euthanasia have occurred several times, most recently the efforts of one of the victims of the 2017 tsunami in Aceh, which of course was rejected like previous requests. The possibility of being granted permission to conduct euthanasia by a court in a criminal law condition that is still used by the Criminal Code is of course present, considering that judges are also obliged to conduct rechtsvinding (legal discovery) if needed and the judge is not a mere mouthpiece of law that deserves attention to legal needs and dynamics that exists in society by assessing the context of the specificity of a case.

The possibility of euthanasia can be further minimized by making a clear formulation of euthanasia in the new Law. According to the author, there are several options that can be taken by regulators in addressing euthanasia, namely (1) explicitly regulating the prohibition of active euthanasia in the Criminal Code; and (2) applying lex specialis by amending the Law on Health and adding Chapters or Articles that specifically regulate the application for euthanasia along with strict conditions to be granted.

Prohibiting euthanasia explicitly in the new Criminal Code as being the first option is formulated to be a strict norm that prohibits accompanied by formulation of criminal threats for the possibility of parties who may potentially violate criminal threats according to the weight of their roles and actions. The second option is to apply lex specialis by changing the Law on Health and adding chapters or articles specifically regulating the application of euthanasia along with strict conditions to be granted. This second option naturally does not merely allow euthanasia because the strict conditions are useful at least in a number of ways, namely:

1. Not turning a blind eye to the sociological conditions of the community with their views on the need for euthanasia.
2. Avoid the practice of illegal euthanasia with full awareness of breaking the law (if strictly prohibited) and agreement between the patient or his family and medical personnel due to a situation or urgency that is not based on justifiable indicators or justifications.
3. Enforcement of strict conditions is a form of prudence, careful consideration will be emphasized conditions that require logical justification and urgency and specificity in a casuistic events.

The second option is actually not so scary because at least the fear of a drastic increase in death rates in European countries can be minimized because of the strict conditions made. Indonesia does not have to teach euthanasia but allows euthanasia to be carried out with the conditions fulfilled a number of terms and procedures provided. The state is required to be consistent in its attitude and must be rigid in responding to the boundaries that have been made, it is not easy to compromise requests especially those whose basis is not at all strong.

D. CONCLUSION

The conclusion of this research is:

1. Indonesia's requirement to explicitly prohibit the possibility of euthanasia only applies to active euthanasia and passive euthanasia is permitted. The argument weighs and gets support from medical experts, namely doctors, making institution law and law sanctioning institution. The argument that arises is related to the theological, medical, human rights and legal ideals of the Indonesian people.
2. As a result if Euthanasia has been explicitly banned is First, affirming the meaning of right to life in the constitution and life view of the Indonesian Nation and Second, affirming aspects of legal certainty regarding the status of euthanasia which will affirm the status of legality as well primary norms in the form of subjects, objects and elements of prohibition (fulfilling the rules of lex certa, lex stricta and lex scripta) and contain secondary norms to sanction those who violate them.

3. The formulation of an explicit prohibition policy on active euthanasia with alternative norms formulated in the ius constituendum is (1) explicitly regulating the prohibition on the implementation of active euthanasia in the Criminal Code; and (2) applying lex specialis by amending the Law on Health and adding Chapters or Articles that specifically regulate the application for euthanasia along with strict conditions to be granted.

REFERENCE

BOOKS

1) Adji, Oemar Seno., 1985, Hukum Pidana Pengembangan, Jakarta: Erlangga.
2) Agung, I Gusti Ngurah., 2007, Manajemen Penulisan Skripsi, Tesis dan Disertasi, Jakarta: RajaGrafindo Persada.
3) Chazawi, H Adami., 2007, Malpraktik Kedokteran: Tinjauan Norma dan Doktrin Hukum, Malang: Bayumedia.
4) Djamali, Abdoel., 1993, Pengantar Hukum Indonesia, Jakarta: Raja Grafindo Persada.
5) Djoko dan Nirwanto, Andhi, Djaman., 1984, Euthanasia Hak Azasi Manusia dan Hukum Pidana, Jakarta: Ghalia Indonesia.
6) Eka Yuantoro, F.A., 2005, Eutanasia, Jakarta: Obor
7) Elvandari, Siska., 2015, Hukum Penyelesaian Sengketa Medis, Yogyakarta: Thafamedia
8) Fajar, Mukti dan Achmad, Yulianto., 2010, Dualisme Penelitian Hukum Normatif & Empiris, Yogyakarta: Pustaka Pelajar.
9) Guwandi, J., 2009, Dugaan Malpraktek Medik & Draft RPP: Perjanjian Terapetik antara Dokter dan Pasien, Jakarta: Fakultas Kedokteran Universitas Indonesia.
10) _____, 2009, Pengantar Ilmu Hukum Medik & Bio-etika, Jakarta: Fakultas Kedokteran Universitas Indonesia.
11) Halimy, Imron., 1990, Euthanasia, Solo: Ramadani.
12) Ilyas, Amir., 2014, Pertanggungjawaban Pidana Dokter dalam Malpraktik Medik di Rumah Sakit, Yogyakarta: Rangkang Education.
13) Isfandyarie, Anny dan Fachrizal Afandi., 2006, Tanggungjawab Hukum dan Sanksi bagi Dokter Buku ke I, Jakarta: Prestasi Pustaka.
14) Isfandyarie, Anny., 2006, Tanggungjawab Hukum dan Sanksi bagi Dokter Buku ke II, Jakarta: Prestasi Pustaka.
15) Kansil, C.S.T., 1989, Pengantar Ilmu Hukum Dan Tata Hukum Indonesia, Jakarta: Balai Pustaka.
16) Karyadi, Petrus., 2001, Euthanasia Dalam Perspektif Hak Asasi Manusia, Yogyakarta: Media Pressindo.
17) Kountur, Ronny., 2003, Metode Penelitian Untuk Penulisan Skripsi dan Tesis, Jakarta: PPM.
18) Lamintang, P.A.F., 1997, Dasar-Dasar Hukum Pidana Indonesia, Bandung: Citra Aditya Bakti.
19) M., Effendi. H.A., 1999, Hak Asasi Manusia Dalam Dimensi Hukum Nasional Dan Hukum Internasional, Jakarta: Ghalia Indonesia.
20) Muslich, Ahmad Wardi., 2014, Euthanasia: Menurut Pandangan Hukum Positif dan Hukum Islam, Jakarta: RajaGrafindo Persada.
21) Ngani, Nico., 2012, Metodologi Penelitian Dan Penulisan Hukum, Yogyakarta: Pustaka Yustisia.
22) Notoatmodjo, Soekidjo., 2010, Etika & Hukum Kesehatan, Jakarta: Rineka Cipta.
23) Pilkington, J Maya., 1992, Misteri Masa Lalu Anda (tentang ajaran Yudaisme), Jakarta: Arcan.
24) Rachles, James., 1986, The End Of Life, British Medical Journal: Oxford University Press.
25) Soekanto, Soerjono., 1990, Ringkasan Metodologi Penelitian Hukum Empiris, Jakarta: INDHILL-CO.
26) Soeprapto., Maria Farida Indarti., 1998, Ilmu Perundang-Undangan, Yogyakarta: Kanisius.
27) Soetrisno S., 2010, Malpraktek Medik & Mediasi Sebagai Alternatif Penyelesaian Sengketa, Tangerang: Telaga Ilmu.
28) Suteki dan Taufani, Galang, 2018, Metodologi Penelitian Hukum, Cetakan kedua, Jakarta: Rajawali Pers.
29) Supriadi, Wila Chandrawila., 2001, Hukum Kedokteran, Bandung: Mandar Maju.
30) Triwibowo, Cecep., 2014, Etika & Hukum Kesehatan, Yogyakarta: Nuha Medika.

JOURNAL ARTICLE

1) Pradjonggo, Tjandra Sridjaja, "Suntik Mati (Euthanasia) Ditinjau Dari Aspek Hukum Pidana Dan Hak Asasi Manusia Di Indonesia", Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan, Th. 1, No. 1, 2016.

INTERNET ARTICLE

1) Bertens, K, Euthanasia: Perdebatan Yang Berkepanjangan, Kompas, 28 September 2000
2) Marpaung, Putri, Tugas Etika dan Hukum Kesehatan (Eutanasia), www.putrisahatimarpaung.blogspot.co.id, accessed on 4 Januari 2018.
3) Murtopo, Herulono , Euthanasia Mewujudkan Hak untuk Mati?, www.kompasiana.com , accessed on 4 Januari 2018.
4) Nabilah, Kasus Euthanasia Killing yang Terjadi di Dunia , www.keperawatanreligionnabilah.wordpress.com , accessed on 4 Januari 2018.
5) Ozanam, Frederic, Euthanasia Menurut Moral Gereja Katolik, www.ozanam.wordpress.com, accessed on 4 Januari 2018.

6) http://rahmanamin1984.blogspot.co.id/2014/03/filsafat-hukum-aliran-utilitarianisme.html, diakses pada 4 Januari 2018.
7) Rahmat, Wilta Aulia, Hukum Euthanasia Menurut Islam, www.aul-al-ghifary.blogspot.co.id/, accessed on 4 Januari 2018.
8) Ruth Terry, Euthanasia, www.mytaste.wordpress.com, accessed on 4 Januari 2018.
9) Saputra, Andi, Moralitas RUU KUHP Pelaku Oral Seks hingga Kumpul Kebo Terancam Bui, www.detik.com, accessed on 4 Januari 2018.

LEGISLATION

1) Undang Undang Dasar Negara Republik Indonesia Tahun 1945

ANOTHER DOCUMENT

1) African Charter on Human and Peoples' Rights.
2) Cairo Declaration on Human Rights in Islam.
3) Bleich, J. David, The Jewis View of Euthanasia, Ktav Publishing House, 2005. (diakses dari www.wikipedia.com accessed on 4 Januari 2018).
4) FK USU, 2006, Kode Etik Kedokteran Indonesia dan Pedoman Pelaksanaan Kode Etik Kedokteran Indonesia, Medan: USU Repository.
5) Putusan Pengadilan Negeri Banda Aceh Nomor 83/Pdt.P/2017/PN Bna.
6) Rancangan Undang-Undang KUHP 2014.
7) Saunders, Willian, Euthanasia Menurut Ajaran Gereja, Arlington Catolic Herald Inc, 2001 (diakses terjemahannya dari yesaya.indocell,net accessed on 4 Januari 2018).
8) The Universal Declaration of Human Right.
9) Voluntary Euthanasia Under Control? Further Empirical Evidence from the Netherlands," Journal of Medical Ethics, 1999, 25.