

## EUTHANASIA REVIEW FROM APPLICABLE CRIMINAL LAW IN INDONESIA (Case Study Medan District Court)

<sup>1</sup>Mega, <sup>2</sup>Nelvitia Purba

<sup>1,2</sup> Faculty of Law, Universitas Muslim Nusantara Al-Washliyah Medan

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### Keywords

Euthanasia,  
Criminal Law

Abstract. Apart from technological advances that have many positive effects, it's just that for some people think that these advances have negative effects as well. The negative influence in question is the human thought of a death. The negative influence of technological advances in health science causes the family of a patient or the patient himself to apply to medical personnel or doctors to hasten the death of a patient in order to relieve pain so that the patient can rest in peace and this is what we call euthanasia. In line with the title of this research, namely "Euthanasia Judging from the Criminal Law Applicable in Indonesia". The problems that will be discussed in this research are How is the application of the law related to euthanasia in the perspective of criminal law? What are the factors that cause someone to apply for euthanasia? What is the medical legal responsibility regarding medical officers (doctors) who perform euthanasia? This research approach uses normative juridical law research methods. This study uses primary data and tertiary data and data analysis in this study uses qualitative analysis. This study shows that the legal basis used for regulating euthanasia in positive law in Indonesia is Article 344 of the Criminal Code, and the factors that apply to euthanasia are generally severe illness with low life expectancy, frustration factors and economic or financial factors.

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Email : [Megaritonga477@gmail.com](mailto:Megaritonga477@gmail.com)  
[nelvitiapurbaum@gmail.com](mailto:nelvitiapurbaum@gmail.com)

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### 1. INTRODUCTION


Efforts to improve the quality of life in the health sector are a very broad and comprehensive effort, these efforts include improving public health, both physical and non-physical. In the National Health system, it is stated that health concerns all aspects of life whose scope and scope is very broad and complex. This is in line with the definition of health given by the international community as: a state of complete physical, mental and social well being and not merely the absence of disease or infirmity.

It can be understood that basically health problems involve all aspects of life and cover all the time of human life, both past life, present life and future life. Judging from the history of its development, there has been a change in value orientation and thinking regarding efforts to solve health problems. The process of changing value orientation and thinking is always evolving in line with technological and socio-cultural developments. The development policy in the health sector which was originally in the form of an effort to cure patients, has gradually developed towards a unified health development effort for the entire community and community participation that is comprehensive, integrated and sustainable which includes:

1. Efforts to increase (promotive);
2. Preventive efforts (preventive);
3. Healing efforts (curative);
4. Recovery efforts (rehabilitative).

The existence of an overly fanatical influence of globalization on freedom has resulted in the estrangement of well-ordered relationships for the collective life of the nation and state into an individual relationship in managing one's own life to determine its future, as well as in determining and ending its future. , even the life of a patient can be extended for a certain period of time, not only that,

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the calculation of the death of a person suffering from a certain disease can be done more precisely.

The development of science and technology also gave birth to new thoughts among today's society, that the demands of human rights are not only limited to the issue of the right to life alone, but also the demand for the right to end life, namely death. In a modern liberalistic view, the issue of death is no longer seen as something that must be accepted with resignation, or in other words that death is not always left to a destiny, but there is also an attempt to alleviate the death medically, and it is a right. for everyone as opposed to the right to life.

The patient's right to die through euthanasia has often been discussed by experts. However, this issue will continue to be the subject of debate, especially if there are interesting cases. Religious, moral, medical, and legal experts have not found agreement in dealing with the patient's desire to die in order to stop his suffering. This situation poses a dilemma for doctors, whether he has the right to end the life of a patient at the request of the patient himself or his family, under the pretext of ending prolonged suffering, without the doctor himself facing legal consequences. Of course in this case the doctor is facing a conflict in his heart.

This debate will never end because the viewpoints used are very contradictory, and again the reason for the debate is the issue of the legality of the act of euthanasia. Although basically euthanasia is included in criminal acts regulated in Article 344 of the Criminal Code (KUHP). In European countries (Netherlands) and America, euthanasia has its own place where its legality is recognized, this is also done by the State of Japan. Of course, in carrying out euthanasia, you must go through the procedures and requirements that must be met so that euthanasia can be carried out. In Indonesia, the issue of euthanasia still has not found a place that is legally recognized and is it possible in developments in the development of Indonesian Positive Law,

The traces of the contemporary debate on euthanasia in Indonesia refer to two stories. First, the story of Hasan Kusuma. On October 22, 2004, Hasan Kusuma submitted an application for permission to the Central Jakarta District Court so that his wife, Again Isna Nauli, be given euthanasia. The wife had been in a coma for two months, plus she was struggling to pay for medical care. It was reported that at that time, the Central Jakarta District Court rejected the euthanasia request.

The second story refers to Ignatius Ryan Tumiwa. This postgraduate graduate from one of the leading universities wants to end his life by lethal injection. However, his application was blocked by Article 344 of the Criminal Code, which threatens doctors or other medical personnel who help a patient end his life. Through his lawyer, Ryan submitted a request for review of the article to the Constitutional Court. In August 2014, his application was withdrawn. The reason, Ryan already has the spirit to live life again. The revocation of the petition was positively welcomed by the constitutional judges who examined this petition.

From the above cases, euthanasia has occurred in Indonesia, although in this case, the euthanasia case has never been revealed due to conflict with Article 344 of the Criminal Code. Therefore, based on the above background, the researcher is interested in conducting a study entitled "Euthanasia in terms of the Criminal Law Applicable in Indonesia". then the author will make the subject matter as follows: How is the application of the law related to euthanasia in the perspective of criminal law. What are the factors that cause someone to apply for euthanasia. How is medical legal responsibility related to medical officers (doctors) who perform euthanasia. The objectives of this study are as follows: As one of the requirements for the author to obtain a Bachelor of Law degree at the Muslim Nusantara University Al Washliyah Medan. To find out how the application of the law related to euthanasia in the perspective of criminal law. To find out what are the factors that cause someone to apply for euthanasia. To find out how medical legal liability is related to medical officers (doctors) who perform euthanasia.

## 2. METHOD

The research method is a path that is carried out in the form of a series of scientific activities carried out methodologically, systematically, and consistently to obtain complete data that can be scientifically justified, so that research objectives can be achieved. Research is the most important thing in the whole series of activities for writing a scientific paper, because research will answer the object of the problem described in the formulation of the problem. The location that the author has determined

in the writing of this thesis is the Medan District Court, which is located at Jalan Court No. 8-10, Kelurahan Petisah Tengah, Kec. Medan Petisah, Medan City, North Sumatra, Postal Code: 20236, Tel/fax (061) 4515847, e-mail: [info@pnmedankota.go.id](mailto:info@pnmedankota.go.id).

**1. Primary data**

The source of this data is direct data obtained directly through interviews with Medan District Court Judges.

**2. Secondary Data**

Secondary data is data obtained indirectly through library studies such as journals and theses, secondary data is divided into 3, namely:

- a. The primary legal materials used in this study are the 1945 Constitution, the Criminal Code, Law No. 36 of 2009 concerning Health, Law No. 39 of 1999 concerning Human Rights, and the Code of Medical Ethics.
- b. Secondary legal materials, in the form of readings such as journals and theses that are relevant to the material being studied are relevant to the material being studied.
- c. Tertiary legal materials, namely by using legal dictionaries as well as general dictionaries and internet websites such as through Google.

Analytical techniques to process data obtained from literature searches, document studies, so this study uses qualitative analysis. This qualitative analysis is basically an explanation of the theories put forward, so that from these theories several things can be drawn that can be concluded and discussed in this thesis.

**3. RESULTS AND DISCUSSION**

Until now euthanasia is still a public debate, some people say that they agree with euthanasia because it is one of the human rights to own people, because apart from the right to life, every human being still has rights. The right to determine when he wants to die, because this is part of the human rights that humans have. This is different from the fact that public opinion does not agree with the habit of drinking because it is considered contrary to religious teachings and is considered a violation of human rights.

The legal point of view of euthanasia in the sense of stopping treatment at the request of the patient. With such a juridical construction, the patient's request to stop treatment is not actually ending his life to die, but he wants to end his suffering. Like some cases that happened about euthanasia, a request made or someone's request was based on the patient's inability to suffer the suffering he was experiencing.

In Law No. 29 of 2004 concerning Medical Practice (*lex specialis*), and Law no. 36 of 2009 concerning Health, no articles directly related to euthanasia were found, but the regulation of euthanasia can still be found in the Criminal Code (KUHP) and the 1945 Constitution (*lex generalis*) even though these articles do not directly lead to action or application. euthanasia.

The closest to the issue of euthanasia is the legal regulation in book 2, Chapter XIX Article 344 of the Criminal Code, which states that: "Whoever takes another person's life at his own request which is clearly stated with sincerity, is threatened with a maximum imprisonment of twelve years. year". In the article above, the sentence "self-request that is expressed with sincerity" should receive attention, because it can be punished whether or not a person who commits euthanasia is based on the elements contained in Article 344 of the Criminal Code. This is also so that the article is not misused, so it must be properly investigated whether someone has committed a murder or not. Efforts to prove that are in accordance with the law are only recognized;

1. Confession
2. letters
3. Gestures
4. Testimony

So if we look at article 344 of the Criminal Code mentioned above, so that someone can be said to have fulfilled that article, the public procedure (prosecutor/prosecutor) must be able to prove the existence of an element of "own request which is clearly stated with sincerity".

The issue of euthanasia from a legal point of view, on the one hand, defines it as a human right, on the other hand it is not a human right. As a logical consequence, countries that regard euthanasia as a human right do not consider euthanasia a criminal act. On the other hand, a country which states that the act of euthanasia is not a human right makes the act of euthanasia a criminal act in its criminal law, as an example of the state of Indonesia.

### **Factors that Cause Someone to Apply for Euthanasia**

There are many reasons behind the reason for euthanasia, because of economic factors, not finding a cure for the patient's illness or the patient no longer has anyone to treat but if it is related to human rights, euthanasia certainly violates human rights, especially the "right to life", which is intended to protect one's life against the arbitrary actions of others. Therefore, the issue of euthanasia which is defined as a death that occurs due to the help of a doctor at the request of himself or his family, or the act of a doctor who ignores a patient who is sick, is considered a violation of the patient's right to life. These factors can be explained as follows:

1. The patient's own request or the patient's family request, the patient is in a persistent vegetative state, meaning that the patient's life is like a plant that can only consume continuously with the help of medical devices or drugs so that the patient or the patient's family decides to apply for euthanasia.
2. Economic Factors. The purpose of this factor is that euthanasia is carried out due to family economic factors that are not possible if the patient is hospitalized for too long. So in this case, the patient's family can't afford to pay for the hospital because the patient has been in a coma for too long. In this condition, it is the family who requests that the equipment that supports the patient's life be removed.
3. Frustration factor, the purpose of this factor is that the request for euthanasia is carried out because of frustration, disappointment resulting from failure to do something or due to not being able to achieve a goal, or bad treatment from the social environment because it is considered different physically, maybe even from the family environment itself. do not provide support, so that a person becomes stressed and feels no purpose in life, so he chooses to commit suicide by euthanasia.

### **Medical Legal Liability Regarding Medical Officers (Doctors) Who Perform Euthanasia**

The responsibilities of medical personnel in the legal field, especially in the field of criminal law, are regulated in the Criminal Code (KUHP) as general rules or other laws and regulations specifically. The basic difference between an ordinary crime and a medical crime lies in the object of the crime. Conventional criminology focuses on the consequences of criminal behavior, whereas in medical criminology focuses primarily on the causes of the offence. Criminal responsibility for medical offenses must be demonstrated in relation to any professional misconduct by medical personnel.

It becomes a very dilemma because in the country of origin of the Criminal Code which is currently in force in Indonesia itself, euthanasia has now been made possible with the issuance of the Law on euthanasia because it is felt that there is a need for this euthanasia act. Neither doctors nor hospitals in Indonesia at this time will openly accept requests for euthanasia. Obviously there will be fear from doctors and the hospital itself against lawsuits from the patient's family or law enforcement, that the hospital/doctor has committed a murder. While they are also obliged to give the best for their patients, there are times when the suffering of the patient is unbearable, and the patient is unable to fulfill the right to his own death because it is a condition that is no longer possible. These doctors actually need legal protection for their profession, especially regarding this euthanasia.

It is necessary to arrange certain things for patients whose suffering is unbearable to get help ending their life by not burdening other parties such as the hospital and the doctors themselves with feelings of guilt or discomfort. On the other hand, Article 344 of the Criminal Code also makes it difficult to prove the occurrence of euthanasia cases in Indonesia. How to prove "at the request of the person himself which is clearly stated with sincerity" when in fact the act of euthanasia occurs generally not at the request of the patient himself. Euthanasia cases usually occur because the patient is no longer

able to communicate let alone express his desire to end his life.

The family and doctors often play a role in the occurrence of euthanasia cases. Often it is the family who asks doctors or other health workers to help end the lives of patients who are sentenced to have no longer life expectancy. Various considerations such as not willing to see patients living suffering with assistive devices to economic considerations where efforts to prolong the patient's life require no small amount of money are common reasons for asking

Doctors as medical personnel in carrying out their profession must adhere to two main behavioral principles, namely the sincerity to act for the good of the patient and not intended to hurt, injure and harm the patient. As part of their sense of responsibility and as a manifestation of these two main behaviors, doctors must respect the rights of patients.

A person can be punished if the criminal act he commits fulfills the elements of the offense that have been determined by law. Viewed from the point of view of the occurrence of prohibited actions, a person will be held accountable for these actions, if the action is contrary to the law and there is no reason to justify or deny it is against the law for the crime he has committed. And viewed from the point of view of the ability to be responsible, then only someone who is able to be responsible can be held accountable for his actions.

Therefore, if a doctor is proven to have made mistakes and negligence, especially in carrying out acts of euthanasia to a patient, the doctor can be held criminally responsible under article 304 (passive euthanasia) and is threatened with imprisonment of two years and eight months or a fine of four thousand five hundred rupiah and article 344 ( active euthanasia) is punishable by a maximum imprisonment of twelve years.

#### **4. CONCLUSION**

In the positive legal system in Indonesia there is still no capable regulation. The closest thing to the issue of euthanasia is the legal regulation in book 2, Chapter XIX Article 344 of the Criminal Code, which states that: "Whoever robs another person's life at his own request is clearly stated with sincerity, shall be punished by a maximum imprisonment of twelve years". In the article above, the sentence "self-request that is expressed with sincerity" should receive attention, because it can be punished whether or not a person who commits it. Factors that apply to someone who applies for euthanasia generally experience severe illness with a thin life expectancy, frustration factors and economic or financial factors. if a doctor is proven to have made a mistake and negligence, especially in carrying out euthanasia to a patient, the doctor can be held criminally responsible under article 304 (passive euthanasia) is threatened with imprisonment of two years and eight months or a fine of four thousand five hundred rupiah and article 344 (active euthanasia) is threatened with with a maximum imprisonment of twelve years.

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