

Problems of the Action of Euthanasia as Part of Human Rights

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Abstract

One of the protections for human rights in the Constitution can be seen from the guarantee provided by Article 27 of the 1945 Constitution which states that "every citizen has the same position before the law and government with no exceptions". Euthanasia or death injections when viewed from the aspects of criminal law and human rights in Indonesia are still experiencing debates that have not found an end, because between the provision of human rights and the conflict of national laws, especially the Criminal Code imposed in Indonesia, but basically that the act of euthanasia is still an act that is prohibited in the criminal law system and health law in Indonesia.

Keywords

problematika; euthanasia;
human rights



I. Introduction

The conception of Indonesia as a State of Law as contained in the Constitution has provided a firm guarantee of the importance of protecting human rights. The protection of human rights in the Constitution can be seen from the guarantee provided by Article 27 of the 1945 Constitution which states that "every citizen has the same position in before the law and the government with no exception." The same principle is also found in Article 28D paragraph (1) The 1945 Constitution which states that "everyone has the right to recognition, guarantee, protection, and legal certainty that is just and equal treatment before the law". A State of Law according to Abdul Hakim Garuda Nusantara, in general there are 4 elements, including:

- 1) Recognition and protection of Human Rights which contains equality in the fields of politics, law, economy, culture, social and education;
- 2) The judiciary is free and impartial and not influenced by any other power or authority;
- 3) Legalization in the legal sense in all forms.

The existence of guarantees and protection of human rights as contained in the constitution further emphasizes the importance of protecting the rights of every citizen as a human being who is a creature created by God Almighty. These rights include: the right to life, the right not to be tortured, the right to freedom of personality, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equal before the law, and the right not to be prosecuted. on the basis of retroactive law is a human right that cannot be reduced under any circumstances, by anyone, at any time and in any case. Regarding the right to life, it often becomes a serious debate in various human rights discourses. There are those who claim that the right to life can be limited, and there are those who argue that the right to life cannot be reduced and restricted in any form, because it is the right of God to determine a person's life and death

In the life of every living being, there must be a life cycle that begins with the processes of life starting from the process of conception, birth, life in the world, and ends with death. In the process, death has a great mystery that has not been discovered by science. In general, death is something that is feared by the wider community. However,

this is not the case in medical and health circles. In the context of modern health, death is not always something that comes suddenly. Death can be legalized into something definite and can be determined by the date of its occurrence. The act of killing can be carried out legally and at a predictable time and place, that is what has been called euthanasia, a murder which is still a matter of controversy and has not been handled properly or an agreement has been reached by various parties. On the one hand, euthanasia in various cases and circumstances is necessary. While on the other hand, this action is not accepted because it is against the law, morals, and religion.

A dilemma arises and places the doctor or nurse in a very difficult position. Medical personnel is a profession that have their own code of ethics so that they are required to act professionally. Medical personnel feel they have a responsibility to help cure patients' illnesses, while on the other hand, public knowledge and awareness of individual rights has also changed greatly. Thus, the concept of death in today's medical world is faced with contradictions between ethics, morals, law, and the ability and technology of such advanced health. Indonesia has not specifically and explicitly regulated the issue of euthanasia and this is still a matter of debate among some parties who agree on euthanasia and those who disagree about it.

Parties who agree to the act of euthanasia argue that every human being has the right to live and the right to end his life immediately and this is done with reasons that are quite supportive, namely humanitarian reasons. With the patient's condition that it is no longer possible to recover or even live, then he can make a request to end his life immediately. While some parties who do not allow euthanasia argue that every human being does not have the right to end his life because the matter of life and death is the absolute power of God which cannot be contested by humans. In general, the anti-euthanasia argument is that we should support people to live, not create structures that allow them to die

The emergence of human awareness of their rights as human beings is one of the important factors behind and gave birth to the idea that became known as Human Rights (HAM). Human rights are rights that humans have simply because they are human. Human beings have it not because it was given to him by society or based on positive law, but solely based on his dignity as a human being. Thus, factors such as race, gender, religion or language cannot negate the existence of Human Rights in humans.

Fulfillment of human rights in a country cannot be separated from the existence of an obligation that arises either by a country or the community in that country so that there appears a harmony that runs in harmony and balance between human rights and obligations. The 1945 Law guarantees the protection of human rights, for example the recognition and guarantee of the right to equality of law, the guarantee of the right to be free from acts of discrimination in its various forms, the right to be free from torture, and so on. Law No.39 of 1999, in addition to regulating various guaranteed rights, also explains the government's responsibilities in respecting, protecting and fulfilling human rights, as well as regulating the National Human Rights Commission (Komnas HAM).

Just as the act of Euthanasia Euthanasia can also be defined as an act of ending an individual's life painlessly, when the action can be said to be an aid to relieve the suffering of the individual who will end his life, Euthanasia shows medical personnel to help patients to die well, without the term Euthanasia is etymologically derived from the Greek words eu and thanatos which means "a good death" or "to die in a calm or happy state". In English it is often called Marc Killing, while according to "The American Encyclopedia includes Euthanasia ISSN the practice of ending life in other to give release from incurable sufferering".

In the Netherlands it is stated that Euthanasia is intentionally not making an effort (nalaten) to prolong the life of a patient or deliberately not doing something to shorten or end a patient's life, and all of this is done specifically for the benefit of the patient himself. Euthanasia in the Oxford English Dictionary formulated as a gentle and comfortable death, carried out especially in the case of a painful and incurable disease". Then according to the Dorland Medical dictionary Euthanasia contains two meanings.

First, an easy or painless death. Second, killing with generosity, ending the life of a person suffering from an incurable and very painful disease, carefully and deliberately." Based on several previous studies that reviewed euthanasia and the death penalty, entitled "Problematics of Imposing the Death Penalty in the Perspective of Human Rights and Criminal Law" written by Amelia Arief who concluded that the death penalty in the view of Human Rights in the legislation in Indonesia "trying to adopt the United Nations Human Rights charter to abolish the death penalty, but several laws and regulations in Indonesia, the threat of the death penalty is still maintained, so that in the new Draft Criminal Code there is a kind of compromise (penal policy).), by making the death penalty not as a principal punishment but as an alternative punishment which is only treated for extraordinary crimes.

Furthermore, the second research entitled Dead Injection (Euthanasia) Judging from the Aspects of Criminal Law and Human Rights in Indonesia, written by Tjandra Sridjaja Pradjonggo who concluded that euthanasia or lethal injection when viewed from the aspect of criminal law and human rights in Indonesia is still undergoing debate. which has not found an end, because between the granting of human rights and the conflict national law, especially the Criminal Code which is enforced in Indonesia, but basically that the act of euthanasia is still an act that is prohibited in the criminal law system and the existing health law in Indonesia, whatever and however the reason used, even health workers are still prohibited from performing the lethal injection. with any reason. In connection with the explanation above, the author would like to study through writing a journal entitled "Implementation of Human Rights in Indonesia Against Euthanasia".

Article 6 (1) The International Covenant on Civil and Political Rights (ICCPR) has mentioned the right to life or freedom of life, which reads: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." The right to life is categorized as a "supreme human right" because without guarantees of effective protection, other rights are meaningless.

Dinstein then reinforces this with his opinion as quoted by George Zdenkowski, that the right to life is the most basic right in a civilized society. Its scope includes the right to be protected from arbitrary death sentences. Furthermore, the second sentence of Article 6 (1) above requires that protecting the right to life is an obligation for the state. This right may not be revoked by anyone in an arbitrary manner including by other individuals and the state "arbitrarily deprived" so that it is the duty of the state to protect the right to life.

Literally, Euthanasia comes from two words, namely "eu" and "thanatos". "Eu" means good, and "thanatos" means death or good death or easy death or it is also often termed "mercy killing" which is essentially a killing based on pity, which in fact cannot be separated from the right to self-determination. determination) in the patient. Along with the new awareness, this right later became the main essence of human rights. This has also occurred in the development of science and technology (especially in the medical field), which has led to significant changes in the understanding of euthanasia. However, ironically, these significant advances and developments in science and technology have not been followed by developments in the fields of law and ethics. Medical legal expert Separovic said that the concept that the concept of death in today's medical world is faced

with contradictions between ethics, morals, and law in the modern world. on the one hand, with such advanced medical capabilities and technology on the other.

Euthanasia is the act of ending a person's life to stop his suffering.

- 1) Euthanasia is assistance given to a person to die peacefully at his own request.
- 2) Euthanasia is the intentional act, either by active or passive action, to end the life of another person at the request of the person concerned.
- 3) In medical science, the word euthanasia is used in three meanings, namely:
 - a) Move to the afterlife calmly and safely, without suffering, for those who believe by mentioning the name of Allah on the lips.
 - b) The time of life will end, the suffering of the sick will be alleviated by giving sedatives.
 - c) Ending the suffering and life of a sick person intentionally at the request of the patient himself and his family.

1. Passive Euthanasia (Indirect Euthanasia)

"Passive euthanasia is euthanasia performed by allowing a person to die by stopping or not providing treatment that can prolong his life."

2. Active Euthanasia (Mercy Killing)

"Active euthanasia is euthanasia that is carried out by carrying out an act intentionally where it has been realized that the action will result in the death of a person. "

Judging from the victim's point of view, euthanasia can be divided into 3 forms, namely:

1. Voluntary Euthanasia

"Voluntary Euthanasia is death that a person requests voluntarily. The request usually arises because the victim is suffering from a disease that causes unbearable pain and the disease itself is incurable. In this case, they cannot commit suicide for certain reasons. For that they asked someone to end his life."

2. Presumed Euthanasia (Non-Voluntary Euthanasia)

"Euthanasia is assumed to be a death that was not expressly requested by the victim. In this case the victim is considered or assumed to choose or ask for death if he can express his will.

3. Forced Euthanasia (In Voluntary Euthanasia)

"Coerced euthanasia is the killing of a patient who is conscious to determine his will, but the killing is carried out without his consent.

II. Research Method

To be able to find out and discuss a problematic issue regarding Euthanasia and Human Rights, it is necessary to have an approach and comparison between Indonesian State Law policies as regulated in Law Number 39 of 1999 concerning Human Rights (HAM). On the other hand, Hilman argues, euthanasia is mercy killing or which means killing without suffering. The practice of euthanasia is often carried out on patients whose diseases are medically incurable and countries that implement Euthanasia policies based on using certain scientific methods.

III. Result and Discussion

3.1 Implementation of Human Rights Against Euthanasia

Human rights are basic rights that are inherent in humans as a gift from God. The Indonesian nation itself is one of the countries that places human rights as a vital aspect that must be protected by the state. This can be seen from how the state's efforts in implementing such protection include the rights of every human being in a state in Indonesia into the 1945 Constitution which is used as a constitutional guideline in the state.

The 1945 Constitution has stated several rights that every citizen has that must be upheld. One of the rights guaranteed by the constitution is the right to live and maintain life. As Article 28A of the 1945 Constitution states that:

"Everyone has the right to live and has the right to defend his life and life"

"In addition, the right to life and to maintain life has also been regulated in Law Number 39 of 1999 concerning Human Rights. Article 9 paragraph (1) of the Human Rights Law states that:

"Everyone has the right to live, to maintain life and to improve his life"

Along with the freedom of humans to do something for themselves, then began to emerge views about euthanasia. Apuranto and Hoediyanto stated that euthanasia essentially has the meaning contained in it, namely:

- 1) In terms of the actions taken, either in the form of a Positive act or a negative act, both can cause death;
- 2) The act of euthanasia is carried out when a person or patient is still alive and has not died;
- 3) The patient has no hope of being cured and is in a terminal stage;
- 4) The act of euthanasia is based on compassion for prolonged suffering;
- 5) The act of euthanasia has the aim of ending suffering.

With several views on euthanasia, along with its development there is a demand to recognize euthanasia as part of human rights. In this case, euthanasia is considered as the right to die, as reported by the Team for the Study of Legal Issues for the Implementation of Euthanasia which stated:

that the most interesting developments of human rights issues is related to euthanasia, where the right to die is considered part of human rights.¹⁸ The emergence of a view which states that euthanasia as a right in the form of the right to die is considered as a consequence of the existence of the right to life by every human being."

"Because everyone" "has the right to live, then it has become a consequence that everyone has the right to choose a death that is considered pleasant for himself which is then called Euthanasia. Philosophically, the origins and history of human rights are generally influenced by a thought by Thomas Aquinas as known as the natural rights theory and developed by Grotius and the social contract theory developed by John Locke. According to Grotius, society must help everyone to use their rights in order to survive. Meanwhile, according to John Locke, as with his social contract theory, it is said that everyone is given the right to life, freedom and natural ownership inherent in him, all of which cannot be taken or reduced by anyone.

The pros and cons of euthanasia as a human right are growing in several countries. In 2001 the Netherlands issued regulations that allow euthanasia and make the Netherlands the first country to legalize the practice of euthanasia. Then, in contrast to the Netherlands, there is a judge's decision in Korea which implicitly says that euthanasia is a prohibited act. If it is studied more deeply and departs from the theory of Grotius and John Locke, it can be said that the act of euthanasia is something that is contrary to human rights.

Philosophically, the right to life cannot be separated from destiny, where in fact life is a gift from God and life is a destiny that is accepted by all his creatures. Every right must have an obligation where the obligation is to maintain the right to life and protect the body from any actions that endanger life.

Then in the UN declaration on human rights, the right that is clearly recognized is only the right to life. So that in fact there is no rule regarding the right to die. Regarding the right to die, it only develops based on the existence of a national and international recognition which states that every individual has "a right to life, free form of torture, and cruel and inhuman treatment".

Besides that, the right to life along with development also gives rise to the right to health of a person. Thus, the development of the right to die clearly cannot be separated from "the right to life, health and freedom from fortune or cruel inhuman treatment". Therefore, the right to die is not a development of the right to life because death and life are not directly proportional, but inversely."

When the right to life is given to every living creature, especially humans, the right to end life is prohibited. Where to respect the right to life of every human being given by God Almighty. In addition, if you look at other positive laws in Indonesia, euthanasia is an act that can be subject to criminal sanctions. Although there are no rules that explicitly state euthanasia, this can be seen from the rules contained in the Criminal Code (KUHP) chapter on crimes, especially regarding human life. Several articles that can be related to euthanasia in the Criminal Code include Articles 340 and 344.

Article 344 of the Criminal Code states that:

"Whoever takes another person's life at the request of that person, which is clearly stated with sincerity, is threatened with a maximum imprisonment of twelve years"

Then Article 340 reads:

"Whoever deliberately takes the life of another person because he has done something wrong murder is punishable by a maximum imprisonment of fifteen years."

In Article 344 of the Criminal Code, it can be observed that there are several elements contained in it, namely:

- a. action: taking life,
- b. object: other people's lives,
- c. at the request of the person himself,
- d. clearly stated earnestly

Talking about euthanasia, in reality what often happens is that the act is carried out on the initiative of the person himself or his family, because of the enormous, endless suffering, or the act of letting the doctor just leave the patient who is sick without giving any help. treatment as necessary. So as the elements of Article 344 of the Criminal Code can be linked to acts of euthanasia. So that the act of euthanasia in Indonesia itself, although it has not been explicitly regulated, but implicitly can be said to be a prohibited act.

IV. Conclusion

In the view of the group that agrees with euthanasia, they consider that euthanasia is the patient's right to determine something that is good for him. The patient has the right to escape the suffering caused by his illness. In this case, the patient is considered to have the right to die. Thus, the act of euthanasia must be considered as a help given by the perpetrator to the patient. In this case, the perpetrator was forced to perform euthanasia because he felt sorry for the suffering of the patient.

If man himself does not have the right to live, how can he have the right to die, when there is death because there is life. In this case, by not having the right to live by humans, humans also do not have the right to die, which is currently better known as euthanasia. Thus, any act of euthanasia is considered against God's grace.

References

- A Masyhur Effendi. (2005). Perkembangan Dimensi Hak asasi Manusia (HAM) & proses dinamika penyusunan hukum hak asasi manusia (HAKHAM), Ghalia utama, bogor.
- Abd Halim. (2012) "Euthanasia Dalam Perspektif Moral Dan Hukum," Jurnal Pemikiran Hukum Al-Mazaib, 1(4): 1-13.
- Adji,Oemar Seno. (1991). Etika Profesional Dan Hukum Pertanggungjawaban Pidana Dokter. Jakarta: Penerbit Erlangga.
- Albineno,J.L. Ch. Euthanasia. (1996). Meditek, vol.1, No.2. JuliDesember,2003. Badudu, J.S. dan Sutan Muhammad Zain. Kamus Umum Bahasa Indonesia. Jakarta: Pustaka Sinar Harapan.
- Andika Priyanto. (2013). Euthanasia Ditinjau Dari Segi Medis Dan Hukum Pidana Di Indonesia, Skripsi, Fakultas Hukum Universitas Hasanuddin Makassar, Tahun.
- Badan Pembinaan Hukum Nasional. (1988). Laporan Akhir Tim Pengkajian Masalah Hukum Pelaksanaan Euthanasia. Jakarta: BPHN, 1999/2000. Djamali,R. Abdoel dan Lenawati Tedjapermana. Tanggung Jawab Hukum Seorang Dokter Dalam Menangani Pasien. Jakarta: Abardin, C.V. Indonesia.
- Cica Natasha. (1996) .“Euthanasia- the Australian Law in an International Context Part I : Passive Voluntary Euthanasia Research Paper.” Parliamentary Library Research Paper.
- Djoko Prakoso. (1984). Euthanasia Hak Asasi dan Hukum Pidana,Jakarta: Ghalia Indonesia)
- Hendrojono Soewono. (2006). Perlindungan Hak- Hak Pasien Dalam Transaksi Terapeutik Suatu Tinjauan Yuridis Setelah Berlakunya Undang-Undang Nomor 29 Tahun 2004. Srikandi,Surabaya.
- I gede Agus Pande Wijaya, I Gusti Ngurah PARwata, “Hukuman Mati dan Euthanasia dalam Perspektif Hak Asasi Manusia dan Peraturan Perundang-undangan”, jurnal Kertha Negara Vol. 9 No. 2 Tahun 2021.
- Keputusan Menteri Kesehatan RI Tentang berlakunya Kode Etik Kedokteran Indonesia Bagi Para Dokter
- Indonesia, Kepmen Kesehatan RI. No. 434/MENKES/SK/X/1983.
- Lamintang, to The Present Indonesian Penal Code. Majalah Badan Pembinaan Nasional, Bina Cipta, Jakarta, Tahun:2, Nomor 7, 1996.
- Nur Hayati, (2004), “Euthanasia dalam Perspektif Hak Asasi Manusia dan Kaitannya dengan Hukum Pidana”, jurnal Lex Jurnalica Vol. 1 No. 2 April.
- Pingkan K. Paulus. (2013). “Kajian Euthanasia Menurut HAM (Studi Banding Hukum Nasional Belanda),” Jurnal Hukum Unsrat, 21(3).
- R. Valentina Sagala dan Ellin Rozana. (2007). Pergulatan Feminisme dan HAM, Pojok 85, Bandung.
- Rustam Ibrahim. (2000). Hubungan antara HAM dengan Demokrasi dan pembangunan. dalam Diseminasi HAM perspektif dan aksi, CESDA LP3ES, Jakarta.
- Sinaga, Bintatar. (1993). Euthanasia Ditinjau Dari Aspek Yuridis. Thesis Magister Hukum, Universitas Indonesia, Jakarta.
- Utrecht. (1994). Rangkaian Sari Kuliah Hukum Pidana I. Surabaya: Pustaka Tinta Mas, Surabaya.
- Wiradharma, Danny. Etika Profesi Medis. Jakarta: Universitas Trisakti.