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The Legal Reformulation of Euthanasia from the Perspective of Criminal Law and Human Rights in Indonesia

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Abstract

This paper is an extension of the proceedings article entitled "Implications of Criminal Law and Human Rights on Euthanasia Practices in Indonesia" by Joice Soraya, Deni Setya Bagus Yuherawan, and Galih Setya Refangga, published in the Proceedings of the 2024 Actual Law Seminar. This journal aims to expand this study by examining in more depth the urgency of reformulating euthanasia law from the perspective of criminal law and human rights in Indonesia. Through a normative juridical approach, this study analyzes national legislation, medical ethics perspectives, and human rights principles in both national and international contexts. Euthanasia in Indonesia is still considered a criminal offense under Article 344 of the Criminal Code, despite demands from the public and medical developments urging more accommodating regulations. This study finds that there needs to be a balance between protecting the right to life and respecting the right to self-determination, so that reformulating euthanasia law is a necessity in the context of human rights protection and legal certainty. This journal also includes comparative studies and jurisprudential analysis from several countries that have legalized euthanasia as a reflective basis for the formation of national law in Indonesia.

Keywords:*Euthanasia, Criminal Law, Human Rights, Legal Reformulation, Criminal Code.*

INTRODUCTION

Advances in science and technology, particularly in medicine, have significantly improved the quality of human life. However, these advances also pose complex ethical and legal challenges, one of which relates to the practice of euthanasia. Euthanasia is the deliberate ending of a person's life to avoid prolonged suffering due to a terminal illness or incurable medical condition. In various countries, this practice has sparked heated debate over the balance between humanitarian values, moral principles, religious norms, and legal certainty.

When discussing euthanasia, the concepts of "eu" (good) and "Thanatos" (death, corpse) are inherently linked to the idea of patient self-determination. This right is a fundamental component of human rights, making it a crucial topic. Advances in individual cognition have led to a heightened recognition of these rights. Advances in science and technology, particularly in medicine, have led to significant changes in the understanding of euthanasia. When considering the occurrence of death, science categorizes it into three types: Orthothanasia, which is a natural death, and Dysthanasia, which occurs with or without medical intervention. Euthanasia, a type of death, has received global attention, but the right to die remains unrecognized.

The issue of euthanasia, or the act of compassionately ending someone's life, has been a long-standing debate in the realms of law, ethics, and human rights. The request to end one's life is usually made consciously by the patient to avoid unbearable pain. Despite this, the practice of euthanasia remains a controversial issue in many countries, including Indonesia.

In Indonesia, euthanasia does not yet have explicit legal legitimacy and is generally categorized as a criminal offense based on the provisions of the Criminal Code (KUHP). Article

344 of the KUHP states that "anyone who takes the life of another person at that person's request shall be punished by a maximum imprisonment of twelve years." This shows that the Indonesian criminal law system still treats euthanasia, whether active or passive, as a violation of the law even if it is carried out out of compassion and with the patient's consent.

This article was written as a development of the proceedings article written by Joice Soraya, Deni Setya Bagus Yuherawan, and Galih Setya Refangga entitled "Implications of Criminal Law and Human Rights on the Practice of Euthanasia in Indonesia" and published in the Proceedings of the 2024 Actual Law Seminar. The article serves as an important basis in seeing how the practice of euthanasia is reviewed normatively from the perspective of Indonesian criminal law and human rights principles. One of the important points raised by the authors in the article is that "under Indonesian law, euthanasia is a legal crime, even though in fact there is a societal need for more humane policies for people with terminal illnesses."

Based on this reality, this paper not only references the ideas in the proceedings article but also expands upon them by including a broader discussion regarding the urgency of reformulating euthanasia law in Indonesia. A normative juridical approach is used to analyze applicable laws and regulations, national and international human rights principles, and a comparative study of countries that have legalized euthanasia to a limited extent.

Furthermore, an article written by Soraya, Yuherawan, and Refangga (2024) asserts that “the general principle of the Criminal Code is to protect the right to a reasonable life and to guarantee human dignity; therefore, under Indonesian law, euthanasia is a criminal offense.” This demonstrates the tension between the absolute protection of the right to life and the medical and psychological realities experienced by patients in terminal conditions.

From a human rights perspective, the right to life is a fundamental right that cannot be reduced under any circumstances (non-derogable rights), as regulated in Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 4 of Law Number 39 of 1999 concerning Human Rights. However, as the human rights paradigm develops, discourse has emerged that the right to a decent death (right to die with dignity) is also part of an individual's right to self-determination. This is where the urgency to consider the reformulation of euthanasia law in Indonesia, in order to answer the need for more humane, balanced, and contextual legal protection between criminal law and human rights.

The urgency of this legal reformation is based on the fact that advances in the medical world, the right to individual autonomy, and the protection of human dignity demand legal regulations that are not only repressive but also accommodating. By considering criminal law and human rights aspects in a balanced manner, it is hoped that a more progressive and contextual legal framework for the practice of euthanasia in Indonesia will emerge.

METHOD

This research uses a normative legal research approach, a legal research method based on the analysis of applicable positive legal norms and legal concepts relevant to the problem under study. This approach was chosen because the primary focus of this paper is to analyze the laws and regulations governing (or not yet governing) the practice of euthanasia in Indonesia from the perspective of criminal law and human rights.

The primary data sources used in this study are primary legal materials, namely laws and regulations such as the Criminal Code (KUHP), the 1945 Constitution of the Republic of Indonesia, and Law Number 39 of 1999 concerning Human Rights. In addition, secondary legal materials are also used in the form of legal literature, scientific journals, articles in proceedings, and expert opinions relevant to the topic. Among them, this study refers to the proceedings

article entitled "Implications of Criminal Law and Human Rights on the Practice of Euthanasia in Indonesia" by Soraya, Yuherawan, and Refangga (2024) as one of the initial foundations for developing academic thinking in this study.

In addition to using a statutory approach, this study also employs a comparative legal approach by examining how several countries, such as the Netherlands, Belgium, Japan, and several states in the United States, regulate the legality of euthanasia within their respective legal systems. This is intended to provide a reflective perspective on the possibility of regulating euthanasia in Indonesia within a legal framework oriented towards human rights protection and legal certainty. The results of this normative analysis will then serve as the basis for formulating constructive legal recommendations, particularly in the context of reformulating Indonesian criminal law to adapt to social dynamics, developments in medical science, and human rights principles.

RESULTS AND DISCUSSION

1. Euthanasia as a Criminal Act from the Perspective of the Criminal Code

In the Indonesian legal system, the practice of euthanasia is still explicitly categorized as a crime against human life. Article 344 of the Indonesian Criminal Code states: "Anyone who takes the life of another person at that person's request shall be punished by a maximum imprisonment of twelve years." Based on this provision, euthanasia is considered a criminal offense, even if it is carried out at the request of the patient concerned and accompanied by humanitarian reasons. This is reinforced in the proceedings article by Soraya et al. (2024), which asserts that "under Indonesian law, euthanasia is a criminal offense" (p. 464).

The legal approach adopted by the Criminal Code places protection of the right to life as an absolute right and does not consider exceptions in the context of terminal suffering. Therefore, medical personnel or others who assist in the implementation of euthanasia risk criminal prosecution, even if their intention is to alleviate the patient's suffering.

The right to life is a fundamental right stipulated in Articles 28A and 28I of the 1945 Constitution, as well as Articles 4 and 9 of the Human Rights Law. The practice of euthanasia is considered to violate this right, although some argue that the right to self-determination is also a human right.

The Indonesian Criminal Code criminalizes all forms of euthanasia:

a. Article 344 of the Criminal Code: The act of taking life at one's own request is punishable by a sentence of 12 years.
b. Articles 338 and 340: Regulate premeditated and ordinary murder.
c. Article 359: Regulates negligence resulting in death.
d. Article 345: Encouraging/assisting suicide is also prohibited.

2. The Tension between Criminal Law and Human Rights

In the realm of human rights, the right to life is a right that cannot be reduced under any circumstances (non-derogable rights), as regulated in Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 4 of Law No. 39 of 1999 concerning Human Rights. However, in the development of modern human rights discourse, the view has emerged that individual autonomy over one's own body and the right to die with dignity also need to be considered.

This discourse aligns with the principle of self-determination, namely the individual's right to determine their own path in life, including when facing death. In certain medical conditions that cause prolonged suffering, the desire to end one's life can be considered an expression of free will, also a human right.

However, Indonesia has not yet adopted these principles into a positive legal framework, so there is tension between protecting the right to life and respecting the will of the individual.

3. **Euthanasia Practices and Regulations in Other Countries**
   For comparison, several countries have legally regulated euthanasia with strict requirements and procedures. In the Netherlands, euthanasia was legalized through the Termination of Life on Request and Assisted Suicide Act of 2002. This law requires a conscious and repeated request from the patient, a diagnosis of terminal illness, and the opinion of two doctors stating that there is no hope of recovery.
   In Japan, the practice of passive euthanasia can be justified under certain circumstances through jurisprudence, such as the Yamaguchi case (1962). Meanwhile, several states in the United States, such as Oregon, Washington, and California, regulate euthanasia through the Death with Dignity Act, which gives patients the right to request a prescription for a lethal agent from a doctor if they meet medical and legal requirements.
   This comparative study shows that euthanasia regulation can be carried out within a national legal framework that still respects human rights, without sacrificing the principles of prudence and medical professionalism.
4. **The Urgency of Reformulating Euthanasia Law in Indonesia**
   Based on this normative analysis and comparative study, it is clear that Indonesia needs a new legal framework capable of accommodating the practice of euthanasia in a limited, responsible, and transparent manner. Legal reform does not mean absolute legalization, but rather strictly regulating procedures, requirements, oversight, and legal protection for both patients and medical personnel.
   In addition, such regulations could include the establishment of medical and legal ethics committees in hospitals, oversight by national human rights institutions such as Komnas HAM, and the involvement of judicial institutions for every active euthanasia request.
   Soraya et al. (2024) assert that "criminal law should not only be a repressive instrument, but also responsive to societal developments and humanitarian needs" (p. 473). This statement reinforces the urgency that law must be dynamic and adaptive in responding to new challenges in the health and human rights sectors.

CONCLUSION

The practice of euthanasia in Indonesia is still categorized as a criminal offense under Article 344 of the Criminal Code, even though it is carried out at the request and consent of a terminally ill patient. This demonstrates that the Indonesian criminal justice system remains repressive towards this evolving medical phenomenon. Furthermore, the right to life, as an inalienable right, must also be understood proportionally, particularly in relation to the rights to dignity and individual autonomy.

The study in this paper, developed from a proceedings article by Soraya, Yuherawan, and Refangga (2024), confirms the tension between legal protection of the right to life and respect for the right to self-determination. In the context of human rights and medical advancement, the need for a legal framework that provides clarity, protection, and justice for patients, families, and medical personnel is increasingly evident.

A comparative study of several countries that have legalized euthanasia on a limited basis shows that reformulating euthanasia laws is very possible without sacrificing moral and human rights principles, as long as it is regulated through strict, transparent, and accountable mechanisms.

Suggestion

1. Reformulation of Indonesian Positive Law
   The government and lawmakers need to consider drafting new regulations or amending the Criminal Code to address limited euthanasia. Such regulations must include strict medical

requirements, informed consent from the patient, and oversight by professional and ethical bodies.

2. Strengthening the Human Rights Perspective in Criminal Law
   It is necessary to integrate human rights values into every criminal law policy-making process, including by recognizing the right to dignity and individual autonomy, as guaranteed in the constitution and international human rights instruments.
3. Enhancing the Role of the Medical Profession and Ethics Bodies
   The practice of euthanasia (if regulated) must involve medical professionals, hospital ethics bodies, and independent oversight bodies to prevent abuse and maintain the precautionary principle.
4. Public Outreach and Dialogue
   Before euthanasia regulations are legalized, inclusive public outreach and dialogue involving community members, religious leaders, health professionals, and academics are needed to achieve a shared understanding.

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