



PASSIVE EUTHANASIA ON INDONESIA LAW AND HUMAN RIGHTS

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ABSTRACT

Discussion regarding passive euthanasia is strongly related to the law and human rights as noted in the Article 6 (1) International Covenant on Civil and Political Rights assert that "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" which has been ratified by Indonesia Law No. 12 of 2005. Hence, this research perspective mainly focuses on the law regarding medical issues especially the passive euthanasia, which occurs indirectly from a doctor with the request or consent of the patient and/or the family to refuse, discontinue, or reject medical efforts. Further, there are two types of legal relationships between patients and doctors in the health services, which is contractual and the therapeutic relationship in relation to laws and regulations, i.e the regulation of the Minister of Health No. 37 of 2014, Law of Health No. 36 of 2009, Law of Medical Practices No. 29 of 2004 and the Indonesia code of medical ethics which states that "Every doctor should always remember his duty to protect the lives of human beings". The purpose is to study the procedures of with-drawing life supports, medical records, and the informed consent. Furthermore, the major issue is that the legality of passive euthanasia will mentality force the terminate-ill patient to perform passive euthanasia (healthcare cost versus the right to live), hence we suggest to tighten the procedures regarding passive euthanasia.

Key Words : passive euthanasia, with-drawing life supports, healthcare cost, right to live.

1. Introduction

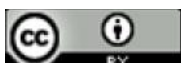
The concept of euthanasia conceptualized is the right to die, this right is always faced with the right to life guaranteed by the constitution. Euthanasia has gone through a long development stage and raises the pros and cons as well as the dilemma in several countries, including Indonesia. Such a the dilemma of euthanasia can not be separated from the aspects of science advancement in the fields of medication. Euthanasia (eu = good, Thanatos = death), actually can not be separated from the right to self-determination (the right of self-determination) in the patient. This right is one of the main elements of human rights and

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because that's always interesting to be discussed.

Euthanasia can be classified in the type as follows:

- a) Active Euthanasia: The euthanasia that is deliberately performed by a physician or other health professionals to shorten or end a patient's life. It is prohibited (including in Indonesia), except in countries that have allowed it through legislation.
- b) Passive Euthanasia: The doctor or other medical health personnel, is no longer provide medical help deliberately to prolong a patient's life, by stopping the infusion, stop the food supply, stop the breathing aids or delay surgery.
- c) Auto euthanasia: A patient refuses expressly the medical treatment and he knew this would shorten or end his life. With the rejection, he made a consent (hand written statement). Auto euthanasia is essentially passive euthanasia on demand.

The every coin that has two sides, it same which euthanasia has pros and cons. The euthanasia pros and cons, which is:¹

2. Pros (reasons for euthanasia)

1. Unbearable pain as the reason for euthanasia: Probably the major argument in favor of euthanasia is that the person involved is in great pain. However, the advances are constantly being made in the treatment of pain and, as they advance, the case for euthanasia/assisted-suicide is proportionally weakened.
2. Demanding a "right to commit suicide": Probably the second most common point pro-euthanasia people bring up is this so-called "right." But what we are talking about is not giving a right to the person who is killed, but to the person who does the killing. In other words, euthanasia is not about the right to die. It's about the right to suicide.
3. People should not be forced to stay alive. There comes a time when continued attempts to cure are not compassionate, wise, or medically sound. That's where hospice, including in-home hospice care, can be of such help. That is the time when all efforts should be placed on making the patient's remaining time comfortable. Then, all interventions should be directed to alleviating pain and other symptoms as well as to the provision of emotional and spiritual support for both the patient and the patient's loved ones.

Cons (arguments against euthanasia)

¹ Dame Cicely Saunders, *Euthanasia: Right To Die*, Social Science Research Network Journal, <http://www.ssrn.com>, 2010.

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1. Euthanasia would not only be for people who are "terminally ill." There are two problems regarding the definition of "terminal" and the changes that have already taken place to extend euthanasia to those who aren't "terminally ill."
 2. Euthanasia can become a means of health care cost containment. Perhaps one of the most important developments in recent years is the increasing emphasis placed on health care providers to contain costs. In such a climate, euthanasia certainly could become a means of cost containment.
 3. Euthanasia will only be voluntary. However, the emotional and psychological pressures could become overpowering for depressed or dependent people. If the choice of euthanasia is considered as good as a decision to receive care, many people will feel guilty for not choosing death. Financial considerations, added to the concern about "being a burden," could serve as powerful forces that would lead a person to "choose" euthanasia or assisted suicide.
 4. Euthanasia is a rejection of the importance and value of human life. People who support euthanasia often say that it is already considered permissible to take human life under some circumstances such as self-defense - but they miss the point that when one kills for self-defense they are saving an innocent life - either their own or someone else's. With euthanasia no one's life is being saved - life is only taken.

The active euthanasia is prohibited and punishable by Indonesia law, however, the practice of healthcare is still going through with the discontinuation of treatment (passive euthanasia) which is legal if the passive euthanasia act follows the procedure in the law. Further, in the Indonesia code of medical ethics assert that; "*A doctor must constantly strive to carry out their profession in accordance with the highest professional standards*". Hence, the doctor who doing medical activities as a medical profession must be in accordance with the latest medical science, law and religion.

Further, the Indonesia code of medical ethics also asserts that "*every doctor should always remember his duty to protect the lives of human beings*". This means that in the action is aimed at maintaining the health of human. Hence, the profession of a doctor should not do: terminate the pregnancy (abortion provocatus) and ending the life of a patient although according to the science and knowledge, the patient may not be healed again (euthanasia). Further, the passive euthanasia may have relevance to the rights i.e. the rights of patients, the right to information, the right to give consent, the right to choose a doctor, the right to choose the hospital, the right to medical confidentiality, the right to refuse treatment, the right to refuse

a medical procedure, the right to stop treatment as asserted in the regulation of the Minister of Health No. 37 of 2014 regarding the determination of death and utilization of organ donors, Law of Health No. 36 of 2009 and Law of Medical Practices No. 29 of 2004.

Based on the above description regarding the problem in this research, hence we assert that How is the perspective regarding the passive euthanasia in Indonesia? and How is the legal procedures regarding the passive euthanasia in Indonesia?

2. Materials and Methods

This type of this research is descriptive analytical research that seeks to describe and elaborate on issues relating to the passive euthanasia in Indonesia, specially to study the regulation of the Minister of Health No. 37 of 2014 regarding the determination of death and utilization of organ donors. The approach used is a normative juridical approach that is based on legislation, theories, and concepts related to writing research.

The source of data derived from literature data, whereas other types of data in the form of secondary data, ie data obtained by searching the literature as well as regulations and norms relating to the issues to be addressed in this study. In the data collection, the authors take steps as follows: To obtain secondary data, carried out by a series of documentaries by reading, citing the books, studying the legislation, documents and other information related to the issues to be discussed. To analyze the collected data the author uses qualitative analysis. Qualitative analysis was carried out to delineate the realities that exist based on the results of research in the form of explanations, from the analysis, can be concluded inductively, that way of thinking in making a conclusion to the issues discussed in general based on facts that are special.

3. Result and Discussion

The framework in this study begins by pointing to the reality of euthanasia in the practice of health care. The practice is manifested in the form of omission medical and / or discontinuation of treatment, or any activity to hasten death. Such actions are known as passive euthanasia. Basically, euthanasia is prohibited and contrary to religious values, social and medical ethics contained in the Indonesia code of medical ethics. However, The complexity of the legal relationship in health care embodied in the therapeutic transaction, makes it very difficult to qualify the passive euthanasia act as a crime. Since the framework of the legal relationship that the concept of passive euthanasia is a medical procedure that is legal in the relationships doctor - patient and family within the framework of the therapeutic transaction.

The relationship includes the relationships administrative law, the civil and criminal law in relation to health.

Passive euthanasia is closely related to medical treatment withdrawal. This is generally not yet widely known among the public. Medical Negligence is one in which the medical action of providing health care is not according to the standard procedure. It can be said is an act of withdrawal from medical doctors, which is not providing any health care to patients with a variety of reasons related to the health care system.

Medical Negligence in hospitals, especially special for the poor person or on the grounds of poor patients must meet several administrative requirements. In the Indonesian legal system in general medical withdrawal treatment is regulated in the regulation of the Minister of Health No. 37 of 2014 regarding the determination of death and utilization of organ donors.

In health care services, there is a reality of the events of medical treatment withdrawal and discontinuation of treatment. Both events, can be categorized as an act of passive euthanasia. Since, judging from the act, euthanasia can be classified into active euthanasia and passive euthanasia. If a doctor's medical action undertaken directly has resulted the death of the patient, for instance by giving drugs that can kill the patient, hence the doctor can be regarded an act of active euthanasia. But if the actions performed by a doctor to a patient which does not directly cause the patient's death, such as by stopping the life support (life support device), then the action of the doctor can be regarded as an act of passive euthanasia.²

The problems encountered in health care (especially physician and the patient's family) is to determine when treatment for a patient person is no longer have the hope of recover. Further, the difficult decisions must still be done, since if the treatment still provided to patients who is no longer have the hope of recovery, hence the action of the doctor's medication can actually be considered unethical (unbearable pain as the reason for euthanasia). The medical criteria should always be used to determine whether a medication or a treatment are useful or not. All of this will be based on the knowledge, skills, technology and experience possessed by doctors which related to the quality of life of patients. Circumstances (quality of life) of patients should be perceived in the context of culture and value system espoused, including life goals and life expectations.

² Sugiri, *Euthanasia: A struggle between Reason, Moral and Legal* in the book *Bioethics: Enclosing the Minotaur in the Labyrinth*, (Salatiga: Pustaka Percik, 2009)

Dimensions of quality of life of patients are physical symptoms, functional ability (activity), family welfare, spiritual, social functioning, satisfaction with treatment (including financial matters), future orientation, sexual life and function in work.³

In the Article 14 Paragraph 1, 2, 3 and 4 on the Regulation of the Minister of Health of the Republic of Indonesia Number 37 Year 2014 Regarding the Determination of Death and Organ Donor Utilization, explained the terms of the suspension or delay of therapy live help which are:

- (1) In the patients who are in a state that can not be recovered due to the illness (terminal state) and medical treatment have been in vain (Futile) hence it can do the discontinuation or withdrawal of life support therapy.
- (2) The policy on the criteria regarding the patient's condition and the state of useless medical treatment is determined by the Director or the Head of the Hospital.
- (3) The decision to stop or withdraw the life support therapy for the patients referred to in paragraph (1) shall be conducted by a team of doctors who treat patients in consultation with a team of doctors appointed by the Medical Committee or the Ethics Committee.
- (4) The action plan termination or suspension of life support therapy should be informed and obtained the consent of the patient's family or representing the patient.

Further, on Article 15 Paragraph 1 and 2 of the said law assert that:

- (1) The Family of patients can ask a doctor to perform the termination or withdrawal of life support therapy or ask the patient condition assessment regarding the stoping or withdraw of life support therapy.
- (2) The decision to stop or withdraw the life support therapy therapy for the patients referred to in paragraph (1) shall be conducted by a team of doctors who treat patients in consultation with a team of doctors appointed by the Medical Committee or the Ethics Committee.

³ Sunaryadi Tejawinata, *The Palliative Care is the Human Rights*, asserted on palliative worldwide commemoration on seminar day dated October 26, 2008, Surabaya. (The Center for Development of Palliative Care and Pain-Relief Hospital Dr. Soetomo on the period 1992-2006)

4. Conclusion

In conclusion, if the patient is in a state that can not be recovered due to illness (terminal state) and medical treatment have been in vain (Futile) hence the passive euthanasia can be performed which the discontinuation or withdrawal the life support therapy. Furthermore, the patient's family can also ask the doctor to suspend or withdraw the life support therapy or ask regarding the patient state assessment. Meanwhile, the decision to discontinue or suspend therapy medical life support action is carried out by a team of doctors who treat patients in consultation with a team of doctors appointed by the Medical Committee or the Ethics Committee.

However, even though the doctors and medical personnel can perform passive euthanasia legally because in accordance with the procedures that are justified by the law, the author suggests that doctors and medical personnel to be back on medical code of ethics in Article 10 of the Decree of the Minister of Health No. 434 / Menkes / SK / X / 1983 Article 11 Code of Medical Ethics Indonesia Year 2012 states: *"Every doctor should always remember his duty to protect the lives of human beings"*. The "death consultation" of passive euthanasia based on the Regulation of the Minister of Health of the Republic of Indonesia Number 37 Year 2014 Regarding the Determination of Death and Organ Donor Utilization, is perform by a team of doctors appointed by the medical Committee or the ethics Committee, however there is no general Standard Operation Procedure (SOP) regarding that matters. Hence, it is important that there is further research to study the said SOP used by medical committee or ethics committee.

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