

## COMPARISON OF SETTINGS REGARDING THE DEAD INJECTION APPLICATION IN THE NETHERLANDS AND INDONESIAN COUNTRIES

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### **Abstract**

Countries around the world have different legal systems. But the most commonly known are the Continental European legal system and the Anglo Saxon legal system. Continental European legal system is a legal system based on various legal provisions that have been codified and the example of the State that has this system is the State of Indonesia. Whereas Anglo Saxon is a legal system based on jurisprudence and the example of the State which has this system is the Netherlands. Each country has a different legal system, as well as in medicine. In the medical world known as Euthanasia. Euthanasia is defined as the act of terminating a person's life (or other creatures) on purpose because of the pain that makes him suffer too much. Indonesia has not specifically and firmly set the issue of Euthanasia and this matter is still being debated. The Indonesian Criminal Code does not find any articles that explicitly regulate euthanasia. However, if observed, there is an article which shows that the prohibition against Euthanasia is article 344 of the Criminal Code, which is a murder carried out with a very and strict request by the victim. It is different from other Continental European countries such as the Netherlands as the first country to legalize Euthanasia. As of 2002, the Netherlands has adopted the concept of Euthanasia into its legal book.

**Keywords** : Euthanasia, The Indonesian Criminal Code, Indonesia, Netherlands

### **Preliminary**

The State of Indonesia is a State based on law, not a State based on power as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) (Udeng, 2018: 1). Based on the formulation of the Article is in line with Plato's view that good governance is governed by law. Meanwhile, according to Aristotle, a good country is a country that is ordered by the constitution and the rule of law (Djamali and Tedjapermana, 1998: 130). The legal system is a

unitary element that each interacts and works together in achieving the goal of unity (Udeng, 2018: 2).

There are many legal systems in the world two of which are the Continental European legal system and the Anglo Saxon legal system. First, the Continental European legal system is a legal system with the characteristics of various codified legal provisions. In its development, the legal principles contained in this legal system are used as the basis for formulation and codification in mainland European countries such as the Netherlands and Indonesia, which have the main principle that the law obtains a binding force because it is manifested in legislation and systematically arranged in the codification or certain compilation (Atmasasmita, 2000: 21).

Second, Anglo Saxon is a legal system adopted by several countries including the United States and the United Kingdom. This legal system is a legal system based on jurisprudence that is the decisions of previous judges which then become the basis of the decisions of subsequent judges. Aside from judges' decisions, written customs and regulations and state administrative regulations, although many of the foundations formed in written habits and regulations, are derived from decisions in court. These legal sources (judges' decisions, customs and state administrative regulations) are not structured hierarchically as in the Continental European legal system (Amiruddin, 2017: 85).

Each country has a different system as well as in the medical term known as Euthanasia. Euthanasia is a problem that makes it difficult for doctors and other health workers. In the Indonesian General Dictionary, Euthanasia is defined as the act of terminating a person's life (or other creatures) on purpose because of illness that makes him suffer too much (Moeliono et al. 1989: 237). Doctors and other health professionals are often faced with cases where patients suffer from a disease that causes severe suffering. Problems like these that make the patient and the patient's family ultimately make the decision to stop the medical action or inject the injection to death, this is called Euthanasia (Paul, 2013: 118).

Parties who agree to Euthanasia can be done, this is based that every human being has the right to live and the right to end his life immediately and this was done with sufficient reason support that is humanitarian reasons. With the state that he is no longer allow it to heal or even live, then it can do a request to end his life immediately. The implementation of Euthanasia is implemented and approved by the Netherlands as a Continental European country, while other Continental European countries

do not legalize the existence of lethal injection as in Indonesia (Dharma, 2016, in <https://news.okezone.com>).

Some who do not allow Euthanasia to reason that every human being has no right to end his life, because the problem of life and death is the absolute power of God that cannot be contested by humans. Countries that do not legalize the existence of Euthanasia, one of them is the country that adheres to the Anglo Saxon system, namely the United Kingdom. The British view the practice of lethal injection as a deliberate or unintentional murder. If it is proven that someone commits Euthanasia then the maximum sentence is life imprisonment (Amirrudin, 2017: 85).

The term Euthanasia in Indonesia is a common thing, like some in other countries, but the application is certainly different. The absence of laws governing Euthanasia, making Euthanasia in Indonesia illegal, is considered an act of murder regulated in Articles 338, 339 and 340 of the Criminal Code (hereinafter referred to as the Criminal Code) (Adji, 1991: 25). Dewi Pika in her article entitled Judicial Review of Euthanasia in the Indonesian Legal Perspective, concluded that the murder referred to in articles 338, 339, and 340 of the Criminal Code was someone who carried out a forced seizure of life, this is certainly different from Euthanasia (Pika, 2017: 267).

The issue of Euthanasia's application in court has occurred several times in Indonesia, but as far as the author knows that the request was not granted, of course due to the absence of a clear legal basis. Euthanasia applications that have occurred in Indonesia, one of which is a request for Euthanasia which was submitted to the Banda Aceh district court with the Berlin Silalahi petitioner who suffered from severe inflammation of the bone to the point of total paralysis of both legs. The disease has been suffered for a long time and does not heal plus the cost that does not exist makes the applicant despair and also no longer able to withstand the pain suffered. However, the petition was rejected by the Banda Aceh District Court based on the consideration of the judge's refusal, of course because Indonesia's positive law did not legalize Euthanasia or lethal injection, lethal injection was considered a murder, violated the medical code of ethics, contrary to the Islamic religion adopted by the applicant and also violated Human Rights (HAM) ) (Zamzami, 2017 at <https://regional.kompas.com>).

Legally formal in positive criminal law in Indonesia there are only 2 known forms of Euthanasia, namely Euthanasia which is carried out at the request of the patient or the victim itself and Euthanasia which is done intentionally omitting the patient / victim as explicitly regulated in Articles 344 and 304 of the Criminal Code (Pradjonggo , 2016: 61). Indonesia has not specifically and firmly set the issue of Euthanasia and this matter is still being

debated. In contrast to other Continental European Countries such as the Netherlands as the first country to legalize Euthanasia. As of 2002, the Netherlands has adopted the concept of Euthanasia into its legal book (Dharma, 2016, in <https://news.okezone.com>). However, there is a age limit, which is a minimum of 12 years and the patient's parents are still positioned as the final decision maker. Therefore, a debate arises over the issue of implementing Euthanasia so it needs to be studied in depth.

Based on this, the authors are interested in discussing the comparative arrangements regarding the application of Dead Syringes (Euthanasia) in the Netherlands and the State of Indonesia and the legality of the application of lethal injection (Euthanasia) in Indonesia.

## **Results And Discussion**

### **Regulations Regarding the Application of Dead Syringes (Euthanasia) in the Netherlands and Indonesia**

The issue of the right to die through Euthanasia's path in some developed countries already have arrangements in state legislation the. An example of this is a European country, but the right to die is not absolute, as is the decision of the Leeuwarden District Court set benchmarks for the formulation of "not subject to law" or "without punishment "of Euthanasia committed. Meanwhile according to country. The Dutch who first legalized Euthanasia, only got it done if the patient himself requests and has fulfilled the requirements for the implementation of Euthanasia.

In European countries, specifically in the Netherlands, the Euthanasia act has its own place which is recognized for its existence and legality. Of course, in carrying out Euthanasia actions, it must go through procedures and requirements that must be met in order for Euthanasia to be carried out. In the Netherlands, Euthanasia assisted by doctors to carry out "suicide" actions, and other medical staff in taking life-ending decisions has been discussed for decades in the medical profession by legal and ethical specialists, both publicly with debates, and also in public debates. in the national parliament (Onwuteaka-Philipsen, 2003: 1).

On 10 April 2001 the Netherlands issued a law permit Euthanasia, Wet Van, 12 April 2001 (International Task Force, 2005, at <http://www.internationaltaskforce.org/rpt2005-3.htm>). This law was declared effective since April 1, 2002, which made the Netherlands the first country in the world to legalize Euthanasia. Patients who experience chronic and incurable pain are given the right to end their suffering.

In the Netherlands, families may apply for Euthanasia if the patient's condition is severe and suffers greatly from the disease. In addition, patients

over 12 years of age can apply for suicidal assistance. What is meant by suicide assistance is that the patient consciously asks to be injected to death because of his severe condition. However, it needs to be emphasized, that in the Dutch criminal law formally Euthanasia and assisted suicides are still maintained as criminal acts, every doctor in the Netherlands is possible to carry out Euthanasia and will not be prosecuted before the court of law as long as they follow some established procedures (Amiruddin, 2017: 87). The procedure is to hold a consultation with a colleague (not necessarily a specialist doctor) and make a report by answering 50 questions.

Indonesia as a Continental European Country which is also the same as the Netherlands does not legalize the existence of Euthanasia. Regulations that can be related to Euthanasia in the Criminal Code can be found in Chapter XIX articles 338 to 350 regarding crimes against people's lives (Amiruddin, 2017: 97). According to the systematic KUHP, the type of crime against the soul is based on the subjective elements divided into 2 groups namely (Haini, 2001: 143):

1) Crimes directed against the human soul are carried out intentionally (dolense misdrijven), in articles 338 to article 350 of the Criminal Code.

2) Crimes directed against human souls that occur due to negligence (culpose misdrijven) in article 359 of the Criminal Code.

Whereas in the Criminal Code there is no article which explicitly regulates euthanasia. However, if examined carefully, the article used to show the prohibition of Euthanasia is article 344 of the Criminal Code, which is about killings carried out with a very and strict request by the victim. Article 344 of the Criminal Code states that anyone who removes the soul of another person at the request of that person, who is mentioned clearly and truly, is sentenced to prison for up to 12 years (Moeljatno, 2005: 116). In the formulation of this article requires that the request to kill must be stated clearly and seriously (ernstig), if this condition is not fulfilled then the perpetrators will be subject to article 338 of the Criminal Code that is an ordinary murder (Yudaningsih, 2015: 121). Provisions regarding euthanasia are not clearly regulated in Indonesian laws and regulations. Euthanasia is explicitly regulated in the Act.

Human rights, namely the right to life, which is interpreted by some people as the right to determine their own lives. A form of Euthanasia that is often done in Indonesia is a form of passive Euthanasia, a form of health reduction. The form of passive euthanasia in Indonesian statutory provisions has not been clearly regulated, so its implementation is not a violation of the law.

Article 344 of the Criminal Code which by legal experts is an article approaching Euthanasia actions including passive Euthanasia cannot work optimally because there is no snare of passive Euthanasia perpetrators in Indonesia. Whereas in the Netherlands who first legalized Euthanasia can only be done if the patient himself requests and has fulfilled the requirements for the Euthanasia action (Amirrudin, 2017: 85).

### **Legality of the Application of Dead Injection (Euthanasia) in Indonesia**

The right to life is a fundamental right or human right of every human being. Our Constitution, the 1945 Constitution, protects the right to life in Article 28A of the 1945 Constitution which states that every person has the right to live and has the right to defend his life and life. Then the promulgation of Law No. 39 of 1999 concerning Human Rights, Indonesia has declared itself as one of the countries that upholds human rights (Manan, 2009: 140). The right to life is the most basic right that cannot be deprived of, deprived of, taken away by anyone, but excluded, if according to the law the right to life must be deprived, as the right to life that is legally deprived is when someone is sentenced to death (Pika, 2017: 3). In addition, Article 344 of the Criminal Code states that anyone who removes the soul of another person at the request of that person, who he mentioned clearly and truly, is sentenced to prison for up to twelve years.

Euthanasia is derived from the Greek words *Eu* which means good and *Thanatos* which means to die, as a whole becomes *Euthanatos*, which means to die well without suffering (Wahyudi, 2005: 135). Can also be interpreted as a reasonable and happy death (Halimy, 1990: 35). The Netherlands, one of the countries in Europe that advanced in medical knowledge, defines Euthanasia according to the formulation made by the Euthanasia Study Group of the KNMG (Dutch Doctors Association), which states Euthanasia is intentionally not doing anything to shorten the life or end the life of a patient, and this is done for the patient's own benefit (Hanafiah and Amir, 1999: 105). As Haryadi cited, according to Kartono Muhammad, Euthanasia can be grouped into 5 groups namely (Kusumasari, 2011 in <http://www.hukumonline.com>):

1) Passive euthanasia, accelerating death by refusing to give / take ordinary relief actions, or stop ongoing normal help.

2) Active euthanasia, taking active action, both directly and indirectly that results in death.

3) Voluntary euthanasia, accelerating death at the consent or request of the patient.

4) Euthanasia is not voluntary, accelerating death without request or patient consent, often referred to as merey killing.

5) Nonvoluntary euthanasia, accelerating death in accordance with the wishes of patients delivered by or through a third party, or at the decision of the government.

Basically Euthanasia has not been legalized in Indonesia because there is no specific regulation or law that allows the existence of Euthanasia because Euthanasia is considered contrary to legal norms and also contrary to social norms, religious norms and medical ethics, besides that in article 344 the Criminal Code has explicitly been stated about not allowing Euthanasia's actions (Parlina, 2005: 116). Based on the perspective of human rights Euthanasia cannot be justified and allowed because it is in accordance with the contents of the 1945 Constitution in article 28A and Law Number 39 of 2009 concerning Human Rights, of course Euthanasia is contrary to the 1945 Constitution and Law No. 39 of 2009 concerning Human Rights even though the Act does not stipulate in detail about Euthanasia. Although Euthanasia has not been legalized in Indonesia or is not permitted by existing laws, in practice or in fact Euthanasia in Indonesia has been passive Euthanasia. This is of course very often we see or we meet in the environment around us, where passive Euthanasia is accelerating death by refusing to give / take ordinary relief actions, or stop ordinary help that is ongoing, many of us see when a patient who has experienced pain in a long time does not heal and according to the medical of the patient there is no development and hope for health, the doctor will refuse to take care and will send the patient home, other than that if the patient comes with a rare disease or no drug has been found for the disease in an irregular manner directly the hospital or doctor concerned will surely reject the patient or not take any action against the patient (Priyanto, 2013: 27).

In medical practice, there are two kinds of Euthanasia, namely active Euthanasia and passive Euthanasia. Active euthanasia is the doctor's action to accelerate the death of the patient by giving an injection into the patient's body. Injections are given when the patient's illness is very severe or has reached the final stage, which according to medical calculations is no longer possible to heal or last long. The reason usually given by doctors is that the treatment given will only prolong the suffering of patients and will not reduce pain that is already severe.

Islamic Sharia forbids active Euthanasia, because it belongs to the category of deliberate killing (*al-qatlu al-'amad*), even though its intention is good, namely to alleviate the suffering of patients. The law is still haram, even at the request of the patient or his family. The arguments on this issue are very clear, namely the arguments that forbid murder. Both the killing of

the souls of others, as well as killing themselves (Saripudin, 2013, in <https://www.kompasiana.com>).

### **Conclusion**

Based on the description above, it can be concluded that the application or implementation of Euthanasia is legalized and some is not legalized depending on what legal system is implemented by each country. In Indonesia it is not clearly regulated, so the implementation is not a violation of the law. Article 344 of the Criminal Code which by legal experts is an article that approaches the actions of Euthanasia including passive Euthanasia cannot work optimally because there is no snare of passive Euthanasia perpetrators in Indonesia. Whereas in the Netherlands who first legalized Euthanasia can only be done if the patient himself requests and has fulfilled the conditions for Euthanasia.

Basically Euthanasia has not been legalized in Indonesia because there is no specific regulation or law that allows the existence of Euthanasia because Euthanasia is considered contrary to legal norms and also contrary to social norms, religious norms and medical ethics, besides that in article 344 the Criminal Code has explicitly been stated regarding the non-permissibility of Euthanasia's actions.

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