



## Comparison of Indonesian and Dutch Laws on the Implementation of Euthanasia

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### ABSTRACT

*Developments in various matters cannot be separated from the regulations attached to them, one of which is related to euthanasia. Euthanasia in general is a treatment given to a patient to end his life intentionally with the aim of escaping suffering. Euthanasia is divided into two types, namely active euthanasia and passive euthanasia. Until now, the act of euthanasia still has pros and cons, including in Indonesia. However, there are also countries that have legalized this, such as the Netherlands. This article will raise issues related to the positive legal regulation of euthanasia in Indonesia and the Netherlands as countries that have legalized euthanasia in terms of human rights and the Criminal Code. The research method is normative juridical research with a comparative approach. The results show that legal regulations related to euthanasia in Indonesia have not yet been specifically regulated even though the act of euthanasia is absolutely prohibited. From a criminal law perspective, the act of euthanasia is subject to Article 338 and Article 344 of the Criminal Code, the implementation of which still creates uncertainty. For families who submit euthanasia, Article 345 of the Criminal Code applies. Meanwhile, the Netherlands has had a law relating to euthanasia since 2001 which is followed by procedures and conditions for its implementation based on Dutch Penal Code 293 and 294 of Dutch law. The formation of regulations related to euthanasia is necessary in Indonesia if it needs to be hastened considering the progress of the times and the mindset of humans who know information easily and can find out about euthanasia.*

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## 1. Introduction

The rights and obligations of every living creature, including humans, are inherent in them from the moment they appear on earth until the end of their lives. The rights inherent in humans are regulated in the provisions of Human Rights (HAM) in each country where they are based. As a legal state, Indonesia regulates the human right to life in the highest source of law, namely the 1945 Constitution, that every human being has the right to live and receive protection for his or her life and existence. The mention of the right to life indicates that this right is an absolute right that every individual has and is protected by the state.<sup>1</sup> Apart from the right to life, other rights are listed in regulations and must be upheld by fellow human beings.<sup>2</sup> However, in the human life cycle, things often do not go according to desire and experience misfortune leading to the end of life or death, one of which is disease. It is hoped that diseases suffered by humans can be overcome and cured, but they often lead humans to a terminal phase that ends in death.

The development of the times, followed by advances in human thought patterns, has increasingly provided innovations in various life sectors, including medical science.<sup>3</sup> One of these things is action euthanasia, which is categorized as a way of ending a person's life with the help of medical personnel or doctors in a certain way. Action *Euthanasia* is aimed at someone who has a serious or difficult disease to cure.<sup>4</sup> *Euthanasia* often becomes a matter of debate from a medical perspective and also legally. Pros from the community and cons of the act of euthanasia are still being debated because this action affects norms, morals, religion and human rights as creatures who are respected on earth.<sup>5</sup> This is also becoming increasingly worrying for medical personnel because often, this action is at the request of the patient's family or even the patient himself. No matter how serious a patient's condition is in the medical world, every doctor must protect and defend the patient's life. This means that no matter how serious and suffering a patient is, a doctor is still not allowed to take action that will end the patient's life or hasten the death.<sup>6</sup> This understanding can be taken from the Indonesian medical code of ethics, Article 7d concerning general obligations, which states: "Every doctor must always remember the obligation to protect the lives of human beings." "According to the code of ethics itself, in Indonesia, as a religious and Pancasila country, we believe in the absolute authority of Almighty God, whereas doctors must use all their intelligence and abilities to alleviate suffering and preserve life, not to end it. Therefore,

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<sup>1</sup> Muhammad Ashri, *Hak Asasi Manusia: Filosofi, Teori & Instrumen Dasar*. (CV. Social Politic Genius (SIGn), 2018).

<sup>2</sup> Ade Syahputra, et al. "Hak Asasi Manusia." *Jurnal Pendidikan Tambusai* 7, no. 3 (2023): 32207-32213.

<sup>3</sup> Muhamad Ngafifi, "Kemajuan teknologi dan pola hidup manusia dalam perspektif sosial budaya." *Jurnal Pembangunan Pendidikan: Fondasi dan Aplikasi* 2, no. 1 (2014).

<sup>4</sup> Rudy Habibie, "Legal Etik Euthanasia: Kajian Yuridis, Filosofis, dan Agama." *Palangka Law Review* (2021): 27-45.

<sup>5</sup> Fuadi Isnawan, *Kajian Filosofis Pro dan Kontra Dilarangnya Euthanasia*. Diss. Universitas Islam Indonesia, 2015.

<sup>6</sup> Mulyono Mulyono, Dewi Setyowati, and Kamarudin Kamarudin. "Tanggung Jawab Hukum Atas Pasien Gangguan Jiwa Yang Melarikan Diri Dari Ruang Rawat Inap Rumah Sakit." *Al-Adalah: Jurnal Hukum dan Politik Islam* 3, no. 1 (2020): 56-65.

we do not want euthanasia to be carried out by a doctor because, among other things, it is seen as contrary to medical ethics itself and is a violation of the law."

No exception in the field of law, both internationally and nationally, *euthanasia* To this day, there is still debate between the pros and cons legally, even though this has been legalized in several countries.<sup>7</sup> Countries that have legalized euthanasia include Switzerland, Netherlands, Austria, and New Zealand, which several years ago legalized this action.

*Euthanasia* in the Netherlands is legalized based on provisions code penal *section* 40 article 293 of the Dutch Criminal Code. The Netherlands also regulates euthanasia in Article 2 of the Law on End of Life and Assessment of Assisted Suicide (*Wet toetsing levensbeëindiging en hulp bij zelfdoding*). Furthermore, in this law, the Dutch government legalized euthanasia for patients who have suffered from illness for years and are difficult to cure, as regulated in Chapter II concerning Implementation Procedures *Euthanasia*

Countries that refuse and do not legalize euthanasia, namely America and Indonesia. Researcher Hery, S. (2020) explained that there are no legal norms that can be used as a basis or legalize actions because it is contrary to article 344 of the American Criminal Code to apply jurisprudence in refusing implementation of euthanasia.<sup>8</sup> In Indonesia, there is still controversy related to legal killing (*euthanasia*) because there are no regulations that regulate more specifically related to euthanasia. The Netherlands expressly legalizes the implementation of euthanasia, while America strictly prohibits the existence of euthanasia.<sup>9</sup>

Meanwhile, juridically, Indonesian law still states euthanasia as an illegal act. Even though no legislation regulates this matter, it is answered by upholding human rights in Indonesia, whose existence is highly valued. However, in addition, action euthanasia is not separated from the rights of individual human beings who are concerned with their destiny as well concerned with human rights. The development of society's mindset gives rise to new thoughts and assumptions, which are also related to action euthanasia.

Action *euthanasia* several people have received attention, one of which is in Banda Aceh. A woman submitted a request for an act on euthanasia to the Banda Aceh District Court due to complications from the disease he was suffering from. Then, based on the decision of the Banda Aceh District Court Number 83/Pdt.p/2017/PN May 2017, the district court rejected the request because no positive law regulated the action. *Euthanasia*.<sup>10</sup> Indonesia, as a country that upholds legal norms, regulates related actions of euthanasia. In Article 344 of the Criminal Code, it is stated that "whoever takes the life of another person at that person's request, which he states clearly and seriously, is

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<sup>7</sup> Muh. Amiruddin, "Perbandingan Pelaksanaan Euthanasia Di Negara Yang Menganut Sistem Hukum Eropa Kontinental Dan Sistem Hukum Anglo Saxon." *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum* 4, no. 1 (2017): 83-102.

<sup>8</sup> Hery Setiawan, "Analisis Yuridis Praktik Euthanasia Menurut Hukum Positif Indonesia Dengan Perbandingan Di Negara Belanda Dan Amerika Serikat." *Actual* 10, no. 1 (2020): 36-42.

<sup>9</sup> Elva Imeldatur Rohmah, Ernawati Huroirah, & Jean Arya Putra Prasetya. "Parliamentary Systems in Continental European Countries and its Relationship to the Effectiveness of Legislative Institutions." *Al-Adalah: Jurnal Hukum dan Politik Islam* 9, no. 1 (2024): 1-23.

<sup>10</sup> Siska Andriani Sukmawati, *Analisis Hukum Kesehatan Mengenai Euthanasia (Studi kasus Penetapan Nomor 83/Pdt. P/2017/PN Bna)*. Diss. Universitas YARSI, 2021.

punished with imprisonment for a maximum of twelve years". Based on the article above, a doctor can be prosecuted by law enforcement if he carries out euthanasia (lethal injection), even though euthanasia is carried out at the request of the patient or his family.

Description of action euthanasia It is also not limited to euthanasia by medical personnel. However, it is divided into several types, namely euthanasia active<sup>11</sup> and euthanasia passive,<sup>12</sup> which, of course, in its legal implementation, is not only focused on the community receiving the action *euthanasia* only but also affects the giver or even if the action is not at the request of the patient himself, namely those closest to him. Based on the description, the research is related to euthanasia. It is important to do this to provide a comparative explanation regarding the implementation of euthanasia in two countries (the Netherlands and Indonesia) to find out more about the provisions and legal arrangements that legalize and prohibit action euthanasia. Due to the importance of this research, the problem to be discussed is formulated into two main problems: (i) How are legal regulations in the context of criminal and human rights related to actions of euthanasia in Indonesia country? (ii) What are the legal arrangements in the context of crime and human rights in the Netherlands as a country that has legalized it *euthanasia*?

## 2. Legal Material and Methods

Studies Efforts are made through observations based on educational principles to train self-awareness that everything experienced in this world is not absolute truth and, therefore, needs to be tested again.<sup>13</sup> Which refers to the norms and norms that apply to regulations and is supported by concepts. These expert opinions are summarized in books and articles, tools in this research. The research approach is comparative (*comparative approach*) and a conceptually based approach (*conceptual approach*), legislation (*statute approach*), and National Journal case approach (*case approach*) that exists and happens. To study and understand the rules and concepts related to the topic, namely euthanasia, which applies to Indonesian and Dutch legislation within the scope of criminal law and human rights. The comparisons always rely on theoretical paradigms and conceptual frameworks between the two. The type of data is secondary, obtained through legislation, namely the Criminal Code, Law No. 39 of 1999, concerning Human Rights as a representation of Indonesian law, while regulations in the Netherlands focus on the Law on End of Life and Assessment of Assisted Suicide (*Wet toetsing levensbeëindiging en hulp bij zelfdoding*). Apart from these legal materials, the data used is also in the form of books, journals, and other scientific works that are relevant to euthanasia to support researchers in analyzing research topics. The technique for obtaining data is through library research, which examines legal materials and enters

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<sup>11</sup> Ainul Yakin, Musta'in Syafi'ie. "Euthanasia Active in Perspective of Islamic Inheritance: An Overview of Islamic Law." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 1 (2020): 25-64.

<sup>12</sup> Fakhurrrazi M. Yunus, "Hak Waris Pemohon Euthanasia Pasif menurut Hukum Islam: Studi tentang Maqāṣid al-Syarī'ah (Birthright of Passive Euthanasia Applicants according to Islamic Law: Study of Maqāṣid al-Syarī'ah)." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 2 (2019): 438-461.

<sup>13</sup> H. Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian* (Jakarta: PT Raja Grafindo Persada, 2004).

them as data. Then, the technical data analysis is carried out qualitatively, describing non-numerical data systematically by categorizing it and then drawing conclusions.

### 3. Results and Discussion

#### 3.1 Legal Arrangements for Euthanasia in Indonesia

The development of the times and technology affects various areas of life without exception. This is done to provide the maximum possible benefits to the community, one of which is in the medical field. Nowadays, human thought patterns continue to develop, providing a new picture regarding the way humans live their lives, one of which is related to act on euthanasia. Death is a cycle in living things that is certain to be experienced by every individual; the question is when a person will face this. When talking about action *Euthanasia* is an action carried out by medical experts for someone who is suffering from a disease that has been around for a long time and/or there is no certainty that they will recover. In medical terms, euthanasia means "dead well".<sup>14</sup> However, the development of the medical world cannot be separated from the implementation of laws and regulations related to human rights, especially when related to death.

In practice, act on euthanasia is categorized into two types viz euthanasia; active and passive. Euthanasia active action is an action given against the will of the person concerned to end his or her life with the help of medical personnel or a doctor. Temporary Passivity is an action taken by a person by refusing all assistance to prolong his life<sup>15</sup>. In terminology, euthanasia comes from the Greek word Euthanatos which means to die well without suffering. *Euthanasia* has several meanings contained in it which are explained, among others;

- a. In a good way, positive *act* or negative *act*, euthanasia culminating in death;
- b. Euthanasia when executed by the party concerned, in this case the patient is alive;
- c. The patient in question has no hope of prolonging his life and is at a terminal stage;
- d. Action *euthanasia* motivated by a sense of suffering that the patient has felt for a long time;
- e. The ultimate goal of action euthanasia is ending suffering. Globally, action euthanasia continues to be a topic of conversation in both the health and legal fields. The essence when talking about death is that someone requires a lot of consideration, both in terms of health and regulations governing the area where they live. This is due to matters of life and death, which are included in human rights and are inherent and regulated in a legal system. Human rights are inherent in every individual, and every human being is obliged to uphold these things and become a moral foundation in interacting with each other.<sup>16</sup>

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<sup>14</sup> Gracia Gracia, Dylan Aldianza Ramadhan, and Juan Matheus, "Implementasi Konsep Euthanasia: Supremasi Hak Asasi Manusia Dan Progresivitas Hukum Di Indonesia," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 1 (2022): 1–24.

<sup>15</sup> Abdul Halim, "Euthanasia Dalam Perspektif Moral Dan Hukum," *Al-Mazaahib: Jurnal Perbandingan Hukum* 1, no. 1 (2012).

<sup>16</sup> Anggraeni Endah Kusumaningrum, "Pergulatan Hukum Dan Etik Terhadap Euthanasia Di Rumah Sakit," *SPEKTRUM HUKUM* 16, no. 1 (2019): 37–59.

Action *euthanasia* it has been used as an alternative to treat pain for people suffering since the 19th century with the help of doctors or medical experts. One of them was in the years between 1990-1998, as many as 69 patients were assisted with euthanasia procedures by dr. Kevorkian.<sup>17</sup> However, the issue is related to euthanasia. Until now, there are still many who disagree among experts and community groups, especially regarding its regulation in law. Starting from these facts, take action euthanasia still often reaps rejection, especially in Indonesia. This is due to advances in human thought patterns and the recognition that a person's death is part of human rights, thus giving rise to debate. It is said that death is also part of every human's rights.

The right to life in human rights is considered a logical reason for action euthanasia, which is the right to die. In other words, it is said that if every human being has life, then every person also has the right to die as long as there is no coercion or torture.<sup>18</sup> So counter groups such as religious leaders think that euthanasia is an act that is not much different from suicide which is expressly prohibited and/or can be considered disguised murder. If viewed from a moral perspective, *euthanasia* is faced with the basic principle of respect for human life. Indonesia, as an Islamic country, pays attention to Islamic teachings, which are guided by the fatwa of the Indonesian Ulama Council (MUI), especially the Holy Qur'an which states in the teachings of the Islamic religion, *euthanasia* considered an action that makes human death easier consciously and intentionally. It is further explained in QS an-Nisa 4(92), which explains that "*It is not appropriate for a believer to kill another believer, except by mistake (unintentionally)*". According to Islam's own view, *euthanasia* is strictly prohibited because it falls into the category of intentional murder (*al-qatlu al-'amd*). Even though it has good intentions to relieve the patient's illness and also at the request of the patient, it is still haram. Islamic teachings have provided clear instructions about death. In Islam, it has also been emphasized that every creation of Allah will perish except Allah Himself as the Creator. In QS Yunus verse 56, it is stated: "It is He who gives life and makes death, and to Him, you will be returned." This verse emphasizes that humans must not precede Allah's decisions, especially in matters of death, because Allah has already regulated human life and death. In QS Annisa verse 29, it means "...and do not kill yourselves. Indeed God is Merciful to you". Likewise, the words of the Prophet, which means "whoever kills himself in a certain way in this world will be tortured on the Day of Resurrection in the same way".

On-action conditions *Euthanasia* at the patient's own request is usually desired because of the ongoing suffering of pain, which then plays a role in the right to self-determination and makes this even more problematic. The right to self-determination, *the right of self-determination*, is not stated explicitly Universal *Declaration of Human Rights* or

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<sup>17</sup> Haryadi Haryadi, "Masalah Euthanasia Dalam Hubungannya Dengan Hak Asasi Manusia," *INOVATIF| Jurnal Ilmu Hukum* 4, no. 5 (2011).

<sup>18</sup> Pingkan K Paulus, "Kajian Euthanasia Menurut HAM (Studi Banding Hukum Nasional Belanda)," *Jurnal Hukum Unsrat* 21, no. 3 (2013): 879.

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Human Rights Declaration but is specifically regulated in the Human Rights Legal Instrument or ICCPR<sup>19</sup>.

The right to life in HAM is an absolute right that every individual has. The right to life or freedom of life is categorized as a "supreme human right" because this right is a fundamental right; without effective protection, other rights become meaningless.<sup>20</sup> Right indetermination His own fate becomes the basis for deciding actions euthanasia to a patient who is considered to be his freedom. When viewed from a human rights perspective, action euthanasia is still at two intersections. On the one hand, it is considered to have violated the right to life, but again, if this is done according to the personal will of the person concerned and is not carried out, it will be in conflict with the right to self-determination.

In Indonesia, itself, society grows and develops by upholding the position of human rights in every line of life, including the right to life, which is the basis of all rights. Humans have the highest position, and human rights act as protection for themselves and their relationships with fellow humans. Article 3 of the Declaration of Human Rights states that humans have equality in respect of a decent life, freedom and safety. Under international human rights law, states have the responsibility to fulfil, protect and respect human rights based on international provisions. This is also implemented in the 1945 Constitution which states that Indonesia is a legal state. So, as a rule of law, it is realized by guaranteeing the protection of people's human rights in the nation and state.<sup>21</sup> Furthermore, Law Number 39 of 1999 concerning Human Rights Article 9 paragraph (1) states that everyone has the right to live, maintain life and improve their standard of living. However, under certain conditions, this right can also be limited, such as the death penalty. The 1945 Constitution of the Republic of Indonesia in Article 28A also regulates the right to live and defend one's life. However, this right cannot apply alone without other rights. Regarding action euthanasia, in Indonesia, it was asked to be carried out on a woman in 2004 who was in a coma after giving birth. Action *euthanasia* was carried out at the request of a third party, namely the patient's husband, who filed this action with the Central Jakarta Court. This was done on the basis of large hospital costs and the family's desperation to see the patient's condition not improving. Based on the decision of the Central Jakarta District Court, the application of the patient concerned is on the grounds that the court institution lacks administration and the basis for the dismissal of all existing evidence. Apart from this, requests for lethal injection or euthanasia Have been widely implemented abroad and provide a great opportunity to be implemented legally in Indonesia as well. Like in the Netherlands, it is increasingly becoming an issue that has pros and cons, especially when discussing related issues which often involve the emotional side of humans because it concerns life and death, which seems sensitive in some circles. Topic *euthanasia* Currently, it is not only limited to the medical

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<sup>19</sup> Pingkan K Paulus, "Kajian Euthanasia Menurut HAM (Studi Banding Hukum Nasional Belanda), 879.

<sup>20</sup> Xavier Nugraha et al., "Analisis Potensi Legalisasi Eutanasia Di Indonesia: Diskursus Antara Hak Hidup Dengan Hak Menentukan Pilihan," *University of Bengkulu Law Journal* 6, no. 1 (2021): 39–59.

<sup>21</sup> Kusumaningrum, "Pergulatan Hukum Dan Etik Terhadap Euthanasia Di Rumah Sakit."

scope but has spread to social institutions in which there are religions and laws related to norms as guidelines for people's lives.

*Euthanasia* is an issue that makes it difficult for doctors and medical personnel, especially when dealing directly with real conditions. It is not uncommon for a patient's condition to be no longer curable so that the family or patient themselves ask for all medical procedures to be stopped, which in the end is classified as medical treatment. *Euthanasia*. It happens in several countries. A number of lawyers think that euthanasia needs to be implemented in Indonesia, referring to the condition that every human being has the right determination His own destiny, including ending his life. In this case, the right to die is considered equivalent to the right to life<sup>22</sup>. Juridically, in Indonesia, until now, there are no special regulations concerned with euthanasia. Even in the health law, there is nothing that clearly states the relevant regulation of euthanasia. In formal jurisprudence, laws are used that can lead to action *euthanasia*, which concerns human life, which is then categorized under criminal law so that it is regulated implicitly in the Criminal Code.

In the Criminal Code, actions relating to a person's life are regulated in Book II, Chapter XIX of the Criminal Code, which is divided into 13 articles, namely 338 to Article 350 of the Criminal Code. In Indonesia, action euthanasia is divided into two types, namely euthanasia at the request of the patient directly and euthanasia which is not at the request of the patient concerned (family, husband/wife).<sup>23</sup> Legally, even action *euthanasia* based on the patient, but criminal penalties are still applied to the perpetrators, in this case, medical personnel or doctors. As understood, Article 344 of the Criminal Code implies that at least twelve years in prison is the maximum punishment for someone who kills another person at his or her clearly sincere request.<sup>24</sup> Based on the formulation of Article 344 of the Criminal Code, it consists of several elements contained therein, namely (i) acts that take life; (ii) the object is another person's life; (iii) based on the request of the owner of the life concerned; (iv) stated seriously by the party concerned.

The phrase "taking a life" is an objective element that comes from the consequences of other people's actions, which cause the death of other people. The element of "other people's lives", in this case, is humans. The element "at the request of the owner of the life" indicates that the idea of taking a life lies with the victim himself. Furthermore, the element "declared seriously" directs that the statement of loss of life be made firmly and clearly. From this article, it can be interpreted that a person is prohibited from taking another person's life, even at the request of the person concerned. This is due to the act of euthanasia in the form of intentionally and consciously taking another person's life. Looking at Article 344 of the Criminal Code, in order to be said to fulfil the requirements of this article, special attention is needed to understand the elements in it. To *establish the right criminal law*,

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<sup>22</sup> Ririn Nur Afifah, Sunardi Sunardi, and Abid Zamzami, "Kematian Yang Diinginkan (Euthanasia) Berdasarkan Hukum Pidana Indonesia," *Dinamika* 29, no. 1 (2023): 27–41.

<sup>23</sup> Ummu Habibah Azalia et al., "Legalitas Penerapan Praktik Euthanasia Berdasarkan Perspektif Hukum Positif Di Indonesia," in *Seminar Nasional Penelitian Dan Pengabdian Kepada Masyarakat*, 2022, 693–700.

<sup>24</sup> Halim, "Euthanasia Dalam Perspektif Moral Dan Hukum."



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Article 344 of the Criminal Code, there must be reformulation regarding current realities and developments, including in the medical field.<sup>25</sup>

However, in several cases that have occurred, the implications of Article 344 of the Criminal Code are still worth considering. One example is the case of Hasan Kusuma, who requested lethal injection for his wife in 2005, which qualified as non-voluntary *euthanasia*, which legally cannot be qualified under Article 344 of the Criminal Code. For cases with these conditions, legally Article 338 of the Criminal Code can be subject to Article 338 of the Criminal Code, which expressly states, "Whoever deliberately takes the life of another person is threatened with murder with a maximum prison sentence of fifteen years" or premeditated murder in Article 340 of the Criminal Code which states that "Anyone who "intentionally and with premeditation to take the life of another person is punishable, for premeditated murder, by the death penalty or life imprisonment or a maximum term of twenty years." From the explanation of the article, it can be seen that other than the party carrying out the act of euthanasia, the patient's next of kin who gives permission for this action can also be subject to imprisonment. Apart from that, there are several other articles that you need to know related to euthanasia, namely Article 345 of the Criminal Code, which states that "Every person intentionally encourages another person to commit suicide, assists him in such an act or provides means If this happens, a person is threatened with imprisonment for a maximum of four years." From the articles listed, it can be interpreted that all forms of action euthanasia in Indonesian territory is a prohibited act.

Action settings *euthanasia*, the cause of which is still an unclear problem. This concerns two articles at once, namely Articles 338 of the Criminal Code and 344 of the Criminal Code, which are legally referred to as the *Confluence of the Ideal* namely actions that conflict with more than one criminal policy. This is also stated in Article 63 of the Criminal Code, which reads, "If a treatment is categorized under more than one criminal regulation, then only one of the regulations is subject to it, by enforcing the criminal provisions with the most severe threats. Meanwhile, if an action is categorized into a general criminal provision and a special criminal provision, then the special criminal provision is applied."<sup>26</sup> Based on Article 63 of the Criminal Code it explains that regulations relating to specific crimes are able to bypass general criminal regulations. If it is related to the two articles which concern action euthanasia, then the regulation is Article 344 of the Criminal Code. However, if it is not implemented with principles *lex specialis derogate legi generali*, law settings *euthanasia* namely Article 338 of the Criminal Code. This is because Article 338 of the Criminal Code has heavier criminal sanctions, namely fifteen years' imprisonment.

Related to liability relevant to the Articles that apply to adjudicating actions euthanasia, In this case, medical personnel or doctors have full responsibility for all actions

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<sup>25</sup> Azalia et al., "Legalitas Penerapan Praktik Euthanasia Berdasarkan Perspektif Hukum Positif Di Indonesia."

<sup>26</sup> Afifah, Sunardi, and Zamzami, "Kematian Yang Diinginkan (Euthanasia) Berdasarkan Hukum Pidana Indonesia."

taken. However, to impose criminal responsibility on doctors, it is necessary to analyze considerations regarding whether the actions taken were for medical purposes or not. So, Article 344 of the Criminal Code applies and cannot be subject to criminal sanctions.<sup>27</sup>

Conditions that continue to be left like this in the sense that without regulations will definitely make it difficult for medical personnel as the main actors in health care. The development of the times and the increasingly developing mindset of society require the government to also move dynamically in regulating regulations. Judging from related new euthanasia or lethal injection is not only influenced by the health of the party concerned but is also influenced by other factors such as economic problems and the dynamics of a progressively more advanced society. It cannot be denied that people's knowledge regarding action euthanasia is increasingly cornering medical personnel. From these various reports, it can be seen that dynamic human thought patterns and technological advances must be followed by the creation of adequate regulations.

Until now, there are still requests for action *euthanasia* by the Indonesian people through lethal injection. In 2022, a fisherman in Aceh province, specifically the Lhokseumawe area, Named Nazaruddin, submitted a request for euthanasia by lethal injection to the local district court. However, his request could not be granted apart from the existing regulations and also because the reasons stated were not because of the illness he was suffering from but due to the economic suffering he was experiencing. Apart from that, another case occurred in September 2023; a grandmother came to the local health centre and submitted a request for lethal injection to the officers (detikSumbagsel, n.d.). Applicable national laws need to be seen from a rationality perspective in implementing themeuthanasia and based on the views of the community. Progressive law itself aims to provide prosperity and happiness for those under its control so that indirectly, the law can help ease the burden on people who suffer from an illness through *euthanasia*.<sup>28</sup>

### 3.2 Arrangement *Euthanasia* on Dutch Law

In terms of developments over time, European countries have become much more developed in various aspects, including the Netherlands. Dutch progress was also followed by progress in society's mindset and the creation of regulations so that whatever ideas were formed and implemented in the pattern of social order were always in direct proportion to the regulations in force. Regarding actions *on euthanasia*, The shopping country is the country that provides legality for these actions followed by appropriate requirements and procedures. The practice of euthanasia in the Netherlands was considered a solution towards decriminalization in 1973. This development is supported by opinions stating an increase of up to 70% in support for euthanasia until 1990. *Euthanasia* had received public support since 1984 when the court and Royal *Medical Association* established a guideline for doctors. Since the end of 1993, the Dutch Government has implemented action-related reporting on euthanasia and assisted suicide by doctors. This is done to review whether euthanasia, what

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<sup>27</sup> Andika Priyanto, "Euthanasia Ditinjau Dari Segi Medis Dan Hukum Pidana," n.d.

<sup>28</sup> Gracia, Ramadhan, and Matheus, "Implementasi Konsep Euthanasia: Supremasi Hak Asasi Manusia Dan Progresivitas Hukum Di Indonesia."

is done to the patient, is in accordance with the procedure or not. (First Chamber of the States General, n.d.) Then, in April 2001, the Netherlands ratified the Law allowing the action euthanasia law of April 12, 2001 after receiving the support of 46 votes from the results of a vote by the Senate that stated;

*“hondende toetsing van levensbeëindiging op verzoek en hulp bij lijkberzorging atau Review procedures for the termination of life on request and assisted suicide and amendment of the Criminal code and the Burial and Cremation Act”*

However, the law of *euthanasia* came into effect on April 1 2002 and marked the first country to legalize the practice of euthanasia. Related settings *euthanasia* regulated in *Termination of life on Request and Assisted Suicide*. All procedures and conditions are regulated in these regulations. If it is violated, criminal sanctions will be imposed as regulated in Article 293 *Dutch Penal Code* or the Dutch Criminal Code.<sup>29</sup> As for Article 293 *Dutch, the Penal Code* stated and translated that;

- a. Whoever end a person's life based on an express request from the person concerned is punishable by 12 years imprisonment with a category five fine;
- b. The action, as referred to in the first paragraph, is not a violation if the doctor adheres to the special criteria and caution regulated in Article 2 of the Law on End of Life on Request and Assisted Suicide and if the doctor concerned conveys this action to a pathologist based on Article 7 Paragraph 2 of the Burial and Cremation Law.

From this article, it can be seen that treatment *euthanasia* by doctors who have the authority to be given protection by the regulations in force in the Netherlands. This is directly a sign that action *euthanasia* is legal in the Netherlands. Furthermore, there are conditions that apply in the implementation of *euthanasia* in the Netherlands, including,<sup>30</sup>

- a. The patient feels the suffering of the pain is unbearable and there is no chance of healing;
- b. Request *euthanasia* is voluntary directly from the patient and continuously. If the request is under the influence of drugs, psychology, or another person, the request cannot be granted;
- c. The patient is consciously aware of the consequences, conditions and options;
- d. Request *euthanasia* at least one or more doctors were consulted, including a written opinion confirming the patient's condition;
- e. *Euthanasia* carried out by a doctor-assisted by appropriate medical care;
- f. The patient's age must be at least 12 years and over with a limit age of 16 years, including a parent's statement at the time of request euthanasia;
- g. Patients aged 16 years and over with conditions who cannot express their wishes but have previously understood them consciously and clearly and have a written statement regarding euthanasia still cannot be done as per the precautionary requirements.

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<sup>29</sup> Natasha Grace and Ida Kurnia, “Analisis Polemik Euthanasia Ditinjau Dari Perspektif Hak Asasi Manusia (Perbandingan Euthanasia Di Indonesia Dan Belanda),” *Jurnal Hukum Adigama* 4, no. 2 (2021): 3536–59.

<sup>30</sup> M. Arwani, “Tinjauan Yuridis Tindak Pidana Euthanasia Berdasarkan Hukum Dari Beberapa Negara (Indonesia-Belanda-Amerika Serikat),” *J. Chem. Inf. Model* 53, no. 9 (2013): 1689–99.

As a comparison, Belgium has also legalized euthanasia since 2002. Even though there is no Euthanasia Law that clearly regulates it, the 2003 National Council of Medical Colleges stated that *euthanasia* can be done as long as it meets the maintenance requirements. The concept regulated in Belgium is not much different from that in the Netherlands, which must be based on the patient's desires or wishes without any influence from disease conditions that are difficult to cure. In general, there are two procedural conditions. What must be fulfilled is that the doctor who euthanizes the patient must consult with a doctor who has no relationship with the patient and the treating doctor.<sup>31</sup>

As an important note from the requirements above, it can be seen that the implementation of the act on euthanasia continues to be regulated properly in accordance with the provisions and also pays attention to human rights in determining their own fate. *Euthanasia* is enforced with several important notes specifically regarding the health condition of the party concerned and supported by the patient's own wishes. Doctors are also not permitted to directly recommend action euthanasia to the patients they treat.

#### 4. Conclusion

*Euthanasia* In Indonesia is still a controversial matter to this day because the implied interpretation is that it helps someone to take their life either of their own free will or due to circumstances such as suffering from an incurable disease. Some groups consider euthanasia as the right to die, which is an antonym for the right to life inherent in every human individual. However, some parties also oppose this because they consider it unequal. Indirectly, *euthanasia* in the Indonesian Criminal Code is regulated as an act of murder, as stated in Articles 338 and 344 of the Criminal Code. These articles seem to be used as a warning to the public that actions euthanasia is a forbidden thing, though euthanasia There are no specific regulations in the Criminal Code or other regulations. Whether carried out on the basis of medical procedures by experts such as doctors, euthanasia, which concerns human life, is an absolutely prohibited act. Meanwhile, in other parts of the world, the country of windmills or the Netherlands was the first country to legalize euthanasia publicly and regulated in special laws. Practice euthanasia, which is enforced, is also followed by provisions related to clear procedures and conditions. Enforcement *euthanasia* is considered capable of being a solution for society to ease the burden of health costs if, in certain conditions, there is no hope of recovery based on the patient's own request. With conditions in the Netherlands that apply euthanasia, It also had an influence on discussions in other countries, which are still debated today.

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<sup>31</sup> Slamet Sampurno Soewondo, Syarif Saddam Rivanie Parawansa, and Ulil Amri. "Konsep Euthanasia di Berbagai Negara dan Pembaruannya di Indonesia." *Media Iuris* 6, no. 2 (2023).

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