

CHAPTER 1V
THE ANALYSIS OF EUTHANASIA PRACTICE IN THE NETHERLANDS
AND INDONESIA

A. The Sovereignty Theory among the States

The sovereign state has the right to determine of the national legislation governing to every person under the jurisdiction of a State.²⁷ Based on these ideas, it is possible that some similarities and differences in the legislation of the country with other countries. Reciprocally with the Netherlands and Indonesia, which are under the protection of United Nation, both of them has to obey all of the regulations include the principle of the Universal Declaration of Human Right as the branch of United Nation.

According to Article 2 of the International Covenant on Civil and Political Right provides that:

1. Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.
2. Each State Party undertakes to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Each State Party to the present Covenant undertakes:

²⁷ J. G. Starke, 1958, *An Introduction to International Law*, Butterworth & co Ltd : London, P. 83

1. To ensure that any person whose rights are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in a official capacity;
2. To ensure that any person claiming such a remedy shall have his right there to determine by competent judicial, administrative or legislative authorities.
3. To ensure that the competent authorities shall enforce such remedies when granted.²⁸

Based on article 25 of Universal Declaration of Human Right, states that everyone has the right to a standard of living adequate for the health and well being of himself and of his family, it means that all of the member state have to protect they citizen includes the health of them.

B. Euthanasia Cases in the Netherlands

Euthanasia in the Netherlands was first legalized through court decisions in the Netherlands. In 1984, the Supreme Court in the Netherlands established a set-of-criteria that should be followed for a medical practice to cause the death of a person by euthanasia without fear of prosecution. From 1984 to 2002 a series of legal decisions led to a widening application of euthanasia. The courts allowed euthanasia for people living chronic depression, to children who were born with disabilities, and other vulnerable groups.

There is a number reported of euthanasia deaths in the Netherlands;²⁹

²⁸ Thomas Buergenthal, *Op., Cit*, p. 38

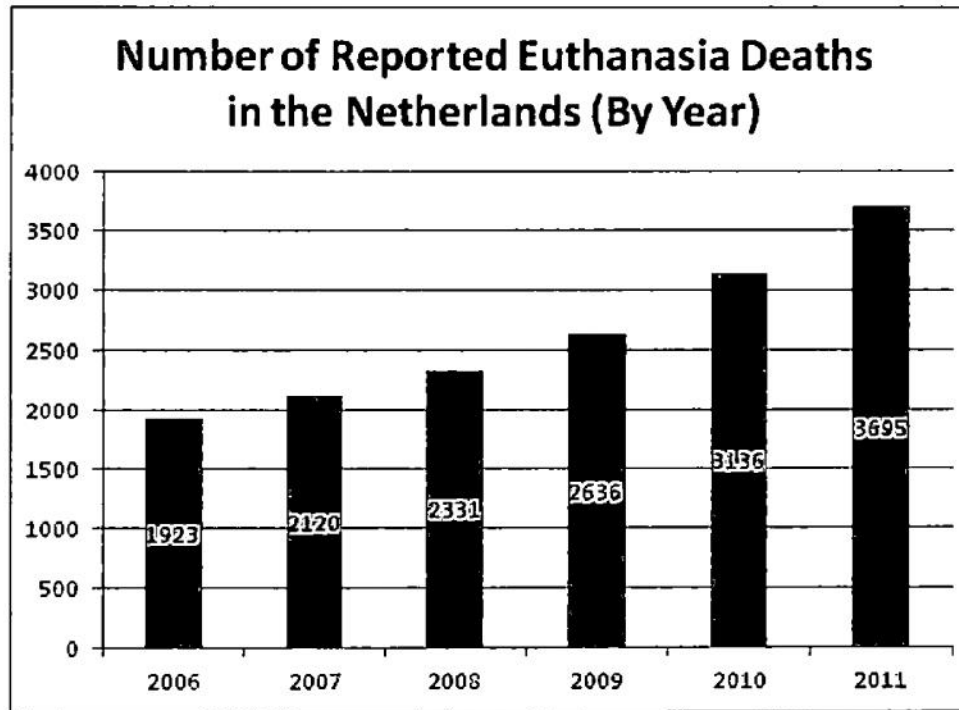


Table 1.1 Euthanasia Deaths in the Netherlands

In 2001, the Netherlands parliament official legalized euthanasia along the guidelines that was approved by the successive court decisions. The law officially came into effect in April 2002. Therefore euthanasia and assisted suicide were common before being legalized in the Netherlands.

Based on Charter of Fundamental Right of the European Union, The Netherland has a duty to protect the right of lifefor the entire citizen, and also prohibited to give death penalty and implement of death penalty.

Euthanasia in the Netherlands executed termination of life on request and assisted suicide (review procedures) on Act 2002 in accordance with

Wetboek van Strafrecht. In Section 2 of Euthanasia Act in the Netherlands as the basic of euthanasia practice is guidance of medical care carefully.

Euthanasia practice have to execute by the medical practice, they have to qualify based on the Euthanasia Act Section 2 (1). There are:

“The requirements of due care, referred to in Article 293 second paragraph of Dutch Penal Code mean that the physician:

- a. Hold the conviction that the request by the patient was voluntary and well considered,
- b. Hold the conviction that the patients suffering was lasting and unbearable,
- c. Has informed the patient about the situation he was in and about his prospects,
- d. The patient hold the conviction that there was no other reasonable solution for the situation he was in,
- e. Has consulted at least one other, independent physician who has seen the patient and his given his written opinion on the requirement of due care, referred to in parts a until d point,
- f. Has terminated a life or assisted in suicide with due care.³⁰

Human Right in the Netherlands stated in The Netherlands Constitution. The provision that talking about the right of life regarding on euthanasia contained on Section 22 the Netherlands Constitution, there are:

³⁰ Alifia Qoni Sudharto, 2011, *Hak Untuk Hidup Sebagai Hak Asasi Manusia Internasional: perbandingan dibebérapa Négara*: Jakarta, P. 118

- 1) The authorities shall take steps to promote the health of the population.
- 2) It shall be the concern of the authorities to provide sufficient living accommodation.
- 3) The authorities shall promote social and cultural development and leisure activities.³¹

Dutch Penal Code Articles 293 and 294 make both euthanasia and assisted suicide illegal, even today. However, as the result of various court cases, doctors who directly kill patients or help patients kill themselves will not be prosecuted as long as they follow certain guidelines. In addition to the current requirements that physicians report every euthanasia/assisted-suicide death to the local prosecutor and that the patient's death request must be enduring, the Rotterdam court in 1981 established the following guidelines. There are some reasons of Euthanasia practice in the Netherlands:

a. Unbearable pain.

Probably the major argument in favor of euthanasia is that the person involved is in great pain. Euthanasia advocates stress the cases of unbearable pain as reasons for euthanasia.

b. Demanding a right to commit suicide.

Euthanasia is not about giving rights to the person who dies but, instead, is about changing the law and public policy so that doctors,

³¹ *Netherland Constitution*, 1983, http://www.servat.unibe.ch/icl/nl00000_.html downloaded on Wednesday, July 31, 2013 at 2.51p.m.

relatives and others can directly and intentionally end another person's life. People do have the power to commit suicide. Suicide and attempted suicide are not criminalized. Suicide is a tragic, individual act. Euthanasia is not about a private act. It's about letting one person facilitate the death of another.

c. People be forced to stay alive

Neither the law nor medical ethics requires that everything be done to keep a person alive. Insistence, against the patient's wishes, that death be postponed by every means available is contrary to law and practice. It would also be cruel and inhumane. There comes a time when continued attempts to cure are not compassionate, wise, or medically sound.³²

The due care criteria, in order for a medical practice to be exempt from criminal liability, stipulate that the attending the medical practice:

- a) must be convinced that the patient has made a voluntary and well-considered request to die;
- b) must be convinced that the patient's is facing interminable and unendurable suffering;
- c) has informed the patient about his situation and his prospects;
- d) together with the patient, must be convinced that there is no other reasonable solution;
- e) has consulted at least one other independent doctor of the patient;

³² *Reason for Euthanasia*, taken from <http://www.euthanasia.com/reasonsforeuthanasia.html> downloaded on Thursday, August 01, 2013 at 12.04 p.m.

- f) has seen and given his written assessment of the due care requirements as referred to in points 1 to 4;
- g) has helped the patient to die with due medical care.³³

The statements of patient who want to euthanasia practice have to written statement which has to write by the patient who conscious with their condition. But, there is an exception for the patients who cannot express them request, for example is in the coma condition. Based on Section 2 (2) UU the Netherlands euthanasia Act stated that patient who had been up to 16 years old, they could request euthanasia practice based on the condition of themselves.

Based on Section 2 (4) of the Netherlands Euthanasia Act stated that the patient who had been 16 years old until 18 years old who request on euthanasia practice, the have to representative by their parent better. But, if the patient had been 12 years old until 16 years old, the medical worker could take euthanasia practice based on the request of patient parents absolutely.

The Dutch debate on euthanasia was sparked by a court case in 1973 in the same year in which the Dutch Society for Voluntary Euthanasia was formed, in this case, a general practitioner was prosecuted for ending the life of her mother, who had suffered a cerebral hemorrhage, was partly paralyzed, was deaf, and had trouble speaking. After the mother had repeatedly expressed the wish to die, the daughter ended her mother's life by giving her a lethal dose of morphine.

³³ *Euthanasia in Netherland*, 2011, <http://www.life.org.nz/euthanasia/abouteuthanasia/history-euthanasia3/Default.htm> accessed on Monday, July 29, 2013 at 15.08 a.m.

The court of Leeuwarden found her guilty, not because she had hastened the death of her mother, but because she had directly ended her life instead of stepping up the doses of morphine with the secondary effect that the patient's life would have been shortened. The court gave her a suspended sentence of one week imprisonment and put her on probation for a year.

In later decisions, the courts no longer exclude that a doctor may bring about the death of the patient in a direct way, but they have elaborated the criteria developed in the Leeuwarden decision and added other requirements.³⁴

According to the Supreme Court in the Alkmaar case, the Court of Appeals of Amsterdam had not given sufficient reasons for its conviction of the doctor; in particular, it should have investigated whether, according to responsible medical opinion, a necessity had existed. In doing so, it should have taken into account, for instance, whether it could be expected that the patient would soon no longer be able to die with dignity in circumstances worthy of a human being. The case was referred to the Court of The Hague, which acquitted the doctor.

In the same year, the Royal Dutch Medical Association issued an influential statement on euthanasia. While recognizing the fact that in a pluralistic society there would never be consensus on matters such as abortion and euthanasia, including among doctors, the medical association stated that euthanasia might be acceptable in certain circumstances.

³⁴ Ubaldus de Vries, 2003, The Limit of Lawful Euthanasia, *Annals Health Law Journal*, Vol XX : Ireland.

In order to provide guidance to the profession as to under which conditions euthanasia could be permissible, it formulated a set of criteria that mirror the criteria developed by the courts:

1. The request for euthanasia must come from the patient and be entirely free and voluntary, well considered and persistent
2. The patient must experience intolerable suffering (physical or mental), with no prospect of improvement and with no acceptable solutions to alleviate the patient's situation.

In The Netherlands, Euthanasia as the intentional killing by act or omission of a dependent human being for his or her alleged benefit, there are pro and contra as follows as:

Arguments for Euthanasia:

- a) It provides a way to relieve extreme pain.
- b) It provides a way of relief when a person's quality of life is low.
- c) Frees up medical funds to help other people.
- d) It is another case of freedom of choice.

Arguments against Euthanasia:

- a) Euthanasia devalues human life
- b) Euthanasia can become a means of health care cost containment
- c) Physicians and other medical care people should not be involved in directly causing death

- d) There is a "slippery slope" effect that has occurred where euthanasia has been the first legalized for only the terminally ill and later laws are changed to allow it for other people or to be done non-voluntarily.³⁵

On 1985 the State Commission on Euthanasia proposed that Article 293 of the Penal Code be amended in such a way that the intentional termination of another person's life at the latter's express and earnest request would not be an offence, provided this is carried out by a doctor in the context of careful medical practice in respect of a patient who is in an untenable situation with no prospect of improvement. As will be explained below, that proposal has never resulted in an amendment of the Penal Code.

The decision of Leeuwarden District Court formulation that sets against euthanasia's performed. Euthanasia may only be carried out if the patient himself who requested and has met the requirements for the implementation of euthanasia.

Implementation can be done with certain conditions, as follows as:

- a. People who want to end their lives are really being sick and not able to be treated, such as cancer.
- b. The patient is possibility of a small life and just waiting for death.
- c. Patients should suffer extreme pain, so that suffering can only be reduced by morphine.

The person who should carry out the termination of patient life only from the family, the doctors who is treating the patient and there are two

³⁵ *Euthanasia Prons and Cons*, 2013, taken from <http://www.euthanasia.com/proscons.html> accessed on Thursday, August 01, 2013 at 1.26 p.m.

specialists who can determine whether or not performed euthanasia. All of the requirements that have to fulfilled, euthanasia can be implemented. Although the request of euthanasia execute by the legislation, the Dutch Penal Code still stated that euthanasia is one of illegal action. But, the medical worker who execute of euthanasia patient is not become the offender if the report what they did and qualified to execute of euthanasia based on the operational standard.

But, relating to the euthanasia practice based on the Netherlands legislation especially The Netherlands Euthanasia Act, the Netherlands has the right to decriminalized of euthanasia action because the overall international legal instrument has been underscored appreciation and protection of the right to life. The Netherlands also considers that the request to an end to the life of someone who suffers extreme in order for the load lightened should not be prohibited by the rules.

C. Euthanasia Development in Indonesia

In Indonesia, human rights are important issues which cannot be separated from the Pancasila and the 1945 Constitution, because there clearly explain rooted on human rights are the rights of human beings by nature.

Based on Article 1 paragraph 1 of Law No. 39 Year 1999 on Human Rights, human rights are a set of rights which is nature and the existence of human as the creatures of God and His grace must be respected, upheld and

protected by the state, law, government, and everyone in order to respect and protection of the dignity.

Indonesia, as a member of the United Nations has an obligation to accommodate the protection of the right to life. In line with that, the Article 28A of the 1945 Constitution of the Republic Indonesia guarantees the right to life, stated that "every person has the right to live and to defend life and living".

A request to perform euthanasia cases on October 22 Year 2004 came from Panca Satria Kusuma Hasan for Agian Isna Nauli, 33 years old, she lying in a coma for 3 months postoperatively besides Caesar and inability to bear the burden of the hospital cost. The request of Panca Satria Kusuma Hasan to perform the euthanasia fulfilled to the Central Jakarta District Court. This case is an example of a form of involuntary euthanasia. The request is ultimately denied by the District Court of Central Jakarta.³⁶

Euthanasia in Indonesia considered as criminal offense, because it categorized as one of crime against life, it is proven by the article of the Criminal Code relating to euthanasia, there is Article 344 of the Criminal Code, stated: "Everyone who robs the lives of others who are clearly expressed by sincerity punishable with a maximum imprisonment of twelve years".

Until now, the rule of law based on religion aspect, morality aspect, and decency aspect determined that help others person to end up their lives

³⁶*Kasus Ny. Agian*, 2004, taken from <http://news.detik.com/read/2004/10/16/135003/225608/10/kasus-ny-agian-rs-telah-lakukan-euthanasia-pasif> accessed on Thursday, August 01, 2013 at 12. 43 p.m.

although it comes from the request of patient is not good deeds, it proven from the legal aspects of euthanasia are likely the fault of the medical practice in the implementation of euthanasia.

In Indonesia, euthanasia is one of illegal action based on Penal Code section 344 stated that "Every person who takes the life of another person at his explicit and earnest desire, shall be punished by a maximum imprisonment of twelve years", it also stated in the sections 338, 340, and 345 of Indonesian Penal Code.

1. Section 338 of Penal Code stated that "The person who with deliberate intent takes the life of another person, shall being guilty of manslaughter, be punished by a maximum imprisonment of fifteen years"
2. Section 340 of Penal Code stated that "The person who deliberate intent and with premeditation takes the life of another person, shall being guilty of murder, be punished by capital punishment of life imprisonment or a maximum imprisonment of twenty years".
3. Section 345 of Penal Code stated that "Any person who deliberate intent instigates another to commit suicide, aid him thereby or provides him with the means there to shall, if the suicide ensues, be punished by a maximum imprisonment of four years".

The Universal Declaration is not a treaty, so it does not directly create legal obligations for countries. However, it is an expression of the fundamental values which are shared by all members of the international community, and it has had a profound influence on the development of international human rights law. Some argue that because countries have consistently invoked the Declaration for more than sixty years, it has become binding as a part of customary international law.

Based on the explanation above, euthanasia practice in Indonesia still prohibited. The prohibition of euthanasia contained in Article 344 of the Criminal Code that is still valid today. However, the formulation may make it difficult for law enforcement to implement or conduct prosecutions under the provisions.

In Indonesia, euthanasia is one of illegal action because it is contradict with some regulation, such as 1945 Constitution, Act No 39 Year 1999 and also contradict with social norm and also religious norm. According to Chairman of the Indonesian Doctors Association (IDI) Farid Anfasal Moeloek stated, Euthanasia not accepted based on the norms and values that develops in the Indonesian society, it is not compatible in accordance with the Indonesian ethics and violating of Penal Code. Thus, based on Indonesian law, euthanasia does not allow.

Indonesia explicitly prohibited the euthanasia practice because it is not in accordance with the values of decency, morality, and religion.

Based on the discussion above, The Universal Declaration of Human Right as the agreement which binding to all state members of International community are different with Dutch Legislation and also Indonesian Legislation as the guidance of The Netherland and Indonesia regarding on euthanasia. Because of international law and national law entirely separate, there are two different systems, the problems that arise is not because the hierarchy should not became first, but it is as an issue of transformation,

national law could be enforced after a transformed legal role in national law,
and vice versa.