Breaking The Euthanasia Taboo Through The Gateway of Medical Futility: The Concept of Pseudoeuthanasia in Indonesian Criminal Law Reform

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| ABSTRACT

Background: End-of-life care in Indonesia remains a legal taboo reinforced by the fear of criminal prosecution [1]. This taboo is reinforced by Articles 344 and 345 of the Old Criminal Code (*Wetboek van Strafrecht*) [2] and strictly maintained in Articles 461 and 462 of the new Law Number 1 of 2023 (National Criminal Code) [3], which categorize euthanasia and assisted suicide as criminal offenses. However, modern medical reality presents conditions of medical futility, where basic life support only serves to postpone death without hope of recovery [4]. The disconnect between rigid criminal law and Minister of Health Regulation No. 37 of 2014 [5], which allows for withdrawing life support, creates a legal grey area. Consequently, the concept of "futility" emerges as a potential juridical "gateway" to legalize the termination of care without falling into the delict of euthanasia [6]. **Objective:** This research aims to deconstruct the euthanasia taboo by formulating a legal construction where medical futility serves as a ground for criminal exclusion validating the concept of Pseudoeuthanasia. **Method:** This normative legal research utilizes statute and conceptual approaches to analyze the Criminal Codes (Old and New), Health Law [10], and global bioethical principles to achieve legal coherence. **Arguments:** Equating the withdrawal of futile support with euthanasia is a legal fallacy. Through the gateway of futility, the act is reclassified as Pseudoeuthanasia. In true euthanasia, the doctor is the cause of death; conversely, in pseudoeuthanasia, the underlying disease is the *causa proxima* (proximate cause), while the doctor merely ceases to impede the inevitable natural process [7]. This distinction aligns with the bioethical separation of "killing" and "letting die" [8]. Thus, medical futility nullifies the element of "unlawfulness", fulfilling the professional duty of non-maleficence [9]. **Conclusion:** Medical futility is the key to breaking the euthanasia taboo. It transforms the withdrawal of life support from a suspected murder into a lawful medical action protected by the Health Law [10].

| KEYWORDS

Pseudoeuthanasia, Medical Futility, Law No. 1/2023 (New KUHP), Withdrawing Life Support, Criminal Law Reform.

I. INTRODUCTION

The discourse on end-of-life care in Indonesia has historically been stifled by a pervasive "legal taboo" [1]. This taboo is not merely a social or religious construct but is deeply embedded in the nation's criminal law tradition, which views any medical intervention intended to shorten a patient's suffering, regardless of the clinical hopelessness, as a criminal act of murder [2, 3]. In the context of Indonesian criminal law reform, the newly enacted Law No. 1 of 2023 (National Criminal Code) maintains an absolute and dogmatic principle regarding the protection of life. Articles 461 and 462 of the New Code explicitly criminalize the deprivation of life, even when requested by the patient, reflecting a legal stance that often ignores the clinical reality of the dying process.

However, the rapid advancement of medical technology such as high-frequency ventilators, extracorporeal membrane oxygenation (ECMO), and advanced artificial organ support has created a paradox in modern clinical settings. Doctors are now capable of maintaining biological functions even in cases where major organs, including the brain, have suffered irreversible damage [4]. This phenomenon leads to "medical futility," a state where interventions no longer offer therapeutic benefits but merely prolong the agony of a biological state that no longer possesses the potential for recovery [4, 15]. The tension between the physician's ethical duty of *non-maleficence* (the

obligation to do no harm) and the threat of criminal prosecution creates a culture of "defensive medicine." In this climate, healthcare providers often continue useless, invasive therapies solely to avoid the risk of being accused of euthanasia [6, 12].

This article introduces and deconstructs the concept of Pseudoeuthanasia as a vital conceptual breakthrough. By positioning "medical futility" as the definitive juridical "gateway," this research argues that the cessation of life support in hopeless cases is fundamentally distinct from the prohibited "pure euthanasia." This distinction is supported by the legal and bioethical frameworks established by scholars such as H.J.J. Leenen [14] and Z.P. Separovic [11], providing a path toward legal certainty and the protection of human dignity in the final stages of life.

II. METHODOLOGY

This study employs normative legal research utilizing a multi-layered approach to provide a comprehensive legal solution. First, a Statute Approach is used to analyze the hierarchy and harmonization between Law No. 1/2023 (New KUHP), Law No. 17/2023 (Health Law) [10], and Minister of Health Regulation No. 37/2014 [5]. Second, a Conceptual Approach is applied to deconstruct the elements of criminal liability, specifically the doctrines of causality and *mens rea* in the context of medical practice [7, 9]. Finally, a Comparative Opinion Approach integrates international perspectives from health law experts to differentiate between "active killing" and "letting die" [8, 13]. The analysis is qualitative-prescriptive, aiming to formulate a robust legal construction for the implementation of Pseudoeuthanasia in Indonesia.

III. RESULTS AND DISCUSSION

3.1. The Conflict of Dogmatics: Prohibited "Pure Euthanasia" vs. Clinical Reality

Under the Indonesian legal system, "pure euthanasia", the active and intentional act of ending a life to relieve suffering, remains a strictly prohibited delict. Article 461 of the New Criminal Code [3] stipulates that any person who takes another's life at their request faces significant imprisonment. This absolute protection of life is rooted in the "Sacredness of Life" principle. However, this dogmatic approach fails to account for the modern clinical transition from "saving life" to "prolonging the dying process" [15].

When a patient enters a state of permanent unconsciousness or brainstem death, the continuation of life support often shifts from being a life-saving measure to becoming a form of medical torture. Without a clear legal demarcation, physicians are trapped in a dilemma: continuing treatment violates the patient's dignity and causes unnecessary suffering (violating *non-maleficence*), while stopping treatment risks prosecution for murder [6, 13]. This research argues that the current taboo persists because the law fails to distinguish between the *intent to kill* and the *acceptance of death* in the face of medical futility.

3.2. Genealogy of Pseudoeuthanasia: The Theories of Leenen and Šeparović

To break the impasse, we must look to the doctrine of Pseudoeuthanasia , Prof. H.J.J. Leenen [14] posits that certain medical actions, while appearing to end life, lack the essential legal elements of euthanasia. Leenen identifies "Medically Pointless" (*Zinloos*) treatment as a core category of Pseudoeuthanasia. In this view, if a treatment no longer provides a benefit, it is no longer a "medical act" but a biological intervention that the doctor has no legal duty to continue.

Similarly, Prof. Z.P. Separovic [11] emphasizes the importance of the physician's role in the natural dying process. Separovic argues that "letting die" when a patient's condition is irreversible is an act of respecting human dignity and the natural order [11, 12]. In Pseudoeuthanasia, the physician does not "cause" death; rather, the physician ceases to interfere with a death that is already in progress due to the patient's underlying pathology.

3.3. Medical Futility as the Juridical Gateway

The core of this legal reconstruction is the identification of Medical Futility as the "Gateway". An intervention is classified as *futile* when it cannot achieve any physiological or qualitative goals for the patient [4, 8]. Once a patient is medically assessed as being in a state of futility, a process regulated by MoH Regulation No. 37/2014 [5], The legal regime governing the physician's actions changes fundamentally.

In this "Gateway" framework, before the threshold of futility is met, any act to end life is "pure euthanasia" and is prohibited. However, once the threshold of futility is passed, the doctor's legal "duty to treat" expires [10]. Therefore, withdrawing life support at this stage is a lawful medical action (Pseudoeuthanasia). This gateway provides the necessary demarcation to protect doctors from the "murder" delicts of the KUHP [3, 7].

3.4. Deconstruction of Causality: The Theory of *Causa Proxima*

The primary legal argument for Pseudoeuthanasia lies in the deconstruction of causality. In criminal law, a person is liable only if their action is the "proximate cause" of death [7]. In the case of Pseudoeuthanasia, the removal of a ventilator or the cessation of vasopressors is merely the *conditio sine qua non*, but the underlying disease remains the *causa proxima*[7, 9].

As Yunanto and Helmi [7] suggest, the medical device was merely "holding back" a death that was already biologically determined. When the machine is removed, the patient dies from their illness, not from the doctor's "act" of removal. This separation is crucial for removing the element of depriving life from the doctor's conduct, as the doctor is not the author of the death but the observer of a natural process .

3.5. Deconstruction of *Mens Rea*: Intent vs. Duty

The element of *mens rea* (criminal intent) must also be scrutinized. For a murder conviction under Article 461 of the New KUHP, there must be a specific intent to kill (*malice*) [3]. In Pseudoeuthanasia, the physician's intent is fundamentally different. The intent is to fulfill the bioethical duty of *non-maleficence* and to respect the patient's dignity by ending invasive and painful treatments that offer no hope [8, 9]. This is an act of "professional duty" rather than "criminal intent." By aligning the intent with medical standards and ethical codes [15], the physician's conduct loses the "evil mind" required for criminal liability.

3.6. *Lex Specialis* as the Final Legal Shield

Finally, the principle of *Lex Specialis Derogat Legi Generali* provides the definitive legal validation. Law No. 17/2023 (Health Law) [10] and Minister of Health Regulation No. 37/2014 [5] are the specific laws that govern medical conduct and the determination of death. When a physician follows the rigid procedural requirements of these specific regulations, including assessment by multiple specialists and consultation with the family, the action is categorized as a justification ground. This principle ensures that the special rules of the medical profession take precedence over the general murder articles of the Criminal Code when dealing with cases of medical futility [3, 10, 13].

IV. CONCLUSION

The "Euthanasia Taboo" in Indonesia is a result of a legal misunderstanding that equates clinical hopelessness with criminal intent. This research has demonstrated that by adopting the Pseudoeuthanasia concept [14, 11] and utilizing Medical Futility as the juridical gateway, we can provide a robust defense for healthcare professionals. Withdrawing support for futile patients is not a crime because the *causa proxima* remains the disease [7], and the physician's intent is to fulfill a professional and ethical duty [9]. This practice is legal and protected under the Health Law [10] and MoH Regulation No. 37/2014 [5]. To ensure absolute legal certainty and to prevent the trauma of "defensive medicine," it is recommended that the Supreme Court or the Ministry of Health issue formal guidelines that explicitly adopt the terminology of Pseudoeuthanasia as a recognized reason for criminal exclusion.

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