

Law Euthanasia and Thai Society

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Abstract

The purpose of research on euthanasia law and Thai society was to study legislation related to the “right to die” or/and active euthanasia and the feasibility of enacting laws to support the “right to die” or/and active euthanasia. This documentary research revealed that Thai laws related to the issue of “right to die” or/and euthanasia currently address only passive euthanasia, as stipulated in Section 12 of the National Health Act B.E. 2550 (2007). That the right of non-consent to receive public health services on prolonged life at the end-of-life stage. Thailand does not permit active euthanasia, as there is no supporting legislation and there has never been a draft of law on this matter. Therefore, any feasible approach to enacting a law in support of the “right to die” or active euthanasia must begin with attitude adjustment and providing knowledge for Thai people to accept euthanasia, then proceed to draft a law to support the “right to die” or/and active euthanasia, or helping by speed up death in order to allow hopeless patients to be relief from the suffering of illness.

Keywords: Euthanasia, Active euthanasia, Passive euthanasia, The right to die, Thailand

Introduction

Around early 2019, many news agencies in Thailand as well as online social media reported the case of a Thai man who has suffered a brain tumor for 10 years and requested for euthanasia in Switzerland [1-5]. From the aforementioned case, social trends took an interest and sparked various controversies on the issue of “the right to die” or/and active euthanasia, and physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from the diseases. Is it possible for Thailand to do this and to what extent is allowed? Moreover, another issue causing controversies in society is a connection between the right to die or/and active euthanasia or physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from the diseases. This is considered a connection among public health, science, law, criminology, social science, and humanities. Additionally, this is related to ethical principles, morals, religious teachings, social ways, and faith and beliefs in Buddhism.

Euthanasia is derived from the Greek language, consisting of two components: ‘EU,’ meaning ‘good,’ and ‘Thanatos,’ meaning ‘death.’ Consequently, the term refers to “good and peaceful death” [6]. There are various forms of euthanasia as outlined below [7]:

1. Active Euthanasia: Directly causing a patient’s death, typically through the administration of a lethal injection.

2. Passive Euthanasia: Intentional discontinuation of life-sustaining treatments or the withdrawal of medical treatments.

3. Voluntary Euthanasia: A request for death made with the patient's written consent.

4. Involuntary Euthanasia: A consent for death made by a third party, such as relatives or intimates, in cases where the patient is unable to provide consent or is unconscious.

5. Self-Euthanasia: The act of causing one's own death.

6. Euthanasia Performed by Others: An act carried out by another individual with the intention of ending the patient's life.

7. Physician-Assisted Suicide: The patient carries out the act of euthanasia independently but requires assistance from another individual, such as a physician, to facilitate the process.

In general, there are two main types of euthanasia: Active Euthanasia and Passive Euthanasia. Active Euthanasia involves an action performed by a physician with the intention of causing the individual's death to alleviate suffering, such as administering barbiturates to ensure a gradual death with minimal pain. Passive Euthanasia refers to discontinuation of life-sustaining treatments, a decision that typically involves input from family members, physicians, and other relevant parties. This approach is deemed to allow such patient to die naturally at the appropriate time, in accordance with the law of nature [7-9].

The significance and background of the aforementioned problem lead to the issue that should be studied regarding Thai society and the right to die or/and active euthanasia or physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from the diseases, even though this issue is necessary to overlook ethical principles, morals, religious teachings, social ways, and faith and beliefs in Buddhism. Furthermore, the death of a person brings about many other rights as well. However, it is considered a better way to be used as an alternatives in the future according to constantly changing social conditions.

Research Objectives

1. To study laws and legal consequences related to "the right to die" or/and active euthanasia or physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from diseases

2. To study the issue of "the right to die" or/and active euthanasia or physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from diseases by comparing to foreign countries' approaches

3. To study guidelines and feasibilities of Thailand to propel the issue of “the right to die” or/and active euthanasia or physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from diseases

Methodology

This is documentary research to collect both domestic and foreign documents and research about “the right to die” or/and active euthanasia or physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from diseases. Moreover, law regarding euthanasia in Canada, Netherland, Switzerland and Thailand was taken to study for comparison.

Result

Objective 1: Legal provisions and consequences in Thailand related to the issues of “the right to die” or/and active euthanasia, and physician-assisted suicide to allow patients with hopelessness for medical treatment to be completely cured and free from suffering from diseases.

The study of legal provisions and consequences in Thailand related to the issues of “the right to die” or/and active euthanasia, and physician-assisted suicide to allow patients with hopelessness for medical treatment to be completely cured and free from suffering from diseases, indicates that these issues are related to the fundamental concepts of human dignity, human rights, and personal liberty. This is due to the fact that these rights are inherent to all individuals, and tied to their lives and bodies. Additionally, this aligns with the right to life as well, as long as it does not infringe upon the rights of others. In particular, from an ethical perspective, individuals possess the right to euthanasia. At the same time, in terms of academic framework, regarding the issue of the right to die in which individuals should have the autonomy to make decisions, it can be explained through the right to self-determine as outlined in human rights theory. In other words, humans are rational beings, capable of thought and reasoning. Therefore, any decisions or actions are a result of an individual’s careful consideration [10-15].

“The right to die is a significant component of human dignity based on human rights. For freedom or liberty to determine the final stage of their life, individuals should have the right to die peacefully in their own home, surrounded by family, rather than in a hospital surrounded by strangers. Consequently, patients have the right to refuse life-sustaining treatments, or even request physician-assisted death, especially in cases of unbearable pain” [12].

In medical terms, according to medical dictionaries, the right to die refers to an individual's right to refuse life-sustaining assistance, such as using a respirator, providing water and nutrition, or medication, especially in case of terminal illnesses. This concept aligns closely with its legal meaning. In legal terms, the right to die is considered a personal right to end one's own life, but it must be exercised by the life's owner under conditions of preparedness and voluntary consent, without the consent of others. In Thailand, there are laws concerning the right to die, designed to protect the human rights of individuals. Previous studies have identified two key legal provisions related to euthanasia: Section 28 of the Constitution of the Kingdom of Thailand, B.E. 2560, which emphasizes human dignity as well as the rights and liberties of individuals; and Chapter 3 of the National Health Act, B.E. 2550, which outlines the rights and liberties of Thai nationals, stipulating that:

“A person shall have the right and liberty over their life and body. No search or any act that affects an individual's right and liberty over their life and body shall be permitted, except as provided by law.”

In other words, neither other individuals nor physicians have the right to intervene with a person's body or life without their consent. This is consistent with Section 8 of the National Health Act 2007 on rights and duties in respect of health that:

“For the provision of public health services, public health personnel shall provide sufficient health information to the service recipient to enable them to make an informed decision regarding whether to receive the service. In case the service receiver refuses any service, such service shall not be provided to them.

However, although some patients may not be reliant on medical equipment, they may be subjected to suffering from an incurable illness. In such cases, these patients may wish to end their own lives, but they are unable to do so independently due to their illness or disability. As a result, these patients request physicians to end their life or perform a physician-assisted suicide. This right is deemed a positive right. Therefore, the aforementioned acts may result either from the decision of the perpetrator or the request of the patient to end their life. Furthermore, among the countries that permit individuals to create a living will to refuse public health services according to Section 12 of the National Health Act, B.E. 2550. This living will shall be effective when the patient reaches the terminal stage of their life (Terminally Ill-Patient).

“Section 12: Any person shall have the right to create a living will to refuse public health services that are solely intended to prolong the terminal stage of their life, or to cease suffering caused by illness. The living will under paragraph one

shall be in accordance with rules and procedures prescribed in the Ministerial Regulation. When public health personnel carry out the living will of an individual in accordance with paragraph one, this shall not be considered an offense, and they shall not be held liable for any responsibility.”

According to the aforementioned legal information, Thailand is considered to promote individuals’ full rights and liberties concerning their lives and bodies. However, these rights are not effectively implemented in practice and remain impractical due to the ambiguity of the legal provisions.

Objective 2: the right to die” or/and active euthanasia or physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from diseases by comparing to foreign countries’ approaches Netherlands

The Netherlands is initially to legislate a law of euthanasia and physician-assisted suicide in the world. The conduct of euthanasia and physician-assisted suicide has been permitted since 2002. The Netherlands allows euthanasia and physician-assisted suicide for both adult (over 18 years old) and minor (12-18 years old). The physician who carry out euthanasia and physician-assisted suicide must comply with the procedure in the law, which consists of 6 elements [16] [17] [18].

(1) The patient must submit a request for euthanasia willingly without any pressure from a third party and the patient’s decision must be carefully considered.

(2) The patient who submits the request does not have to be terminally ill, but the doctor must consider that the patient must suffer unbearable physical or mental suffering. and no chance of improved health or quality of life.

(3) The patient must be fully informed of his/her end-of-life options, his/her illness, and his/her treatment options.

(4) The patient has no other treatment options.

(5) The request for euthanasia must be carefully considered by the physician who is making the request and must be discussed and screened by another physician.

(6) The physician must be present with the patient throughout the process and the process must be based on the principles of medical appropriateness.

The physician must report any euthanasia or physician-assisted suicide to a regional committee, which must consist of lawyers, physicians, and ethicists. The committee can consider whether the process is consistent with law. If the process is inconsistency with law, the committee must report to the public prosecutor that legal action then can be taken against the physician [16-8].

Switzerland

Switzerland is a country that recognizes the right to die in both active euthanasia and passive euthanasia by Article 114 and Article 115 of the Penal Code 1937 of Switzerland with a specific legal principle for “only if the motive is selfish” [19-21]. Active euthanasia in Switzerland is illegal. However, physician-assisted suicide is permitted under the law. This means that a physician can legally assist a person in ending their own life as long as the motive is not “selfish” and the person requesting assistance is fully able of making the decision. This law is mainly enforced by the Swiss Penal Code without any specific law that clearly defines the process of euthanasia or physician-assisted suicide. Then, it is wide interpretation by medical professionals and the ethical condition under the Swiss Academy of Medical Sciences.

Although euthanasia is prohibited but assisting another person to commit suicide is permitted with the reason of selfish motive [19-22]. Physicians are not obligated to conduct euthanasia or physician-assisted suicide but physicians possibly select to assist patients if it meets ethical requirements. Physicians must have considered all alternatives way thoroughly and assessment by a medical professional must be conducted to confirm the patient mental health and the severity of the illness. Physicians must be certain that the patient decision is not influenced by pressure from family or others. Currently, several organizations are established to carry out euthanasia or physician-assisted suicide euthanasia for foreign patients that called “EXIT A.D.M.D. Suisse Romande” and “Dignitas Suicide Clinic” and “Life Circle”. Switzerland legally introduced “Technology Sarco Capsule” for euthanasia or physician-assisted suicide which is an option for those who want to leave this world peacefully [20].

Canada

Canada has law regarding euthanasia and physician-assisted suicide since 2016. Both euthanasia and physician-assisted suicide are called Medical Aid in Dying: MAiD. Before legislating federal law, the law of Quebec has been in force since 2014 and it was in force. However, Quebec’s law only allows physician-assisted suicide protects medically assisted suicide. Active not euthanasia is not under the Quebec’s law. Canada has the following conditions to apply for euthanasia and physician-assisted suicide [16-17, 23-24]:

- (1) The patient must be a Canadian citizen. Foreigners are prevented from the service of euthanasia/suicide tourism.
- (2) The patient must be an adult (over 18 years old).
- (3) The patient must be suffering and incurable symptoms with reasonably foresee of death.
- (4) The patient voluntarily requests medical assistance in dying and is free from external pressure.

(5) The patient is fully informed about his/her treatment options, including palliative care.

Requesting for medical assistance in dying are based on the fully consent of the patient. It means that patients who are legally non-consent cannot request medical assistance in dying. This includes children, schizophrenia patient and patients who cannot providing of consent. In addition, the Canadian law does not explicitly state the conditions for requesting euthanasia but the law requires the patient in the term of reasonably foresee of death instead of term “terminally ill patient”. This basically reflects the purpose of Canadian lawmakers to interpret the law on a case-by-case and limit the number of patients who can access euthanasia [23-24].

The Canadian legal procedure is also highly complex that reflecting efforts to protect patients. The essential elements of the process are:

- (1) The use of two independent physicians to determine the patient’s
- (2) Requirement for witnesses,
- (3) Requiring a 10-day waiting period,
- (4) Requiring physician to provide information about palliative care
- (5) Requiring an independent observer
- (6) Inquiry to confirm the request before death

The above components are intended to (1) ensure that patients have fully and (2) prevent patients from being taken direct advantage by relatives or physicians who may benefit from the patient’s death [16] [17, 23].

Objective 3: The guidelines and feasibilities of Thailand to propel the issue of “the right to die” or/and active euthanasia or physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from diseases

The law supporting the right to death or/and active euthanasia in Thailand has never legislated. This emerge the public health to reconsider euthanasia. The study found that it was hard to launch the “right to death” or/and active euthanasia in assisting patients with the hopelessness of medical treatment to be completely cured and free from suffering from diseases. Currently, the approach or opportunity in Thailand towards “the right to death” appears in a form of “passive euthanasia”, which allow hopeless patients from medical treatment to die by terminating treatment and the hopeless patients will be natural death. Then, The Thai government and public health sector shall promote and support:

(1) Allowing individuals to write a letter of living will to deny public health services according to Section 12 of the National Health Act 2007. This is applicable to refuse

public health services that are only for prolonging death or end the suffering from illness.

(2) Palliative care refers to caring for hopeless patients in medical treatment to be able to continue living until the end of their lives.

From the study, the right to die or active euthanasia has not yet been legally recognized for patients and physician to carry out. Although it is the right of hopeless patient, however, making individual to die is still unaccepted in Thai society. This is because it is seen as violating the law, morality religious beliefs [9-13, 25] Therefore, the Section 8 of National Health Act 2007 allows patient to refuse treatment. Section 12 of National Health Act 2007 permit the patient to self-determination by making a letter of living will to deny medical technologies and services for prolong death or to end the suffering from illness, which is consistent with passive euthanasia only.

Discussion

The study found that the issue of “right to death” or/and active euthanasia in assisting that hopeless patients from medical treatment to be free from suffering from disease, has not yet occurred in Thailand. “Right to death” or/and euthanasia in Thailand, when considering Section 12 of the National Health Act 2007 allows individuals to write a letter of living will to deny public health services for prolonging death or to end suffering from illness. This legal provision seems to supports people to express their will in advance about death in the last moments of their lives. Thai people can request to exercise the right to die naturally by deny medical treatment to prolong the time of death. In foreign countries, this type of advance will regarding death is called “living will” or “advance directive” or it can be called consent to voluntary passive euthanasia [26-28].

There are many reasons that Thailand have not launch a law that fully recognizes the right to die or active euthanasia. Attitudes, beliefs, and religions of Thai people are related with non-acceptance of active euthanasia. This is because attitudes and beliefs mentioning death is inauspicious or a curse on others and suicide is considered is sin. This is consistent with previous research that defining Thai society does not like to mention death or avoids mentioning due to the long inherited belief. When a serious illness occurs, Thai people are more prefer palliative care than voluntary passive euthanasia. Another reason is that Thai people lack preparation for death and Thais do not consider various matters related to death and avoid talking about death. Thais will think about death only when entering aging or experience health problems [17, 29].

In the view of law and morality, active euthanasia is considered to be intentional death. However, active euthanasia in Thailand is currently not legally recognized. When

analyzing active euthanasia, it is also found that it is an act that falls under the elements of the Thai criminal offense of intentional killing of others under Section 288 or 289 that is punishable by death or life imprisonment. Although voluntary active euthanasia is still illegal in Thai law, the factual elements of the crime are significantly different from other intentional killings, namely the request of the person killed. Therefore, prosecuting the perpetrators of euthanasia on the same basis as intentional killing of others seem to be unfair and inappropriate [9, 28, 30].

In the medical perspective, the opinion argue with the law, morality religion beliefs in society. The public health sector pronounced negative consequence when hopeless patients of medical treatment are unacceptable euthanasia or physician assisted suicide. Non- acceptance of euthanasia or physician assisted suicide results in loss medical resources and increasing huge budget of the public health sector. Treating an incurable disease will increase the burden of expenses for the family. In addition, another negative result is that hopeless patients will only suffer from the threat of the disease. This makes the illness more severe until the physical condition is unbearable. Patients may feel like a burden to their family and their human dignity is devalued [31-33]. Therefore, the question of the right to death has been raised as why people do not have the right of death. The death brings freedom from the suffering serve illness. This demand for the right of death is consistent with the Rational Choice Theory. That is hopeless patients of medical treatment or patients in the final stages of life who request death to be freed from suffering. The request for death has been considered through “reasonableness” and “comparison” between the severity of the action and the consequences of the action. Prohibiting the demand of right to death may cause serve physical and mental suffering.

In contrast, both active euthanasia, defined as the intentional act of directly causing a person’s death to alleviate suffering, and passive euthanasia, which involves the withholding or withdrawal of medical treatments, are legally permitted in many Western countries. The acceptance of both forms of euthanasia in these societies is attributed to a relatively low level of prejudice or opposition towards euthanasia. Furthermore, this acceptance can be due to the widespread understanding of euthanasia. The cultural context of each country plays a significant role in shaping attitudes towards euthanasia, with liberalism in Western societies reflecting a cultural framework that emphasizes individual rights and freedoms. The prevailing attitudes and acceptance of euthanasia in Western societies lead to the evolution of laws and policies to ensure consistency, namely the acceptance of euthanasia. Additionally, in certain countries, euthanasia has existed informally prior to being formally legalized. Therefore, euthanasia is a way to legalize an activity that, though previously illegal, is

accepted by society, in order to ensure official monitoring and control [34-38].

Once euthanasia is legalized in other countries, it has prompted greater efforts to advocate for the right to die in Thailand, compared to previous years [28, 39-40]. This shift is influenced by legal advancements in other countries and the growing acceptance of active euthanasia, which refers to an act that allows patients with hopelessness for medical treatment to be completely cured and free from suffering from diseases. As a result, it is necessary to reconsider whether the time has come for people in Thailand to legally access the right to die. This is consistent with the research indicating that awareness of “the right to die” serves as a crucial foundation for the acceptance of “euthanasia”. In particular, as “the right to die” and “euthanasia” have gained increasing acceptance in Western societies over the past decade [12]. Thailand has been influenced by these ideas. This influence is rooted in the principle of equality among individuals, as well as the recognition of social differences. In addition, “the right to die” is another fundamental right concerning the body, which suggests that individuals should have the autonomy to make decisions, particularly for patients with hopelessness for medical treatment to be completely cured and free from suffering from diseases [7]. Proper legal frameworks and enforcement can help these patients access the right to die in a lawful and supportive manner. The decision to end one’s life is typically made when patients with hopelessness for medical treatment to be completely cured and free from suffering from diseases no longer endure physical and mental suffering.

Conclusion

At present, Thailand still cannot perform active euthanasia or assist hopeless patients who have in medical treatment to be free from suffering from disease. This is because law to support active euthanasia has never even been a draft law on this matter. The feasible way to speed up hopeless patients in medical treatment to be free from suffering from disease is to proceed according to Section 12 of the National Health Act 2007 by writing a letter of living will to refuse public health services for prolong death or to end suffering from illness.

However, another factor that should not be neglected by the government is the general public’s attitude towards such matters because it has never appeared in Thai society. Even though passive euthanasia is currently legalized, most people have no idea and do not access passive euthanasia. Therefore, it is a crucial problem how to enable people to look through cruelty and deep-rooted belief saying that death should happen naturally based on each person’s lifespan. Allowing people to participate is beneficial to the government to use it as a lesson so as to study both positive and negative results, and to analyze the possibility of the level of success of legislative enactment whether it will be high or low.

Recommendation

In addition to integrating Section 12 of the National Health Act B.E. 2550 (2007) and Ministerial Regulations B.E. 2553 (2010) specifying principles and procedures to implement a living will so as to refuse public health service which is provided solely to extend their terminal stage of life or to end the severe suffering from illness for enabling management at the early stage of law enforcement to be effective, the legislative drafting can be conducted by applying foreign legal drafting. The most apparent issues include;

1. Legislating specific laws on “the right to die” or/and active euthanasia or physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from diseases

2. Both active and passive euthanasia can be done simultaneously. A person has the right to choose to do so. This is considered a personal right which cannot be assigned to another person.

3. Guidelines or procedures for euthanasia such as using blood vessel-related medicines or providing medicines with higher doses than necessary to exert barbiturate-like effects causing deep sleep and relaxing the body to cause heart muscles to eventually stop.

4. Screening patients’ characteristics considered by physicians appropriate to allow the patients to undergo euthanasia by submitting a request for euthanasia can be done by establishing committees for considering a request for euthanasia.

5. Consult with other physicians who do not provide active euthanasia in order to review the diagnosis of the physicians who provide active euthanasia if they use their full professional discretion.

6. Establishing a private organization to provide active euthanasia service is deemed not possible in Thailand at the initial stages. If the right to die or/and active euthanasia, and physician-assisted suicide to allow patients with the hopelessness of medical treatment to be completely cured and free from suffering from diseases is allowed, it would be difficult to control inappropriate acts, or it may cause dishonest acts done by providing inaccurate opinions. This is because a person’s death brings about the rights of other many people.

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