

บทวิเคราะห์เปรียบเทียบหลักความชอบด้วยกฎหมายของการกระทำการุณยฆาต
The Comparative Analysis of legality of Euthanasia in Netherland and
Thailand

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Abstract

Euthanasia is the act or practice that put the person who suffers from living to death. Growing concern towards human rights protection and medication present-day medical advancement subsequently raise the question of whether or not euthanasia should be legal. The Netherland became the first country in the world that has officially legalized Euthanasia since 2002. This has inspired other countries, Including, Thailand, to be aware of the term ‘Euthanasia ‘and the idea on whether it should be legalized. This paper is going to describe what it is and give an overview of how the law system in both countries perceive it and the comparison between both countries as it was completely opposite between Netherland and Thailand.

Keywords : Euthanasia, Thailand, the Netherlands

บทคัดย่อ

การรณยฆาตเป็นการกระทำที่ทำให้บุคคลหนึ่งซึ่งประสบกับความทุกข์ทรมานจากการมีชีวิตเสียชีวิตรอง อย่างไรก็ดี ความตื่นตัวต่อแนวคิดการคุ้มครองสิทธิมนุษยชนและเทคโนโลยีที่ก้าวหน้ามากยิ่งขึ้นนำไปสู่การตั้งคำถามที่ว่า การกระทำการรณยฆาตควรกระทำได้โดยชอบด้วยกฎหมายหรือไม่ เนเธอร์แลนด์เป็นประเทศแรกในโลกที่อนุญาตให้สามารถกระทำการรณยฆาตได้โดยชอบด้วยกฎหมาย การดังกล่าวเชิญชวนให้ประเทศอื่นรวมถึงประเทศไทยต้องคำนึงถึงประเด็นการอนุญาตให้การกระทำการรณยฆาตสามารถกระทำได้โดยชอบด้วยกฎหมาย บทความนี้จักศึกษาแนวคิดเรื่องนี้ในระบบกฎหมายทั้งสอง

คำสำคัญ: การรณยฆาต, ไทย, เนเธอร์แลนด์

1. The Definition of Euthanasia

The word “Euthanasia” originally came from Greek language ; Eu meaning eu “good” and thanatos means “death”.

Euthanasia, also called mercy killing, is an act or practice of painlessly putting to [death](#) to persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures. Because there is no specific provision for it in most legal systems¹

2. The Classification of Euthanasia

Euthanasia comes in several different forms, each of which brings a different set of rights and wrongs.²

Active and passive euthanasia In active euthanasia a person directly and deliberately causes the patient's death. In passive euthanasia they don't directly take the patient's life, they just allow them to die.

- Active euthanasia is when death is brought about by an *act* - for example when a person is killed by being given an overdose of pain-killers.
- Passive euthanasia is when death is brought about by an *omission* - i.e. when someone lets the person die. This can be by withdrawing or withholding treatment such as switching off a machine that is keeping a person alive so that they die of their disease or it could be from the refusal of medical treatment, which came from the patient himself

Voluntary and involuntary euthanasia Voluntary euthanasia occurs at the request of the person who dies. Non-voluntary euthanasia occurs when the person is unconscious or otherwise unable (for example, a very young baby or a person of extremely low intelligence) to make a meaningful choice between living and dying, and an appropriate person takes the decision on their behalf.

Involuntary euthanasia occurs when the person who dies chooses life and is killed anyway. This is usually called murder, but it is possible to imagine cases where the killing would count as being for the benefit of the person who dies but this could also be a case when a patient is unconscious or in vegetative state and somebody makes a decision for him too.

Assisted suicide this usually refers to cases where the person who is going to die needs help to kill themselves and asks for it. It may be something as simple as getting drugs for the person and putting those drugs within their reach.

¹ The Editors of Encyclopaedia Britannica, ‘Euthanasia’) *Britannica*, 27 December 2019(<<https://www.britannica.com/topic/euthanasia>> accessed 9 November 2020.

² ‘Ethics Guide’ (*BBC*, 2014) <<http://www.bbc.co.uk/ethics/euthanasia/>> accessed 20 November 2020.

3. Right to die and Death with Dignity

3.1 Right to die

The term “right to die” is the idea that a person has the right to end their life or be voluntarily euthanized. In general, this refers to people with terminal illness and the belief that they should be able to end their life, turn down lifesaving treatments, or move forward with assisted suicide if they so desire³

The advocates of Euthanasia stated that an individual person has a fundamental right to control their own death just as they have a right to control their own life. And it’s a freedom of choice as to only the patient really knows how they feel, and how the physical and emotional pain of illness and prolonged death impacts their quality of life.

Advocates of the idea of “right to die” believe that people should be allowed to end their suffering if faced with a terminal illness.

3.2 Death with Dignity

In support of physician assisted suicide or voluntary active euthanasia, the argument is often made that, as people have the right to live with dignity, they also have the right to die with dignity.⁴

This is a very controversial subject, as many people question the moral act of assisted suicide and Active Euthanasia. In Argument against to them, it consists of many factors such as moral and religious arguments, the patient’s feeling (i.e. Guilt: Patients may feel they are a burden on resources and are psychologically pressured into consenting.)

4. Euthanasia in Netherland and Thailand

4.1 Netherland

Given to the fact, Netherland is the first country in the world that legalized Euthanasia by passing the termination of life on request and assisted Suicide Act in April 2001 and the law took its effect on the 1st day of April in 2002

Even though the euthanasia was legally approved and legalized by the Dutch government just recently in the first decade of 21st century, it, in fact, wasn’t a new thing that surprised the population of Holland as this topic was first debated back in 1973 with the so-called ‘Postma Case’ and complemented by the ‘Brongersma’ case next.

³ 'Right to Die States 2020' (*World Population Review*, N.D.) <<http://worldpopulationreview.com/states/right-to-die-states/>> accessed 20 November 2020.

⁴ Anton van Niekerk, ‘We have a right to die with dignity. The medical profession has a duty to assist’ (*The Conversation*, 26 October 2016) <http://theconversation.com/we-have-a-right-to-die-with-dignity-the-medical-profession-has-a-duty-to-assist-67574>> accessed 20 November 2020.

The Case of Postma and Brongersma

A retired GP who, in 1972, applied euthanasia on the seriously ill mother died in December last year. She was picked up by the police, the villagers of Noordwolde came massively in action. Still she was prosecuted and her case (resulting in 1 week suspended sentence) in 1973 became world news. The argumentation from the court formed the base of the current Dutch Euthanasia law. As such she can be seen as the initiator and one of the co-founders of the NVVE, Dutch Right to Die Society, of which she was a Honorary member⁵

And then the topic of euthanasia was raised in the debate of the parliament again after Brongersma case had happened. Edward Brongersma was an 81-year-old ex-senator. Who, very well known to the public, died by means of voluntary euthanasia in 1998 by the the doctor named, Philip Suntorius due to brongersma's belief that he was suffering because of his hopeless existence This case is considered as one of the landmark in development of Dutch euthanasia law and also a big part of approving the termination of life on Request and Assisted Suicide act. During parliamentary debates many question about the new Act was connected with this case.⁶

On November 28, 2000, the Dutch Lower House of parliament, by a vote, approved the legalization of euthanasia (104 for and 40 against). Then, on April 10, 2001 the Dutch Upper House of parliament followed and voted to legalize euthanasia (46 for, 28 against and one member was not present).

On April 1st 2002, Termination of Life on Request and Assisted Suicide Act came into effect and euthanasia became legal in the Netherlands.

1. The Termination of Life on Request and Assisted Suicide Act 2002

The complete text of the Dutch law on euthanasia as entered into force on April 1st, 2002. It consists of 5 chapters, which are, as follow ;

- Chapter 1 : the definitions of terms
- Chapter 2 : Requirements of Due Care
- Chapter 3 : the Regional Review Committees for Termination of Life on Request and Assisted Suicide.
- Chapter 4 : Amendments to other Acts
- Chapter 5 : Final Provision

⁵ 'Initiator Truus Postma of Dutch Euthanasia Law died')*The World Federation of Right to Die Societies*, 14 January 2015 (<<https://www.worldrtd.net/news/initiator-truus-postma-dutch-euthanasia-law-died>> accessed 20 November 2020.

⁶ Tony Sheldon, "“Existential” suffering not a justification for euthanasia' [2001] *BMJ* 1384, p 1384.

Since 2002, the conditions of euthanasia are governed by the Termination of Life on Request and Assisted Suicide Act. The law is made out of three parts. Which are,

- The first regulate `requirements of due care, and discusses about responsibilities of reviewing reported cases.
- The second amends articles 293 and 294 of the penal code.
- And the third amends the Burial and Cremation Law.

There are three main chapters that are keys and important to the topic of this CrossWorks, which are, chapter 1, chapter 2 and chapter 4 meanwhile, Chapter 3 and chapter 5 involving about the committee are only the complement to this act.

Chapter 1 the definitions of terms

Termination of Life on Request and Assisted Suicide (Review Procedures) Act⁷

This Act entered into force on April 1, 2002 Review procedures of termination of life on request and assisted suicide and amendment to the Penal Code (Wetboek van Strafrecht) and the Burial and Cremation Act (Wet op de lijkbezorging).

Chapter I. Definitions of Terms

Article 1

For the purposes of this Act:

- a. Our Ministers mean the Ministers of Justice and of Health, Welfare and Sports;*
- b. assisted suicide means intentionally assisting in a suicide of another person or procuring for that other person the means referred to in Article 294 second pragraph, second sentence of the Penal code;*
- c. the physician means the physician who according to the notification has terminated a life on request or assisted in a suicide;*
- d. the consultant means the physician who has been consulted with respect to the intention by the physician to terminate a life on request or to assist in a suicide;*
- e. the providers of care mean the providers of care referred to in Article 446 first paragraph of Book 7 of the Civil Code (Burgerlijk Wetboek);*
- g. the regional inspector means the regional inspector of the Health Care Inspectorate of the Public Health Supervisory Service.*

This chapter provides the definition or meaning of terms used in the act, therefore everyone would have the same understanding of these terms

Chapter II. Requirements of Due Care

⁷ 'Support the Patients Rights Council' (*Patients Rights Council*, 10 November 2020) <<http://www.patientsrightscouncil.org/site/>> accessed 20 November 2020.

Article 2

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

- a. holds the conviction that the request by the patient was voluntary and well-considered,*
- b. holds the conviction that the patient's suffering was lasting and unbearable,*
- c. has informed the patient about the situation he was in and about his prospects,*
- d. and 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 has given his written opinion on the requirements of due care, referred to in parts a - d, and*
- f. has terminated a life or assisted in a suicide with due care.*

2. If the patient aged sixteen years or older is no longer capable of expressing his will, but prior to reaching this condition was deemed to have a reasonable understanding of his interests and has made a written statement containing a request for termination of life, the physician may cant' out this request. The requirements of due care, referred to in the first paragraph, apply mutatis mutandis.

3. If the minor patient has attained an age between sixteen and eighteen years and may be deemed to have a reasonable understanding of his interests, the physician may cant' out the patient's request for termination of life or assisted suicide, after the parent or the parents exercising parental authority and/or his guardian have been involved in the decision process.

4. If the minor patient is aged between twelve and sixteen years and may be deemed to have a reasonable understanding of his interests, the physician may cant' out the patient's request, provided always that the parent or the parents exercising parental authority and/or his guardian agree with the termination of life or the assisted suicide. The second paragraph applies mutatis mutandis

This chapter provides the qualification of the person requiring for the euthanasia and also how the process of euthanasia is done.

Chapter IV. Amendments to other Acts

Article 20

The Penal Code shall be amended as follows:

A

Article 293 shall read:

Article 293

1. Any person who terminates another person's life at that person's express and earnest request shall be liable to a term of imprisonment not exceeding twelve years or a fifth-category fine.
2. The act referred to in the first paragraph shall not be an offence if it committed by a physician who fulfils the due care criteria set out in Article 2 of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act, and if the physician notifies the municipal pathologist of this act in accordance with the provisions of Article 7, paragraph 2 of the Burial and Cremation Act.

B

Article 294 shall read:

Article 294

1. Any person who intentionally incites another to commit suicide shall, if suicide follows, be liable to a term of imprisonment not exceeding three years or a fine of the fourth-category fine.
2. Any person who intentionally assist another to commit suicide or provides him with the means to do shall, if suicide follows, be liable to a term of imprisonment not exceeding three years or a fourth-category fine. Article 293, paragraph 2 shall apply mutatis mutandis.

Article 21

The Burial and Cremation Act shall be amended as follows:

A

Article 7 shall read:

Article 7

1. A person who has performed a postmortem shall issue a death certificate if he is convinced that death has occurred as a result of a natural cause.
2. If the death was the result of the application of termination of life on request or assisted suicide as referred to in Article 293 second paragraph or Article 294 second paragraph second sentence, respectively, of the Penal Code, the attending physician shall not issue a death certificate and shall promptly notify the municipal autopsist or one of the municipal autopsists of the cause of death by completing a form. The physician shall supplement this form with a reasoned report with respect to the due observance of the requirements of due care referred to in Article 2 of the Termination of Life on Request and Assisted Suicide (Review Procedures) act.
3. If the attending physician in other cases than referred to in the second paragraph believes that he may not issue a death certificate, he must promptly notify the municipal autopsist or one of the municipal autopsists of this by completing a form.

This chapter provides the amendment of the other acts or legislation such as section 293, section 294 of the penal code and also the burial and cremation act

The illegality of euthanasia was ended by coming of article 293. Article 293 [1] provides: " Any person who terminates another person's life at that person's express and earnest request shall be liable to a term of imprisonment not exceeding twelve years or a fifth-category fine."

But article 293[2] adds: "The act referred to in the first paragraph shall not be an offence if it was committed by a physician who fulfils the due care criteria of the Termination of Life on Request and Assisted Suicide Act, and if the physician notifies the municipal pathologist of this act in accordance with the provisions of Burial and Cremation Act."

Additionally, assistance with suicide would never be considered as a crime before the article 294 of Penal Code. Article 294[2] states: " Any person who intentionally assist another to commit suicide or provides him with the means to do shall, if suicide follows, be liable to a term of imprisonment not exceeding three years or a fourth-category fine". Nevertheless, both of those types are treated differently by Penal Code, but Dutch law does not make any differences between active euthanasia and assisted suicide in practice as far as they are justifiable.

4.2 Thailand

Firstly, Thailand has not yet passed the legality of Euthanasia which was done actively by the doctor on request of the patient just like the Netherland. Right now, Thailand has an act that governs the healthcare service and patient's rights, called the National Health Act B.E 2550 where it has one section involving to Euthanasia, which is the section 12.

1. Section 12 of National Health Act B.E. 2550

Section 12 of The national health act B.E. 2550 is currently the only legislation in regard to Euthanasia which are, as follow;

"Section 12. A person shall have the right to make a living will in writing to refuse the public health service which is provided merely to prolong his/her terminal stage of life or to make a living will to refuse the service as to cease the severe suffering from illness.

The living will under paragraph one shall be carried out in accordance with the rules and procedure prescribed in the Ministerial Regulation.

*An act done by public health personnel in compliance with the living will under paragraph one shall not be held an offence and shall not be liable to any responsibility whatsoever."*⁸

In section 12 of this act, it seems like many people make a misunderstanding perception of it as the content provided in this section has an ambiguous meaning. It is

⁸ English translation in: http://thailawforum.com/laws/National%20Health%20Act_2007.pdf

actually about the living will, which is, in fact, about the right to refuse by the patient and may be one of the classifications of the euthanasia.

The Living will (Advance directive) could be considered as “Passive Euthanasia” (according to the definition of passive euthanasia on page 2); it is also considered as the refusal of treatment, which is also a subsequent right in the patient’s right. But it’s slightly different from the Euthanasia that we all know or in this case “Active Euthanasia”

‘ Living Will ’ is the term used to describe that the patient make a living will in writing to refuse the treatment that would only prolong his/her terminal state of life. Such action would end that person’s severe suffering from illness and must be abided by all relevant parties, including relatives and the doctor

With that being said, the act only covers the living will right or the passive euthanasia type but not the active euthanasia type that was practiced in Netherland or other countries. This means that it is still considered as a crime because medical treatment is a direct act towards patient’s life and physique. Therefore, if the act affects the patient’s life and lead him or her to death, then it will fall within section 288 and 289 of the Thai penal code

“Section 288, Whoever, murdering the other person, shall be imprisoned by death or imprisoned as from fifteen years to twenty years.

Section 289, Whoever commits murder on:

1. An ascendant;
2. An official in the exercise of his functions, or by reason of exercising or having exercised his functions;
3. A person who assists an official in the exercise of his functions, or by reason of the fact that such person will assist or has assisted the said official;
4. The other person by premeditation;
5. The other person by employing torture or acts of cruelty;
6. The other person for the purpose of preparing or facilitating the commission of the other offence; or
7. The other person for the purpose of securing the benefit obtained through the other offence, or concealing the other offence or escaping punishment for the other offence committed by him, shall be punished with death.”

Many countries in the world, including Thailand, have not yet legalized the Active Euthanasia and Assisted Suicide as they are still a matter of debate. There are a variety of important reasons to support that they should not be legal, for example

- Moral notion and religious belief of people in the society
- It could lead people into committing suicide
- Euthanasia would not make any progress in the medical research
- It could alter people’s concept of moral

- In some cases, it could be that the patients don't actually want to die but just being in their tough period of time , especially facing with death, these patients' mind are in the very fragile state.

- There are other “much better” options

Since there are so many factors that are against the euthanasia in Thailand to become legal, there are more Thai people who seek to get (Active) Euthanasia done elsewhere. One of the cases that have been well-known in the social media lately is the case of Khun Golf. The story is as follow ;

The Case of Khun Golf (Facebook Status Case)

There was the case of Khun Golf that raised the public view on the euthanasia. The story of him is as follow;

Khun Golf , 40 year-old Thai guy, had been diagnosed with Chronic Brain Tumor and had been suffering from the disease ever since, the disease not only affected his body but also his mind painfully, in addition , he felt that this situation would affect his family and his loved ones too. Therefore he decided to have euthanasia done outside of the country (Switzerland) as to it was still considered illegal by the Thai law

Prior to 2 hours before his death, he posted a status on his Facebook account. The post is as follow;

“Oh! my beloved moon... Please tell my dad and mom I’m happy now And there is no need to cry I’m finally reunited with the universe Forever where I abide by

After this was posted, I’d get the medicine and leave this world permanently. The reason that I came to get euthanasia is because I don’t want my parents to constantly take care of me , if the next surgery will cause me into a vegetative state for the rest of my life. I am now very happy that I won’t be suffering anymore and that my parents can, now, take a rest from taking care of me. Farewell Dad and Mom. Golf” (Source : Drama-Addict FB Page)

This post dramatically attracted public eye to the term ‘Euthanasia ‘as it had never been done by any Thai person before. It also caused the controversy and debate among Thai people on whether it should be legal now, just like other countries⁹.

5. The comparative analysis

The Euthanasia was very different in the view of legislation in both countries. Debates involved a lot of factors such as morals, ethics, law and medicine. Although the issues are discussed a lot in the media and elsewhere, it was not discussed much in legalization bodies.

⁹ See Thai Criminal Code 1956

Given the fact of euthanasia in both the Netherland and Thailand, it is obvious that almost all type of Euthanasia in the Netherland were already legalized by the coming of the Termination on Request and Assisted suicide Act in 2002. In the other hand, Thailand legalized only one type of it, which was the passive euthanasia by the section 12 of National Health Act B.E.2550

The reasons behind the difference between these two countries were due to a lot of factors such as,

The moral concept , Religious Belief and Culture: in terms of religious belief, it is very obvious that almost 98 % of Thai People are Buddhist, this could literally reflected on the moral concept of people in the country. For Thai people, suicide or killing yourself directly or indirectly are considered sinful, based on Buddhism.

Phra Phaisarn Wisalo also gave the overview in the Buddhist dimension that “the people, who are in favor of Euthanasia always make a point of it as the patient’s life ,who want to die, is useless, no dignity because It’s not only painful but also not self-reliant. If you look at it in humanity dimension, Euthanasia is definitely a good thing but in Buddhist dimension, life was viewed as something very valuable. As long as we are still breathing, No matter how sick you are, you can do good things. Make it possible At least for our own minds ... Also, you will be able to learn from illness or use it as a teaching tool to emphasize that life is impermanent, suffering and not in our own power”¹⁰

And the other challenge in Thailand is that most people refuse to talk about death as they believe it is a bad omen. There are still cases where family members refuse to allow the physician to withdraw life support even when the patient has made a living will. This reflects one of the highest Thai values, katanyu, or respecting one's elders.

"We see it every single day; family members do not talk about whether they want the patient to die naturally or be connected to life support," Amphon Jindawatthana, former secretary-general of the NHCO, told the Bangkok Post in 2015¹¹

Meanwhile in Netherland, although it’s considered a grave sin in Christianity and majority of Dutch people are Christian, the greatest support for the procedure of Euthanasia legalization – at 98 per cent – comes from those who describe themselves as “non-religious”, with the greatest opposition from Muslims and Orthodox Protestants. This means that, in Netherland, people are becoming more non-religious and atheist as the time has passed by and that Dutch people tend to view through it via the human right dimension than religious or ethics dimension. Besides this, Pisit Sriakpokin, senior technical officer at the National Health Commission Office (NHCO) in Thailand, who has written a legal paper on euthanasia for

¹⁰ ‘Euthanasian in Buddhist Perspective’ (Visalo.org, 2012) <<http://www.visalo.org/columnInterview/5409Image.htm>> accessed 20 November 2020.

¹¹ Erich Parpart, 'Dying and Dignity') *Bangkok Post*, 21 January 2019 (<<https://www.bangkokpost.com/business/1614810/dying-and-dignity>> accessed 20 November 2020.

the office, said euthanasia was not widely debated in Asia in the past because Asian societies place "more weight" on traditional practices over personal freedoms.¹²

The Movement and Feedback behind Legalization: Prior to coming of the Termination on request and Assisted suicide act in 2002, the practice of active euthanasia had been done ever since 1973 (the Postma case). Which means, in order to legalize something, there must be the movement behind it and attract the government's interest, then raised the debate among them, which finally lead to consideration of it in parliament. Meanwhile, in Thailand, there was never a case of euthanasia that caused debate among politician or lawyer in the government just like in Netherland as to it was considered a crime and due to moral concept stated above, therefore Euthanasia wasn't known much and was never discussed seriously among Thai people. For instance;

While section 12 of National Health Act B.E.2550 was proceeding, it seemed that there were still disagreements from some people and even though the Act has been promulgated, there is still dispute that the Ministerial Regulations were issued incorrectly. Until the Supreme Administrative Court has decided the legality of the law¹³.

Back to Netherland ,Statistic based on the representative survey showed that, fifty-five percent say physically healthy people should have right to end their own lives. Eighty-seven percent of the population favoring its availability in certain controlled circumstances, Eight percent opposed to it in all circumstances and five percent with no opinion. With that being said, a majority of the Dutch population supports the idea of euthanasia for those who say they're "tired of life" although they remain physically healthy. Right-to-die advocates often point to Holland as the model for how well physician-assisted, voluntary euthanasia for terminally-ill, competent patients can work without abuse. ¹⁴

In conclusion, Thailand is different from Netherland in regard to Euthanasia because the social context in both countries such as moral concept, law, people, national background etc. is somewhat different.

6. Conclusion

In conclusion, Passive Euthanasia is legal or allowed in both Thailand and Netherland, according to the law provided by the federal government

- Thailand : Section 12 of National health Act B.E. 2550

¹² Mentioned above (11)

¹³ Social Communication Department, National Health Commission of Thailand, 'Euthanasia and its events in Thai Law')*ThaiLivingWills*, N.D.(<http://www.thailivingwill.in.th/content/Mercy_Killing> accessed 20 November 2020.

¹⁴ Peter Cluskey, 'Right to euthanasia for people 'tired of life' supported by most Dutch')*The Irish Times*, 19 November 2019(<<https://www.irishtimes.com/news/world/europe/right-to-euthanasia-for-people-tired-of-life-supported-by-most-dutch-1.4088750>> accessed 20 November 2020.

- Netherland : the Law on Contracts for Medical Treatment which is part of Dutch penal code.

But Active Euthanasia and Assisted Suicide is different between these two countries

- Thailand : considered as a crime by the section 288 of Penal code

- Netherland: Active type was legalized by the Termination of Life on Request and Assisted Suicide Act. 2002 and section 293 ,294 of Penal code. Assisted Suicide is still considered as crime but when it comes into practice of the law, it was treated as the same as the active type, as long as it's justifiable.