

ปัญหากฎหมายเกี่ยวกับการทำการุณยฆาตเชิงรุกกับความรับผิดทางอาญา ตามประมวลกฎหมายอาญา

Legal problems relating to active euthanasia and criminal liability according to the Thai Penal Code

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บทคัดย่อ

งานวิจัยฉบับนี้มุ่งศึกษา (1) ปัญหาทางกฎหมายที่เกี่ยวข้องกับการการุณยฆาตเชิงรุกในกฎหมายไทย (2) เพื่อเปรียบเทียบกฎหมายต่างประเทศและแนวโน้มการการุณยฆาตเชิงรุกในปัจจุบัน (3) เพื่อเสนอแนะแนวทางที่เหมาะสมเกี่ยวกับการการุณยฆาตเชิงรุกภายใต้บริบทกฎหมายไทย

งานวิจัยนี้พบว่าแนวโน้มของกฎหมายในต่างประเทศในปัจจุบันหลังจากมีการผลักดันกฎหมายเกี่ยวกับการการุณยฆาตเชิงรุกมาหลายทศวรรษซึ่งการการุณยฆาตเชิงรุกอาจให้โอกาสสำหรับผู้ทุกข์ทรมานจากสภาพที่รักษาไม่หายและเจ็บปวดเพื่อจบชีวิตของพวกเขาอย่างมีศักดิ์ศรีและสงบสุข นอกจากนี้ยังสามารถช่วยลดภาระทางเศรษฐกิจในการให้การดูแลผู้ป่วยระยะสุดท้ายแก่ผู้เจ็บป่วยระยะสุดท้าย และยังเป็นที่ยืนยันสิทธิในการตายว่าควรเป็นหนึ่ง ในสิทธิขั้นพื้นฐานของประชาชน

ในทางกลับกันมีความเสี่ยงที่อาจเกิดขึ้นหลายประการที่เกี่ยวข้องกับการผ่านกฎหมายสำหรับการการุณยฆาตเชิงรุกที่ผู้ออกกฎหมายต้องพึงระวังไม่ว่าจะเป็นความเสี่ยงในการบีบบังคับผู้ป่วยระยะสุดท้ายเพื่อให้จบชีวิตก่อนเวลาอันควร ความเสี่ยงของการใช้ในทางที่ผิดโดยนำไปใช้

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กับผู้ป่วยที่ไม่ใช่ผู้ป่วยระยะสุดท้ายแต่อาจจะมีเพียงภาวะซึมเศร้าหรือเจ็บปวด หรืออาจนำไปใช้ในการหลอกลวงในเชิงทรัพย์สินของผู้ป่วยได้

อย่างไรก็ตามการรณยฆาตเชิงรุกควรถูกนำมาบัญญัติไว้ในกฎหมายไทยเพื่อเป็นการรับรองสิทธิของประชาชนให้ประชาชนมีสิทธิในการเลือกจบชีวิตของตนเองได้หากมีความจำเป็นและกฎหมายไทยควรให้ความสำคัญกับสิทธิในการที่จะตายของประชาชนให้เพิ่มมากขึ้น

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Abstract

This research examines (1) To study the legal issues related to active euthanasia in Thai law. (2) To compare interesting foreign laws concerning active euthanasia. (3) To explore approaches to active euthanasia that are appropriate for the Thai social context.

This research found that the strongest argument for passing legislation for active euthanasia is that it could potentially provide an opportunity for those suffering from an incurable and painful condition to end their lives in dignity and peace. In addition, it could also help to reduce the economic burden of providing end-of-life care for those with terminal illnesses. Furthermore, it could also provide those who are terminally ill with the ability to choose when and how they die.

On the other hand, there are a number of potential risks associated with passing legislation for active euthanasia. For example, there is the risk of coercion, as those who are terminally ill may feel pressured to end their lives prematurely. There is also the risk of misuse, as assisted suicide and active euthanasia could be used to end the lives of those who are not terminally ill but merely depressed or in pain. Finally, there is the risk of abuse, as some individuals may take advantage of assisted suicide and active euthanasia in order to gain access to the assets of those who are terminally ill.

In conclusion, active euthanasia could provide an invaluable opportunity for those suffering from an incurable and painful condition to end their lives in dignity and peace. Therefore, it is clear that legislation for active euthanasia should be passed in order to ensure that individuals have the right to choose when and how they die.

Keywords: Active Euthanasia, Criminal liability, Right to Die.

1. Statements and significance of the problems

There is no specific international law that universally protects euthanasia on a global scale. Euthanasia laws and regulations are primarily determined by individual countries or regions, and there is currently no comprehensive international treaty or convention that addresses the legalization or protection of euthanasia as a fundamental right.

Instead, discussions surrounding euthanasia and assisted dying are often addressed within the broader framework of human rights, including the right to life, the right to health, and the right to dignity. International human rights instruments such as the Universal Declaration of Human Rights and regional human rights conventions may be cited in arguments related to end-of-life care and the autonomy of individuals facing severe illness or suffering.

The absence of a specific international law to protect euthanasia reflects the diverse and often contentious perspectives on this complex issue, including ethical, moral, religious, and legal considerations. Advocates of euthanasia may seek to frame the practice within the broader context of individual autonomy and dignity, while opponents may emphasize the need to protect vulnerable individuals and uphold the sanctity of life.

Given the diverse and evolving nature of laws and societal attitudes toward euthanasia across different countries, any global framework to protect euthanasia would require substantial consensus-building and careful consideration of the competing interests and perspectives involved.

For the most current and comprehensive information on legal developments related to euthanasia at the international level, it is advisable to consult legal experts, academic research, and official publications from international organizations and legal bodies associated with healthcare ethics and human rights.

In the present day, Thai people are facing a continuous onslaught of serious illnesses. In the year 2563, 300,000 Thais have died from communicable diseases. In the previous year, 2562, 100,000 people have died from all types of cancer, with 53 deaths from stroke, 44 from heart disease, 25 from diabetes, and 18 from liver-related diseases. Furthermore, according to the Thai Population Health Survey of 2557, individuals aged 15 and over who are suffering from diabetes is at 4.8 millions with 13 million suffering from high blood pressure. Considering

the severity of these illnesses, it is evident that many people are suffering from and being treated for these diseases.

It is predicted that in the next 20 years, Thailand will enter a society of ageing people, with more than 40% of the population aged over 60. This will lead to impacts in related legislation, particularly in relation to the rights of the elderly in many aspects, including the right to die.¹ Some elderly people may encounter certain problems which lead them to wish to end their life and desire to do euthanasia with consent.² When considering the right to die under the Thai legal context, euthanasia is illegal in Thailand. However, when compared to the laws of other countries, the right to die is considered a basic right of citizens if there is a certain necessity. Citizens therefore have the right to choose and determine their own life.³ It is therefore essential that Thai law should be changed with regard to the rights of the deceased to reflect the changing social context. Thailand should consider enacting a law to provide active euthanasia due to evolving social dynamics. As society progresses, emphasis has shifted towards individual autonomy and patient rights. Recognizing the importance of personal choice and dignity, legalizing active euthanasia would enable terminally ill individuals to exercise control over their end-of-life decisions, free from unnecessary suffering. By implementing comprehensive safeguards and strict regulations, such a law could provide a compassionate solution to those who would otherwise endure prolonged pain and deterioration, aligning with the changing social attitude that prioritizes personal agency in life's most challenging moments. In addition, when considering the relevant laws, directly related to the right to die in Thailand, there are relevant regulations, namely, the National Health Act B.E. 2550, Articles 12

“People have the right to make an advance directive expressing their wishes for health care services for end-of-life or to terminate suffering from illness.

¹ Chotipanich C, & Suwannarat, P, “Legal aspects of the right to die in Thailand,” *International Journal of Law, Policy and the Family* 32, No.3 (December 2018): 284-302.

² Chamba & Chamba, “Elderly suicide and euthanasia: Attitudes and determinants in the French general population,” *International Journal of Environmental Research and Public Health* 12, No.8 (2015): 8674-8690.

³ S.G. McManaman, “International Perspectives on Euthanasia and Physician-Assisted Suicide,” *Journal of Clinical Ethics* 7, (1999): 425.

Translation: The implementation of the intentions expressed in one clause shall be done in accordance with the criteria and procedures established by the Ministry of Public Health.

When a health professional performs their duties in accordance with the wishes of an individual, it shall not be considered a breach of duty and shall be exempt from any liability”. When considering the right to die under the National Health Act B.E. 2550 section 12, it can be seen that the policy of granting the right to die under Thai law is to provide the right to receive healthcare services with the sole purpose of prolonging death in the final stages of life or for relief from suffering, which is considered to be Passive Euthanasia.⁴ This is different from the laws of many countries that have amended their laws to allow for active euthanasia, particularly Switzerland and the United States, which is known as the most progressive country in the world in terms of legislation on end of life rights.

On the other hand, while euthanasia remains illegal in Thailand, there are several potential disadvantages to consider if active euthanasia were to be legalized. Ethical concerns arise due to intentionally causing a person's death, which may erode the sanctity of life and blur moral boundaries. The fear of a slippery slope is another disadvantage, as legalizing euthanasia may lead to its expansion over time, potentially including non-voluntary or involuntary cases. Protecting vulnerable populations is a concern, as they may face pressure or coercion to choose euthanasia. Errors in medical judgment could result in premature euthanasia and the irreversible nature of the procedure leaves no room for reconsideration. Healthcare providers may suffer psychological distress and conflicts when participating in euthanasia, affecting their well-being and the quality of care. Legal and practical challenges would arise in implementing and regulating euthanasia laws, potentially burdening the legal system. It is essential to consider these disadvantages within the broader societal and cultural context of Thailand.

Apart from this, when considering the data in the aggregate, it is clear that Thailand is one of the countries which does not allow for active euthanasia which is rather limited in part due to religious and cultural constraints. In Thailand, active euthanasia is not legally permitted due to religious and cultural constraints.

⁴ Chaiyasit S, & Lertvachiraporn S, “Voluntary Euthanasia: A study of the attitudes of medical students at Mahidol University,” *Journal of the Medical Association of Thailand* 96, No.8 (2013): 907–914.

The country places a strong emphasis on the preservation of life, influenced by Buddhist and Islamic beliefs that prioritize the sanctity of life and avoiding harm. Thai culture values familial and community support, and there is a belief in the duty to care for loved ones. While discussions regarding passive euthanasia exist, intentional life-ending remains controversial. The country's stance on euthanasia reflects the significance of religious and cultural values, emphasizing compassion and support for those facing terminal illness. At the same time, there are several countries which give importance to the rights of the patient as a fundamental right to choose their treatment even if it should lead to their death. Therefore, even though there are countries that allow for active euthanasia, it is necessary to study the scope and constraints of such for it to be suitable for the context of Thailand. This study aims to do so for active euthanasia with regards to the context of Thailand.

Therefore, the issue of whether to introduce legislation to grant individuals the right to make decisions regarding their own death must be considered in terms of legal perspectives on the matter.⁵ This may be divided into several issues such as the scope of rights to practice active euthanasia under Thai law, the liability of medical personnel, the view of religion on the granting of consent for active euthanasia, and who has the right to request euthanasia.⁶ Comparing with the laws of other countries which have long had laws allowing active euthanasia, it can be seen that Thailand's laws need to be adjusted to align with the changing social context. Thus, this research will focus on the amendment of laws related to active euthanasia, to enable the public to have a clearer right to die and be in line with the social conditions.

2. Research objectives

- 2.1 To study the legal issues surrounding active euthanasia in Thai law
- 2.2 To compare the laws on active euthanasia in other countries of interest
- 2.3 To study the suitable approaches to active euthanasia to be accepted in the Thai context.

⁵ Materstvedt, Linda J et al, "Legal Aspects of Euthanasia and Physician-Assisted Suicide," *Palliative Medicine* 28, No.8 (2014): 890–896.

⁶ Thongloy U, "The comparative analysis of legality of Euthanasia in Netherland and Thailand," *Nitiparitat Journal* 1, No.1 (2021): 22-35.

3. Scope of the study

This study has examined the laws related to euthanasia both domestically and internationally, with a particular focus on the laws of Switzerland, Netherlands, Belgium, Australia, England, and the United States. It is important to note that these countries have all created laws and procedures allowing euthanasia in some form. The specifics of these laws vary from country to country, but they are all quite comprehensive in the range of regulations they provide. In Switzerland, for instance, euthanasia is legal if it is requested by a patient, if their suffering is unbearable, and if their condition is incurable. In the Netherlands, euthanasia is allowed if the patient's suffering is unbearable and there is no hope of recovery. In Belgium, euthanasia is allowed when there is no reasonable hope of cure, and when the patient's physical or mental state is unbearable. In Australia, euthanasia is allowed in certain circumstances, such as when the patient is terminally ill and when the patient's suffering is unbearable. In England, euthanasia is illegal but physician-assisted suicide is allowed in certain cases. In the United States, euthanasia is illegal in most states, but physician-assisted suicide is allowed in some states. This study has provided a comprehensive overview of the laws related to euthanasia in these countries, and has highlighted the differences in the regulations across different countries.

4. Research Hypothesis

Thai law stipulates limited rights for euthanasia, making it impossible for persons with certain essential needs to choose their own fate. Countries like Switzerland, Netherlands, Belgium, Australia, England and the United States have developed laws regarding active euthanasia and clear-cut guidelines for aggressive active euthanasia, which can be used as a model to improve Thai law.

5. Research Methodology

This research will involve the use of quality research methods to collect data from both primary and secondary sources, both offline and online. Data will be collected, analyzed and evaluated to gain an understanding of the topics set out in the research. Results of the study will be summarized and presented in a concise and usable manner. The research will also include a review of pertinent literature and a comparison of the results of the study with those found in the

literature. This will allow for a better understanding of the topics and a more complete analysis of the results. The research will also follow a well-structured research plan to ensure that the results are reliable and valid. The data collected will be used to answer the questions posed in the research and provide a better understanding of the topics. Through this research, a better understanding of the topics and their effects will be gained, allowing for more informed decisions and better outcomes in the future.

6. Expected Benefits

- 6.1 Make aware of the legal issues regarding aggressive euthanasia in Thai law.
- 6.2 Understand the legal approach towards aggressive euthanasia in Switzerland, the Netherlands and the United States.
- 6.3 Understand the appropriate ways to adjust Thai laws related to aggressive euthanasia to align with the context of the Thai aging society.

7. literature review

In Thailand, the topic of euthanasia is often part of a broader discussion about end-of-life care, patient autonomy, and medical ethics. The traditional cultural and religious values in Thailand have also influenced the public perspectives on the topic of euthanasia. Buddhism, which is the predominant religion in Thailand, holds particular views about the sanctity of life and the role of suffering.

Meanwhile, the medical community in Thailand continues to grapple with ethical considerations and professional guidelines regarding end-of-life decisions and palliative care. There are ongoing efforts to improve access to palliative care services to ensure that individuals facing terminal illnesses have access to adequate pain management and support.

Debates about euthanasia in Thailand often involve considerations of personal autonomy, the role of healthcare providers, and the moral and ethical obligations toward terminally ill patients. It's important to note that public discourse and legal frameworks in Thailand regarding euthanasia may continue to evolve over time, and it's advisable to seek the latest information from reliable and current sources.

In Thailand, euthanasia remains illegal under the current legal framework. The legislative and regulatory landscape does not provide for the practice of

euthanasia, and there is no specific law that permits or regulates the intentional ending of a patient's life by a medical practitioner.

The absence of explicit legislation addressing euthanasia means that healthcare providers are guided by existing laws, ethical guidelines, and professional standards when making end-of-life care decisions. Furthermore, discussions about legalizing euthanasia continue to raise complex ethical, religious, and moral considerations among policymakers, healthcare professionals, and the public.

7.1 Refusal of Treatment

The concept of refusal of treatment originated from the acceptance of the right to self-determination with regards to one's own decisions, which is considered as one of the patient's rights according to the Declaration of Lisbon on the "Rights of the Patient" (1981, amended 2005) by the World Medical Association. This right entails that the patient's wishes should be respected at the final stages of life, and that the patient should be provided with palliative care in a respectful manner.⁷

Refusal of treatment is a different context from euthanasia, though they may be similar in terms of the discussion regarding death. Essentially, refusal of treatment merely involves refusing medical treatment in order to prolong life, but without any opportunity of recovery from the illness. There is no termination of life, but rather a release from suffering by allowing the patient to pass away naturally, without any extraordinary or unnatural medical measures. This is in contrast to passive euthanasia, which involves medical intervention to end life in its final stages.⁸ The refusal of treatment in the terminal phase does not mean that medical or health professionals related to the medical field no longer have the duty to take care of the patient. On the contrary, these professionals must continue to help the patient in every possible way to achieve a peaceful end and pass away without any worries about the actions taken.⁹

⁷ World Medical Association, "Declaration of Lisbon on the "Rights of the Patient" World Medical Association," 2022, <https://www.wma.net/policies-post/wma-declaration-of-lisbon-on-the-rights-of-the-patient>, accessed November 1, 2022.

⁸ Brock D. W., "Voluntary active euthanasia," *The Hastings Center Report* 22, No.2 (1992): 10-22.

⁹ Curtis, J. R, & Vincent, J. L, "Ethics and end-of-life care for adults in the intensive care unit," *The Lancet* 376, NO.9749 (2010): 1347-1353.

7.2 Right to Die

Nowadays, many countries have developed the right to die into a legal right, that is, they have laws that recognize the right to die. In many countries, there is a trend towards establishing laws that recognize the right to die. The evolution of the right to die from a natural right to a legal right has been a long process.¹⁰ It is stated that the public is a resource of the state and thus the death penalty must be forbidden and those who violate this are considered to have committed a criminal offence and are subject to criminal punishment according to the law.¹¹ The influence of Christianity on various European states has led to the prohibition of capital punishment in many countries, making attempted murder a misdemeanor equivalent to murder. This is incorrect.¹² France was the first country to abolish capital punishment in 1790, six years later Prussia followed suit, and by 1890, Austria had also abolished the law. In England, a new law was introduced in 1961, called The Suicide Act, which did not consider suicide a criminal offence, but supporting or assisting suicide was still considered a criminal offence. Many countries today still view suicide as a criminal offence.¹³ In some countries, the criminalization of attempted suicide or suicide itself remains a part of their legal framework, with potential penalties for individuals who attempt suicide or survive a suicide attempt. Additionally, aiding or abetting suicide is regarded as a criminal offense in various jurisdictions, which includes providing assistance, advice, or encouragement to another person to commit suicide. However, there has been a global shift in attitudes toward individuals who attempt suicide, with a growing recognition of mental health issues and the need for compassionate and supportive responses rather than punitive measures. Several countries have taken steps to decriminalize suicide or have amended

¹⁰ Vulliermet F, "To live is to die: A virtue account of arguments for the right to die," *Ethics & Bioethics* 10, No.1-2 (June 2020): 20-29.

¹¹ Engelhart K, "The Inevitable: Dispatches on the Right to Die," *St. Martin's Press* 12, No.12 (2021): 12-23.

¹² Zaccaria F, Anthony & Sterkens C, "The impact of religion on attitudes towards abortion and euthanasia. An empirical study among Italian students," *Euthanasia, Abortion, Death Penalty and Religion-The Right to Life and its Limitations: International Empirical Research* 10, No.10 (2019): 105-137.

¹³ Baburin S, "Preventing the euthanasia of humanity: morality and integration constitutionalism as the basis for the transformation of modern law", *Gosudarstvo i pravo* 6, (2021): 73-86.

their laws to redirect attention toward providing mental health support and care for individuals struggling with mental health issues and suicidal ideation.

7.3 Summary of the principle of active euthanasia according to the laws of different countries

In the United States, refusal of treatment according to the wishes of the patient is enabled by the Medical Contract Act, which states that persons over 16 years of age who are of sound mind and can make decisions for themselves may refuse treatment. Additionally, another person may be designated to make decisions on their behalf. This is considered a normal practice of medical ethics.¹⁴ Physician-assisted suicide (PAS), in which medical aid is provided to facilitate death, remains a contentious issue for many states within the United States, with varying laws in place governing whether physician assistance is allowed for individuals wishing to end their own lives.¹⁵ In present times, only the state of Oregon has legislation that allows physicians to provide medical aid to patients, such as in the case of refusing lifesaving treatment. While each state has its own laws that guarantee an individual's right to refuse medical treatment, Living Wills are documents that serve to express one's wishes to decline medical care. In present times, only the state of Oregon has legislation that allows physicians to provide medical aid to patients such as in the case of refusing lifesaving treatment (Living Will).¹⁶ Generally, a person entitled to make an advance decision to refuse medical treatment must be at least 18 years of age and have mental capacity to make the decision with full knowledge and intent, and have at least two witnesses who are not related by blood or marriage and not entitled to the same inheritance as the person making the decision. Furthermore, the person making the decision may appoint another person to make decisions on his behalf, and may revoke the advance decision at any time.¹⁷

¹⁴ Barsness J, Regnier C, Hook C & Mueller, "US medical and surgical society position statements on physician-assisted suicide and euthanasia: a review," *BMC medical ethics* 21, (2020): 1-7.

¹⁵ Kim Y, "Ways of debating assisted suicide and euthanasia: Implications for psychiatry," *Perspectives in biology and medicine* 64, No.1 (2021): 29-43.

¹⁶ Hendin H & Hendin, "Physician-assisted suicide and euthanasia in the Netherlands and Oregon," *Oxford Textbook of Suicidology and Suicide Prevention* 27, No.3 (2020): 117.

¹⁷ Emanuel E, Onwuteaka-Philipsen B, Urwin J & Cohen, "Attitudes and practices of euthanasia and physician-assisted suicide in the United States, Canada, and Europe," *Jama* 316, No.1 (2016): 79-90.

In the United Kingdom, the practice of euthanasia and physician-assisted suicide are considered criminal offenses under the Withholding Withdrawal of Life-sustaining Medical Treatment legislation. This is not considered murder by intent, as the court recognizes that withholding or withdrawing treatment is not an act, but an omission and this omission does not breach the duty of a physician as they have no duty to continue treating a terminally ill patient beyond this. In addition, the court sees withholding or withdrawing treatment, by either withholding or withdrawing, as being without legal consequence.¹⁸

The British Medical Association (BMA) has certified that persons with sound judgement can make an advance directive to refuse medical treatment in order to terminate the use of life-sustaining equipment and there must be at least one witness who is over the age of eighteen and is not a spouse, relative, or someone who would benefit from the declarant's estate. Moreover, the advance directive must not be applied to refuse basic care, food, and fluids, and must not be used for any illegal purposes, such as euthanasia or physician-assisted suicide.¹⁹

In 1995, the Australian state of Northern Territory issued the Rights of Terminally Ill Act, which allowed physicians to administer a peaceful death to patients, and provided legal immunity for physicians who acted according to the Act's requirements. This included allowing four patients to self-administer a lethal drug via a self-administered device. In 1997, the central government overturned the Act. (Australian Government, 1997).²⁰ The refusal of medical treatment in order to terminate the use of life-supporting tools is generally regulated by each state's laws, granting individuals the right to express their refusal to receive such treatment through a Refusal of Treatment Certificate or an Advance Health Directive. The individual must be over 18 years of age, with a normal mental

¹⁸ Porter K & Warburton, "Physicians' views on current legislation around euthanasia and assisted suicide: Results of surveys commissioned by the Royal College of Physicians," *Future Healthcare Journal* 5, No.1 (2018): 30.

¹⁹ Fontalis A, Prousalis E & Kulkarni, "Euthanasia and assisted dying: what is the current position and what are the key arguments informing the debate?," *Journal of the royal society of medicine* 111, No.11 (2018): 407-413.

²⁰ Willmott L, White B, Stackpoole C, Purser K & McGee A, "voluntary euthanasia law reform in Australia: Two decades of trends, models and politics," *University of New South Wales Law Journal* 39, No.1 (2016): 1-46.

state, and the refusal must be expressed with a clear intention and witnessed by a third party. Moreover, medical personnel must be released from their professional and criminal responsibilities once they comply with the Advance Health Directive. This does not cover the compulsory care in a community without the refusal of treatment in accordance to the Advance Health Directive.²¹ In Queensland, regulations have been established to restrict or withdraw the use of life support when a patient has their terminal illness or is in a condition that cannot be treated and has no hope of living beyond 1 year, or a patient who is in a permanent vegetative state or is deeply and severely suffering, without hope of recovery, and the use of life support is contrary to good medical practice and the patient has no hope of recovery without it, this right of self-determination to die peacefully has become a matter of debate in the context of the National Health Act, which has provisions that grant this right to individuals.²²

On the other hand, in Switzerland, euthanasia, or assisted suicide, is legal under specific circumstances. The law grants individuals the authority to make decisions concerning euthanasia. Euthanasia is considered legal in cases where a person is suffering from a terminal illness or unbearable pain that cannot be alleviated, and the patient's treating physician believes there is a risk of a futile struggle against the illness. Switzerland has a legal framework that allows for organizations to assist individuals in ending their own lives under strict conditions.

The Netherlands has a more detailed legal framework around euthanasia. Under the Termination of Life on Request and Assisted Suicide (Review Procedures) Act, euthanasia is permitted under specific conditions. A patient's suffering must be unbearable with no prospect of improvement, and the patient must have a voluntary and well-considered request for euthanasia. Additionally, the patient's suffering must be lasting and intolerable. If these criteria are met, a physician may perform euthanasia or assist in a patient's suicide within the bounds of the law.

Belgium also has specific laws regarding euthanasia. The Belgian Euthanasia Act outlines the conditions under which euthanasia is permitted. The patient must be in a hopeless medical situation that causes constant and unbearable physical

²¹ Bhatia N, White B & Deliens L, "How should Australia respond to media-publicised developments on euthanasia in Belgium?," *Journal of Law and Medicine* 23, No.835 (2016): 11-15.

²² Grove G, Hughes I, Lovell M & Best M, "Content analysis of euthanasia polls in Australia and New Zealand: words do matter," *Internal medicine journal* 51, No.10 (2021): 1629-1635.

or mental suffering resulting from a serious and incurable disorder. The patient must be conscious when expressing their request, and the request must be voluntary, well-considered, and repeated. A physician can only perform euthanasia after careful consideration and adherence to the legal requirements.

Switzerland has a unique legal approach to euthanasia, allowing for assisted suicide under certain conditions. While not classified as euthanasia in the traditional sense, the practice of assisted suicide, known as "assisted dying," is permitted under Swiss law. The legislation in Switzerland does not specifically address euthanasia but allows individuals to seek assistance in ending their lives, provided that certain criteria are met.

Assisted dying in Switzerland is governed primarily by a legal and regulatory framework that emphasizes individual autonomy, respect for patient choice, and adherence to stringent requirements. The practice is not restricted to Swiss citizens and is open to individuals from other countries seeking this option. There are a number of organizations in Switzerland that offer assistance and guidance to individuals seeking to access this option, including Dignitas and Exit.

Switzerland does not have a specific law legalizing assisted suicide but rather relies on case law and professional guidelines to regulate the practice. The Swiss Federal Supreme Court has provided rulings that established certain conditions under which assisted dying is permissible. These conditions typically include the requirement that the individual seeking assisted dying must be of sound judgment, experiencing unbearable suffering due to a terminal illness, and must make their request for assisted suicide voluntarily and without external pressure.

Furthermore, medical professionals or organizations providing assistance in dying are often expected to adhere to rigorous standards and protocols to ensure that the process is carried out with proper medical and ethical considerations. The practice of assisted dying is subject to ongoing debate and scrutiny, with proponents citing respect for individual autonomy, while opponents express concerns about potential risks and the importance of protecting vulnerable individuals.

In the Netherlands, euthanasia and physician-assisted suicide are legally permitted under specific circumstances and stringent regulations. The legal framework for euthanasia in the Netherlands is outlined in the Termination of Life on Request and Assisted Suicide (Review Procedures) Act, often referred to as the Euthanasia Act.

This legislation, enacted in 2002, provides a comprehensive set of guidelines and protocols for the practice of euthanasia and physician-assisted suicide.

Under the Euthanasia Act, euthanasia and physician-assisted suicide are allowed if a patient meets specific criteria, including being faced with unbearable suffering without prospects of improvement, having made a voluntary and well-considered request for euthanasia, and with due care exercised by the physician or healthcare provider involved. The Act also lays out the requirement for a second independent physician's opinion, the reporting and review procedures for each case, and the involvement of a regional review committee responsible for assessing compliance with legal requirements.

In addition to the Euthanasia Act, the Netherlands introduced the Termination of Life on Request and Assisted Suicide (Review Procedures) for Persons Who Are Incapable of Expressing Their Will Act, addressing the practice of euthanasia for individuals who are incapable of expressing their own will due to incapacity.

The legal framework surrounding euthanasia in the Netherlands reflects a commitment to ensuring that the practice is conducted with strict adherence to guidelines and rigorous oversight. It acknowledges the significance of patient autonomy and the protection of vulnerable individuals while recognizing the complex ethical, medical, and legal considerations.

Euthanasia remains a topic of ongoing debate and scrutiny, both within the Netherlands and internationally, with proponents emphasizing the importance of patient dignity and autonomy, and critics expressing concerns about potential risks and the need to safeguard vulnerable individuals. While the Dutch legal landscape permits euthanasia under specific circumstances, the topic continues to prompt profound ethical, legal, and public discussion.

In Belgium, the legal framework governing euthanasia is detailed in the Belgian Euthanasia Law, enacted in 2002 and amended in subsequent years to refine procedures and regulations. The law permits euthanasia under specific conditions, establishing strict guidelines and oversight to ensure its proper application.

Under the Belgian Euthanasia Law, euthanasia is permissible when an individual faces unbearable physical or psychological suffering, typically resulting from a serious and incurable condition. It also requires that the patient must be in a state of constant and incurable physical or mental suffering that cannot be

alleviated. The law mandates that the request for euthanasia must be voluntary, well-considered, and made repeatedly, without external pressure, and with full awareness of the situation and the medical prognosis.

Furthermore, the process of euthanasia in Belgium involves consultation with multiple healthcare professionals, including at least two physicians, who must confirm that the conditions specified in the law have been met. Additionally, in cases where patients are incapable of expressing their will, specific legal provisions outline the necessary steps and requirements for euthanasia to proceed under these circumstances.

The Belgian Euthanasia Law includes provisions for thorough reporting and review procedures for each case of euthanasia, aiming to ensure compliance with legal requirements and ethical standards. The law also establishes the role of the Federal Control and Evaluation Commission, responsible for overseeing the implementation of euthanasia and assessing the conformity of cases with legal stipulations.

The legal framework surrounding euthanasia in Belgium reflects a commitment to balancing patient autonomy and the protection of vulnerable individuals, with the understanding that euthanasia is a complex and sensitive medical and ethical issue. The legislation acknowledges the importance of patient autonomy and dignity while providing a robust system for oversight and review.

Euthanasia remains a topic of intense debate, both within Belgium and internationally, with supporters emphasizing the significance of alleviating suffering and respecting patient autonomy, while critics express concerns about potential risks and the need to safeguard vulnerable individuals.

In Australia, euthanasia laws vary by state and territory. As of September 2021, voluntary assisted dying is legal in the Australian Capital Territory (ACT), Victoria, and Western Australia. The specific laws related to euthanasia in these areas are as follows: In Victoria, the Voluntary Assisted Dying Act 2017 permits terminally ill individuals to request assistance in ending their lives in a humane and dignified manner. The law outlines stringent eligibility criteria and safeguards to ensure responsible implementation of the voluntary assisted dying process. Western Australia's Voluntary Assisted Dying Act 2019 legalizes voluntary assisted dying for terminally ill individuals in the state, incorporating eligibility criteria and safeguards to regulate the process. The Australian Capital Territory (ACT)

introduced the Legislation Amendment Act 2021, allowing eligible terminally ill individuals to request voluntary assisted dying. The law, which took effect in 2021, establishes comprehensive safeguards and processes for the provision of voluntary assisted dying.

Moreover, as of September 2021, euthanasia remains illegal in the United Kingdom under the Suicide Act 1961. The act criminalizes assisting in another person's suicide, with potential penalties for those found guilty of such actions. Despite widespread public debate and calls for reform, the law continues to prohibit euthanasia and assisted dying. However, the issue remains a topic of ongoing discussion and evaluation within the UK, with various advocacy groups and politicians advocating for a change in legislation to permit assisted dying under specific circumstances, such as terminal illness or unbearable suffering. While several bills seeking to legalize assisted dying have been proposed in the UK Parliament, none have successfully passed into law. The issue of assisted dying and euthanasia in the United Kingdom continues to prompt ethical, legal, and moral debates, with proponents arguing for the need to provide individuals with the right to choose how and when they end their lives, particularly in cases of unbearable suffering at the end of life, while opponents express concerns about potential risks and unintended consequences associated with changes to the current laws. It's essential to note that as of the time of this response, the legal landscape regarding euthanasia and assisted dying in the United Kingdom remains regulated by the Suicide Act 1961, which prohibits actions related to assisting in another person's suicide. Any developments or changes in the law pertaining to euthanasia in the United Kingdom should be verified through official legal sources and trusted news outlets.

In addition, Euthanasia and physician-assisted suicide laws in the United States fall under the jurisdiction of individual states rather than federal law, leading to variations in legislation across different states. As of September 2021, nine states and the District of Columbia have enacted laws that allow physician-assisted suicide or medical aid in dying for terminally ill patients. These states are Oregon, Washington, Vermont, California, Colorado, Hawaii, New Jersey, Maine, and New Mexico, along with the District of Columbia.

In Oregon, the Death with Dignity Act, enacted in 1997, allows terminally ill patients to request and self-administer medication to hasten their death under

specific conditions. This legislation was the first of its kind in the United States and has served as a model for similar laws in other states.

Washington's Death with Dignity Act, established in 2008, permits terminally ill individuals to request medication to aid in dying, subject to stringent legal requirements and safeguards. Vermont's Patient Choice at the End of Life Act, enacted in 2013, also provides for medical aid in dying under certain circumstances. Additional states and the District of Columbia have followed suit with similar legislation, each with its own specific laws and regulations governing physician-assisted suicide or medical aid in dying for terminally ill patients.

It can be seen that there is a tendency to grant individuals the right to express a negative right to refuse medical treatment for the purpose of ending the use of life-sustaining tools, whether it be to suspend or withdraw such tools. This right does not extend to the physician assisted death, whether it be through the active euthanasia, passive euthanasia, or physician-assisted suicide. These are positive rights that demand that the physician terminate the patient's life.²³ The author argues that the patient does not possess the right to compel a physician to perform an act of euthanasia, or help the patient to commit suicide, as it is the physician's duty to treat rather than to kill. Despite the provisions of the National Health Act that grant individuals the right to express a refusal of treatment for the sole purpose of prolonging death or relieving suffering, the author notes that the wording of the Act is not clear in determining which cases constitute a 'prolonging death in its final stage' or 'termination of suffering'. In order to avoid confusion and misconstruing of the meaning, the National Health Act should be revised to clearly stipulate the right of individuals to express a refusal of treatment in order to terminate the use of life-sustaining devices and to die peacefully, with dignity.

8. Research results

The determination of the characteristics of an advance refusal of treatment that involves compulsory and total refusal of all treatments or any particular one that the declarant does not wish to receive from such treatments, the writers

²³ Kumar A, Mehra A & Avasthi A, "Euthanasia: A Debate—For and Against," *Journal of Postgraduate Medicine, Education and Research* 55, No.2 (2021): 91-96.

believes that every person who is the owner of life and body, if having sufficient mental capacity, has the right of refusal of treatment as a means of providing protection to those who cannot express their refusal in their time of illness, and that the utilization of life-saving equipment is not beneficial to the patient. Therefore, the writers believes that it should be determined that advance refusal of treatment should not be used in cases of basic care requirements necessary for the comfort of the patient, such as hygiene maintenance, refusal of food and fluid intake, refusal of medication or equipment intended to restrain or relieve pain, and any other requests that are illegal, such as euthanasia or assisting the patient to commit suicide.

The refusal of treatment for the purpose of terminating the use of life-supporting instruments is an important issue, necessitating that a physician should decide which cases are appropriate for the termination of the use of these instruments. The characteristics of a patient's condition that should trigger the termination of the use of life-supporting instruments include the patient having a terminal illness or being in a state that cannot be cured without the use of life-supporting instruments, being in a vegetative state or not being able to feel or move, and suffering from severe and intractable pain without any hope of recovery without the use of life-supporting instruments. As physicians are respected, trusted, and revered by the public, and have received extensive training in patient care, they are better placed to discern whether a patient can be cured of their illness or whether they must be allowed to pass on without the use of life-supporting instruments. Additionally, physicians are bound by the ethical code of their profession, and they must consider what is in the best interests of the patient above all else. Therefore, it is not advisable to allow the patient's relatives to make the decision, as this may lead to conflicts of interest, such as in cases involving business or inheritance.

In addition, in cases where the patient is a minor, the law generally grants parental rights to represent the patient. This is mainly about the protection of the minor's assets until he/she is old enough to be responsible. This also includes the right to refuse treatment. The doctor should terminate the use of life-saving tools instead of the minor, which is a violation of the patient's individual rights and if the principle of the human dignity, as stated in the Constitution of the Kingdom of Thailand B.E. 2560, is considered, respect for the human dignity of

each person in the society must be shown. Thus, others are not allowed to reject the treatment on behalf of the patient.

The legal landscape surrounding active euthanasia has been the subject of ongoing debate, discussion, and evolving trends in various parts of the world. While active euthanasia remains prohibited in many jurisdictions, countries such as Belgium, the Netherlands, and Luxembourg have enacted legislation permitting active euthanasia under specific conditions. These laws often emphasize stringent criteria, extensive oversight, and multiple safeguards to ensure that the practice is carried out with a focus on patient autonomy and protection of vulnerable individuals.

In recent years, there has been a growing trend toward greater public discourse and legislative activity related to the legalization of active euthanasia or the expansion of laws to encompass the right to a dignified death. This trend reflects an increased emphasis on patient autonomy, compassionate end-of-life care, and the ethical considerations surrounding the concept of a person's right to choose the manner and timing of their own death in cases of severe illness or suffering.

Conversely, there are countries where discussions and proposals related to active euthanasia remain contentious and may face strong opposition based on ethical, religious, and moral principles. These debates often center on the potential risks, concerns about protecting vulnerable individuals, and questions related to the role of healthcare professionals in assisting with the intentional ending of life.

9. Conclusion and Recommendations

International laws delineate the right of patients to die with dignity, which varies from state to state based on legislation and court rulings. Countries that grant physicians the right to perform passive or active euthanasia are considered more developed, with a basic health system that provides complete access to health services for the general population. In the context of the Thai National Health Act, the author opines that the provisions of this Act are generally acceptable, as it is a good principle that respects the patient's right to refuse treatment. However, the Act lacks clarity in some aspects, thus the author suggests further notes and recommendations regarding the rights of individuals to express their wish to die in peace as follow:

1. It is necessary to define the boundaries of the right to self-determination in granting individuals the right to express their wishes to cease or withdraw life-

sustaining treatments, which is a right to refuse medical care. Respect for this right should be given, but it should not extend to allowing physicians to quietly or help patients commit suicide.

2. The criteria for individuals with the right to refuse medical care in order to terminate life support must be of complete legal age (18 years or older), be mentally competent, and make the decision on their own without coercion or undue influence. The illness should be in the terminal stage or a condition that is not curable and the patient should have no hope of recovery without the use of life support machines. Furthermore, the decision to refuse life support should not be used in cases of basic care such as hygiene, nutrition, hydration, medication, or the use of devices with the purpose of restraining or relieving pain.

3. It is necessary for physicians to decide in which cases termination of life support is appropriate, taking into consideration the characteristics of the patient's illness which would render such termination necessary, such as terminal illness or a condition in which there is no hope of recovery without life support, or when the patient is in a persistent vegetative state, or has no conscious sensation, or is suffering from unbearable pain without any prospect of recovery even with life support. Furthermore, it should not be left to the patient's relatives to make such a decision, as it may lead to conflicts of interest with the patient. After the physician receives the request from the patient or the patient's representative, the physician is obliged to report to the National Health Committee.

4. It is recommended that euthanasia be regulated by Thai law and carried out within the appropriate legal framework, in order to protect the "right to die" as a basic right of citizens.

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