



MEDICAL ACTION OF DOCTORS WITH EUTHANASY FROM THE PERSPECTIVE OF CRIMINAL ACTS ON ISLAMIC LAW: A NORMATIVE REVIEW

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ABSTRACT

Purpose: This research investigates euthanasia treatment by physicians from human rights and Islamic legal perspectives. It aims to comprehend ethical and legal considerations regarding euthanasia within Islamic criminal law and human rights principles.

Methods: A normative approach analyzes Islamic criminal law's rules on euthanasia. Expert opinions assist in resolving ethical and legal complexities. Indonesian legal frameworks, including relevant laws, are examined.

Results and Conclusion: Active euthanasia by physicians is deemed illegal under Islamic law, akin to suicide, as only Allah SWT can end life. Indonesian legal provisions uphold the right to life, with breaches carrying legal consequences. The research concludes that active euthanasia is prohibited from both Islamic and human rights perspectives, emphasizing respect for human life and legal repercussions for violations.

Research Implications: Implications extend to healthcare, policy, and legal sectors, stressing the need for ethical guidelines aligning with Islamic principles and human rights in end-of-life care.

Originality/Value: This study contributes to euthanasia discourse, examining it through Islamic law and human rights. It offers insights into ethical decision-making in healthcare, especially where Islamic law influences moral considerations.

Keyword: Medical Law, Euthanasia Law, Patients Justice, Criminal Islamic Law.

AÇÃO MÉDICA DE MÉDICOS COM EUTANÁSIA SOB A PERSPECTIVA A PERSPECTIVA DOS ATOS CRIMINOSOS NA LEI ISLÂMICA: UMA REVISÃO NORMATIVA

RESUMO

Objetivo: Esta pesquisa investiga o tratamento da eutanásia por médicos a partir dos direitos humanos e das perspectivas legais islâmicas. Seu objetivo é compreender as considerações éticas e legais relativas à eutanásia dentro da lei criminal islâmica e dos princípios de direitos humanos.

Métodos: Uma abordagem normativa analisa as regras da lei penal islâmica sobre a eutanásia. Opiniões de especialistas auxiliam na resolução de complexidades éticas e legais. As estruturas legais da Indonésia, incluindo as leis relevantes, são examinadas.

Resultados e conclusões: A eutanásia ativa praticada por médicos é considerada ilegal segundo a lei islâmica, semelhante ao suicídio, pois somente Allah SWT pode pôr fim à vida. As disposições legais indonésias defendem o direito à vida, sendo que as violações acarretam consequências legais. A pesquisa conclui que a eutanásia ativa é proibida tanto sob a perspectiva islâmica quanto sob a perspectiva dos direitos humanos, enfatizando o respeito pela vida humana e as repercussões legais das violações.

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Implicações da pesquisa: As implicações se estendem aos setores de saúde, políticas e jurídico, enfatizando a necessidade de diretrizes éticas alinhadas com os princípios islâmicos e os direitos humanos no tratamento do fim da vida.

Originalidade/valor: Este estudo contribui para o discurso sobre a eutanásia, examinando-o por meio da lei islâmica e dos direitos humanos. Ele oferece percepções sobre a tomada de decisões éticas na área da saúde, especialmente quando a lei islâmica influencia as considerações morais.

Palavra-chave: Direito Médico, Lei da Eutanásia, Justiça dos pacientes, Lei Islâmica Criminal.

LA ACCIÓN MÉDICA DE LOS MÉDICOS CON EUTANASIA DESDE LA PERSPECTIVA DE LOS ACTOS CRIMINALES EN EL DERECHO ISLÁMICO: UNA REVISIÓN NORMATIVA

RESUMEN

Objetivo: Esta investigación investiga el tratamiento de la eutanasia por parte de los médicos desde las perspectivas de los derechos humanos y la legalidad islámica. Su propósito es comprender las consideraciones éticas y jurídicas relativas a la eutanasia en el derecho penal islámico y los principios de derechos humanos.

Métodos: Un enfoque normativo analiza las normas del derecho penal islámico sobre la eutanasia. Las opiniones de expertos ayudan a resolver complejidades éticas y legales. Se examinan las estructuras jurídicas de Indonesia, incluidas las leyes pertinentes.

Resultados y conclusiones: La eutanasia activa por parte de los médicos se considera ilegal según la ley islámica, similar al suicidio, ya que solo Alá puede poner fin a la vida. La ley indonesia defiende el derecho a la vida, y las violaciones tienen consecuencias legales. La investigación concluye que la eutanasia activa está prohibida tanto desde una perspectiva islámica como desde una perspectiva de derechos humanos, haciendo hincapié en el respeto por la vida humana y las repercusiones legales de las violaciones.

Implicaciones de la investigación: Las implicaciones se extienden a los sectores de la salud, político y jurídico, haciendo hincapié en la necesidad de directrices éticas alineadas con los principios islámicos y los derechos humanos en el tratamiento del final de la vida.

Originalidad/valor: Este estudio contribuye al discurso sobre la eutanasia al examinarla a través de la ley islámica y los derechos humanos. Ofrece ideas sobre la toma de decisiones éticas en el área de la salud, especialmente cuando la ley islámica influye en consideraciones morales.

Palabra clave: Derecho Médico, Ley de Eutanasia, Justicia del Paciente, Derecho Penal Islámico.

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1 INTRODUCTION

With the advancement of science and technology in the field of medicine, a patient's life can be extended, and this often puts doctors in a dilemma that puts them in a difficult position. Doctors feel that they have a responsibility to help cure patients, while on the other hand, the public's knowledge and awareness of individual rights have changed greatly. Thus, the concept of death in today's medical world is confronted with the contradiction between ethics, morals, laws, societies, religions, abilities, and such advanced medical technology. In further



development, with modern medical equipment, the suffering and pain of a patient can be alleviated. The life of a patient can be extended for a certain period of time with the use of certain instruments. But the truth is, even though the technology in medicine is so advanced, there are still some patients who can't avoid severe suffering³. A patient with a certain disease that is difficult to cure, like malignant cancer, will suffer very much. The great suffering will come to an end when death comes. However, death itself is a mystery that is difficult to guess because, generally, no one can know exactly when death will come. Some cases presented by Imron Halimi, describe how severe the suffering of a patient with a severe illness is. One of the cases he raised was about a young man who had a car accident that caused his brain damage, and he could no longer be medically cured. For four years, he was lying in a coma, as if he had died. All his ability to think and feel is no longer in the young man.

Other cases are mentioned and recorded in the Guinness Book of World Records as the longest human being in a coma or unconscious. Kasam, a young firefighter from Ahmedabad, India, suffered a head injury that meant some bone fractures on one of them when he fell from a staircase while he was extinguishing the fire. Then he was taken to Ahmedabad City Praja Hospital, the state capital of Gujarat. According to the doctors who treated him, Kasam had suffered a heart attack and remained unconscious.

In the Netherlands, as quoted by Imron Halimi, euthanasia was once carried out against a patient in a hospital in Alkmaar who suffered from malignant cancer. The euthanasia act was carried out at the request of the patient's daughter, who is also a female doctor, and the hospital director. He even called on all doctors to come together to help patients by giving them a "mercy killing" injection or euthanasia. All the doctors were eventually found guilty of murder, but the court did not impose a criminal sentence. Indonesia has not specifically regulated euthanasia⁴. (Mercy Killing). Euthanasia, or killing a person's life at his own request, is the same as a criminal act of killing someone. And it's still a debate among those who agree with euthanasia and those who disagree with it. With his condition no longer enabling him to heal or even live, he can make a plea for an immediate end to his life. In cases like this, people are no longer required to engage in medication or medical action. In fact, euthanasia by mortal injection is criminalised as murder. If the doctor has raised his hand and confirmed that the disease cannot

³ Esmi Warassih Pujirahayu, "Pemikiran Hukum Spiritual Pluralistik," 2016. <https://repository.umi.ac.id/823/3/Pemikiran%20Hukum%20Spiritual%20Pluralistik.pdf>

⁴ jurnal Al-Himayah, "Euthanasia Dan Prospekti Pengeturannya Dalam Hukum Islam Dan Hukum Pidana Noor Asma Fakultas Syariah Iain Sultan Amai Gorontalo Email : Nurasmaz82@Gmail.Com Abstrak Key Word : Euthanasia , Hukum Pidana , Hukum Islam Pendahuluan Pesatnya Penemuan Teknologi" 2 (2018): 167–90. <http://www.journal.iaingorontalo.ac.id/index.php/ah/article/view/569/474>



be cured and that it still costs a lot if it still needs to be treated, not to mention that the treatment has to be extra effort, then what can be done is to stop the treatment process and medical intervention in the hospital. In Indonesia, the issue of euthanasia has not yet gained a recognised place in jurisprudence, and is it possible that in the development of Indonesian positive law⁵, euthanasia will gain a recognisable place? If the law in Indonesia ever wants to make the question of euthanasia one of the topics of discussion, it should be kept in mind and consider the aspects of its values, both social, ethical, and moral.

The problem of euthanasia to this day still raises both the pros and cons of the legal, ethical, religious, and cultural view in general and also the view of Islam in Islamic Criminal Law (Fiqh Jinayah) in particular in determining the law. To this end, the authors attempted to investigate the issue of euthanasia in the Islamic Criminal Law Prospectus in the form of the preparation of a thesis entitled "Medical acts of doctors carrying out euthanasia from the perspective of Islamic criminal law". This research want assess how is the conduct of a doctor in dealing with the euthanasia issue reviewed from the perspective of Islamic criminal law and how are doctors' actions in dealing with euthanasia reviewed under Human Rights.

2 RESEARCH METHOD

The approach used in the preparation of this thesis, is a normative approach. This study is intended to describe as detailed as possible about the norms in force in Islamic criminal law, considering the legal position of euthanasia perpetrators as well as to investigate the problem of euthanasia as a new problem, in accordance with the developments of the times adapted to the present circumstances, where euthanasia in the medical world is studied with the prospects of Islamic penal law (pictured criminal) and in its solution assisted by the opinions of experts and experts. The data source referred to by the data source in this study is the subject from which the data is obtained. Since this research is a library research, all of this research activity is focused on the study of data and books related to the topic. In this study, the author uses two sources of data, namely: a. primary data sources that are books that specifically deal with the problem of euthanasia and fiqh books that deal with murder. b. secondary data source That is supporting data source that is several books or free writings that have a connection to the topic

⁵ Suprayoga, B., Hartiwiningsih, & Rustamaji, M. (2023). Reconstruction of State Economic Losses in Criminal Acts of Corruption in Indonesia. *Revista De Gestão Social E Ambiental*, 17(4), e03453. <https://doi.org/10.24857/rgsa.v17n4-024>



discussed, as well as the opinion of medical practitioners and experts of Islamic law. Obtain data in the drafting of this thesis, is to use library research (library research). The editor searches the research material that is related to the problem being studied. In order to collect data, the author uses documentation techniques, i.e. the author observes data sources that are both primary and secondary documents, as well as works that provide information about euthanasia in general, the fingerprints of murder in Islam, or works which provide information that contains Islamic views on euthenia. The data that has been collected and selected is then qualified in accordance with the issues discussed in this study, then gathered and processed in such a way that it produces the necessary data. In this writing, after the data obtained, then analyzed using methods namely:

- a. Method of induction, that is, the way to think of statements of a specific nature to draw a conclusion of a general nature. Operationalization of this method is to express the opinions of scholars first and then discussed to further draw conclusions from the discussion. Because of its verification nature, this study will test the opinions of the scholars, but not with a practice and trial of application in a particular society because this research is literary as described above, but with the same theory adapted to the development of modern culture based on the purpose of the Shariah.
- b. The method of deduction, that is, the way of thinking from a general statement to draw a conclusion of a particular nature. Operationalization of this method is by revealing theories or opinions of a general nature and then drawing conclusions that are of a special nature. In this writing, using the method of deduction, that is, the way to think from a general statement to draw a particular conclusion. Like the problem of the position of euthanasia perpetrators that can not be determined if discussed from a specific point of view first because of the extent of the euthenia problem. The data collected is analyzed qualitatively in a deductive way of thinking. Deductive means researching and analyzing the various forms of euthanasia, then determined, the type of euthanasia that belongs to the Islamic criminal law, as well as the perpetrators of the act and also the legal sanctions that must be applied to this act of euthanasia.



3 RESULT

3.1 A DOCTOR'S ACTIONS IN DEALING WITH EUTHANASIA ISSUES ARE REVIEWED FROM THE PERSPECTIVE OF ISLAMIC LAW

The euthanasia problem is a dilemma that puts doctors in a difficult position. A doctor is a profession that has its own code of ethics, so it is required to act professionally. On the one hand, the science and technology of medicine have advanced so much that they can sustain a person's life. (Walaupun istilahnya hidup secara vegetatif). Doctors feel that they have a responsibility to help cure patients, while on the other hand, the public's knowledge and awareness of individual rights have changed greatly. People have the right to choose who is to be respected, and today people are aware that they have the power to choose life or death. Thus, the concept of death in today's medical world is confronted with the contradiction between ethics, morality, law, ability, and such advanced medical technology. A doctor is bound by a doctor's oath. In the seventh paragraph of the Indonesian doctor's oath, he said that I would respect every human life from the moment of conception, while the eighth point said that he would give priority to the health of the victim. On the oath of a Muslim doctor, there is a *lafal* to protect the human soul in all stages and all circumstances and to do what is possible to save it from death, disease, and anxiety. This is where doctors will face a dilemma in deciding what to do if the patient or his family wants euthanasia. These issues are complex because they relate to ethical, moral, legal, economic, social, religious, and cultural issues. Euthanasia is the act of ending an individual's life in a painless manner, when such an act can be said to help alleviate the suffering of an individual who will end his life. In general, death is a topic that is very feared by the public. In the context of modern health, death is not something that comes suddenly." Death can also be committed legally and is still a controversy among the public, especially in the health world. Islam acknowledges the right of a person to live and die, but it is a grace of God to man. There are many verses of the Qur'an and hadiths that require respect and preservation of the soul of man. (*hifzh al-nafs*).

In the event of allowing a person to die deliberately, the word "allow" is used; the term is more subtle when compared to the word "allow." Allowing someone to die contains the understanding that in a condition in which all kinds of efforts to cure a person's disease no longer have a purpose, medically such efforts will not have a positive result, although in some cases treatment results in even greater suffering, so that in such circumstances a sufferer is



better left to die in peace and honour without intervention (pressure), but that does not mean that any kind of effort is immediately stopped. Mercy death is a direct and deliberate act of stopping a person's life on the basis of his permission or even his request. It's because the sufferers can't stand it anymore. This event is not the same as allowing someone to die, even though it is also possible that there is a direct action, such as, for instance, the embroidery of a certain device. In the event of a death of compassion, the victim explicitly requests that his life be stopped because of unbearable pain and not left to die. Further on, the event of the deprivation of life for mercy gives the understanding of an immediate action to stop the life of the victim without his permission. This action is based on the assumption that the next victim's life will be meaningless. As far as deliberate acts are concerned, the taking of a person's life for mercy is the same as the death of a man by mercy. The fundamental difference with the death of mercy is that in the event there is permission or even at the request of the sufferer, whereas in the case of the taking of a person's life without the permission of the sufferer. Euthanasia is a practice that precedes God's destiny. With the pretext of ending suffering, it belongs to the category of murder. Based on the above opinions, the author suggests that the majority of Islamic scholars do not endorse the existence of euthanasia practitioners. It is a matter of life and death, and it is the matter of God, the Creator of mankind.

3.2 THE ACTION OF A DOCTOR IN DEALING WITH THE EUTHANASIA PROBLEM REVIEWED FROM HUMAN RIGHTS

A doctor is bound by a doctor's oath. In the seventh paragraph of the Indonesian doctor's oath, he said that I would respect every human life from the moment of conception, while the eighth point said that he would give priority to the health of the victim. On the oath of a Muslim doctor, there is a *lafal* to protect the human soul in all stages and all circumstances and to do what is possible to save it from death, disease, and anxiety. This is where doctors will face a dilemma in deciding what to do if the patient or his family wants euthanasia. These issues are complex because they relate to ethical, moral, legal, economic, social, religious, and cultural issues. God clearly forbids man to kill himself, or anyone else to do so. Life and death are all in the hands of God, even though human beings, including doctors and other health workers with all the science and technology in their hands, try to help a patient, but everything will be decided by God. In the Indonesian Medical Code of Ethics and the Doctor's Oath, it is stated



that the doctor has the duty and obligation to protect the life of human beings from the moment of conception, and the doctor must devote his life for the sake of humanity.

Euthanasia from a human rights perspective is a violation of the right to life of a patient to be protected. From the point of view of today's legislation, there is no new and complete regulation on euthanasia. The articles which can be used as the legal basis for further discussion are those contained in the Indonesian Criminal Code, in particular those articles which deal with the problem of crimes affecting the human soul. The articles that are closest to the issue of legal regulations are in book 2, chapter IX, article 344 of the Covenant. The right to life must be protected by the state, especially by the rule of law. That is why a good rule of law upholds fundamental human rights. The recognition and consolidation of the rule of law is one of the purposes of protecting human rights, which means that the rights and freedoms of the individual are recognised, respected, and respected.

The penance of the human soul in the Covenant is found in Articles 338, 339, 340, and 341. Besides being able to read the sounds of the articles themselves, you can also be able to know how the Creator of the Law looks at the soul of man. In short, from the history of the establishment of KUHP, it is known that the legislators at that time (the Dutch Indian era) regarded the human soul as its most precious property, compared to the property of other human beings. The general principle of the Criminal Code relating to the human soul is to provide protection so that the right to live righteously as human will is guaranteed. Article 344 of the Covenant states: "Anyone who takes away the soul of another person at the request of the person himself, whom he expressly and seriously mentions, is punished with imprisonment for a term of twelve years."

Under the article, a doctor may be prosecuted by law enforcement authorities if he commits euthanasia, even at the request of the patient and the family concerned, as such an act constitutes an act against the law. A doctor or a family member is exempt from the claims of Article 344, but he cannot exempt himself from Article 388, which reads: "Anyone who deliberately kills another person is punished with the death penalty, with a sentence of imprisonment for life for 15 years." Then a doctor can be dismissed from his office for violating the code of medical ethics. Ministry of Health Decree No. 434/Men.Kes/SK/X/1983 Art. 10 states that "Every doctor shall always bear in mind his duty to protect the 'living' of human beings". Furthermore, from a legal point of view, active euthanasia is clearly a violation of the R.I. Act No. 39 of 1999 on human rights, namely Articles 4, Article 9 paragraph 1, Article 32, Article 51, Article 340, Article 344, and Article 359. Thus, all these articles indicate that murder



at the request of the victim remains a crime for the perpetrator. In the context of active legislation in Indonesia, euthanasia remains considered a prohibited act; it is not possible to "end a person's life" even at the request of the person himself. It is a crime, a crime that is threatened with punishment for those who violate the prohibition⁶.

Euthanasia in the code of ethics of health professionals is an ethical and moral dilemma. The medical personnel are faced with a difficult choice between rescuing the patient and the patient's direct and indirect demands. But still, this act of euthanasia is not permissible under the ethics code of any health care profession⁷. So euthanasia is actually contrary to medical ethics. In the context of human rights, doctors and patients have equal status, and patients must have their rights, including the right to information. From patient information, the doctor will convey to the patient his opinions and views. He needs to inform the patient about the treatment plan and treatment, how long the treatment and treatment will last, and the effects to be anticipated, such as the discomfort to experience, the nature and form of the complications, and so on.

4 DISCUSSION

Every scientific paper has a purpose, and based on the problem formula above, the preparation of this thesis aims to actions of a doctor in dealing with euthanasia issues are reviewed from the perspective of Islamic criminal law and knowing the actions of a doctor in dealing with euthanasia issues reviewed in Human Rights

4.1 LAW ENFORCEMENT

In principle, must be useful to society, but in addition, society also expects the law to be enforced in order to ensure justice. Nevertheless, it cannot be denied that what is considered useful (sociologically) is not necessarily fair, nor is what is perceived to be fair (philosophically) necessary for society. The mechanisms and procedures for determining the priorities of the revision or the creation of new laws should be known to the public as soon as possible and should not fish the presence of resistance from society. At least two kinds of

⁶ Arifin Rada, "Euthanasia Dalam Perspektif Hukum Islam," *Perspektif* 18, no. 2 (2013): 108, <https://doi.org/10.30742/perspektif.v18i2.119>.

⁷ Sri Warjiyati, "Implementasi Euthanasia Dalam Perspektif Ulama Dan Hak Asasi Manusia," *Jurnal Hukum Pidana Islam* 6, no. 1 (2020): 258–84. <https://jurnalfsh.uinsby.ac.id/index.php/HPI/article/view/1026/768>



approaches are carried out: the system approach and the political-cultural approach⁸. The approach of the priority system of the revision or the formation of new legislation should be seen contextually and conceptually as closely linked with the dimensions of geopolitical, eco-political, demographic, sociopolitic, and kratopolitic. In other words, legal politics does not stand alone, apart from other political dimensions, much less if the law is expected to act as a means of social engineering. The obscurity of a view that sees the law only as a regulatory and receptive tool without realising its compatibility with other dimensions will produce a rigid product and concept without a horizon of insight and a broader systemic view in translating the sense of justice of the law of society.

4.2 THEORY OF LEGAL EFFECTIVENESS

According to Soerjono Soekanto, the degree of effectiveness of the law is determined by the level of public compliance with the law, including its enforcers, so it is assumed that "a high level of compliance is an indicator of a functioning legal system. Some argue about the theory of effectiveness, such as Bronislaw Molinoswki, Clerence J. Dias, Allot, and Murmer. Bronislaw Malinosvki argues that the theories of the efficiency of social control, or law, in a society are analysed and distinguished into two categories: (1) modern society; (2) primitive society; modern society is a society whose economy is based on a very large market, specialisation in the field of industry, and the use of advanced technology; in a modern society, laws are made and enforced by authorised officials.

4.3 THE THEORY OF THE EXISTENCE OF ISLAMIC CRIMINAL LAW

Islamic criminal law in fiqh literature is referred to as *jinnah*⁹, as a form of offence committed by man to his neighbour, whether the offence or such crime is committed physically or non-physically, such as killing, accusing or defaming, or committing crimes against property, and thers. When it is spoken of, it is not apart from the two terms of the word: the word and the word. *Jinayah* means wrong or evil. *Jinayah* is the masdar of the word (*fi'il madhi*) *janaa*, which contains the meaning of a work for the unit of men who have sinned or done wrong. Islamic

⁸ Vol No, "UMPurwokerto Law Review" 1, no. 1 (2021): 54–61.

⁹ Judika Atma Togi Manik Mahmud Mulyadi and M Ekaputra, "Kajian Euthanasia Pasif Dalam Perspektif Hukum Pidana Indonesia," *USU Law Journal* 5, no. 4 (2017): 110–16.



punishment, when performed, is not independent of the meaning of Shariah and fiqh or is often translated into Islamic law or Islamic laws. The word "shariah" is derived from the Arabic "sari'a," which means a path to a source of water, a clear path to follow. In the context of religion, sharia means the highway to a good life, which is the use of religious values to guide human life. The Shariah is the way set by God in which man acts in his life to fulfil the will of God, including spiritual, mental, and physical acts. So the shariah encompasses beliefs and charities, justifying and believing in the existence of one God, even all legal and social transactions as well as personal behaviour, including shariah affairs, which are the comprehensive principles of the total way of life.

4.4 A GENERAL REVIEW OF MEDICINE

The medical profession has long been opposed to euthanasia because the medical profession is to heal and not to kill. Hippocrates' oath clearly rejected him: "I will not give lethal poison or give advice on this to those who ask for it." This oath then became the basis of the oaths of all doctors in the world, including in Indonesia. Maybe this oath wasn't made by Hippocrates himself. Professional ethics is part of social ethics, that is, a philosophy or rational critical thinking about the duties and responsibilities of human beings as well as members of humanity¹⁰. To perform that noble profession well, a high level of morality is required of the perpetrator. The three characteristics of that high morality are dare to act with determination to act according to the demands of the profession, being aware of his responsibilities and have high idealism. The ethics of the medical profession is a consciousness and guideline that governs the moral and ethical principles in the exercise of the activities of the medicine profession so that the quality and quality of professional medicine remain awake in a respected way. The ethics of the medical profession are a set of behaviours of doctors in relation to patients, families, communities, peers, and partners.

The primary legal obligations of a doctor are as follows:

1. The duty to diagnose a disease.
2. The duty to treat disease.

¹⁰ Muji Iswanty and Fuad Nur, "A Review of Euthanasia : Criminal and Medical Law Aspects in Indonesia," *Journal of Health, Medicine and Nursing* 52, no. 2012 (2018): 102–8. <https://core.ac.uk/download/pdf/234692592.pdf>



3. The obligation to provide sufficient information to the patient in a language understood by the patient, whether requested or not.
4. The obligation to obtain the patient's consent (without coercion or pressure) to the medical action to be performed by the doctor after the doctor provides sufficient information and is understood by the patient.

Euthanasia and the Code of Medical Ethics Bartens describes ethics as derived from the ancient Greek "ethos" in a single form, meaning custom, custom, and good morals. Moreover, Poerwadarminta concluded that ethics is the same as morality, that is, the understanding of what is good and what is bad, as well as the understanding of the rights and duties of people. Ethics, as the study of science, discusses morality or about people related to their behaviour towards other beings and fellow human beings. Kodeki (Medical Code of Indonesia), also called the ethics of the doctor's profession, is a guideline for Indonesian doctors in the practice of medicine. Based on the existence of this Kodeki, we can see it in the explanation of Article 8 letter F of the Act No. 29 of 2004 on Medical Practice (the "Medical Practice Act") and Article 24 of the Law No. 36 of 2009 on Health (the Health Act). The purpose of the ethics of this profession is to ensure that there is no deviation in the exercise of the profession. Therefore, the ethics of this profession must be respected and obeyed by every person who exercises a particular profession, for example, a doctor who must obey and abide by the Code of Medical Ethics of Indonesia. (KODEKI). Every action taken by a physician must be in accordance with the skills acquired by his medical education as well as the advancement of medical science. As stipulated in Article 2 of the Code of Medical Ethics, that is, "a doctor shall always endeavour to carry out his profession according to the highest standards of the profession." The highest standard of the occupation is to perform the profession in accordance with the state of the art of medical science or in conformity with the development of the medical disciplines, general ethics, the ethics of medicine, law, and religion. The above-mentioned state-of-the-art medical education is in compliance with Article 28 paragraph 11 of Act No. 29 of 2004 on Medical Practice.

Neglect can also occur in medical practice as well as in the case of euthanasia. The neglect arises from the factor of the person or the perpetrator. In health, the causes of negligence are a lack of knowledge, a lack of competence, and the lack of rigour of doctors when



conducting treatment. Negligence in criminal law is divided into two categories¹¹. Firstly, if the act is a criminal act, it is not necessary to look at the consequences of the act as provided for in Article 205 of the Covenant. Secondly, the term "consequence" means a criminal event if the result of the crime itself has caused consequences prohibited by the criminal law, such as the disability or death of another person as provided in Article 359 of the Code. In Arabic the term is known as qatlu ar-rahma or taysir al-maut. According to medical terms, euthanasia means the act of relieving the pain or suffering experienced by a person who is about to die. It also means speeding up the death of someone who is in great pain and suffering ahead of his death. So euthanasia is the act of facilitating death or deliberately ending a person's life without feeling pain, for mercy to alleviate the suffering of the sick. Hippocrates first used the term "euthanasia" in "Hippocratic oaths" written in 400-300 BC. The oath read: "I will not advise or give a lethal medicine to anyone even if asked for it". In the history of British law, common law from 1300 until the time of "suicide" or "assistance in the execution of suicide" was not permitted.

The elements of euthanasia are seen from several definitions above, among others do something or not do something. Ending life, accelerating death, or not prolonging the patient's life. The patient suffers from a disease that is difficult to cure. At or without the request of the patient or his family and for the benefit of the patient and his family. Euthanasia is divided again into direct and indirect active euthanasias. This kind of euthanasia is commonly called mercy killing. An indirect active euthanasia is a condition in which a doctor or medical staff performs medical action not directly to end a patient's life, but is aware of the risks that may shorten or end the life of a patient. For example, withdrawing oxygen or other life aids. An example of active euthanasia, for example, is someone suffering from malignant cancer with extreme pain so that patients often faint. In this case, the doctor is sure that the person concerned will die. Then the doctor gave her a drug with a high overdose that could relieve her pain, but stopped her breathing at once.

¹¹ Bambang Ali Kusumo and Ellectrananda Anugerah Ash-shidiqqi, "Euthanasia Dalam Perspektif Hukum Islam Dan Hukum Yang Berlaku Di Indonesia," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 3 (2023): 1908, <https://doi.org/10.35931/aq.v17i3.2165>.



4.5 PASSIVE EUTHANASIA IS THE ACT OF A PHYSICIAN STOPPING THE TREATMENT OF A PATIENT WHO SUFFERS FROM SEVERE PAIN, WHICH IS MEDICALLY IMPOSSIBLE TO CURE ANYMORE

The common reason why doctors are presented is because of the limited financial condition of the patient, while the funds required for treatment are very high, whereas the function of treatment according to the doctor's calculations is no longer effective. There are other measures that can be classified as passive euthanasia, that is, the doctor stops the treatment of a patient who according to medical research is still likely to recover.

4.6 REVIEW OF EUTHANASIA FROM THE ASPECTS OF ISLAMIC CRIMINAL LAW

According to Indonesian law, euthanasia is an act that is unlawful, as can be seen in the provisions of the existing laws, namely Article 344 of the Code of Criminal Law, which states that “Anyone who kills another person at the request of his own person, whom he expressly and genuinely mentions, is punished with 12 years of imprisonment for life”. Thus, formally the law in force in our country does not allow euthanasia by anyone. Farid Anfasal Moeloek, the chief general manager of the Indonesian Medical Association (IDI), in a statement published by Tempo magazine on Tuesday (October 5, 2004), stated that euthanasia or “killing without suffering” is unacceptable to the present day in the values and norms that are evolving in Indonesia. The medical field divides the death process into three categories: first, Orthothania is the process of death that occurs as a result of a scientific process or in a natural way, such as the presiding process, disease and so on. Second, dysthanasia is an unnatural death process such as murder, suicide, etc.

Passive euthanasia is called *taisir al-maut al-munfa'il*. In passive euthanasia¹², no instruments or active measures are used to end the patient's life, but he is only left without treatment to extend his life. It is based on the doctors' belief that the treatment is useless and does not give hope to the patient. Among the problems that have been known among the scholars of Shara 'is that the treatment or cure of diseases is not mandatory according to the law of *Jumhur fuqaha* and *priests mazhab*. Even according to them, this cure only revolves around the law of the veil. Article 4 of the Human Rights Act No. 39 of 1999 states that “the right to life, the right not to

¹² Iswanty and Nur, “A Review of Euthanasia : Criminal and Medical Law Aspects in Indonesia.”



be tortured, the rights to personal freedom, thought, and conscience, the religious rights, the non-slavery, the recognition of personality and equality before the law, and the right not to be prosecuted under the law of recession are human rights that cannot be diminished under any circumstances and by anyone.” The Prophet said that no matter how severe the disease is, there is a cure for it. (HR Ahmad dan Muslim). As for facilitating the process of death by passive euthanasia, as stated in the question, it all falls within the category of treatment cessation practices. It is based on the doctors' belief that the treatment is useless and does not give hope to the sick, according to the law of God (the law of the universe) and the law of causes. This problem is related to the law of doing treatment that is disputed by the scientists, whether it is compulsory or merely Sunnah. Although there are a small group of scholars who are obliged to do so, such as the Scholars of Shafi'iyah and the Habbalis, as proposed by the Islamic Church of Ibn Taimiyah,.

The conceptual framework of euthanasia is the term for medical assistance to alleviate the pain or suffering experienced by a person who is about to die. It also means accelerating the death of someone who is in great pain and suffering ahead of his death. The factors of euthanasia themselves are actually different. The first factor is the human factor. It means that the euthanasia is carried out by a doctor because he feels pity for his patient's prolonged suffering, which is medically difficult to cure. Here, the doctor decides on his own what he will do according to the patient's health considerations. The second factor is the economic factor, which means that euthanasia is carried out because of family economic factors that are not possible when patients are treated in hospitals for too long. So in this case, the patient's family can't afford to pay for the hospital's expenses because the patient has been in a coma for too long. In these circumstances, it was the family that requested the removal of the patient's life support equipment.

Euthanasia has two main lines: active and passive. The definition of active euthanasia is to deliberately take action that results in death, while passive euthanasia is to allow treatment that prolongs life. In active euthanasia, whether voluntary or involuntary, death is the goal of one's actions. Action taken, such as large doses of sleeping pills or poison injections, is meant to end the patient's life. While passive euthanasia seeks to solve the moral problems of treating patients who are no longer hopeless or who are approaching their timing by stopping all therapies, so that a natural solution can take place, Active euthanasia occurs when a doctor or other health care provider deliberately performs an action to shorten a patient's life or to end the life of the patient. Accordingly, active euthanasia is subsequently divided into two



categories, i.e., immediate active euthanasia occurs when a physician or other health care provider performs a medical action to alleviate the patient's suffering in such a way that it is logically concluded that the life of the patient is shortened or ended. In this euthanasia issue, it is not independent of several parties, i.e., the patient as being in the euthanasia, the doctor as the perpetrator (executor) of the euthanasia, and the family as the party approving the act of euthanasia. In this case, the patient's request must be careful not to be abused, and then, in determining whether the request is true and genuine, it must be proved by the presence of witnesses or by other means of evidence, namely, testimony, letters, confessions, and signs.

5 CONCLUSION

Based on the description of the results of the investigation and the interpretation, the following conclusions can be drawn the action of a doctor in dealing with the problem of euthanasia from the perspective of the crime of Islamic law, in particular active euthanasia, is forbidden because it is categorised as an act of suicide that is prohibited and threatened by Allah SWT with the punishment of hell forever because the only one entitled to end a person's life is Allah SWT. Therefore, the person who ends his life or who helps, in this case, a doctor, accelerates the death of a person is the same as opposing the provisions of Islam. Except if passive euthanasia is based on circumstances and behaviour and not out of despair or the intention of suicide or killing a patient, then it is allowed to be done passively. Euthanasia is revised by the Indonesian Constitution, and the laws provide full guarantees of the right to human life enshrined in the Basic Law of 1945 and Law No. 39 of 1999 on Human Rights. In both of these sources of law, the right to life is stated as an inherent right of every Indonesian citizen. Legal sanctions will apply if the right is violated, in accordance with the criteria of the act of violation of the law established in the material law source.

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