

## EUTHANASIA IN A REVIEW OF ISLAMIC LAW AND CRIMINAL CODE

**AJI TITIN ROSWITHA NURSANTHY**  
**Awang Long School of Law , Samarinda**  
Email: [Witaayu77@yahoo.co.id](mailto:Witaayu77@yahoo.co.id)

Received 18 July 2019 • Revised 2 Oct 2019 • Accepted 6 Nov 2019

### Abstract

When euthanasia was still being debated, some agreed and some refused. This is because there is an absolute limit that determines death is God and the limits of human rights. The purpose of writing about euthanasia is to find out how religious views and criminal law end this human life.

Judging from the objectives, including normative law research. The type of data that used in this study are secondary data and primary data. Data collection techniques that used in this study are the study of literature in the form of books, legislation, documents, internet and so on. Data analysis uses data deduction and data interpretation.

Based on the results of research and data analysis, it can be concluded that euthanasia is prohibited in any religion, in the code of medical ethics, it is also not permissible as well as in the rule of criminal law, while the reasons are as follows:

In Islam it said: killing one human being is the same as killing all humanity, because every human being must have a family, and have offspring and that human beings are members of the society. Killing one person indirectly will hurt the family, offspring and the surrounding society. Therefore Islam classifies murder as a grave sin after shirk (the history of Bukhari and Muslim). The killer will get a revenge in the form of hell (QS An-Nisa: 93). Criminal Law Regulations in Indonesia said that Euthanasia is a prohibited act, in the criminal law in force in Indonesia the provisions regarding Euthanasia are contained in article 304 of the Criminal Code which prohibits the existence of passive euthanasia and article 344 of the Criminal Code which prohibits active euthanasia. So Euthanasia cannot be applied in Indonesia because in addition to being contrary to Islam, it is also contrary to the Indonesian Criminal Code (KUHP).

**Key words : Euthanasia , Islamic Law, Criminal Law**

### BACKGROUND

Every living creature, one of which humans will surely experience a life process starting from fertilization, birth, life and ending with death. Of all the life cycles of death it still contains a great mystery, and science has not succeeded in uncovering it. One of them in QS Az, Zumar 30: Surely you will die and they will die (too).

Death as the end of a life is the right of God, and when the time has come for them to be determined, they cannot go back even a moment and do not put them first. In this situation how the rights of patients who want to accelerate death due to suffering.

The patient's right to die is known as Euthanasia. Until now euthanasia is still being debated, both among religious experts, law experts and medical. Thus creating a dilemma for doctors in terminating this human life.

Do these doctors have the legal right to terminate this human life, And what are the religious, law, moral or ethical, socio-cultural aspects of the implementation of this euthanasia. We will discuss how the views of Islam and the law of the implementation of this euthanasia.

## RESEARCH METHODS

### A. Research Types and Approaches.

In this paper the author uses the normative juridical approach, because the approach is the law research model called the normative law research.

### B. Law Materials

The law provisions are the primary law material which includes the Al-Qur'an as a guide to the life of Muslims, Al Hadist, the Criminal Law Act, Law on Medical Practice Number 29 of 2004 Article 45 paragraph (1) to (6). Law Number 36 of 2009 Article 56 and Article 57, Minister of Health Regulation No. 434 / Men .Kes. / SK / X / 1983 in article 10. Regulation of the Minister of Health Number 290 of 2008 Article 1, Indonesian Medical Code of Ethics Chapter II article 9. With the normative juridical approach it is expected to thoroughly discuss the euthanasia problem and provide input to the regulators of the regulation.

### C. Law Materials and Analysis

The author uses the method of library research. This library research study is conducting research from library books, magazines, journals, articles and sources from the internet that are relevant to the issues discussed.

## DISCUSSION

Brain death (brain death) is defined that brain function cannot return after 6 hours of non-functioning, based on physical examination and EEG. If there are no confirmation tests, the observation is carried out for at least 12 hours. The definition is: a person with an irreversible brain is declared dead if:

- It is known that all brain functions do not function.
- There is no cerebral function, for example there is no response.
- Brain stem malfunction, such as pupillary light, corneal reflexes, oculocephalic / oculovestibular reflexes, oropharyngeal reflexes, respiration such as apnea.
- It is known that brain malfunction is irreversible.
- The cause of coma is known and meaningful as a cause of loss of brain function, the chance of recovery of the brain is removed.
- Failure of brain function persists during the observation or trial of therapy.
- Complications are excluded like drug and metabolic poisoning.
- hypothermia.
- Age under 5 years.
- Shock circulation.
- Observation has been carried out with sufficient time, without confirmation tests 12 hours since the cause of the irreversible condition is known.
- Brain anoxia.
- With a confirmatory test (shortening the observation time of a diagnosis of brain death determined by Electroencephalography (EEG) there is no cortical function, is irreversible, it marked by electrocerebral silence, and clinically there is no brain stem function. Cerebral Blood Flow (CBF) there is no blood flow that is demonstrated by radio nuclide scanning (radionuclide scanning) and intracranial blood vessel 4 angiography and clinically brain malfunction for at least 6 hours. (Suyono: 2010).

Euthanasia comes from the Greek word consisting of Eu which means beautiful, good, honorable, or gracefully with dignity and the word Thanatos which means dead. So etymologically Euthanasia is either dying well or dying with honor.

The philosopher Philo who said Euthanasia was a calm and good death. Around 400 BC, a famous oath was The Hippocratic Oath. Suetonius, a historian who lived in 70-140 AD, reported the death of Emperor Augustine as follows: He had an easy death as he always wanted. Because he can almost always ask the gods for himself and his family "euthanasia" if he hears that someone can die quickly without suffering. During the renaissance euthanasia view was expressed by Thomas More

and Francis Bacon. In Nova Atlantis put forward the idea of euthanasia medica, which is that doctors should not only cure but alleviate the suffering before death. At that time medical science was entered into the idea of euthanasia to help people who suffer when they die.

Euthanasia itself in the Oxford English Dictionary is interpreted as a soft and comfortable death. While according to the medical dictionary Euthanasia contains 2 (two) meanings, namely:

1. A death that is hopefully painless.
2. Murder with generosity, terminating the life of someone who is suffering and can not be cured and is very painful deliberately.

Euthanasia according to Philo (50-20 AD) means to die quietly and well, whereas Roman writer Suetonius in his book Vita Caesarum says that euthanasia means "die quickly without suffering". In the 19th century Euthanasia caused debate in North America and Europe.

In 1828 the law on euthanasia came into force in the state of New York. Then in 1935 supporters of Euthanasia were formed in England and in America in 1938. But Euthanasia remained legalized both in Britain and in America. In 1939 German Nazi forces controversially carried out Euthanasia of children under the age of 3 who have mental retardation, disability or other disorders that cause them to become useless, and will also apply to children over the age 3 years and elderly. Euthanasia itself in Indonesia is still a pro and a contra, because there are those who approve euthanasia, there are also those who do not approve. Those who approve Euthanasia are of the opinion that euthanasia is an act of agreement and carried out with the aim of ending the suffering of the patient. Groups that are against Euthanasia argue that euthanasia is covert murder. Because death is against God's will.

Types of euthanasia:

In terms of the procedure for implementing Euthanasia divided into 3 (three) categories:

1. Aggressive euthanasia (active euthanasia) is a deliberate action taken by a doctor or health worker to end or shorten the life of a patient by administering a deadly compound both orally or by injection
2. Non aggressive euthanasia (automatic euthanasia) is a condition where a patient expressly and consciously receives medical treatment, even though knowing his rejection will shorten or end his life. This euthanasia was officially submitted by making "codicil" (handwritten statement). Non-aggressive euthanasia is a practice of passive euthanasia at the request of the patient concerned.
3. Passive euthanasia is an act of negative euthanasia that does not use tools to end a patient's life. Passive euthanasia is done by stopping the provision of medical assistance that can intentionally prolong a patient's life.

In terms of people who make euthanasia decisions divided into 2 (two), that is;

1. Voluntary euthanasia if the person making the decision is a sick person.
2. Involuntary euthanasia if the person making the decision is another person such as the family because the patient is medically coma.

In terms of granting permits, euthanasia is divided into 3 (three):

1. Euthanasia is beyond the patient's ability, which is an act of euthanasia that is contrary to the patient's desire to live, this kind of euthanasia can be like a murder.
2. Euthanasia is not voluntary, this euthanasia is still a debate, because it is considered wrong by anyone, because this happens when someone who is not competent to make a decision, while the status is only a guardian for the patient. This is still controversial, because some trustees have the right to make decisions for the patient.
3. Voluntary euthanasia, euthanasia is done with the patient's own consent, but this is still controversial.

In terms of the purpose of euthanasia is divided into 3 (three):

1. Euthanasia is based on mercy
2. Euthanasia of animals
3. Euthanasia based on doctor's help, this is a form of voluntary aggressive euthanasia.

## Legal Aspects of Euthanasia Aspects of Islamic Law

Basically there is no religion in this world that justifies killing, because the goal of religion is for the peace of mankind. Islam forbids active euthanasia because it includes intentional killing (Al Qatlu Al 'Amad), even though its intention is to ease the burden of suffering on patients. It is Haram, even though it's at the request of the patient himself or his family. The following propositions forbid killing, whether killing someone else's soul, or killing yourself in the word of God:

1. And do not kill a soul that is forbidden by Allah (to kill) but with something (cause) that is right (QS: Al-An'am: 151).
2. And it is not appropriate for a believer to kill a believer (the other) except because of guilt (accidentally). (QS. An Nisa: 92)
3. And do not kill yourselves, Allah is Most Merciful to you (QS. An-Nisa: 29).

From the argument above it is clear, that the legal obligation for doctors to carry out active euthanasia, because the act is included in deliberate killing (Al Qatlu Al 'Amad), which is a criminal offense (jarima) and a major sin. Doctors who carry out active euthanasia by inserting lethal injections into the body of their patients, according to Islamic criminal law will be sentenced to qishash (capital punishment for killing) by the Islamic government (Khilafah) according to the word of God: It has been obliged upon you qishash with regard to people who was killed (QS; Al Baqarah: 178). Unacceptable reasons for active euthanasia that are often cited by reason of not being able to stand to see the suffering of the patient, so then the doctor facilitates his death. This reason only looks at outward aspects, whereas behind it there are other aspects that are unknown and reach by humans. By accelerating the death of the patient through active euthanasia, the patient does not get the wisdom of the pain test given by Allah Subhananhu Wa Ta'alla that is forgiveness of sins. Rasullulah SAW said: It is not befall on a Muslim that a calamity, whether trouble, pain, sadness, distress or disease, even the thorns that pierced it, unless Allah blotted out his mistakes or sins with the calamity that befell him (HR Bukhari and Muslim). The wisdom behind sickness and calamity is explained by the Rasulullah sallallaahu alayhi wa sallam, he said that: "It is not a Muslim who is stricken with a disease and among of them, but Allah will abort with his sins like a tree that shed its leaves". (Narrated by Bukhari no. 5660 and Muslim no. 2571).

### Medical Ethics Aspects

In the Criminal Code see from the side of the doctor as the main perpetrators of Euthanasia, especially active Euthanasia and is considered as a premeditated murder or intentionally taking a person's life without looking at the background of the conduct of euthanasia by the doctor concerned to his patient. In juridical normative every patient must get education about the disease they are experiencing, how the severity and methods and medical actions as to what to do, and for decision making remains the full responsibility of the patient and his family. Including if the patient stops treatment to have a negative impact on his health condition, or it is probable that being terminated will cause the patient to die.

Law on Medical Practice Number 29 of 2004 Article 45:

1. paragraph 1: Every doctor's action towards a patient must get approval,
2. paragraph 2: the consent referred to in paragraph 1 is given after the patient gets a complete explanation.
3. paragraph 3: the explanation referred to in paragraph 2 at least includes:
  - a. Medical diagnosis and procedure,
  - b. The purpose of the medical treatment carried out,
  - c. Other alternative actions and risks
  - d. Possible risks and complaints,
  - e. Prognosis of actions taken.
4. Paragraph 4: Approval as referred to in paragraph (2) can be given both in writing and orally.
5. Paragraph 5: any medical or dental action that carries a high risk must be given with written approval signed by the party giving the approval.
6. Provisions regarding the procedure for approval of medical or dental procedures as referred to in paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) shall be regulated by Ministerial Regulation.

And the Law on Health No. 36 of 2009 in article 56 Paragraph 1: Everyone has the right to accept or reject part or all of the relief measures that will be given to them after receiving and understanding information about such actions in full.

And Article 57 Paragraph 1: Every person has the right to the confidentiality of their personal health condition that has been revealed to the health service provider.

In the Minister of Health Regulation No. 434 / Men .Kes. / SK / X / 1983 in article 10 contains: every doctor must always remember the obligation to protect human beings. In the explanation section it is explicitly stated that a strong instinct in every living creature including humans is to maintain their lives. Business for that is the duty of a doctor. Doctors must strive to preserve and preserve the lives of human beings, meaning that according to both religion, state law, and medical ethics, a doctor is not permitted:

A. Abortion (abortion provocatus).

B. End the life of a sufferer, who according to science and experience is unlikely to recover (euthanasia).

The law guarantees constitutional rights, especially in the health sector. The core of the law is the emphasis on self-determination, if active euthanasia in Indonesia or medically murder is absolutely prohibited, but if we observe the rules in the law Health Act, Indonesia fully respects passively euthanasia. The purpose of passive euthanasia is the cessation of medical treatment, which is most likely because it can cause the patient to die. But there is a very important thing that is approval of what medical actions and how to be given (Informed Consent). According to Permenkes Number 290 of 2008 Article 1 Number 1 Informed Consent is approval given by the patient or next of kin after obtaining complete agreement on the medical and dentistry actions to be performed on the patient. The aim is to provide legal protection to doctors against unforeseen and negative consequences, for example against risk of treatment that is impossible to avoid even though the doctor has tried as much as possible and acted very carefully and thoroughly.

Indeed informed consent must be carried out, but not always informed consent is needed or must be implemented, where there are exceptions. This is stated in Permenkes No. 290/2008 article 4 which states that: in an emergency situation, to save a patient's life and / or prevent disability, approval for medical action is not required. Therefore, if the patient is in an emergency, the doctor may not postpone the action or question the informed consent, because if it is too late it will endanger the patient's condition or known as *zaakwarneming* (voluntary acts without forced) regulated in article 1354 of the Civil Code.

### **Criminal Legal Aspects**

Although euthanasia is not a juridical term, it has broad law implications both criminal and civil. Euthanasia from a medical point of view is regulated in the Indonesian Medical Code of Ethics Chapter II Article 9, there is a doctor's obligation to patients that every doctor must always remember their obligation to protect every human being. This means that doctors are prohibited from ending their patients' lives (euthanasia) even though according to medical science and patient experience it is impossible to recover from their illness. The Code of Medical Ethics in Indonesia uses euthanasia in three meanings, that is:

1. Moving to the afterlife calmly and safely without suffering, for those who believe in the name of God on the lips.
2. Life time will end, alleviated the suffering of the sick by giving sedatives.
3. End the suffering and life of a sick person intentionally at the request of the patient themselves and their family.

Articles in the Criminal Code emphasizing that euthanasia, whether active or passive without request, is prohibited. Like, active euthanasia with requests. Regulations regarding euthanasia in the Criminal Code are:

- a. Article 338 of the Criminal Code: Anyone who intentionally removes another's life from an ordinary murder is sentenced to a maximum of fifteen years in prison.
- b. Article 340 of the Criminal Code: Anyone who intentionally and planned in advance removes the lives of others, because they are guilty of premeditated murder, are sentenced to death or life imprisonment, or imprisonment for twenty years.
- c. Article 344 of the Criminal Code: Anyone who removes the soul of another person at the request of that person, who is clearly stated and is actually sentenced to prison for twelve years.
- d. Article 345 of the Criminal Code: anyone who intentionally persuades another person to commit suicide, helps him in the act or advises him for that is threatened with imprisonment for a maximum of four years, if that person commits suicide.
- e. Article 359: causing the death of a person by mistake or negligence, shall be punished by imprisonment for up to five years or imprisonment for one year.

From the articles of the Criminal Code above, we can conclude that euthanasia is an act that cannot be applied or legalized because it is contrary to the Criminal Code, and doctors as

professionals are responsible in every medical action performed on patients. Therefore the liability attached to the doctor especially in euthanasia is criminal, ethical and professional liability.

## CONCLUSION

Birth & death are God's prerogatives & not human rights so that no one in this world has the right to extend or shorten their own lives. Or in other words, even though outwardly or clearly it seems that someone controls themselves, but actually they are not the full owner of themselves. There are certain rules that we must obey & we believe in as God's rules.

So, even if someone have themselves, but still they cannot kill themselves. This statement according to religious experts expressly prohibits the act of euthanasia, whatever the reason.

Euthanasia is currently still pros and cons. Based on the explanation of Euthanasia, it can be concluded that Euthanasia in Islamic Law and Article 338 of Criminal Law, Article 340, Article 344, Article 345, and Article 359 cannot be legalized, although some countries have legalized it. Death that results from an act intentionally committed against another person is a violation of the Law and Human Rights.

## SUGGESTION

1. There is no clear law regulation in regulating Euthanasia in Indonesia, it is requested that the legislators be able to issue a special law for Euthanasia in order to create law certainty.

## DAFTAR PUSTAKA

1. Al Quran
2. Al Hadist
3. Kitab Undang-Undang Hukum Pidana
4. Kitab Undang-Undang Hukum Perdata
5. Kode Etik Kedokteran Indonesia
6. Undang-Undang Kesehatan Nomor 36 tahun 2009
7. Undang-Undang Praktek Kedokteran Nomor 29 tahun 2004
8. Peraturan Menteri Kesehatan No 434/Men .Kes. /SK/X/1983
9. Peraturan Menteri Kesehatan Nomor 290 Tahun 2008
10. Euthanasia Menurut Pandangan Hukum Positif dan Hukum Islam, Drs. H. Ahmad Wardi Muslich, Rajawali Pers.
11. Guwandi(II), Bahasa Medis, Jakarta: Penerbit Fakultas kedokteran UI, 2005.
12. Internet : Aspek Medis dan Hukum Euthanasia
13. Billy N, 2008 Aspek Hukum Dalam pelaksanaan Euthanasia Di Indonesia.  
Tersedia : [http://www.hukum\\_kesehatan.web.id](http://www.hukum_kesehatan.web.id) diakses tanggal : 24 Desember 2017.
14. Fadli. Ahmad 2000. Euthansia dalam Medis dan Hukum Indonesia.  
Tersedia : [Hukum\\_Kesehatan.web.id](http://www.hukum_kesehatan.web.id)teknosehat in biotik dan bio hukum, diakses tanggal 25 Desember 2017.
15. Hanafiah, Jusuf dan Amir. 1999 Etika kedokteran dan Hukum Kesehatan Edisi 3 Buku kedokteran EGC : Jakarta.
16. Suyono, Handi, 2008 Brain Death (Kematian Otak) Departemen Fisiologi dan Kedokteran Hiperbarik. Fakultas Keperawatan Universitas Katolik Widya Mandala, Surabaya.  
Tersedia : <http://www.medicine.medscaape.com/article//1177999-overview>. Diakses tanggal 24 Desember 2017.
16. Priyanto, Andika, Euthanasia Ditinjau dari Segi Medis dan Hukum Pidana d Indonesia.  
Tersedia : <http://www.Respiratory.unhas.ac.id/handle/123456789/6368>. Diakses tanggal 28 Desember 2017.
17. Tince P. Somoele. T. MH, Dr. Persetujuan Tindakan Kedokteran (Informed Consent), Kompasiana Platform Blog. Diakses tanggal 28 Desember 2018.

Medical Terms:

1. EEG: Electroencephalogram is a medical test that is used to measure the electrical activity of the brain, by placing electrodes on the scalp also called the brain wave test.
2. Irreversible: cell death
3. Pupil: black circular opening in the middle of the iris.
4. Corneal Reflexes: involuntary movements that are flashing when there are stimuli in the cornea
5. Okulosefalik reflex: the response of the movement of the eyeball opposite the direction of turning the head
6. Oropharyngeal reflex: the response part of the digestive tract and respiratory tract found in the back of the mouth. The oropharynx is the meeting of the oral cavity with the pharynx
- Aapnea: cessation of normal respiratory rhythms.
7. Metabolic: is or is related to metabolism.
8. Hypothermia: a state of body temperature that drops to below 35 degrees celsius.
9. Complications: new diseases arise in addition to existing diseases
10. Circulatory shock: a life-threatening medical condition that occurs when the body does not get enough blood flow so that it does not have enough oxygen to meet the body's metabolic needs.
11. Observation of diagnosis: observation of the type of disease by checking the symptoms.
12. Brain anoxia: injury that causes lack of oxygen to the brain.
13. Electrocelebral silence: does not function the brain stem.
14. brain stem: the brain region that connects the brain to the spinal cord.
15. Cerebral Blood Flow: no blood flow is indicated by a radio nuclide scanner (radionuclide scanning) and 4 intracranial artery angiography
16. Radio nuclides: isotopes of active radio.
17. Cerebral angiography: an action aimed at providing an overview of the condition of blood vessels and blood flow in the cerebral area using an x-ray.
18. Intracranial blood vessels:
19. Informed Consent: approval of action
20. Abortion: discharge of the fetus before reaching viability.