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# Euthanasia From the Perspective of Criminal Law and Human Rights

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**Abstract**
With the development of technology and science in the medical field, death does not always occur suddenly; instead, it can occur according to plan. Such an act, defined as the killing of a person at a predetermined time and place, is called euthanasia. This practice remains controversial and has not been adequately resolved by various parties. This study aims to analyze euthanasia from the perspective of human rights and criminal law applicable in Indonesia. The research method employed is a normative theoretical approach, encompassing primary, secondary, and tertiary legal materials. The findings of this study indicate that euthanasia, as regulated in Indonesian society, disregards an individual's right to life and is, therefore, not permitted. Although euthanasia is not explicitly recognized in Indonesian law, several provisions could potentially criminalize it, such as Articles 344 and 345 of the old Criminal Code or *Kitab Undang-Undang Hukum Pidana* (*KUHP*) and Articles 461 and 462 of the new *KUHP*. The process of legislation and legal reform, particularly concerning *euthanasia*, must continue to be guided by Pancasila and the 1945 Constitution of the Republic of Indonesia, while also considering the religious and cultural norms prevailing in Indonesian society.

**Keywords:** Criminal

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## INTRODUCTION

The issue of murder, whether committed by individuals or by the government, is classified as a crime against legal norms (Ningsih & Nugroho, 2021). In principle, humans are not permitted to take the life of another person, but some justify murder on moral grounds (Rahman, 2018). Euthanasia is a term rooted in the medical field, but it also intersects with the law in various countries (Sulistyorini, 2020). In Indonesia, euthanasia is also regulated by law (Prasetyo, 2022). Murder—whether committed by the community or by the government—remains a crime against legal norms, interpreted as an act that causes significant harm (Wijaya & Sari, 2020). It is an antisocial act that invites deliberate opposition from the state in the form of punishment or sanctions (Hidayat, 2019). Due to its harmful effects on society, for the sake of safety and order, the community as a whole is burdened with the duty and responsibility, together with authorized bodies, to combat murder. Murder committed on moral grounds may be justified, even considered obligatory (Putra, 2021).

In principle, humans are not permitted to end another person's life, but some justify such acts on moral grounds, even declaring them obligatory (Rahman, 2018). Issues of life termination are frequently debated in the medical field, particularly in intensive care units (Sulmasy & Mueller, 2017). Some end-of-life concerns for critically ill patients include euthanasia, physician-assisted suicide, death with dignity, patient self-determination, advance directives, futile treatment, and withholding or withdrawing life support (Materstvedt, 2020). Many medical professionals are still not fully aware of these issues, necessitating comprehensive discussion (Pereira, 2018). In practicing medicine, doctors hold not only

professional responsibility for their patients' health but also ethical and legal responsibilities regarding the care they provide (Radbruch et al., 2020). Thus, physicians must expand, refine, and deepen their medical skills while continuously keeping abreast of developments in bioethics and the medico-legal aspects of medical services (Sulmasy, 2021). Every human undergoes a life cycle beginning with conception, birth, and the challenges of living, and ultimately ending in death (Bolt et al., 2019; Emanuel et al., 2016; Oliver et al., 2021).

Global statistics reveal the growing acceptance of euthanasia in various forms. In the Netherlands, cases rose from 1,882 in 2002 to 7,666 in 2021 (Rurup et al., 2022). Belgium recorded 2,699 cases in 2021 (Dierickx et al., 2018), while Canada reported 10,064 instances of medical assistance in dying (MAiD) that same year, a 32.4% increase from 2020 (Downar et al., 2022). These trends highlight international momentum toward acceptance (Pesut et al., 2020), creating external pressure on countries with restrictive laws to reconsider their positions (Cohen et al., 2017). For Indonesia, this global context raises critical questions about how to preserve cultural, religious, and constitutional principles while addressing contemporary bioethical challenges (Radbruch et al., 2020; Sulmasy, 2021).

A controversial case in the euthanasia debate involves Dr. Jack Kevorkian, nicknamed "Doctor Death," who assisted patients whose conditions were not always terminal (Kovács, 2018). This raises the question of whether his actions truly alleviated suffering or instead caused premature deaths (Gamliel, 2020). Of the 69 patients Kevorkian assisted between 1990 and 1998, only 25% were classified as terminally ill according to autopsy reports, while approximately 72% showed deterioration driven by a desire to die (Shah et al., 2018). His actions sparked fierce debates from ethical, social, and medico-legal perspectives (Quill et al., 2018). The question remains whether doctors should immediately assist patients who wish to die or whether such determinations should rest with an authorized body or council deciding if someone is terminally ill and eligible for *euthanasia* (Schuklenk & van de Vathorst, 2015; Gómez-Vírseda et al., 2020; Dierickx et al., 2018).

In the highly advanced world of modern medicine, ethical, moral, and legal requirements remain necessary for *euthanasia* practices (Baksheev et al., 2018). This is intrinsically related to the application of human rights in medicine. To what extent patients (and doctors) have rights to request or provide *euthanasia* must be considered. A clear contradiction emerges: human rights include the right to life, yet reality also demands recognition of the right to die. Once confined to medical discussions, the debate over the permissibility of *euthanasia* now extends to law, religion, and social institutions. Global prominence for *euthanasia* was further established by the World Law Conference organized by the World Peace Through Law Center in Manila, Philippines, on August 22–23, 1977.

Despite international debate, the right to die remains controversial and often unrecognized. The word *euthanasia* derives from the Greek term *euthanatos*, meaning "to die well without suffering." The Netherlands defines it, through the Euthanasia Study Group of the KNMG (Dutch Medical Association), as intentionally refraining from prolonging life or deliberately taking steps to shorten it, conducted in the patient's interest. Discussions of *euthanasia* (eu: good, *Thanatos*: death/corpse) are inseparable from patient self-determination, one of the fundamental elements of human rights. From a scientific perspective, death is

classified into three types: *orthothanasia* (natural death), *dysthanasia* (unnatural death), and *euthanasia* (medical assistance).

Human rights have become an international discourse, but they are fundamentally individual concerns. The problem of the right to die arises from persistent suffering that even advanced technology cannot entirely eliminate. Ending a patient's life by withdrawing life support raises the question of whether such action violates human rights (Rashid, 2023).

In Indonesia, the Indonesian Medical Association (IDI) declared in 1990 that a person is considered dead if their brain stem no longer functions. If the brain stem is dead, the heart and lungs can only continue with the help of support machines. *Euthanasia* has long been a subject of debate among medical, legal, human rights, and religious circles. Nevertheless, requests for it continue to rise, particularly in countries recognizing "dying with dignity." One such case was Belgian Paralympian Marieke Vervoort, whose life was ended through a doctor's injection at age 40. Belgium legally recognized *euthanasia* even before the Netherlands. However, most countries prohibit it.

Indonesia is one such country. Constitutional law scholar Jimly Asshiddiqie argues that recognizing the right to die would equate to legitimizing acts such as suicide bombings under the pretext of the "right to die." National Commission on Human Rights (Komnas HAM) member M. Choirul Anam stated that debate on *euthanasia* continues internationally, with some movement toward legalization, provided certain conditions: (1) the reasons are extremely compelling, such as an incurable condition; (2) the decision is carried out by a professional and responsible individual; and (3) the procedure adheres to strict legal safeguards.

Much of the Indonesian literature on *euthanasia* emphasizes medical doctrine, ethics, and legal consequences. Works include Kuitert and F. Tengker's *Kematian yang Digandrungi: Euthanasia dan Hak Menentukan Nasib Sendiri* (Death Loved: Euthanasia and the Right to Self-Determination), and Djoko Prakoso and Djaman Andi Nirwanto's *Euthanasia: Human Rights and Criminal Law.* Indonesia, however, still lacks specific legal regulation of *euthanasia* (mercy killing). Ending someone's life at their request is treated as murder under Article 344 of the Criminal Code (KUHP). Yet, in countries such as the Netherlands, the United States, and Japan, the law has carved out exceptions with strict procedures.

Criteria have been proposed to govern exceptional *euthanasia* cases: certainty of an incurable disease, unaffordable cost of medication or treatment, and extraordinary medical effort required to sustain life. In such contexts, ceasing medical treatment becomes the only option. However, lethal injection as a form of *euthanasia* remains equivalent to murder under Indonesian law.

In practice, *euthanasia* has not been legally recognized in Indonesia. A notable case in Jakarta District Court involved a husband's request for his comatose wife, who suffered permanent brain damage. Before any ruling was made, the patient unexpectedly recovered and was declared healthy. Such cases illustrate the complexities Indonesian law must consider if *euthanasia* becomes a subject of future legal reform, taking into account ethical, social, and moral values.

Globally, legalization has accelerated. The Netherlands enacted *euthanasia* laws in 2002, followed by Belgium (2002), Luxembourg (2009), Colombia (2015), Canada (2016), and several U.S. states including Oregon (1997), Washington (2008), Vermont (2013),

California (2015), Colorado (2016), and Hawaii (2018). More recently, Spain and New Zealand both legalized it in 2021. With over fifteen jurisdictions worldwide recognizing *euthanasia*, countries like Indonesia face mounting pressure to re-examine their stance.

The novelty of this research lies in its thorough analysis of *euthanasia* within Indonesia's specific constitutional and legal framework, with a focus on tensions between global trends, Pancasila principles, and constitutional rights protecting life. Previous Indonesian studies emphasized medical ethics or general criminal law, whereas this research specifically integrates human rights, criminal law, and constitutional law perspectives. It also addresses recent developments under Indonesia's new Criminal Code (enacted 2023, effective 2026) and their possible implications for *euthanasia* regulation.

This study ultimately aims to evaluate the perspective of criminal law on *euthanasia* within Indonesia's legal framework—examining how current and future criminal code provisions may apply—and to assess the perspective of human rights law on *euthanasia*, by analyzing the balance between individual autonomy and the state's fundamental obligation to protect life under Indonesia's constitutional order and relevant international human rights instruments.

## RESEARCH METHOD

This study was a normative legal study focusing on legal norms and legislative products. It applied a legislative and conceptual approach, relying primarily on statutory interpretation and secondary reference materials.

Data collection followed a systematic process. First, a comprehensive literature review was conducted to identify relevant primary legal sources, including the Indonesian Constitution (UUD 1945), Law No. 39 of 1999 on Human Rights, the current Criminal Code (KUHP), and the New Criminal Code (effective 2026). Second, secondary legal materials were obtained from academic databases, legal journals, court decisions, and scholarly publications addressing euthanasia, human rights, and criminal law both in Indonesia and in comparative jurisdictions.

The research employed a qualitative legal methodology using deductive reasoning to examine the application of existing legal provisions to euthanasia cases. The analytical framework involved: (1) doctrinal analysis of relevant legal texts to identify applicable provisions and potential conflicts; (2) comparative legal analysis of other jurisdictions' euthanasia regulations to contextualize Indonesia's position; (3) constitutional interpretation of how euthanasia relates to fundamental rights protected under Indonesian law; and (4) synthesis of findings to draw conclusions about the legal status and human rights implications of euthanasia in Indonesia.

The research process emphasized systematic documentation and maintained objectivity by considering both supporting and opposing perspectives on euthanasia legalization. Data validation was ensured through triangulation of multiple legal sources and cross-referencing with established legal precedents and scholarly interpretations.

## RESULTS AND DISCUSSION

### Euthanasia in the Criminal Code

The analysis of euthanasia within Indonesia's criminal law framework reveals a complex legal landscape that directly addresses the core research objectives of understanding

both criminal law perspectives and human rights implications. From the perspective of current legislation, there are no comprehensive regulations on euthanasia. However, because the issue of euthanasia concerns the safety of human life, regulations or articles that at least approximate the elements of euthanasia must be sought. The examination of relevant criminal code provisions demonstrates how Indonesian law prioritizes the protection of life while simultaneously creating potential legal consequences for euthanasia practitioners.

From the perspective of current legislation, there are no comprehensive regulations on euthanasia. However, because the issue of euthanasia concerns the safety of human life, regulations or articles that at least approximate the elements of euthanasia must be sought. The only legal basis for further discussion is what is contained in the Indonesian Criminal Code, particularly the articles that discuss crimes involving human life. The closest legal provisions to this issue are in Book 2, Chapter IX, Article 344 of the KUHP.

Previously, let's examine other articles in the KUHP that pertain to human life, such as Articles 338, 339, 340, 341, and others. We can read the text of these articles and understand the lawmakers' perspective on human life. In summary, from the history of the Criminal Code's creation, it is clear that the lawmakers at that time (the Dutch East Indies era) also regarded human life as the most valuable possession of a person, surpassing other possessions. Therefore, any act, regardless of its motive or nature, that threatens the safety and security of human life is considered a serious crime by the state. Thus, the state always protects the safety of citizens' lives. In this context, two interests must not be overlooked: societies and the individuals.

The perspective of the drafters of the Dutch East Indies laws remains upheld by the current government during the New Order era. This is evident in the Criminal Code, where human life's safety and security are still guaranteed without any changes. It is a reality that, regardless of religion, race, skin color, or ideology, the safety and security of human life in Indonesia are guaranteed by law. This also reflects the principle of equality before the law, which must also be applied to the safety and security of human life. Article 344 of the Criminal Code states that "Anyone who takes the life of another person at their request, clearly expressed with sincerity, shall be punished with imprisonment for a maximum of twelve years." From the wording of this article, it can be concluded that a person is not permitted to murder another person, even if the murder is carried out at the request of the victim. It is difficult to imagine someone who would go as far as to "kill" or, in other words, "take the life" of another person, especially someone they know or who needs help, at the request of the person in question who is suffering from a severe, incurable illness, for example. It becomes even more difficult when this is further linked to moral and humanitarian issues. However, in the future, due to unavoidable circumstances, it may be difficult to avoid situations where taking the life of someone who is deeply loved or in need of help, or allowing their life to be taken by death at their request, becomes unavoidable.

In the above article, the phrase "request made with sincerity" must be given attention because this element will determine whether the person who did it can be prosecuted under Article 344 of the Criminal Code. To prevent this element from being abused, when deciding whether someone has murdered out of compassion, the elements of an explicit request and sincerity must be proven either through witnesses or other evidence, as mentioned in Article 295 of the Criminal Code.

**Passive Euthanasia in Indonesian Positive Law**

The distinction between active and passive euthanasia represents a crucial aspect of this research's examination of how Indonesian criminal law addresses different forms of end-of-life interventions. This analysis directly supports the research objective of understanding criminal law perspectives on euthanasia by demonstrating how Indonesian legal provisions, while not

explicitly mentioning euthanasia, create a framework that potentially criminalizes both active and passive forms of life termination.

Euthanasia can be divided into categories based on how it is carried out. It can be divided into two categories: active and passive euthanasia. Passive euthanasia occurs when medical personnel indirectly end a patient's life by stopping or limiting the treatment necessary for the patient to survive. Active euthanasia occurs when a doctor or healthcare professional intentionally performs euthanasia through active medical intervention to cause the patient's death. Increasing the dosage of prescribed medication can also result in passive euthanasia. Therefore, euthanasia is classified as active or passive based on how it is carried out.

Passive euthanasia occurs when a doctor or other medical personnel intentionally withholds medical assistance that could prolong the patient's life. Many cases of passive euthanasia occur in Indonesia, but they never come to light because the public considers it normal or acceptable. Since the formation of the Criminal Code until now, there have been no actual cases in Indonesia related to euthanasia (Herawati, 2019). Passive euthanasia occurs when a patient dies because medical professionals do not do what is necessary to keep the patient alive or stop doing something that keeps the patient alive. Examples of passive euthanasia include turning off life support machines, removing feeding tubes, not performing life-prolonging surgery, or not administering life-prolonging medication.

Regarding passive euthanasia, it can be said that this type of euthanasia has ambiguous values. On the one hand, passive euthanasia is considered an immoral act. On the other hand, it is considered a noble act because it intends to relieve the patient's suffering. When performing euthanasia, doctors are faced with two choices: to help the patient or to carry out the mandate given by the law. Article 304 of the Criminal Code, which essentially prohibits placing or allowing someone to suffer when it is legally required to maintain or care for that person, is considered to regulate passive euthanasia, even though the term “euthanasia” itself is not explicitly mentioned in the article.

In criminal law, regardless of the reason or the person involved, anyone who takes another person's life without legal authority, except those authorized by law, must be considered a criminal offense (Articles 48, 49, 50, and 51 of the Criminal Code). Meanwhile, all parties involved must be regarded as responsible, whether by committing the act, ordering it to be committed, participating in it, or aiding in it (Articles 55 and 56 of the Criminal Code). Passive euthanasia under the Criminal Code falls under the crime of murder at the request of the victim, regulated under Article 304 of the Criminal Code, which states that "Anyone who intentionally places or allows a person to be in a state of suffering, when, according to the law applicable to him or because of his consent, he is obliged to provide life, care, or maintenance to that person, shall be punished with imprisonment for a maximum of two years and eight months or a fine of up to four thousand five hundred rupiah." From the wording of the above article, it can be concluded that a person is not permitted to murder another person, even if the murder is committed through neglect (Article 304) or at the request of the person (Article 344), as the perpetrator will still be subject to criminal penalties, even if the perpetrator is a medical team or a doctor (Dwidya & Hartiwiningsih, 2022).

**Euthanasia from a Human Rights Perspective**

This section directly addresses the second research objective by examining how euthanasia conflicts with Indonesia's human rights framework. The analysis reveals the fundamental tension between individual autonomy (potentially supporting a right to die) and the state's constitutional obligation to protect life, providing crucial insights into how human rights law views euthanasia in the Indonesian context. As is commonly understood, a country is governed by law if it has four characteristics. First, it acts by the applicable law. Second, it must comply with judicial decisions. Third, it must be fair and guarantee human rights. Fourth,

the judiciary must be independent of the government's will. As a state governed by the rule of law, Indonesia naturally respects human rights, as enshrined in the Universal Declaration of Human Rights, which has been incorporated into the Preamble of the 1945 Constitution of the Republic of Indonesia.

The first paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia recognizes the right to freedom. Recognition of humanity is the core of human rights, and recognition of justice is the essence of the rule of law. The second paragraph states that Indonesia is a just nation, and justice is the goal of the rule of law. The third paragraph states that everyone has the right to participate freely in the community's cultural life. This is consistent with Article 27(1) of the Universal Declaration of Human Rights. The fourth paragraph contains political, civil, economic, social, and cultural human rights. The principles of Pancasila contained in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia embody respect for human rights. Human rights principles are also included in the body of the 1945 Constitution of the Republic of Indonesia, although they were not explicitly mentioned as human rights (Qamar, 2016).

Human rights in Indonesia are regulated in Law No. 39 of 1999 on Human Rights. According to Article 1(1) of Law No. 39 of 1999 on Human Rights, human rights are a set of rights inherent in the nature and existence of human beings as creatures of God Almighty. They are His gifts that must be respected, upheld, and protected by the state, the law, the government, and everyone for the honor and protection of human dignity.

Law No. 39 of 1999 on Human Rights is divided into ten categories. The right to life is regulated in Chapter II, Article 4 of this law, which states that the right to life is a right possessed by human beings in Indonesia and is regulated in Law No. 39 of 1999 on Human Rights. According to Article 1(1) of Law No. 39 of 1999 on Human Rights, human rights are a set of rights inherent in the nature and existence of human beings as creatures of the Almighty God. They are His gifts that must be respected, upheld, and protected by the state, law, government, and everyone for honor and the protection of human dignity.

Law No. 39 of 1999 on Human Rights is divided into ten categories. The right to life is regulated in Chapter II, Article 4, which states that the right to life is a right possessed by every person and may not be taken away in whole or in part under any circumstances and by anyone. Chapter III, Article 9, paragraph (1) states that every person has the right to life and to preserve their life. Article 33, paragraph (2) states that every person is free from the fear of arbitrary deprivation of life. When related to euthanasia, this act of euthanasia is in direct conflict with Article 4, Article 9(1), and Article 33(2) of Law No. 39 of 1999 on Human Rights. Several articles in the 1945 Constitution of the Republic of Indonesia regulate human rights and are related to euthanasia, namely Article 28A, Article 28G paragraph 2, and Article 28I (I Gusti Agun,2020)

Talking about euthanasia also means talking about the right to self-determination. In Law No. 39 of 1999 on Human Rights, Article 9 paragraph (1) states that every person has the right to life and to improve their standard of living. This provision is often interpreted by people as the right to freely determine their own life, which must also be supported by the right to information (Article 14) and the right to health (Article 9 paragraph (3)). Based on these provisions, patients and their families, after receiving clear information about the patient's condition, may request the doctor's consent to discontinue treatment if there is no possibility of the patient recovering from their illness and reducing the burden and costs. This consent serves as the basis for the implementation of euthanasia, so doctors should not be held liable if reported, as their actions are based on the consent of the parties involved, namely the patient and their family, or what is known as informed consent.

Euthanasia can place doctors in a difficult situation where, on the one hand, they must respect the patient's rights to determine the medical steps to be taken. On the other hand, they

face ethical, moral, and legal aspects. According to the Medical Code of Ethics, doctors must protect patients, which means that doctors are not allowed to end a patient's life, even if there is no chance of recovery. In the medical world, euthanasia can be defined as a medical effort to anticipate and stop the spread of disease after previous medical efforts have failed or been unsuccessful. The Universal Declaration of Human Rights (Article 3) also mentions the right of every person to life, liberty, and freedom from safety. euthanasia from a human rights perspective in Indonesia is an interesting topic to discuss, considering that Indonesia upholds human rights that must be respected and protected by all elements in Indonesia, including the state, the law, the government, and the entire Indonesian society, especially regarding the right to life, which is a non-derogable right or cannot be violated by anyone, at any time, and under any circumstances (Jesica, 2023). If we assess euthanasia from a human rights perspective, euthanasia is an act that violates the fundamental right to life. The Criminal Code, and most importantly, oversteps God Almighty's authority.

Legally, euthanasia is a criminal act. However, not everyone who commits a criminal act can be punished. The Criminal Code, Chapter III, addresses matters that exempt, reduce, or aggravate criminal penalties, particularly in Article 48. Article 48 of the Criminal Code focuses on physical coercion. In medical science and technology, the influence of coercive force can be interpreted physically and psychologically. When treating patients who cannot be cured, the treating doctor may feel great compassion for the patient and even suffer emotionally. This is an example of psychological coercive force.

Therefore, doctors who perform euthanasia can be considered to have committed a criminal act. However, doctors are not held criminally liable or receive lenient punishment or even legal exemption if they follow Article 48 of the Criminal Code by extension (I Gusti Agung,2020).

The Indonesian Medical Code of Ethics (KODEKI) is a guideline that regulates doctors' behavior. This guideline regulates doctors' daily duties and governs their relationships with the public. Doctors are expected to exhibit commendable behavior because the medical profession is noble. Doctors are expected to practice their profession with noble intentions and proper methods. The public need not worry that euthanasia will be easily performed by a doctor, even though doctors are human and not immune to error. Therefore, a legal framework is needed to control euthanasia in the future (I Gusti Agung,2020)

## CONCLUSION

This study highlighted the tension between global trends increasingly favoring the legalization of *euthanasia* and Indonesia’s constitutional and legal framework, which—rooted in Pancasila principles—upholds the sanctity of life as a non-derogable right. From a human rights perspective, *euthanasia* conflicts with several provisions of the 1945 Constitution and Law No. 39 of 1999 on Human Rights, which guarantee the right to life and protection from arbitrary deprivation of life. From a criminal law standpoint, although Indonesia lacks specific *euthanasia* regulations, acts of assisting or carrying out *euthanasia* fall under multiple provisions of the Criminal Code relating to murder, incitement to suicide, abandonment, negligence, and complicity, exposing both healthcare professionals and family members to prosecution. The research concluded that Indonesia’s constitutional principles and socio-cultural values firmly prohibit *euthanasia*, prioritizing the protection of life over individual autonomy in end-of-life decision-making. Future research should examine how Indonesia might develop a context-specific legal framework for bioethical dilemmas, exploring mechanisms for improving palliative care and patient dignity while remaining faithful to constitutional safeguards and Pancasila ideology.

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