

## *Euthanasia and the Assessment of Patients' Autonomy Rights in the Indonesian Criminal Code*

Fanny Tanuwijaya

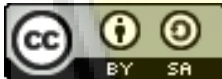
University of Jember, Indonesia

*fannytanuwijaya2018@yahoo.com*

### ABSTRACT

This study aims to analyze and clarify the application of criminal law principles in cases of euthanasia. The concept of euthanasia is a new thought in criminal law that arises because of humans' desire to determine life's direction. The realization of life's ownership of oneself gives birth to the thought that one can hasten one's death. The conception of self-determination in euthanasia is by realizing the right to autonomy, which is an essential principle in medical law. However, the manifestation of euthanasia as the fulfillment of autonomy has a conflict with criminal law, especially in Indonesia. In Indonesia, the conflict of norms on euthanasia and the provisions of criminal law can be seen in the legislative product, namely the Criminal Code (KUHP), which clearly reflects euthanasia prohibition. A study of euthanasia in criminal law principles shows that health regulation, especially regarding euthanasia, needs to pay attention to the right to patient autonomy as its main principle. The conflict over the right to autonomy and Indonesian criminal law creates a conflict of norms that further tests euthanasia's legality in Indonesia.

**KEYWORDS:** Indonesian Criminal Code. Patient's Autonomy, Religious Values.



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## I. INTRODUCTION

In the study of Indonesian criminal law, euthanasia is a discourse related to medical treatment because of the assumption that every individual has a choice in his life.<sup>1</sup> Euthanasia can be defined as the treatment according to the patient's request to determine the end of his life.<sup>2</sup> Of course, every human life will culminate in death, and the boundary between the two depends on the process and the course of life. Every individual has a different life process and has the right to live his own life as a human being without interference from other individuals.<sup>3</sup> Respect for the dignity of one's life has also been guaranteed in Article 28G paragraph (1) of the 1945 Constitution. Based on the idea that a person's life is a personal matter, each individual has the right to decide his life plan, giving rise to the term autonomy.<sup>4</sup> This term relates to how humans should act independently, especially for their health problems when they become patients who are entitled to themselves while being treated. In other words, during the treatment period, the patient has the freedom to<sup>5</sup> end one's own life in the form of freedom of human will to choose.<sup>6</sup>

In practice, euthanasia conflicts with some norms in Indonesia. Religious norms consider that life is a gift from God and is sacred so that humans cannot unilaterally end their lives.<sup>7</sup> On the other hand, the human element becomes an element that puts pressure on euthanasia's validity. As an action that emphasizes the essential words, namely *eu* and *thanatos* or ending life-based on compassion, it is appropriate if the patient himself requests euthanasia, but this does not rule out the possibility of a conflict of belief in a health worker, especially a doctor asked to perform the procedure.<sup>8</sup> The belief that it is not appropriate to end a patient's life despite being asked consciously by the patient creates a significant problem for ensuring the validity of euthanasia. The legal certainty becomes a subsequent problem that eventually encompasses criminal law, especially in the Indonesian Criminal Code (KUHP). The application follows Article 344 of the Indonesian Criminal Code, which states that termination of life-based on a request from a person who wants to end his life is an act

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<sup>1</sup> Margaret A Somerville, *Death Talk: The Case against Euthanasia and Physician-Assisted Suicide* (Baskerville: McGill-Queen's University Press, 2001).

<sup>2</sup> Oluyemisi Bamgbose, "Euthanasia: Another Face of Murder" (2004) 48:1 Int J Offender Ther Comp Criminol 111-121.

<sup>3</sup> Hans-Georg Ziebertz & Francesco Zaccaria, "The Right to Life Questioned. Introductory Remarks" in Hans-Georg Ziebertz & Francesco Zaccaria, eds, *Euthan Abort Death Penal Relig – Right Life Its Limit* (Cham: Springer Nature Switzerland, 2019) 1.

<sup>4</sup> Jennifer Fecio McDougall & Martha Gorman, *Euthanasia: A Reference Handbook*, 2d ed (Santa Barbara, 2008).

<sup>5</sup> Y Michael Barilan, "Respect for Personal Autonomy, Human Dignity, and the Problems of Self-Directedness and Botched Autonomy" (2011) 36:5 J Med Philos 500.

<sup>6</sup> Tom L Beauchamp, "The Right to Die as the Triumph of Autonomy" (2006) 31:6 J Med Philos 644 and Helen Silving, "Euthanasia: A Study in Comparative Criminal Law" (1954) 103:0 Univ PA Law Rev 350-390.

<sup>7</sup> Joseph Sanders, "Euthanasia: None Dare Call It Murder" (1970) 60:3 J Crim Law Criminol 351-359.

<sup>8</sup> Julian Savulescu & Udo Schuklenk, "Doctors Have No Right to Refuse Medical Assistance in Dying, Abortion or Contraception" (2017) 31:3 Bioethics 162-170.

that carries the threat of imprisonment, is still considered to have an element of coercion that cannot handle cases euthanasia in full considering its complexity.<sup>9</sup>

The situation has the potential to clash between human autonomy and the Indonesian Criminal Code, relating to the implementation of euthanasia creates a legal issue which then has the potential to be discussed. The discussion on this conflicted case is then carried out in this paper. This paper aims to examine the health law system, primarily the medical domain, which is associated with material criminal law to discuss the concept of euthanasia in Indonesia from the lens of criminal law.

The two sections of the existing discussion identify and clarify the conflict between the principles of autonomy and criminal law in Indonesia in addressing problems related to euthanasia. First, how do the principles of autonomy and criminal law view euthanasia in Indonesia? This topic will discuss how the principle of autonomy in charge of one of the main principles of medical law and the perspective of criminal law in addressing the existence of a practice of euthanasia in Indonesia. Second, how the perspective of the principle of human autonomy and criminal law can provide the correct position for the application of euthanasia in Indonesia. This section discusses applying the concept of human autonomy, which is good and can be elaborated with the concept of criminal law so that euthanasia can have reasonable legal certainty.

## II. EUTHANASIA: PATIENTS' AUTONOMY VS. CRIMINAL LAW

Euthanasia is a term derived from a combination of two words, namely *eu*, which means good, and *thanato*, which means death.<sup>10</sup> In short, it can be explained that euthanasia is a word that has the meaning of an action to end life well. The terminology of euthanasia shows that there is an act of ending one's life based on the value of goodness. The value of goodness in euthanasia has a basis that is based on fulfilling a human's desire to escape from the pain he experiences by ending his life.<sup>11</sup> The purpose of escaping from the suffering experienced when a person is alive provides a strong basis for a person to decide to end life. The situation for retaining the patient suffers for life considers its considerable difficulty in obtaining solutions. Various aspects of human life can stimulate the desire to end life, especially in an impossible case. They can be exemplified from the cases of illness that have less chance of life, or pain over the uncertainty of a person to continue his life, as in someone unconscious for a very long time; suffering over great pain for a disease suffered; even to the factor of inability to

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<sup>9</sup> I Made Wahyu Chandra Satriana, "Euthanasia Dalam Pandangan Filosofis Ideologis dan Norma Hukum" (2020) 5:1 J Ilm Huk Jure 23–39.

<sup>10</sup> Agus Hermanto, "Euthanasia From The Perspective of Normative Law and Its Application in Indonesia" (2017) 14:2 Hunafa J Stud Islam 275–300.

<sup>11</sup> Andi Sofyan, "Euthanasia: Concept and Rule of Law in Indonesia" (2017) 58:0 J Law Policy Glob 27–32.

fulfill the cost of caring for a person for a disease that has a precarious condition.<sup>12</sup> Several situations in human life that trigger the desire to end life explain various situations that can severely negatively impact a person to decide to defend his life. It has become what can be considered normal when someone unlikely to live decides to end his own life.

The explanation of euthanasia's terminology provides a view that implies that determining the end of life is not something that does not have a fundamental human value. In contrast to the absence of a literal basis for ending life, euthanasia has a basis for careful consideration to respect a person's nature of freedom in choosing decisions in life. The idea of euthanasia is manifested in creating a central concept within the health sector's scope of regulations, namely the right to autonomy.<sup>13</sup> Autonomy rights or what are known as patient autonomy rights provide a basis for a human being to determine according to his wishes how he wants to be treated while undergoing the treatment process. Adjustments to a patient's will to be treated are things that need to be considered in implementing the treatment process carried out by health workers, especially medical doctors. It is necessary to pay special attention to fulfilling a patient's autonomy rights, given that one of the main pillars of the principle of treatment is the principle of autonomy.<sup>14</sup> As one of the essential principles in medical services, autonomy emphasizes that respect for a patient's decisions is vital in medical services. The characteristics of the autonomy principle that emphasize human values provide a perspective that medical services are necessary to uphold human rights norms. However, the linkages provided by human rights values provide a view that seems to provide an opportunity for a human being to have any will for himself. About the implementation of euthanasia related to the right to health autonomy and the concept of human rights, the giving of this action is intended as a tribute to a person's decision aimed at defending his honor.<sup>15</sup> The basis for human honor or human dignity is based on the human will to do something, and basically, this will is his own will that cannot be actively influenced by other people. In short, it can be explained that the effort to maintain human dignity, especially for a patient, which is associated with decisions that lead to euthanasia, is a form of fulfilling a person's right to choose what is best for him. Many things underlie human thinking to give an excellent end to his own life, such as the fear aimed at the fear of losing autonomy and dignity, which is feared to occur when a person continues his life.<sup>16</sup> This fear of losing the dignity of a human being is shown, especially in a patient treated and is suffering from a disease that makes him unable to carry out activities that he could easily do. The inability to carry out the task

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<sup>12</sup> Tomy Pasca Rifai, "Passive Euthanasia on Indonesian Law and Human Rights" (2017) 1:2 Muhammadiyah Law Rev 1–8.

<sup>13</sup> Claudia Carr, *Beginning Medical Law* (Abingdon: Routledge, 2015).

<sup>14</sup> John Coggon & José Miola, "Autonomy, Liberty, and Medical Decision-making" (2011) 70:3 Camb Law J 529.

<sup>15</sup> Emmanuel N Kontomanolis et al., "The Conflict between Euthanasia and Human Dignity: A Different Glance" (2018) 4:4 *Ulutas Med J* 184–193.

<sup>16</sup> Andrea Rodríguez-Prat et al., "Patient Perspectives of Dignity, Autonomy and Control at the End of Life: Systematic Review and Meta-Ethnography" (2016) 11:3 *Plos One* 1–18.



makes a patient need help from fellow humans. However, when the help that a patient asks for is assistance that gives trivialities and imposes a burden on others, such as a patient who cannot walk alone to the bathroom and always needs help who at the same time has no certainty to be cured, it is possible could tarnish the dignity or honor of a patient.<sup>17</sup>

The idea of euthanasia, which is the concept of ending one's life in the right way, clearly affects human autonomy. Human autonomy creates a view that the implementation of euthanasia is carried out to uphold the honor of a human's freedom of choice.<sup>18</sup> The honor given to a human being's choice to decide what he wants for his life is given primarily to the patient. Respect for a patient's decisions ultimately creates a root principle in medical law, namely autonomy.<sup>19</sup> Clearly, it can be explained that euthanasia is a form of respect and protection for human dignity when viewed from the point of view that human autonomy is correct and can be implemented. Human autonomy cannot be taken for granted, as is the case with the rule of law, mainly what has happened in Indonesia regarding its criminal law. In the criteria of criminal law, euthanasia can be categorized as an act of murder where the victim is a human being.<sup>20</sup> Indonesian criminal law prohibits euthanasia.

The prohibition considers the assumption that euthanasia is an act that results in a person's death. Euthanasia issues have considerations on various dimensions or thoughts from various fields, such as health, social and economic, culture, religion, and humans.<sup>21</sup> Based on the various factors that have been mentioned, the formulation of criminal law in Indonesia, especially related to issues regarding euthanasia, will undoubtedly have various points of consideration. The perspective that can indeed strongly underlie euthanasia's rejection is a religious point of view or religious norms. The religious element becomes a substantial value as an antidote to euthanasia as an act of ending life because it is the basis that most religious values will uphold the sacred value of life as a gift from the Almighty. Termination of life with good intentions or the like cannot be justified because such action is considered to have overstepped the Almighty's authority, who has the right to give and take every human being's life at the time he has determined. The relationship between religious values is getting more vital because religious values are the most important thing for a human being to guide a human being in his life.<sup>22</sup> The existence of religious values as the most critical direction indicates that the thought of religious values in Indonesia, which influences the norms of criminal law, making the practice of euthanasia literally will receive a firm rejection. Strong belief in religious values will further strengthen the rejection of the legalization

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<sup>17</sup> Andrea C Nakaya, *Thinking Critically: Euthanasia* (San Diego: ReferencePoint Press, 2015).

<sup>18</sup> Lauren Wharton, "Should Euthanasia be legalized in England and Wales? Interpreting John Stuart Mill's Harm Principle" (2019) 1:1 *Stud J Prof Pract Acad Res* 28–38.

<sup>19</sup> Daniel Fu-Chang Tsai, "How Should Doctors Approach Patients? A Confucian Reflection on Personhood" (2001) 27:1 *J Med Ethics* 44–50.

<sup>20</sup> Nathan E Goldstein et al., "Prevalence of Formal Accusations of Murder and Euthanasia against Physicians" (2012) 15:3 *J Palliat Med* 334–339.

<sup>21</sup> Sofyan, *supra* note 11.

<sup>22</sup> Sutarno, "Euthanasia from the Perspective of Indonesian Norms" (2020) 11:1 *Syst Rev Pharm* 192–202.

of euthanasia based on religious values. Therefore, the Indonesian Criminal Code reaffirms that euthanasia is regarded against the law.<sup>23</sup> As a result, euthanasia cannot be justified for any purpose or excuse. The prohibition against euthanasia is carried out based on various norms, especially religious values that uphold the view that one's life is a sacred gift. The prohibition of euthanasia in Indonesia provides a perspective that assumes that the concept of euthanasia is incorrect and is even considered technological advances in health science give a negative influence.<sup>24</sup> Although it can be explained from what has been written that basically, the thought of euthanasia is a thought created by the desire of humans to maintain their identity or dignity, the view of giving negative impacts aimed at the development of health science can represent the perspective of rejection that is reflected in the situation—criminal law in Indonesia.

The existence of euthanasia based on the perspective of human autonomy and the perspective of Indonesian criminal law has clearly shown a discrepancy in the prohibition of practices euthanasia juridical in the formulation of criminal law. In the view of human autonomy, the concept of euthanasia shows that giving death to a person of his own accord is a proper thing to do to uphold human dignity.<sup>25</sup> Thus, it must comply with expediency and justice. As stated in the theory of expediency in law, the right action is based on giving humans the highest satisfaction.<sup>26</sup> The fulfillment of the patient's desire, who has the grievous suffering of his illness to be released from his life, represents the goal of benefit caused by the end of suffering that the patient desires. Also, the fulfillment of justice's value is the concept that justice is a legal goal achieved with a balance of values.<sup>27</sup> The implementation of euthanasia based on human values and a person's desire to end his life to maintain his honor while he is alive shows that there is a connection between the meanings that both will be fulfilled, namely the fulfillment of the human task in releasing the life of a patient as a form of respect for the decision of the patient.

At the same time, this can protect his dignity as an autonomous human being. Fulfillment of humanitarian obligations and protecting patient dignity shows the fulfillment of the elements of balance in value, namely fulfilling the obligations of health workers and fulfilling patient desires. Meanwhile, on the other hand, namely, on the side of Indonesian criminal law, legal objectives can fulfill legal certainty and justice. Fulfillment of legal certainty is the provision of a clear legal basis that can be applied and used by every community member under the aegis of the law.<sup>28</sup> Legal certainty can be said to be the provision of clarity, which can be the basis for assessing a particular action so that a problem can be resolved with certainty. The provision of legal certainty

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<sup>23</sup> Cut Megawati & Zul Aidy, *Euthanasia Menurut Perspektif Hukum Positif (KUHP)* (Denpasar: Universitas Udayana, 2019).

<sup>24</sup> Harry Murty, Ariella Gitta Sari & Irham Rahman, "Analisis Yuridis Terhadap Suntik Mati (Euthanasia) Ditinjau Dari Perspektif Hukum Pidana" (2020) 3:1 *Transparansi Huk* 43–65.

<sup>25</sup> Carr, *supra* note 14.

<sup>26</sup> Jeremy Bentham, *An Introduction to The Principles of Morals and Legislation* (Oxford: Clarendon Press, 1789).

<sup>27</sup> John Braithwaite, "Rules and Principles: A Theory of Legal Certainty" (2002) 27:0 *Aust J Leg Philos* 47–82.

<sup>28</sup> *Ibid.*

is indicated by the formulation of Article 344 of the Criminal Code, which explicitly states that every act of depriving a life is requested or not is the same as an act of murder, which is punishable by imprisonment.<sup>29</sup> With this legal basis, any implementation of euthanasia is prohibited and can be punished. This prohibition is apart from the absence of a sentence that directly indicates that euthanasia is an act that can link to murder in the Criminal Code.<sup>30</sup> Also, the fulfillment of justice's value is shown by providing protection to the community and protecting health workers. As indicated by the prohibition against euthanasia, health workers' protection is that every health worker, especially medical doctors, is immune to requests for life termination requested by a patient or individual parties.<sup>31</sup> With this immunity, medical personnel can be guaranteed the performance of their duties to save a patient's life. Meanwhile, on the patient's side, of course, they can also be protected from ending their life and can reflect on their life better.

### III. COMPLYING EUTHANASIA WITH THE INDONESIAN CRIMINAL CODE

A view from the perspective of human autonomy and the concept of criminal law can clearly be said to have contradictions that essentially treat a human's right to life.<sup>32</sup> The statement explains this contradiction that human autonomy is the right to treat human will, which is free in making choices about his life, while criminal law as a set of rules is formed from the accumulation of very diverse values to protect people having beliefs. That protecting one's right to life is the main thing. So it can clearly be seen that the view of human autonomy requires that the position of the right to life in every human being belongs to the human being himself, while at the same time the criminal law states that the right to life has protection aimed at making a person safe from actions that cause death. The view of human autonomy and the concept of criminal law, especially the one that applies in Indonesia, are two concepts that are difficult to unify to form a concept for the implementation of euthanasia that can be taken literally.<sup>33</sup> The opinion on the difficulty of combining the two concepts, namely between human autonomy and criminal law, is based on an apparent conflict of values. This conflict is because, on criminal law, its formation is based on various values, especially religious values, commonly referred to as religious values. The divinity, which is a thought that believes in power beyond human power, creates conflict with the thought of euthanasia in the concept of human autonomy, which has a focus on humanity as a whole.<sup>34</sup>

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<sup>29</sup> Hermanto, *supra* note 10.

<sup>30</sup> Satriana, *supra* note 9.

<sup>31</sup> David Gibbes Miller, Rebecca Dresser & Scott Y H Kim, "Advance euthanasia directives: a controversial case and its ethical implications" (2019) 45:0 J Med Ethics 84-89.

<sup>32</sup> Tom L Beauchamp, "The Right to Die as the Triumph of Autonomy" (2006) 31:6 J Med Philos 644.

<sup>33</sup> Pitono Soeparto, ed, *Etik dan Hukum di Bidang Kesehatan*, (Surabaya: Airlangga University Press, 2006).

<sup>34</sup> Sutarno, *supra* note 23.

The discussion of euthanasia in terms of human autonomy has considerations that lead to the right to life, which is thoroughly discussed, focusing on human life criteria.<sup>35</sup> The focus on human life criteria is explained by examining one core, namely the various phenomena that affect a human being physically and psychologically. The idea of euthanasia in human autonomy has the essence of everything that influences a person to be interested in ending life with himself. Everything that affects human thinking, which ultimately focuses on the desire to end life, is formed automatically based on the state of life he feels, and this is what gives place to the concept of human dignity, which explains that everyone has their thoughts about the honor they have, including in terms of protecting it.<sup>36</sup> So it can be emphasized that the concept of autonomy views euthanasia by using human dignity, which is further influenced by conditions in human life itself. The view of human autonomy shows that the study of the human condition by looking at the things that happen to humans makes euthanasia an action that can be done based on protecting the dignity of a human being. A full focus on the human condition as it is will indirectly contradict several values that shape legal regulation, particularly criminal law in Indonesia.

As previously mentioned, religious values have a significant role in influencing the rejection of the concept of euthanasia. The significant burden of rejection given by religious values is considered based on state ideology, namely the religious value reflected in Pancasila's first principle.<sup>37</sup> As the root of thought that shapes the nation's characteristics, it is clear that religious value will be dominant in every individual in Indonesia; the dominance of religious values automatically enters the realm of state governance arrangements, which ultimately affects the formation of laws their interpretations. Based on Pancasila's religious value, the highest legal basis for the state, the 1945 Constitution, must have an interpretive point of view that upholds religious values.<sup>38</sup> In euthanasia, the legal basis used is the article relating to human rights, namely Article 28A. The interpretation of the value of life in Article 28A, the 1945 Constitution, which has the basis of Pancasila, will undoubtedly create a view known as the sanctity of life or the sanctity of life, which states that it is the absolute authority of the Almighty in matters of giving and taking life opportunities from a human.<sup>39</sup> The highest legal basis of the state views and respects human life based on religious values. All forms of human activity aimed at ending life, especially regarding euthanasia, are obliged to be prohibited because this is the same as overstepping the authority of the Almighty in taking care of the creation and termination of human life. The implementation of euthanasia for all reasons, including respect for the right to human autonomy and the reason for the life of a human being, is deemed unable to exceed legal

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<sup>35</sup> Kontomanolis et al., *supra* note 15.

<sup>36</sup> Somerville, *supra* note 1.

<sup>37</sup> Mujiburrahman, "State Policies on Religious Diversity in Indonesia" (2008) 46:1 Al-Jami'ah 104.

<sup>38</sup> Fais Yonas Bo'a, "Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional" (2018) 15:1 J Konstitusi 27-49.

<sup>39</sup> Satriana, *supra* note 9.



authority based on religious values.<sup>40</sup> Divine value as the main milestone in the creation of law in Indonesia makes the idea of human autonomy less influential.

It can be clearly stated that the concept of euthanasia based on human autonomy is contrary to the basis for the formation of law in Indonesia. The regulations in the Indonesian Criminal Code, which have a basis for formation that originate from the state's highest legal basis, follow the same thing. The conditions in prohibiting euthanasia in the Criminal Code is affirmed in Article 344. This Article prohibits taking actions that result in the loss of a person's life at the request of the person himself.<sup>41</sup> The interpretation shows the relationship between religious values that such regulations represent the state's desire to protect the highest rights in a human being. Protection of the Almighty sacred gift aims for the people's benefit, namely to protect the life that exists for each individual. With the existence of regulations prohibiting euthanasia in Indonesia, based on the protection of life from the Almighty, the Indonesian Medical Code of Ethics (KODEKI) is a basic guideline for medical practice in Indonesia that prohibits euthanasia.<sup>42</sup> In line with criminal law norms, based on religious values, KODEKI expressly admits that based on statutory values, which relates to the view that only the Almighty has the right to deprive a human of life. Thus, religious value is the dominant value in determining euthanasia as a prohibited action. However, the study of criminal law apart from religious values shows the same view as stated in Article 344 of the Criminal Code. It asks a person in the act of terminating a life, causing the loss of life as it is closely related to euthanasia.<sup>43</sup>

The linkage of Article 344 of the Criminal Code to euthanasia reflects from a person's request for the sake of taking their own life with the help of another person. Losing one's life is the goal of carrying out the act of euthanasia, which clearly fulfills the element of murder that causes the loss of one's life.<sup>44</sup> In terms of meaning, anything that causes a person's life to be unnaturally lost is an act that can be so-called murder. In determining euthanasia as an act that is so-called murder, it is also necessary to study the law, particularly criminal law. An examination of the elements of a person's request and his utterance's seriousness to end his life are vital elements in determining whether the act constitutes euthanasia.<sup>45</sup> The statement on the element of homicide cannot fundamentally meet the criteria for the implementation of euthanasia. Thus, the next will lead to deliberate. Providing euthanasia, which is a full awareness to end a person's life, especially when a doctor knowingly knows that the patient has asked to

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<sup>40</sup> Indrie Prihastuti, "Euthanasia dalam Pandangan Etika secara Agama Islam, Medis dan Aspek Yuridis di Indonesia" (2018) 1:2 J Filsafat Indones 85–90.

<sup>41</sup> Murty, Sari & Rahman, *supra* note 25.

<sup>42</sup> Majelis Kehormatan Etik Kedokteran Indonesia, *Kode Etik Kedokteran Indonesia* (Jakarta: Pengurus Besar Ikatan Dokter Indonesia, 2012).

<sup>43</sup> Sofyan, *supra* note 11.

<sup>44</sup> *Ibid.*

<sup>45</sup> Dewi Asri Yustia & Utari Dewi Fatimah, "Pembaharuan Hukum Kesehatan Terhadap Tindakan Euthanasia Dalam Rangka Memberikan Kepastian Hukum dan Perlindungan Hukum Bagi Pasien dan Dokter" (2018) 19:1 Litigasi 52–88.

end his life, is an act that is done on purpose to eliminate life.<sup>46</sup> The statement regarding the seriousness of life's loss has the juridical aspect of euthanasia to an act of murder. Categorizing euthanasia, as an act of murder focuses on the awareness of ending a person's life without looking at any background for what the act was committed. The position of euthanasia in criminal regulation based on murder is primarily aimed at euthanasia actively administered.<sup>47</sup>

In terms of criminal law, the explanation regarding euthanasia shows that the act is an act against the law, which can be categorized as murder. In Indonesia, legal regulations that subsequently spread into criminal law and KODEKI strengthen this prohibition position by using religious values. The reality of the regulatory situation and KODEKI in Indonesia seems to give a doubtful position for the principle of human autonomy to justify euthanasia.<sup>48</sup> Thus, the right to human autonomy is limited by legal norms, especially criminal law, which is based on an ideological basis relating to the divine element. However, the statement on the review that has been carried out has not shown certainty over the law. Because of the absence of straightforward elucidation in the Criminal Code, euthanasia is included in the act of murder.<sup>49</sup> The state of the absence of euthanasia in the KUHP regulations is shown in Article 344, which only explains the matter of terminating life at the victim's request.

The conditions on the ground in the application of euthanasia were not discussed further, which could create a gap in the Criminal Code regulations. The applicability euthanasia of passive proves the gap in Article 344 of the Criminal Code relating to euthanasia.<sup>50</sup> Euthanasia that can be linked to Article 344 of the Criminal Code is for those that are consciously giving an active termination of life for others, but euthanasia passive, which is carried out by allowing someone to end his life indirectly, cannot necessarily link to that article. Conditions, such as medical conditions in the field, can provide various justifications that may include health conditions, economic conditions, and considerations of medical personnel's equipment and work effectiveness.<sup>51</sup> Some circumstances aim at the patient's condition to create compulsion for health institutions and medical personnel to let the patient die. Thus, the institution and medical personnel cannot be blamed or received justification because a condition forces them to be unable to do anything to save patients.<sup>52</sup> This compelling condition gives the position that an act of euthanasia can be carried out by meeting the passive criteria. It is not carried out based on directly eliminating the life of another person. Therefore, if reviewed by considering how it is given, *euthanasia* is not entirely prohibited, by focusing

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<sup>46</sup> Arifin Rada, "Euthanasia Sebagai Konsekuensi Kebutuhan Sains dan Teknologi (Suatu Kajian Hukum Islam)" (2013) 13:2 J Din Huk 333–343.

<sup>47</sup> Murty, Sari & Rahman, *supra* note 25.

<sup>48</sup> Anggraeni Endah Kusumaningrum, "Pergulatan Hukum dan Etik Terhadap Euthanasia di Rumah Sakit" (2019) 16:1 J Spektrum Huk 37–59.

<sup>49</sup> Satriana, *supra* note 9.

<sup>50</sup> Rifai, *supra* note 12.

<sup>51</sup> Dewi Liana, Musakkir & Hasbir Paserangi, "Euthanasia Pasif Dalam Hubungannya Dengan Pernyataan Pulang Paksa Dari Rumah Sakit" (2014) 3:1 Analisis 60–67.

<sup>52</sup> Rifai, *supra* note 12.

on its passive type due to circumstances that compel that a person cannot be saved due to various factors that cannot be fulfilled.<sup>53</sup>

#### IV. CONCLUSION

On the legal side, regulations related to euthanasia refer to human rights to their lives, which can be classified as acts against the law under the category of murder. Belief in religious values, as shown by the Indonesian nation's rationale, namely, Pancasila, has a strong influence on the interpretation of articles, especially in Article 28A of the 1945 Constitution of the Republic of Indonesia concerning the right to life. With the idea that the authority to give life and death is the Almighty's absolute authority, all actions related to ending life are overstepping the state's goal in upholding the right to life. Therefore, the Criminal Code, which is formed based on the premise of the 1945 Constitution of the Republic of Indonesia, will indirectly interpret Article 344 relating to murder at the victim's request as an act that violates religious values' nature. Even though there is a religious value that strengthens euthanasia prohibition, its passive implementation has a nature that can escape the Criminal Code provisions. The justification for euthanasia passively is related to several factors that cause force, as in the medical environment, where the condition of health, economy, and perhaps the availability of facilities makes it impossible to save the patient. So, the application of euthanasia by the concept of autonomy cannot exceed the provisions of legal regulations, especially criminal law, which is based on religious values. At the same time, these provisions still provide an opportunity for euthanasia to occur in Indonesia in a passive nature.

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#### COMPETING INTERESTS

The authors declare that they have no competing interests.

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<sup>53</sup> *Ibid.*

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