








## LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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**CRIMINAL LAW POLICY ON EUTHANASIA FROM THE PERSPECTIVE OF  
PANCASILA**

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**ABSTRACT**

Euthanasia is a term taken from Latin, namely “eu” meaning death and “thantos” meaning good; literally, euthanasia can be interpreted as accelerating death in a good way. In general, in the medical world, there are two types of euthanasia, namely: 1) Active euthanasia, which is a doctor's action of administering drugs to a patient to accelerate their death, and 2) Passive euthanasia, which is a doctor's action of not providing assistance or stopping treatment for the patient. In the Indonesian Criminal Code (KUHP), the articles closest to euthanasia actions are found in Articles 344, 345, and 304. Meanwhile, in medical ethics, Article 11 requires doctors to protect the lives of human beings. This research aims to examine and understand the basic idea behind the policy of criminalizing euthanasia and to understand how the criminal law policy *ius constituendum* on euthanasia is shaped based on the perspective of Pancasila in Indonesia. The type of legal research used is normative legal research, with the approach methods including: the Statute Approach and the Conceptual Approach. The results of the study are: 1) The basic idea of the criminalization policy on euthanasia in Indonesia is based on several aspects, namely Pancasila, law, ethics, religion, and Indonesian social and cultural values. The foundation of Pancasila, as life and death are absolute rights of God, is based on the principle of “Belief in the One and Only God,” and then Indonesia, as a country with the Pancasila ideology, must uphold Human Rights (HAM) as contained in the second principle, “Just and Civilized Humanity.” Then, there are concerns about the misuse of power by doctors in carrying out euthanasia and abuse by patients or their families due to economic and social pressures. 2) The legalization of euthanasia in Indonesia is a complex issue, especially regarding Pancasila as the way of life of the Indonesian people. However, if examined in depth and carefully, especially concerning

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humanitarian and justice aspects, there is still an opportunity for legalization, especially in the medical field. As stated in Minister of Health Regulation No. 37 of 2014 concerning the Determination of Death and Utilization of Organ Donors and Law No. 17 of 2023 concerning Health.

**Keywords:** Euthanasia, Basic Idea of Criminalization, Legalization Based on the Perspective of Pancasila

## **1. INTRODUCTION**

In 2014, a person named Ignatius Ryan Tumiwa, a graduate student at the University of Indonesia (UI), submitted a request to Komnas HAM to be given a lethal injection and conducted a judicial review to the Constitutional Court (MK) to legalize lethal injection. The reason Ryan Tumiwa applied was that he suffered from depression and also did not have the money to go to a psychiatrist for routine treatment (Belarminus, 2014). Then, later in 2005, the same petition was filed by Siti Zulaeha, who suffered from a coma after undergoing surgery due to an unwanted pregnancy in November 2004. Doctors stated that Siti Zulaeha was in a vegetative state and holes had been made in her chest and throat to help her breathe. Siti Zulaeha's husband could not bear the sight of his wife's suffering and the increasing medical expenses, which caused him to apply for a lethal injection at the Jakarta District Court, and this application was also rejected by the Jakarta District Court because Indonesian law does not allow euthanasia (Agatha, n.d.).

The problem of euthanasia will occur if there is someone who has an incurable disease or someone who has a prolonged illness and there is no hope for recovery, so that the victim or family urges the doctor to give more doses of medicine or tell the doctor not to do anything to hasten someone's death so as not to cause prolonged suffering to the victim. In a case like this, it makes it difficult for the doctor to make a decision or dilemma, if he does not do it, he will get continuous pressure from the victim's family and feel sorry for the victim's suffering, then if this is done it will be against religion, morals, and applicable law in Indonesia.

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Whereas in positive law in Indonesia the rules that approach the act of euthanasia are regulated in Article 344 of Law Number 1 of 1946 on the Criminal Code (Old Criminal Code) which reads, “Anyone who takes the life of another person at the earnest and convincing request of the other person shall be punished with a maximum imprisonment of 12 (twelve) years”. Meanwhile, Article 461 of Law Number 1 Year 2023 on the National Criminal Code reads, “Any person who takes the life of another person at the request of the other person, which is clearly stated with sincerity, shall be punished with a maximum imprisonment of 9 (nine) years”. Based on the readings of these articles that everyone is prohibited from taking the life of another person, even at the request of the person himself, if the act is committed, then it can be subject to criminal sanctions.

From the above provisions, as Pancasila is the basic norm and aims to uphold Human Rights (HAM), it can be said that the act of euthanasia cannot be justified because it is contrary to human nature itself (Fauzia & Hamdani, 2021). Therefore, everyone, including doctors, is obliged to protect and defend the lives of all people, even in serious and critical circumstances. Although in certain circumstances, doctors are required to take medical action after in-depth consideration, one way to save a patient is through such action. However, doctors are not allowed to take action to end the patient's life.

Based on the background as described above, the author finds the existence of legal regulations on euthanasia as contained in articles 344 of the Criminal Code and 461 of the National Criminal Code, but it has not been further regulated regarding the provisions of euthanasia if the patient experiences certain conditions, so that euthanasia becomes the last option to eliminate suffering. Then, euthanasia is viewed from the perspective of Pancasila, the fundamental principles of the state that are deeply rooted in the moral and ethical values of Indonesian society.

## **2. RESEARCH METHODS**

The type of research used in writing this article is normative legal research. Normative legal research, also known as library research, is a type of research that focuses

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on the principles, norms, and rules of laws and regulations that apply in society. Peter Mahmud Marzuki explains that normative legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal problems at hand. Normative legal research is carried out to produce new arguments, theories, or concepts as prescripts in solving the problems at hand (Nugroho et al., 2020).

Then Soejono Soekanto and Sri Mamudji gave the opinion that normative legal research is legal research conducted by examining library materials (secondary data), which includes research on legal principles, legal systematics, horizontal and vertical legal synchronization, legal comparison, and legal history (Soerjono Soekanto and Sri Mamudji, 2015). Normative legal research is said to be library research because the data source comes from secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials (Armia, 2020). So that if people conduct normative legal research, the researcher will start from a legal event and then look for references to a system of norms, such as laws and regulations, legal principles, and legal doctrines taught by experts, to find legal construction and legal relationships.

### **3. DISCUSSION**

In the formation of laws and regulations in the Indonesian state, they must not conflict with Pancasila as regulated in Law No. 12 of 2011 concerning the Formation of Legislation. In Article 2 of Law No. 12/2011 on the Formation of Legislation, it is emphasized that Pancasila is the source of all sources of state law. Therefore, in the formation of a law, it must not conflict with the values contained in the precepts of Pancasila.

In terms of legalizing euthanasia in Indonesia, there is still a lot of controversy, especially if it is related to the first principle, namely “God Almighty”. However, in practice, health workers or doctors often face difficulties when there is a patient who experiences a disease for which no cure has been found. One example, when Indonesia experienced a COVID-19 outbreak in 2020, where no drug had been found to deal with

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the outbreak, so health workers did not take action and gave patients exposed to COVID-19 drugs to hasten death. For this reason, it is necessary to provide a comprehensive limit to what can be said to be maximum doctor's help so that not all doctors' actions that result in death for the patient are said to be euthanasia.

In science, death has three interpretations: First, euthanasia (death that occurs due to natural processes). Second, Dyathanasia (unnatural death). Third, Euthanasia (death that occurs with help or without help) (Santoso & Fitriani, 2020). Outside of Indonesia, there is the concept of Death With Dignity, which is the idea that terminally ill individuals should have the right to make their own end-of-life decisions, such as determining how much pain and suffering they should endure and when to end their own lives (Agastya, 2024). Then, in the context of criminal law in Indonesia, death is a condition of a person when his breathing has stopped, and if he is still breathing, he is not considered dead. Then the problem is, what if a person, in terms of breathing, has stopped, but his brain can still get stimulation? Can this also be said to be dead in the context of legal science in Indonesia?

In this case, the author agrees that death is when all brain functions are no longer able to respond to stimuli (brain death). Because at that time, a person can no longer receive, process, and send information from outside, even though it is a characteristic of natural human life. So that when the doctor takes action to end medical treatment if the patient is already where his brain activity has completely ended, the doctor who takes this action cannot be said to be murder or helping the patient to commit suicide.

In the context of Indonesia, the formulation of the Almighty God as contained in the first principle of Pancasila has given a distinctive nature to the Indonesian state, which is not a secular state that separates religion and the state, nor is it a religious state based on a particular religion. The Indonesian national state is a state that recognizes God Almighty according to the basis of just and civilized humanity, so that the Indonesian state must maintain noble human character and uphold the ideals of humanity as a creature of God with all its rights and obligations.

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The first principle of Pancasila, as the philosophical basis of the state, is Belief in One God. Because, as the basis of the state, this principle is a source of value and a source of norms in every aspect of state administration, both material and spiritual. This is confirmed by Moh. Hatta, quoted by Kaelan, said that the principle of God Almighty is the basis that leads our state ideals to organize good for society and state administration. With the basis of the principle of God Almighty, state politics gets a strong moral basis. This principle is also the basis for leading spirituality to the path of truth, justice, goodness, honesty, and brotherhood (Kaelan, 2016).

About the Indonesian legal order, the material value of the Almighty God must be a source of material and a source of value for positive law in Indonesia. In this sense, in the Preamble of the 1945 Constitution, there are legal values of God's law (Alinea III), natural law (Alinea I), and ethical law (Alinea III). These legal values are a source of material and value for every formulation and product of positive law in Indonesia (Fauzia & Hamdani, 2021).

While the second precept, "Fair and Civilized Humanity", as a humanitarian country, the Indonesian state, as stated in the 1945 Constitution, namely, "protecting all citizens and all their blood". This means that the state protects all human beings as its citizens without exception; therefore, the state must protect human rights and realize them in legislation contained in the 1945 Constitution Articles 27, 28, 29, and 30. The state is obliged to develop human dignity, and the state must place humanitarian morals as the moral of the state and the administration of government.

The Indonesian state, based on Pancasila, is a just and civilized state, basing nationalism (nationality) on the nature of just and civilized human nature. Indonesian nationalism is a nationalism that is humane, just, and civilized, so it is not a chauvinistic nation (Hamdani et al., 2023).

In the Indonesian context, as the author has explained above, the act of euthanasia in Indonesia is only known in two forms, namely, euthanasia carried out at the request of the victim themselves and euthanasia carried out by deliberately allowing victims who

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need help. The presence of euthanasia is considered a human right in the form of the right to die, which is considered to bring happiness and pleasure to oneself. The argument of the right to die, which is a human right, is a consequence of the right to life. Therefore, when everyone has the right to live, everyone also has the right to die, which we then recognize as euthanasia.

Indonesia is a state that is based on a just and civilized humanity. If it is associated with Islamic teachings in connection with the act of euthanasia in the medical world, we can quote the verses of the Koran and the traditions of the Prophet Muhammad SAW which relate to this matter. In the Quran, Surah Al-Anbiya verse 7, the translation reads “And we did not send (messengers) before you (Muhammad), but some men to whom we gave revelation, so ask those with knowledge, if you do not know” (Najla, 2023). Then the Prophet Muhammad in his saying stated, “If something is handed over not to the experts, wait for the time of its destruction” (Hamidi, n.d.).

What is said to be an expert in this case is a health worker or doctor. Doctors can provide diagnoses to patients based on screening or assessment, so that doctors know when patients are given treatment and stop medical care, or when someone is declared dead/dead. If the patient has brain activity that is no longer functioning and the patient has experienced severe pain that cannot be helped, so that the doctor takes action to stop treatment, can this be said to be euthanasia?

To answer this question, we can take a general opinion that taking the life of another person is a crime, but this must be modularized, and in the case of euthanasia in the medical field should be an exception to be given punishment. This is also contained in Law No. 17 of 2023 concerning Health, Article 192 states “The hospital is not legally responsible if the patient and/or his family refuses or stops treatment that can result in the death of the patient after a comprehensive medical explanation”. Based on these provisions, health workers or doctors cannot be prosecuted legally in the event of death to the patient because of their request to refuse medical action. However, if the action taken by the doctor without the patient's request, it can be said that the health worker or

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doctor has committed a negligence/negligence, so that in this case a legal prosecution can be carried out and the health worker or doctor is responsible for the action as stipulated in Article 304 of the Criminal Code, 359 of the Criminal Code, and Health Law Article 440 paragraph 2, then the health worker or doctor can be subject to a maximum imprisonment of five (5) years.

The future criminal law policy (*ius constituendum*) towards the act of euthanasia should be regulated in a limitative manner as contained in Article 461 of Law No. 1 of 2023 concerning the Criminal Code, because the act of euthanasia is not contrary to Pancasila if it is strictly regulated through special regulations that guarantee the protection of basic human rights and the principles of national morality. As with the application of the death penalty, which is still enforced in Indonesia based on legal considerations and substantive justice, euthanasia can also be legalized with humanitarian arguments and respect for the dignity of individuals who experience unbearable terminal suffering.

The principle of Belief in God Almighty in this context can be interpreted as a form of respect for the value of compassion and humanity, while still providing space for responsible and ethical medical decisions. Similarly, the second principle, Fair and Civilized Humanity, requires dignified treatment for every individual, including the right to be free from prolonged suffering due to incurable medical conditions. Therefore, comprehensive and specific legal arrangements are needed so that the legalization of euthanasia does not lead to abuse of authority, remains within the ethical corridor, and is in line with the values of Pancasila as the basis of the state. This is as regulated in Minister of Health Regulation No. 37/2014 on Determination of Death and Utilization of Organ Donors, Minister of Health Regulation No. 290/MENKES/PER/III/2008 on Approval of Medical Actions, and Law No. 17 of 2023 on Health.

The rules contained in Article 344 of the Old Criminal Code and Article 461 of the National Criminal Code still regulate the actions of a person who takes the life of another person at the request of the person who expresses with sincerity. Unfortunately, the policy on this regulation only changes the criminal sanctions, which originally in the Old

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Criminal Code were punishable by 12 (twelve) years. Whereas in the National Criminal Code, the criminal sanction for such an act is 9 (nine) years.

#### **4. CLOSING**

The future criminal law policy (*ius constituendum*) on the act of euthanasia in Article 461 of Law No. 1 Year 2023 on the Criminal Code, should limitatively regulate the prohibition of euthanasia based on special conditions for medical measures. Legalization of euthanasia in Indonesia can be seen as not contradicting Pancasila if it is strictly regulated through special regulations that guarantee the protection of basic human rights and the principles of national morality. As well as the application of the death penalty, which is still enforced in Indonesia based on legal considerations and substantive justice. This is as regulated in Permenkes Number 37 of 2014 concerning Determination of Death and Utilization of Organ Donors, Permenkes Number 290 / MENKES / PER / III / 2008 concerning Medical Action Approval, and Law No. 17 of 2023 concerning Health.

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