

Euthanasia from the Perspective of Indonesian Norms

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ABSTRACT

This paper investigated euthanasia from a variety of norms in Indonesia. From the perspective of religion, almost all religions oppose euthanasia to be conducted as it discords God's order. However, it is interesting that some of Moslems are, in fact, likely to consider a passive euthanasia for an individual suffering from a terminal condition which any treatment is no longer useful for him. The Lutheran claimed that either nutrient or infusion is no longer needed for patients with terminal condition and no hope of recovery. From the perspective of ethics and profession, euthanasia is considered to be bad, inhuman, violating the right of living, and so on. Medical ethics work through the norms of morality in performing its profession. What doctors perform should be beneficial not taking patients into disadvantageous conditions, appreciate the ideas of their patients with an autonomy toward their own body, and fair or holding on the principles of justice. The current doctor-patient relationship is confusing due to the common condition in which Indonesia is still encountering

a conflict of socio-cultural and legal values. A willing to survive which goes upon a life with communal value-oriented such as mutual consent and fatherhood does exist in one part, however, a major doctrine of *rule of law* simultaneously exists as well in another part whether it is realized or not. Therefore, it needs a legal regulation on euthanasia to meet the sense of justice, to respect the patients' rights, and to ensure which doctors are allowed, banned or under arrest.

Keywords: Euthanasia, Indonesia Norms, Society, Law, Doctor.

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INTRODUCTION

In Indonesia, the concept of thought on organizing a development of health shifts over time from relying on disease treatments and health recovery to organizing a full recovery with prevention care and health improvement, known as a paradigm of health, to be stressed on. This paradigm of health is necessary in the era of Social Security Organization, in this case is for health security, to strengthen its system through the efficiency of cost for patients needs. A reasonable consequence of this paradigm is that every action must be health-oriented by maintaining and improving the quality of individuals, families, and society, as well as the environment, taking sustainable efforts to keep and improve the quality of health care, make it equitable and affordable, as well as encouraging people to have a healthy life [1; 2; 3; 4].

Overall, a focus on organizing national building with insight of health, security of health, and the improvement on professionalism, as well as decentralization on health should be taken into account to reveal an optimal level of health for every individual. Indeed, all of those measures need adequate legal devices in order to provide a legal certainty and full protection toward provider of health care and people having the service [1; 5; 6; 7; 8; 9].

Furthermore, Palliative care has become the focus of interest in many countries. Since the 1980s, palliative care interventions have been more and more integrated into the formal health care system, in a process of professionalization and specialization [10]. Palliative treatment is developed and aimed to make hopeless patients not too suffer with mortality. From the perspective of law, it argues that palliative treatment is the fine form of euthanasia, and it may turn into indirectly-active euthanasia. Also Sigrid Dierickx et al, in their study concludes that in the context of legalized euthanasia, euthanasia and palliative care do not seem to be contradictory [11]

Discussing the concepts of euthanasia in societal norms, it seems that society is neither ready nor quite realistic to

accept and legalize euthanasia, despite the likelihood of accepting other forms of manslaughter. Many people are not quite rational yet. For instance, when one of their parents or families is suffering from a terminal illness and the doctor has said that the patient is no longer have chance to recover from his disease, and when the treatment is about to be discharged, they feel hard with it [12; 3; 13; 4].

Patients in coma and with a ventilator or breathing apparatus on their body for years have no chance to recover from their disease still, in fact, undergo the treatment, although the cost is underpaid and thus sacrificing all they have such as selling their land or other things they have for the sake of the patient's pseudo survival [14; 15; 16].

This condition is similar to an individual with terminal illness, especially the patient with dead brain who is no longer do any personal activity either social, legal, or other ones. It also clarifies that the doctor is no longer able to cure the patient, and thus it is identic with death. The only difference between them is that the patient's family may still hope for a miracle to happen and make the patient live again since, in visual look, the heart is still working as well as the lung, although it is all due to the use of supporting devices. However, such miracle rarely happens, and even though it happens, we could not see the percentage of evidence yet.

It makes confusion on who should decide to take all the treatment off, including ventilator as the life-supporting device, and it makes the related parties hesitant and feel guilty since taking off the ventilator may violate the law as it is similar to a murder [17]. In a situation on which a hospital is out of the necessary devices, the doctor may consider which patients have more chances for recovery, and thus, another patient having those intended necessary devices on his body is likely to be deferred and latterly died. It may be classified into euthanasia. Therefore, this study would investigate euthanasia from the perspective of norms applied in Indonesia.

Euthanasia from the Perspective of Religion Norm

We all know that religion is the most important guidance for human in their life. In England, study of Andriy Danyliv and Ciaran O'Neil conclude that opposition to legalisation of euthanasia is religious beliefs and the strength of those beliefs [18]

Islam

Madinah Charter, the World first constitution, respected the rights of every individual as mentioned in Article 12 of the charter. Therefore, Islam has juridically concerned on and appreciated the rights of individual. In that moment, Rasulullah still lived and Islam just initially developed. It concluded that Islam's respectfulness on individual rights. Al Qur'an in Surah Al-Mulk verse (2) reminds that life and death is in Allah's hand, and those are created to test the human's faith, deeds, and loyalty toward their God. Islam concerns on the salvation of human life since they were in mother's womb up to the rest of their life [19].

In the notion of reasoning a problem, one may use his faith and mind. Thus, in reasoning euthanasia and relate it with the tenet of Islam, one may use his faith and logical mind. The importance of logical mind in Islam makes Hamka argues that the Prophet Muhammad S.A.W. has ever claimed that religion is logical mind, and there was no religion on people with no logical mind [19].

Allah promises to make the believers die easily. Toward people with terminal condition, their death does not need to be hastened, neither through a fine way (e.g., euthanasia) nor arbitrarily killed. Allah gives them chance to repent and die in peace/ *khusnul khatimah* [20]. It concludes that Islam opposes euthanasia. This prohibition is precisely for the importance of the patients. There is a belief that human only live in this world temporarily rather than the hereafter [21]. Death, as the end of a temporary life and as the gate to go to another eternal world, should be encountered by using the chance of repentance. Indeed, patients who patiently face their death and repent toward God may take benefits after they pass the process of mortality.

Although the disease has already been in terminal condition, a miracle from Allah may still possibly come; things that are difficult to investigate. As we know, law in Islam is classified into 5:

1. *Compulsory*, the order must be conducted. When it is conducted, one may get rewards, and conversely, when it is dismissed, one may have sin;
2. *Sunah*, suggestion, when it is conducted, one may have reward, however, when it is dismissed, one may not have any sin;
3. *Haram*, When it is conducted, one may have sin, and conversely, when it is dismissed, one may have reward;
4. *Makruh*, when it is conducted, one may not have any sin, however, when it is dismissed, one may have rewards;
5. *Mubah*, it could be either conducted or dismissed, as it does not effect on reward or sin [22]

Relating to those laws of Islam, passive euthanasia is considerably *haram* by some theologians requiring people to take medication when they are sick, and it is considerably *mubah* by some theologians arguing that it does not need to take medication when people get sick as it certainly gives benefits toward them [23]. Toward the

directly active euthanasia, it must be considerably *haram*, rather than indirectly active euthanasia such as passive euthanasia.

In the notion of murder, Islam claims that for whoever doing murder, it depends on three kinds of rights, including Allah right, rights of beneficiaries, and right to be killed. Therefore, when an individual have repentance and surrender his life to the beneficiaries of a patient killed, he is likely to be free from Allah rights, although it still depends on the beneficiaries whether they do *qisas* or forgive him by charging him (i.e., *diyat*) or not

In the notion of euthanasia, if the order is from the patient self or his/her family and if the doctor is still considered as the murderer, he should surrender to the beneficiaries of the patient and they may make a mutual consent that the family will forgive the doctor without any fine to be charged on him.

Hadith of the prophet Muhammad S.A.W., narrated by Annas r.a. said that Rasulullah ever said: Do not ask for death, as suffering may come. If it is crucial to do such thing, say the following pray: Ya Allah, extend my age if life is better for me, and give me a death if it is better for me." From this hadith, it is clear that asking for death (i.e., euthanasia) is forbidden [6; 16; 3; 13].

Such pray is good and should be conducted by patients who still enable to pray. For patients in coma for years, their family should always pray for them.

Surah An Nisa' verse (29):

"For you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever merciful"

From this Surah, it is clear that Islam opposes suicide. Thus, directly-active euthanasia should not be justified. However, what if the idea is: the patient is sure that his disease will not be recovered, and after a long discussion and explanation from the more than one doctors, he is sure that death in *khusnul khatimah* is everyone's dream ever. As long as he has chance to die in *khusnul khatimah*, he is likely to ask for euthanasia [24].

In Surah Al'A'raf verse (34), we can find that when their time has come, they will not remain behind an hour, not will they precede [it].

Thus, it is Allah determining for life and death, not human. Therefore, indirectly-active euthanasia is not aimed to shorten one's life, but merely mitigating his suffering by some painkillers, and one who determines one's life is only Allah S.W.T.

Surah Al-Maidah verse [3] and Surah Yusuf verse [87] assert that being hopeless is the nature of an infidel. One should keep struggling without ever being hopeless for anything. Euthanasia in Islam is known as *qatl ar-rahmah* or *taisir al-maut*; an intentional action to make one's death easy due mercifulness and it is aimed to mitigate the patient's suffering, whether positive or negative. At the first Islamic Medical Conference in Kuwait in 1981, it claimed that there was no reason justifying euthanasia or murder due to mercifulness [1;7;13; 8].

In the notion of efforts, one is not allowed to stop his effort. In this regard, the attempt refers to recovery through any health treatment and devices. Besides those attempts, another effort that Islam concerns on is being patient, praying, doing good deeds which includes giving

charity to the poor and orphans [25]. At the terminal condition based on medical version, non-medical efforts are possible to be alternative ways, and it is beneficial to have death in *chusnul khatimah* and for the sake of life hereafter. It is important although the *fiqh* of Islam, narrated by H. Sulaiman Rasjid explained about human rights, including right for death [26], despite its unclear explanation on what those rights are.

An idea about human and knowledge by C.A. Qadir as narrated by Hasan Basari, a prominent philosopher from Pakistan, argued that Allah attributed human with superiority, in this case, Adam toward angels had knowledge about things, as mentioned in Al-Qur'an [27]. That is how Allah appreciates and values more toward insightful being. Furthermore, the first revelation that Rasulullah S.A.W. received from Allah contains an order, "read with the name of Allah". Hence, every mankind should seek for knowledge.

In regard with euthanasia, science that doctors have and determine that an individual's disease is no longer able to be cured should be appreciated [28]. In order to avoid or mitigate any error, since doctors are also human being, ones who determine whether or not a disease is no longer able to be cured should be a team, indicating that it is more than one doctor [15; 12; 6].

Roumanian Catholic

Since in the middle of 20th century, catholic churches had been struggling to give as clear doctrines as possible about a health care for terminal conditions, related to the churches' moral tenet on euthanasia and survival system. Paus Pius XII, one who witnessed and imprecated any eugenetic and euthanasia systems by Nazi as well as the beginning of modern systems of survival, was the pioneer who clearly explained this moral problem and defined doctrines. On 5th of May, 1980, a congregation for religious tenet established a declaration about euthanasia that further explained this doctrine, particularly to the increasing complexity of survival systems and the incessant propaganda of euthanasia as a legitimate media to end the life. Paul Yohanes Paulus II, concerning on the increasing practices of euthanasia in encyclical Bible of Life or *Evangelium Vitae* No. 64, warned us to strive against "a worrying tendency" from "the culture of death" in which the increasing number of old and weak people considered to be burdening. Paul Yohanes Paulus II also asserted that euthanasia was a faulty mercifulness; pseudo mercifulness. The true mercy drives to carry on suffering to one another. This mercy should not kill people suffering from terminal condition we could not carry on. (in *Evangelium Vitae*, No. 66).

Hindu

The perspective of Hindu toward euthanasia lies into the teaching of *karma*, *moksa*, and *ahimsa*. *Karma* is a pure consequence from all kinds of will and intention of doing things: good and bad, physic/sould and mind, words and deeds. The accumulation of bad karma may hamper *moksa*, a freedom from reincarnation as a primary goal of Hindu. *Ahimsa* is the principle of "anti-violence" or forbidden to harm others.

Suicide is forbidden in Hindu as it may disturb the process of reincarnation due to aggregate bad karma. Human's life is a valuable chance to pursue a better level of reincarnation [29]. In Hindu, when an individual commit

suicide, his soul will not go into either hell or heaven, but remains in this perishable world as a bad spirit and go with no direction until such a period of life, and he will go into hell to receive worse punishment before finally reincarnating for having his previous *karma*, started from the beginning.

Buddha

Buddha puts a great emphasis on value of life, and avoiding any action of murdering others is considered to be the moral tenet of Buddha. Thus, it is clear that euthanasia should not be justified. This religion also emphasizes on "mercifulness", and unnaturally precipitating someone's death is a kind of violence against the principle of Buddha.

Orthodox Church

Churches always assist the believers since they were born, during their lives, and up to their death by having pray, ceremonies or ritual, sacrament, speeches, teaching, and love as well as faith and hope. Every life and death is united with ecclesiastical life. Death is bad and considered as a symbol of resistance with life that God has granted. Orthodox churches have a strong stance toward the principle of pro-life, and thus, it may against the principle of euthanasia.

Protestant

Protestant consists of various denominations with different approaches in their perspectives of euthanasia along with people assisting the execution of euthanasia. Several perspectives from different denomination such as: United Methodist Church in its teaching argued that "the utilization of medical technology for extending the life of patients with terminal condition needed an accountable decision on when the supporting devices could truly support their chance of life, and when it would end". Lutheran Church in America classified the artificial nutrition and dehydration as a medical treatment not referring to a fundamental care. In particular case, such medical treatment is likely to be useless and burdening, and thus, the moral responsibility could be stopped or nullified and let the death come.

A Christian believes that he is in a unique position to let the life go as he believes that death of a physical body is a beginning to go to a better life. Furthermore, the head of Catholic and Protestant recognize that if putting this life off is legalized, it may indicate a forgiveness of having sin, and the future is a poison for health care, dissolving their hope of being recovered.

From the beginning, the way Christians respond to "suicide" and "mercy killing" issues based on the perspective of "the holiness of life" that gives by God. Ending life due to any reason may against the aim of this grant.

The new covenant gospel by Mateus 25 "therefore, I say to you: you do not need to worry about your soul, what you should eat or drink or any part of your body, what you should wear. That soul is more than food and that body is more than cloth, isn't it?" (Pil. 4:6, 1 Ptr. 5:7, 1 Tim. 6:6, Ibr. 13:5) 27, "who, amongst you, are worry about continuing their ages?". Following this tenet, soul is more important than anything and human will not be able to change it, either extending or shorting it. Again, God will decide.

In the context of law, torturing someone is a violence, however, if it has a good aim, it should be taken into account. This is a legal doctrine or jurisprudence, and a teacher “racking” his students or parents “hurting” their kids to give a learning is one classic instance of this thing. In Christian world, hurting is sometimes allowed such as nailing and passing through someone in Philippines.

Relating euthanasia with religions, all of those religions oppose euthanasia. Interestingly, some Moslems are likely to accept a passive euthanasia by taking an idea that someone with no hope for recovery and closed to death should be patient, religious, and any treatment is no longer useful. Luteranian assume that nutrient-input and infusion are no longer needed for patients with no hope for recovery.

Socio-Cultural Norms

The ownership of life

Who does actually belong one’s life? Does it belong to an individual in personal or belong to his family or both? In Western with individualistic society, one’s life does belong to individual. Conversely, in collective community, one’s life belongs to both himself and his family. In Indonesia, one’s life belongs not only oneself but also his family, and even the community. Hence, losing one’s life will hurt the whole family or even the community.

Someone may feel that he own his one life. However, it does not mean that he owns his own stuff. Latterly, may that life be seen as goods or things? In legal setting, goods are classified into two types, tangible and intangible. As electricity is now likely to be considered as tangible goods, one’s life should be seen as goods as well. Therefore, the term “losing life” is taken to refer to “pass away”.

Toward treating oneself’s life, death penalty is stil applied in Indonesia. Someone sentenced with death is no longer has rights to treat his life by his own. The right is already taken by the state for the sake of law. In Indonesia, as long as an individual is legally acquitted, he may commit suicide, as there is no prohibition for someone to do suicide. Therefore, someone commit suicide will not be sentenced when he failed doing so [1; 12; 13; 8].

Toward Natural Death as the End of Life

Life and death is actually in Allah’s hand. However, F. Tengker questioned the existence of a natural death. Since being fetus, every human has been defined by a broader health care system such as vaccination, higlena, medical check up, and so on, making them no longer be natural. This also happens, and even sometimes, is apparent at the end of one’s life [30]. As previously described, Tengker may assumed that almost every death is not natural, but the process of it involved a lot of intervention from others. Similarly, Montesquieu, a secularist, seemed disagree with the doctrine of fate, which seems causing many bad consequences on human. A belief that salvation has been determined by God, not by an effort of good deeds, makes some people are tempted to violate the law of nature [31]. Death in euthanasia setting is on behalf of patients’ importance, not for providing convenience toward surroundings such as family, health care providers, and the sitter. Organizing euthanasia should be willing-based, indicating that after the request of euthanasia is proposed many times from the patient for the sake of his interest. It decides that: the request of euthanasia should be driven by the patient’s willing to get rid of his suffering with the last

method [30] Indeed, despite the motive as previously described, euthanasia is not only beneficial for patients by dissolving any sustainable suffering, but also for their family. This consideration should be taken into account to strengthen the decision of having euthanasia [15; 12;3].

In fact, when a patient is already in the terminal condition of his disease and has very limited chance for recovery, and his health is even getting worse, many of his family are then likely to pray for his health or death, under Allah’s order. Thus, another attempt to lose the patient’s suffering, in religion context, is by praying for him to be free from his suffering. This is similar to euthanasia, in medical setting. In this regard, praying is much more acceptable rather than euthanasia since it seems to seek for the best result for the patient, whether it will come into death or recovery. Those are from the perspective of religious norms. Nevertheless, it is still difficult to bring them into legal norms, as Indonesia is not a religion-based country. However, carrying particular norms of religion into legal norms may be possible to happen oneday.

“Doctor, are you doing this for me, or I am doing this for you?” [32]

This question ever announced in a TV program in Britain about the business impact on current health care. It may emerge to patients as well, although some ever argued that this question is not appropriate to announce. If we see the current condition of health care in Indonesia, it seems that this question is indeed shows its “aroma”. However, many idealists working for the sake of humanity are still found.

Perhaps, this question may “pseudoly” emerge from a patient with a terminal condition, or a patient feels like suffering so much from his disease but the doctor remains conducting some treatments he does not wish to experience as those all treatments are painful, costly, but with limited chance to success.

Toward the high cost of health care, some developed countries do not see it as problems since it has been covered by the state or through insurances. Conversely, Indonesia is still strunggling to be in that level.

The high cost of medical check up and treatment in a hospital is due to the very high cost on investment, medicine, and other health attributes such as the high expense and the long period of education for doctors and other medical staff and insurance over malpractice. Furthermore, it may also be due to the image created by people toward the doctors or the likelihood of crime from particular people or corporation, such as hospital, as well as the wanting to show up the wealth that hospital sees it as an opportunity for business.

As the increasing cost of health care, it needs to conduct a specific study on the correlation between the request for euthanasia and economic problems, as it indeed does although the result is not quite significant [14; 15; 6; 3;13].

Toward the Quality of a Patient’s Life

It often argues that although an individual is still alive, if the quality of his life is poor, he would rather choose to die. Toward the quality of one’s life is the patient’s condition perceived according to the socio-cultural context and the system of value he follows, including the goal of life, hope, and intention. Following Jennifer J. Clinch, Doborah Dudgeeon, and Harvey Schipper; as mentioned in the Decree of Minister of Health on Paliative Care, the dimension of the quality of life includes:

- a. Physical symptoms
- b. Functional capacity and activity
- c. Family prosperity
- d. Spiritual
- e. Social function
- f. Contentment over the treatment, including financial issue
- g. Future orientation
- h. Sexual life, including the depiction of self
- i. Function in work

Thus, it is clear that patients' condition leading to a request of euthanasia is not only due to his suffering or particular physical symptoms, but also other complex problems.

Toward the Culture of Society

Culture derives from *Sanskerta* *Buddhayah*, a plural term of *buddhi* which refers to sensibility or mind, and the definition of culture, following E.B. Tylor [33] is complex as it involves insight, credence, art, moral, law, custom, and other capabilities as well as habits that human does as the member of a society.

Every human has material and spiritual aspects in their lives. Material aspect involves efforts, human's capability to create things, and the spiritual aspect involves creation resulting in knowledge, and work resulting in beauty. Human pursue knowledge through logical mind, harmonizing between behavior and norms through ethics, and reaching beauty through aesthetics [33]

In practice, when we find a patient with terminal illness, we often pray for him/her by reading *Al Qur'an*, such as *Yaasin*. Is it actually not a very fine form of "passive euthanasia" beyond the term of medicine? The only attempt is through pray intended to hasten either the cure or death by God?

Another form of "passive euthanasia" is that if one of family members suffers from prolonged terminal illness, some groups in a society may believe that he/she has "guidance". In order to make it good, in case of hastening the process until the death comes, the "guidance" is then taken or dissolved.

Regarding to euthanasia in broader society, a group of community may agree with this issue, and others may disagree. The initial phase of discussion rarely gives its acceptance although they ultimately agree with euthanasia after having understanding on it. Only few of them understand the meaning and the kinds of euthanasia.

Societal habits show that euthanasia is relative seldom to conduct. This is due to the fact that the family of the patient or victim gets benefit from the incident of euthanasia, or they may even possibly ask for it, as well as the ignorance or the lack of understanding on euthanasia itself. Moreover, it is also due to a common attitude to not prolong any problems with someone who has passed away.

For the patient's family who seems to get benefit from the implementation of euthanasia, and they may even ask for it, in fact, feel so sorry to the patient and the family, or it may be due to the lack of capability to cover the cost of treatment, especially when the staff of the hospital argue that the patient is no longer survive.

The lack of understanding about euthanasia may happen due to the complexity of medicine and common people with average level of education may feel difficult to

understand the point, or they may probably have incorrect information from irresponsible people. However, many incidents that are unclearly considered to be euthanasia cases have already happened.

The common attitude to not prolong any problems with others who already passed away is such a way to respect them. All debt that possibly belongs to the deceased will be paid back by the beneficiary or asked to be abolished.

When a passive euthanasia occurs, in which any treatment is no longer useful and should be shut down, it is expected that the patient will immediately see his death, and when it does happen, it is considered to be fulfilled. Conversely, if the patient takes longer time to see his death although all treatments have been already settled down, it is considered to be useless and may emerge an argument that such passive euthanasia is worse than the natural death [34].

From Art to Ethics to Law

The Hypocrates in the forth century before Masehi had practiced medication as an "art" with its advantages, the idea of nobleness, and the homage toward human body. In 12th century, this art evolved to be science as many universities grow to become Science Development Center [35].

The engagement of science that directly related to the human's life and death made the oath of Hypocrates was adopted as the ethical code of medicine. For the first time in the western world, this ethical code was noted by Sir Thomas Percival in 1803, in Britain. This document became the basis of conducting professionalism by every doctor related to hospitals and other organizations, and it might solve and prevent any conflict amongst them.

In 1847, the USA established a regulation dealing with the organization of medical professionalism and it is in the form of *Code of Ethics of the American Medical Association*, followed by the first International Code of Ethics of Medicine formulated by *World Medical Association* in London in 1949. The moral requirement of medical professionalism finally established *Medical Law* through its first congress in Belgium in 1967. In Canada, the federal government is responsible for criminal law and the provinces have jurisdiction over health care and enforcement of criminal law. In 2014, the Province of Quebec exploited this constitutional arrangement by legally redefining end-of-life medical care to include euthanasia [1]. The law came into force in December 2015 [36].

Therefore, medicine has gradually sifted from any aspect of morality to be scientifically independent under the medical law it follows. Although it may not be fully sifted from moral aspect, the complexity of problems in medicine may make it happen.

Illich found that institutionalization was the pioneer of medical ethics acted as ones authorized to apply medical ethics in specialty. Illich called the phenomena of theory applied in medical practices as "*technical interprise*" by doctors, as though they may arbitrarily determine the patients' destiny, whether they are classified into terminal or non-terminal condition. Medical diagnosis as though provides medical authority on a totalitarian power [37].

Ethical Norms

Common Ethics and Professional Ethics

In general, there are two types of ethics, common ethics and professional ethics. In regard to common ethics, an individual willing his family to die soon is considered to be bad person, however, when it relates to the terminal condition of the patient (e.g. a patient with a prolonged terminal illness, a patient with certain disease making his body get so thin, a patient with a cronical cancer making his body smells so bad), people surroundings may feel pity for the patient and they will not blame the family, as it may be better for the patient to pass away rather than suffering so much from a terminal disease. However, in Javanese, there is a proverb: “*ora ilo nggege mangsa*”, indicating that it is not good expecting something bad to happen.

Another type of ethics is professional ethics. In this case, the professional ethics of being doctor refers to any medical staff engaged in an oath pronounced upon their inauguration as doctor. The oath pronunciation of being doctor as currently followed is based on the Decree of the Minister of Health No. 434/MENKES/SK/X/1983 on 28th October 1983, which basically contains the ethical code of doctor profession and functions as the base for doctors to perform their profession.

Indonesia Medical Code of Ethics on Doctor's Obligation toward Patients is mentioned in Article 10 that every doctor must always remember their obligation as ones protecting others' life. From the perspective of this ethics, euthanasia is against to Indonesia medical ethics [38]. This is right, since it is not only against the medical ethics of this country, but also against the oath of Hypocrates acted as the base of every doctor's oath around the world. In medical ethics rooted to the oath of Hypocrate, it stated that a doctor would appreciate every individual's life since they were in the process of fertilization. It indicated that after the process of fertilization occurred between ovum and sperma, the existence of ovulated ovum should already be appreciated. .

Following Kartono Muhammad, Sami Jacobalis, and K. Bertens, traditionally medical ethics remains actual, even in this current days on which many attentions point toward the issue. Any effort to avoid moral peril treathening this current health care may fail if it has no a strong ethos in medical profession [39]

In relation to one's life, it is mentioned in the pronunciation of oath that doctors should appreciate individual's life since the process of fertilization and thus, as long as an individual is still alive, that life should be appreciated. What if the life is not qualified, in this case, he/she is so suffering which makes most people feel pity on him/her? The answer is yes, it should still be appreciated; however, the way of appreciating such life may depend on the perspective from the doctor and the surrounding. Some may read Yaasin, others may ask about his/her “guidance” to get rid from the suffering, or provide particular alternative medication, and of course, euthanasia is likely to be an option that the patient asks for.

One very common and confusing moral dilemma in health care emerges when the principles of morality encounter two conflicting sides whether benefiting the patient or appreciating his autonomy of life. Every doctor

and medical staff must strive for things benefiting patients without taking them into disadvantageous position [40].

Medical Ethics

Up to recent days, most people seem to think bad on euthanasia. They think that it is inhuman, violating individual's basic rights to live, and so on. There are some reasons for that, including from the perspective of ethics, both common and professional ethics. Understanding medical ethics is apparently necessary, since a serious solution for issues of medical ethics is quited urgent. Medical ethics discuss about doctors' morality in performing their profession [41]. Medical ethics is the primary concern on this profession. Since they were still in medical college, all the prospective doctors have already had bio-ethics course. They learned not only about ethics toward others or patients, but also about ethics in dealing with and manipulating animals and dead body during their experiments. Ethics toward others does not only refer to patients, but also deals with how to behave toward partners, teachers, and others.

Many people directly put their moral judgment on others based on their physical behavior. Such judgment itself is not a fault. We never know the intention and conscience of an individual in doing something, whereas good and bad depends on whether they keep on their track [42]. Similarly, although they have been engaged with their oath as doctor and their behavior is visible, their conscience cannot be clearly seen.

According Guwandi, the trilogy of medical secrecy consisting of an agreement toward medical treatment, known as *informed consent*, medical records, and medical secrecy itself [43]. The organization of medical secrecy is in the context of medical and legal ethics. Medical secrecy and ethics are all mentioned in the oath of Hypocrate, which is always pronounced by every fresh graduate doctor, the pronunciation of original oath of Hypocrates was arranged by a group of Phythagorean doctors from Coss Island in the end of 4 centuries BC.

Edelstein, cited by Guwandi, argued that the “Phythagorean Manifesto” was an idea to organize a reformation and regulation on doctors' practice at that moment. There were many deviant medical practices at that moment, such as providing poison to chronic patients with no hope for recovery, performing abortion, and likely to conduct surgery rather than having a proper diet, as well as drugs. Finally, although encountering many challenges, reformation still remains successful as those challenges were not legally supported.

Hypocrates Oath provides some guidelines on medical ethics as follow.

1. That the oath fulfills the needs of a coordinated instruction and registration by the doctors. Public should be protected as most as possible from any deceiver pretending to be doctors.
2. It is clearly mentioned that every doctor performs in behalf of their patients' benefit. They should do their best to provide health care, they are not allowed to do things they know that it will be disadvantageous for patients.
3. Euthanasia and abortion are forbidden. The guidelines of lithotomy may prohibit any disruptive surgery such as castration. There is a boundary that it is only performed by the experts.

4. With the outline of doctor-patient relationship, taking benefit from this relationship (for instance) is not justified. Finally, Hypocrates Oath give an emphasis on doctrines of medical secrecy [43].

Hypocrates from Greek, Galenus and Roma, are some prominents of traditional medication who relied the pivotal strengths for a noble medical tradition. With all prominent figures and medical organizations performing in international forums, they intended to base the tradition and discipline of medicine on professional ethics. This type of ethics, as long as prioritizing patients' behalf and condition, it contains some principles, such as beneficence, non-maleficence, autonomy, and justice. With this principle, a doctor dealing with patients should consider that what he is currently performing should be beneficial for his patients (the principle of beneficence), and if not so, it at least should not take the patients into disadvantageous position (the principle of non-maleficence), and he should appreciate any arguments from his patients as they have autonomy for their own physical body. Finally, he should be fair (the principle of justice).

Mustika said that Code of Ethics is the norms that every profession should follow in performing their professional tasks and social life [44]. Those norms contain some guidelines for professional members about how to perform their profession along with its prohibitions. It mentions what should and should not be performed by every member of professionalism; not only in performing their professional task, but also in society.

This current era demands medical practitioner prioritizing the principles of modern ethics, as what Catherine Tay Swee Kian argued, including: the principle of autonomy, the principle of beneficence, the principle of not hurting others, the principles of justice, loyalty, and honesty [45].

KODEKI stated that toward doctors with common responsibilities:

1. Every doctor should uphold, fully comprehend, and implement doctor oath;
2. They should always strive for their profession based on the highest standard of profession;
3. They are not allowed to be induced by things that may dissolve the independence and autonomy of their profession;
4. They should avoid praising themselves.
5. Each of treatments or suggestions that may lower patients' physical and psychological conditions should be given only for patients' needs, after having a consent from the patients' family.
6. They should be careful in informing their findings.
7. Only verified information and arguments are allowed to announce.
- 7a. They should provide competent health care, technical and moral freedoms, along with appreciation and respectfulness on human's dignity.
- 7b. They should be honest in their relationship with patients and partners, given that some problems may deal partners' less competence, deception, and blackout in addressing patients' cases.
- 7c. They should appreciate and maintain the patients' and the partners' rights.

- 7d. They should always remember their responsibility of protecting others' lives.
8. They should thoroughly concern on people's interest and the aspects of health care, including physical and psyc-social ones. They should do their best to be teachers and public servants in actual manner.
9. Cooperating to the stakeholders of medical fields and others should have mutual respect to one another.

And their responsibilities toward patients are as follow.

1. They should be sincere, applying all their insight and skills for the sake of patients' behalf. If is seem less competent, it should be referred to more capable ones, but of course, under the patient's consent.
2. They should give chance to the patients to contact their family and religious advisors and/or other issues.
3. They should keep all information that deals with their patients remain confidential.
4. They should perform the first aid as responsibility for humanity, unless more competent parties are willing and able to perform.

The responsibility toward partners:

1. They should treat their partners as they want to be treated.
2. They are not allowed to take over their partners' patients, unless under particular consent or based on ethical procedures.

Toward themselves

1. They should maintain their health in order to perform well.
2. They should always follow the development of medical science and technology.

Legal Norms

Doctor-Patient Relationship

Doctor-patient relationship is actually confusing. This is inevitably due to the common condition of the current society. In this case, Indonesia still has conflicting value in its law. In one part, one is willing to keep surviving and live with communal value-oriented, such as mutual consent and fatherhood, and in another part, a prominent doctrine "rule of law" is simultaneously applied as well [46]. Some Indonesian people still assume themselves as a part of nature in term of their behavior. In order to reach happiness of this life, an individual should correspond to the regulation applied there. Violating law is defined, and thus, penalty/sentences for such violation are aimed to refine the balance of nature. Besides the cosmic perspective of life, a kind of concord with others is acknowledged. It may influence the law. For instance, when a lawsuit emerges, the solution should be aimed to reach a concord between parties, whether through particular agreement or compromising. As Daniel S. Lev argued, [47], such concord may clearly show the good sides of life, but it may also make the aim of reaching a legal certainty difficult to pursue.

In regard to legal setting, there are three kinds of community, but Satjipto Rahardjo classified it into two kinds. First, it is a group of common people with no education background on law, and despite the willing,

they should obey the applied law. Second, it is a group of people learning about law and working as legal practitioners. Third, it is a group of legal experts. This final group has no responsibility to either make judgment or force something, conversely, it is much more about capturing out the fact honestly and clearly. They are responsible to have well understanding on law. From the perspective of science, there is no place for legal professionals to monopolize the truth [48].

A scientist should have several scientific attitudes, such as:

- Objective, in consideration
- Relative, scientific-based knowledge over several postulates is apriorily accepted as a truth, and even a theory is sometimes abolished by another theory.
- Skeptical, always hesitant over any arguments with lack of evidence.
- Intellectually patient; able to stay strong and restrained to keep struggling under pressures for the sake of scientific conviction.
- Simplicity, in thinking, expressing, and proving things.
- Taking sides of ethics; science has no intention to finally make judgment on what is good or bad, but it is responsible to reveal what is wrong and relatively right [49].

Overall, although it does not clearly describe a study about euthanasia yet, a conclusion may finally reveal that euthanasia is reasonable to be conducted, and scientists have no capacity to force that inference to be followed or even conducted.

The followers of natural law argued that the content of law was moral. Thomas Aquinas claimed that the natural law is conducting the good and avoiding the bad. Grotius suggested that law of nature showed good reasons and any measures within have moral quality [50].

On 26th March 2009, an interactive interview on TV One about the winning case of medical malpractice and one supporting a patient of ex-head of IDI is dr. Kartono Muhammad. This is an interesting advancement to be examined. The patient, with a support from his doctor, was very tough with any processes of therapeutic transaction.

Medical malpractice is often difficult to prove due to a variety of things affecting the result of a treatment, such as the serious condition of the illness, the patient's fitness and obedience, the doctor's competence and seriousness, the treatment considered to be an "art", and an argument that doctors are not willing to blame one another and thus, they tend to support each other.

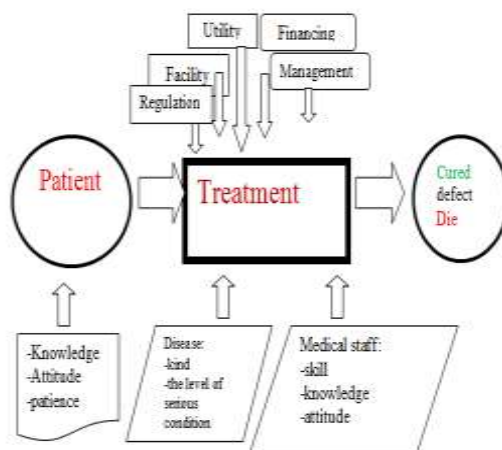


Figure 1: Process of Treatment and Its Determinants

Note:

Patients having medical treatment may end with being cured, defected, or death. Factors influencing the result of the treatment are as follow.

- The patient self, such as their lack of understanding on their disease and physical fitness from that disease.
- The disease self; whether it is chronic or not, or malignant or not.
- The medical staff self, including doctors and nurses in parts of their competence and skills.
- The hospital regulation, facility, utility, financing, and management of treatment, whether or not it is beneficial for patients.

The Role of Regulator in Medical Malpractice and Euthanasia

The role and insight of legal apparatus on medical law and euthanasia is still less in this country, since the interest on cases of medical malpractice and euthanasia is still less, and the medical law is relatively new in law. Furthermore, Pitono Soeparto argued that Criminal Code is unable to

be immediately applied on medical cases [51]. Thus, many lawyers who tend to advocate the victims of medical malpractice may feel difficult to apply the positive law if they have less understanding on medical law.

In regard to euthanasia, Article 344 Criminal Code often relates with this issue, although not all kinds of euthanasia are appropriate to relate to that Article. Also Article 345 Criminal Code can be relates with euthanasia or physician assisted suicide. Euthanasia, physician assisted suicide and any medical malpractices are actually complex due to some factors influencing the process of medical treatment which seems complex as well.

In custom law along with its features such as: religiously traditional, comprehensive and joint, not pre-exist, unequal, fair, and flexible, etc., when a custom case occurs, things to be concerned on the most are the emergence of reaction or correction and the chaos of societal balance as well as who the subject of this incident and what his motive. If the subject refers to parties with high status (e.g., the rich, royal family, or educated people), the sentence

will be more severe sentence rather than what common people may have. For instance, the sentence will be different for murder case if the victim comes from high-status parties, rather than common people.

When euthanasia happens and is considered to be costum case, the subject must be educated party (e.g., doctor) performing such method for the good of the patient and family, or even it is due to the patient's request for euthanasia. This practice may cause imbalance in society. **The "victim" requesting for euthanasia must be suffering so much from a disease that has no hope to heal, and thus, the "defendant" should be charged with very fine sentence or even free from any legal suit.**

In Indonesia, the subject of organizing law is traditionally a group of society; not individual, and the importance of someone depends on his function in that society. The more important he is in a community, the more important his value as a legal subject. Thus, the value of one's life in traditional community depends on his function in that community. When euthanasia happens, the reaction revealed may depend on the level of function someone has in his community.

Proving the Cases of Euthanasia and Malpractices is relatively difficult

In the fact, the past relationship of doctor and patients was vertical-paternalistic. However, the increasing awareness on law, science, and technology makes this relationship sifts into horizontal-contractual. The Principle of Equal Before the Law must be applied for all, that's why it is applied toward a doctor as well. This principle addresses that every citizen has the same status in law, without seeing his profession, race, ethnics, religion of each of the citizen. In medical practice, it often says that the process of health care by a doctor is an "art". Thus, the uncertainty on its procedures is getting bigger since it depends on the doctor's "mood". Furthermore, although some standards have been set out (e.g., normal prices for labs), it is not fix. This makes people freer to give another judgment over the result of medical examination, and thus, proving any dereliction that a doctor did is difficult to do. However, everyone performing criminal should be proven. In regard to euthanasia, proving such case is difficult, given that the doctor and the patient's family may cover up the case.

Rights and Obligation of Patient and Doctor
Based on Act No. 29/2004 on Medical Practice, patients have several rights, including:

- a. Receiving full information about any medical treatment as mentioned in Article 45 subsection (3);
- b. Asking for opinion from other doctors or dentists
- c. Experiencing service according to their medical needs;
- d. Refusing any medical treatments; and
- e. Having the content of their medical records.

However, patients also have several obligations as follow.

- a. Providing full and true information about their health issue;
- b. Obeying advices from doctors or dentist;
- c. Obeying the procedures of health care; and
- d. Retaining for the service they received.

Furthermore, it concludes that the patients' rights include:

- a. Right to have information on anything that relates to their disease;
- b. Right to be informed and to have assurance on medical secrecy dealing with their condition;
- c. Right to whether accept or refuse any medical treatment to be performed;
- d. Right to have second opinion on diagnosis, health plan, and treatment for their disease;
- e. Right to refuse any treatment to be performed;
- f. Right to refuse particular treatment;
- g. Right to stop any on-going treatment;
- h. Right to see their medical records; and
- i. Right to choose doctors and health care providing treatment on their disease.

Looking at those rights, the right to not having any treatment until they pass away is the patients' right. Thus, the right of death is actually on patients self. Another right that is rare to be recognized is juridical right. According to Yusuf Hanafiah, one of patients' rights is: right for living, right upon their body, and right to naturally die.

Freddy Tengker argued that the right to determine the fate of oneself and the right of having health care can be broken down into several rights Act No. 29/ 2004 on Medical Practice sets the obligation of a patient, including:

- a. Providing necessary information toward their doctor for the sake of recovery;
- b. Obeying the doctor's advices after having a consent on treatment;
- c. Obeying any consent treatment; and
- d. Obeying all the condition of treatment and recovery, including the cost they need to pay.

Doctors and dentists also have rights in performing their medical practices, such as:

- a. Having a legal protection in performing their professional tasks based on the standard of profession and the standard of operational procedures;
- b. Providing medical treatment based on the standard of profession and the standard of operational procedures;
- c. Obtaining full and true information from patients and family; and
- d. Getting paid for their work.

And their obligations include:

- a. Providing medical treatment based on the standard of profession and the standard of operational procedures, as well as corresponding to the patients' condition;
- b. Referring patients to doctors or dentists with better competence, when they feel unable to conduct examination or treatment;
- c. Keeping in secret toward anything related to the patients' condition, even after the patients passed away;
- d. Performing the first aid as responsibility for humanity, unless more competent parties are willing and able to perform; and
- e. Expanding their insight and be up-to-date with the development of medical and dental science.

Overall, doctors should appreciate their patients' rights. In regard to euthanasia, it should be further discussed.

CONCLUSION

From religious perspective, it seems that most religions oppose the application of euthanasia. Interestingly, some Moslems are likely to accept a passive euthanasia, especially for people with chronic condition and have no hope to survive from their disease or any medical treatment is no longer useful. Lutherans assume that nutrient and infusion is no longer useful for patients with no hope for survival.

However, why does euthanasia remain bad, inhuman, and violating others' right to live, particularly for nowadays? One reason addressing this question comes from the perspective of ethics, both common and professional ones. Medical ethics describes the morality of doctors in performing their profession.

In providing treatment for their patients, doctors should consider whether it is beneficial for their patients or not. At least, it may not harm them. Besides, every doctor should appreciate the ideas/opinions of their patients, who have autonomy over their own body. They should also be fair or uphold the principle of justice.

The recent relationship of doctor and patients is quite confusing, as this country is still struggling with any socio-cultural and legal conflicts. In one part, people are willing to live with communal value-oriented, such as mutual-consent and fatherhood, and in another part, the doctrine of *rule of law* does exist.

It is clear how important the enactment of regulation on euthanasia is, so that the essence of justice and the **respectfulness toward the patients' rights in medical field** can be fulfilled. Finally, it may reveal the certainty of which doctor is allowed, banned, or under arrest.

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