

## CHAPTER II

### THE THEORY OF RIGHT TO LIFE AND DIE IN INTERNATIONAL LAW

#### A. Definition of Euthanasia

Euthanasia is derived from Greek<sup>45</sup>, *eu* and *thanatos*. The word *eu* means good, and *thanatos* means death. The point is to end life in an easy way without pain. Therefore euthanasia is often referred to as mercy killing, a good death, or enjoys death<sup>46</sup>. Euthanasia etymologically means death well without suffering. Euthanasia in ancient language means quiet death without extreme suffering<sup>47</sup>. Euthanasia in the Oxford Learners Dictionaries is defined as “the practice (illegal in most countries) of killing without pain a person who is suffering from a disease that cannot be cured”.<sup>48</sup> The literal meaning is the same as good death or easy death. It is also often called mercy killing essentially euthanasia is an act of pity on the basis of compassion. This action is carried out solely so that someone dies faster, with the essence of:

1. The act of causing death,
2. Performed when someone is still alive,
3. Disease there is no hope for recovery or in the terminal phase,
4. Motive for mercy due to prolonged suffering,

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<sup>45</sup> Greek is an independent branch of the Indo-European family of languages, native to Greece, Cyprus and other parts of the Eastern Mediterranean and the Black Sea.

<sup>46</sup> Chuzaimah T. Yanggo dan Hafiz Anshary AZ, “*Problematika Hukum Islam Kontemporer*”, buku ke-4, Jakarta. Pustaka Firdaus, 2002. p 64.

<sup>47</sup> Galih Nurdiyanningrum, “Penghentian Tindakan Medis Yang Dapat Dikualifikasikan Sebagai Euthanasia” *Jurnal Panorama Hukum*, Vol. 3 No. 1 Juni 2018. p 48.

<sup>48</sup> Oxford Learners Dictionaries about Euthanasia.

5. The goal is to end suffering.<sup>49</sup>

Euthanasia can also be defined as the act of ending an individual's life in a non-painful way, when the action can be said to be an aid to alleviate the suffering of an individual who will end his life, euthanasia shows medical personnel to help patients die well, without great suffering.<sup>50</sup>

In medical terms, euthanasia means actions to alleviate the pain or suffering experienced by someone who is about to die, also means to accelerate the death of someone who is in extreme pain and suffering before his death.<sup>51</sup> The Indonesian medical code of ethics uses euthanasia in three meanings, namely:

1. Move to the afterlife calmly & safely without suffering.
2. Life time will end; alleviate the suffering of the sick by giving sedatives.
3. End the suffering & life of a sick person intentionally at the request of the patient himself or the family.<sup>52</sup>

Based on medical explanations, euthanasia according to Dr. Kartono Muhammad<sup>53</sup> is helping to speed up one's death to be free from suffering.<sup>54</sup>

According to Dr. Med Ahmad Ramli<sup>55</sup> and K. St. Pamuntjak<sup>56</sup> euthanasia is a

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<sup>49</sup> British Journal of Medicine & Medical Research 9 (7): 1-12, 2015, Article no.BJMMR.19151 ISSN: 2231-0614.

<sup>50</sup> Anton van Niekerk, "We have a right to die with dignity. The medical profession has a duty to assist". <https://theconversation.com/we-have-a-right-to-die-with-dignity-the-medical-profession-has-a-duty-to-assist-67574>. Oktober 2016. Accessed October 08 2019.

<sup>51</sup> Eko Setiawan, "Eksistensi Euthanasia dalam Perspektif Hukum Islam", *Al-Ahwal*, Vol. 7, No. 1 April 2015. p 151.

<sup>52</sup> Ikatan Dokter Indonesia, "*Kode Etik Kedokteran*". p 27.

<sup>53</sup> Dr. Kartono Muhammad is the former chairman of the Indonesian Doctors Association (IDI) 1985-1988.

<sup>54</sup> Kartono Muhammad, "*Tekhnologi Kedokteran Dan Tantangannya Terhadap Bioetika*". Gramedia Pustaka Utama, Jakarta. 1992. p 105.

<sup>55</sup> Dr. Med Ahmad Ramli is the author of the book "*Kamus Kedokteran Arti Dan Keterangan Istilah*". Publisher by Djambatan, published in 1976.

<sup>56</sup> Kasuma Sutan Pamuntjak (born 1886) is an Indonesian writer and businessman and one of the founders and owners of Djambatan Publishers, and also author of the *Kamus Kedokteran*

doctor's effort to alleviate the suffering of facing death.<sup>57</sup> It can be concluded that euthanasia is an attempt action and assistance done by a doctor to deliberately accelerate the death of a person, which he estimates is nearing death, with the aim of alleviating or freeing him/her from his suffering. Euthanasia is not only an act of ending the life of a patient who suffers greatly, but also an attitude of silence, not making efforts to prolong his/her life and let him/her die without any treatment efforts.<sup>58</sup> The definition of euthanasia includes at least three possibilities, namely:

1. Allow (let) someone die,
2. Death due to mercy,
3. Take someone's life out of mercy.<sup>59</sup>

Allowing someone to die implies the existence of a fact, that all kinds of efforts to cure a person's illness, it is no longer useful. Medically the healing effort had no positive results, even under certain circumstances there was a possibility that the treatment would actually result in increased suffering. In such circumstances, a sufferer is better left to die in a calm state without human intervention. Death due to mercy is a direct and deliberate action to end a person's life based on his permission or request. This is caused by the condition of patients who can no longer bear the pain so severe. This situation is certainly not the same

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*Arti Dan Keterangan Istilah.*

<sup>57</sup> Elsa Liana, "Euthanasia dalam Perspektif Hukum Islam dan Hukum Positif Indonesia". <https://www.selasar.com/jurnal/41282/Euthanasia-dalam-Perspektif-Hukum-Islam-dan-Hukum-Positif-Indonesia>. January 2018. Accessed October 08 2019.

<sup>58</sup> Ajeng Quamila, "Serba - serbi Euthanasia: Bunuh Diri yang Diawasi Dokter". <https://hellosehat.com/hidup-sehat/fakta-unik/apa-itu-euthanasia/>. October 2016. Accessed October 08 2019.

<sup>59</sup> Nur Hayati. *Op.Cit.*

as allowing someone to die, although there may also be similarities<sup>60</sup>. The event of taking a person's life out of compassion provides an understanding of an immediate action to stop a patient's life without his permission. This action is based on the assumption that the patient's life will have no meaning anymore. Of course there is a difference between this event and death due to mercy, namely that in this latter event the action is carried out without the consent and consent of the sufferer.<sup>61</sup>

### **B. Right to Life under International Human Rights Law**

The right to life have recognition most common in article 3 declaration universal human rights<sup>62</sup> then Article 6 international covenant on civil and political rights, acknowledged the right of attached to each people for a living, adding that this right "to be covered by law" and that "no one should in an arbitrary manner revoked the life"<sup>63</sup>. The right to the life of under the age of 18 years and obligation the state to ensure pleasure this right as maximum as possible, them specifically recognized in article 6 Convention The Rights Of Children<sup>64</sup>. In accordance with article 2 Universal Declaration Of Human Rights

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<sup>60</sup> Chelsea Pietsch, "Mercy in the Context of Euthanasia", March 2009. <http://www.issuesmagazine.com.au/article/issue-march-2009/mercy-context-euthanasia.html>. Accessed October 08 2019.

<sup>61</sup> Eka Saripudin, "Tentang Eutanasia". <https://www.kompasiana.com/mindasay/551b7233a33311be20b65e90/euthanasia>. January 2013. Accessed October 08 2019.

<sup>62</sup> Article 3 of the Universal Declaration provides that it says "everyone has the right to life, liberty and security of person".

<sup>63</sup> Article 6 International Covenant on Civil and Political Rights.

<sup>64</sup> Article 6 Convention the Rights of Children "recognizes that all children and young people have the right to survive and the right to develop. It also says that the government should work to prevent the deaths of children and young people".

Declarations<sup>65</sup> and the un convention everyone is entitled to protection rights to life without distinction or discrimination in the form of anything, and everyone will be guaranteed have equal access and effective in a settlement for violation of this right. In addition, article 4: paragraph 2, of The Covenant on Civil and Political International Rights stated that exceptional circumstances like political instability internal or other public emergency cannot be used to justify all humiliation of the right to life and safety of the person. General confession for rights to life every person in the international instrument is a legal basis for a job. Special rapporteur various, agreement, resolution, convention and other declarations adopted by competent states bodies contain provisions relating to the type of violation. Their special right to life is also part of the legal framework in which the special rapporteur operates. One of the most relevant of an instrument the principles effective prevention and investigative execution extra law, arbitrary and concise, adopted by The Economic and Social Council in resolution 1989/65 24<sup>th</sup> may 1989. The principle 4 said:

*“Obligation the government to assure effective protection through judicial or other means for individuals and group that were in danger of execution beyond any law, arbitrary or short, including those that received death threats”.*

All acts and omissions of state representatives that constitute a violation of the general recognition of the right to life embodied in the Universal Declaration of Human Rights (Article 3) and the International Covenant on Civil and Political

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<sup>65</sup> Universal Declaration of Human Rights (UDHR), Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Rights (Article 6 and, also Articles 2, 4, paragraph. 2, 26 and, in particular with regard to the death penalty, Articles 14 and 15), as well as a number of other treaties, resolutions, conventions and declarations adopted by competent United Nations bodies, fall within its mandate.<sup>66</sup>

### **C. International Instruments Regarding Right to Life**

#### **1. Universal Declaration of Human Right (UDHR)**

Under the Universal Declaration of Human Right that stated in Article 3:

*“Everyone has the right to life, liberty and security of person”.*<sup>67</sup>

Which is meant by every individual human being has the right to his/her own livelihood in the manner desired by himself/herself and the intended freedom and safety of the individual, every individual has the right to freedom of his own without slavery and has the right to regulate his/her own safety as he/she wishes individually.

#### **2. International Covenant on Civil and Political Rights (ICCPR)**

Article 6:

- 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*
- 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.*
- 3. When deprivation of life constitutes the crime of genocide, it is*

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<sup>66</sup> United Nations Human Rights. <https://www.ohchr.org/EN/Issues/Executions/Pages/InternationalStandards.aspx>. Accessed August 08 2019.

<sup>67</sup> Universal Declaration of Human Rights, Article 3.

*understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*

- 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*
- 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*

Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.<sup>68</sup> The right to life in article 6 of the International Covenant on Civil and Political Rights mentioned above are known that moral principles are based on the belief that humans have the right to live and, in particular, must not be killed by other entities including governments. The concept of the right to life arises in much debate on the issue of the death penalty, war, abortion, euthanasia, brutality of the state apparatus, justifiable killings, and public health care. Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia, or willful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself, whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children: as well as disgraceful working conditions, where people are treated as mere instruments of gain rather than as free and responsible persons, all these things and others like them are infamies indeed.<sup>69</sup>

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<sup>68</sup> International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966, Article 6.

<sup>69</sup> Evangelium Vitae (IOANNES PAULUS PP. II) New threats to human life, point 3 The

#### **D. Right to Die Under International Human Rights Law**

There is no “right to die” under international law because many do not have all the rights protected and recognized by people of the right to life. However, currently the world is developing in a level of catastrophic<sup>70</sup> causing an increase in the level of physical health and mental illness problems making the choice to die is a choice and sometimes needs to be done. Because the choice to end one’s life may appear to conflict with the principle of the right to life, the author intends to explore the relationship between the right to life and the right to die in human rights schemes. Article 3 of the Universal Declaration of Human Rights states that:

*“Everyone has the right to life, liberty and security of a person”.*

This declaration was politically coordinated by several legally binding UN<sup>71</sup> agreements: the Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the Convention on Disability Rights (CRPD). The ICCPR does not mention “the right to die”, and in article 6 states that:

*“Every human being has the right to be bound to life. This right must be protected by law. No person may arbitrarily lose his life”.*

Article 6 of the CRC says that:

*“Every child has an inherent right to life”.*

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Second Vatican Council.

<sup>70</sup> Catastrophic: extremely harmful, bringing physical or financial ruin.

<sup>71</sup> The United Nations (UN) is an inter-governmental organization responsible for maintaining international peace and security, developing friendly relations among nations, achieving international cooperation, and being a Centre for harmonizing the actions of nations.



Article 10 CRPD is even clearer:

*“States parties reiterate that every human being has the inherent right to live and should take all necessary steps to ensure enjoyment effectively by the disabled Equality with others”<sup>72</sup>.*

This particular concern for people with disabilities reverberates in the CRC.

Article 23 CRC confirms that:

*“A child with mental or physical disabilities should enjoy a full and decent life, in a condition that guarantees dignity, increases self-reliance and facilitates the active participation of children in society”<sup>73</sup>.*

These documents highlight strong protections for vulnerable groups such as child with mental or physical disabilities, who are usually the ones most affected by euthanasia legislation. The UN treaty monitoring bodies, which provide comments and recommendations to countries about fulfilling their contractual obligations, have several times criticized the practice of euthanasia. The UN Human Rights Committee formally condemns the Dutch euthanasia of babies approved under the “Groningen protocol<sup>74</sup>”: The Committee is very concerned with reports that newborn babies have ended their lives with medical personnel. Also, the latest observation by the Human Rights Committee in the Netherlands from the 96<sup>th</sup> session of 2009, stated:

*“The Committee remains concerned at the level of euthanasia and assisted suicide on the part of the State. The Committee reiterates its*

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<sup>72</sup> Article 10 Convention on the Rights of Persons with Disabilities.

<sup>73</sup> Article 23 Convention on the Rights of the Child “All children and young people have the right to be safe and happy. When a child or young person has a disability, people should make sure it does not get in the way of this”.

<sup>74</sup> The Groningen Protocol is a medical protocol created in September 2004 by Eduard Verhagen, the medical director of the department of pediatrics at the University Medical Center Groningen (UMCG) in Groningen, the Netherlands. It contains directives with criteria under which physicians can perform “active ending of life on infants” (child euthanasia) without fear of legal prosecution.

*previous recommendations in this regard and urges that the law be enforced. Review based on recognition of the right to life*<sup>75</sup>.

In the same way the right to life is recognized in many other human rights documents, such as: the Charter of European Fundamental Rights (Article 2)<sup>76</sup>, the European Convention on Human Rights (Article 2)<sup>77</sup>, the African Charter on Human Rights and the rights of people (Article 4)<sup>78</sup>, and American Convention on Human Rights (Article 4)<sup>79</sup>. Similarly, none of these documents mention the “right to death”.

Under the European legislative framework the Parliamentary Assembly of the Council of Europe (PACE)<sup>80</sup> in resolution 1859 (2012), paragraph 5, offers a very clear position on euthanasia:

*“Euthanasia, in the sense of deliberate murder with human acts or omissions dependent on him or suspected Benefits, should always be banned”.*

This resolution is further brought “to the attention of Member States, with the implementation request” by recommendation 1993<sup>81</sup>.

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<sup>75</sup> World Youth Alliance, *Debating Death #4: “Is There a “Right to Die” in the International Law?”* <https://www.wya.net/op-ed/debating-death-4-is-there-a-right-to-die-in-the-international-law/>. Accessed October 08 2019.

<sup>76</sup> Article 2 of the Treaty on the European Union, the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

<sup>77</sup> Article 2 of the European Convention on Human Rights protects the right to life. The article contains a limited exception for the cases of lawful executions and sets out strictly controlled circumstances in which the deprivation of life may be justified.

<sup>78</sup> African Charter on Human Rights and the rights of people (article 4) “Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”.

<sup>79</sup> American Convention on Human Rights Article 4: Stated about “Right to Life”.

<sup>80</sup> Parliamentary Assembly of the Council of Europe (PACE) is the parliamentary arm of the Council of Europe, a 47- nation international organization charged dues to their members, dedicated to upholding human rights, democracy and the rule of law. The Council of Europe is an older and wider circle of nations than the 28 - members European Union – it includes, for example, Russia and Turkey among its member states – and oversees the European Court of Human Rights.

<sup>81</sup> Hrvoje Vargi, “*Should Euthanasia And Assisted Suicide Be Legal? Addressing Key Arguments and Analyzing the Consequences Of Legalization*”.

Similarly, PACE Recommendation 1418 (1999) in the paragraph 9 states that:

*“The Committee of Ministers encourage the member States of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects:*

*c. by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while:*

*I. Recognizing that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with Article 2 of the European Convention on Human Rights which states that “no one shall be deprived of his life intentionally”*

*II. Recognizing that a terminally ill or dying person’s wish to die never constitutes any legal claim to die at the hand of another person.*

*III. Recognizing that a terminally ill or dying person’s wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death.”<sup>82</sup>*

PACE recommendations and resolutions are important because European Court of Human Rights (ECHR)<sup>83</sup> has to take them as guidance in its rulings. Recommendation 1418 is also quoted in the European Court of Human Rights<sup>84</sup> case *Pretty v. United Kingdom* from 2002<sup>85</sup>, the case has some fact that The

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[https://www.researchgate.net/publication/331025583\\_Should\\_euthanasia\\_and\\_assisted\\_suicide\\_be\\_legal\\_addressing\\_key\\_arguments\\_and\\_analyzing\\_the\\_consequences\\_of\\_legalization](https://www.researchgate.net/publication/331025583_Should_euthanasia_and_assisted_suicide_be_legal_addressing_key_arguments_and_analyzing_the_consequences_of_legalization). Doi 10.32701/Dp.20.1.3. February 2019. Accessed October 08 2019.

<sup>82</sup> Protection of the human rights and dignity of the terminally ill and the dying – Parliamentary Assembly Recommendation 1418 (1999), Document.

<sup>83</sup> European Convention on Human Rights (ECHR) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international convention to protect human rights and political freedoms in Europe. Drafted in 1950 by the then newly formed Council of Europe, the convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.

<sup>84</sup> European Court of Human Rights (ECHR or ECtHR; French: *Cour européenne des droits de l’homme*) is a supranational or international court established by the European Convention on Human Rights. The court hears applications alleging that a contracting state has breached one or more of the human rights provisions concerning civil and political rights set out in the Convention and its protocols.

<sup>85</sup> Dianne Pretty –early 2000s had motor neuron disease. Sought a declaration pursuant to s 4 of the Human Rights Act 1998 that the blanket ban on assisted suicide in s 2 (1) was incompatible with Article 2 (the right to life) and Article 8 (right to private life). The domestic courts rejected both aspects of Ms. Pretty’s claim finding that the blanket ban did not interfere with

petitioner, a British citizen, was paralyzed due to degenerative and terminal illness, and asked for assurances from the Director of Public Prosecution (DPP)<sup>86</sup> that her husband, if he helped her commit suicide, would be immune from prosecution. His intelligence and capacity to make decisions remains undisturbed by illness. She emphasized her determination to control how and when she died, but her illness prevented her from committing legal suicide according to English law. She claims that domestic law on assisted suicide violates her rights under Articles 2, 3, 8, 9 and 14 of the European Convention on Human Rights.

Applicants for alleged violations of Article 2 (right to life), Article 3 (prohibition of torture and degrading treatment), Article 9 (freedom of thought, conscience and religion) and Article 14 (non-discrimination). The applicant tried to challenge the validity of the DPP's refusal to ensure her husband's immunity from prosecution, and part 2 (1) of the Suicide Act 1961<sup>87</sup>, which made it a crime to help others commit suicide. The applicant submitted that Article 2<sup>88</sup> protected the right to life, not life itself, and protected an individual from arbitrary deprivation of life by a third party, not from the individual's own choice to die.

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either the right to life or the right to private life. Ms. Pretty was partially successful before the ECtHR which found: 1. that the right to private life was engaged by the blanket ban: The applicant in this case is prevented by law from exercising her choice to avoid what she considers will be an undignified and distressing end to her life. The Court is not prepared to exclude that this constitutes an interference with her right to respect for private life as guaranteed under Article 8 (1) of the Convention.

<sup>86</sup> Director of Public Prosecutions (DPP) is the office or official charged with the prosecution of criminal offences in several criminal jurisdictions around the world. The title is used mainly in jurisdictions that are or have been members of the Commonwealth of Nations.

<sup>87</sup> Suicide Act 1961 Is an Act of the Parliament of the United Kingdom. It decriminalized the act of suicide in England and Wales so that those who failed in the attempt to kill themselves would no longer be prosecuted.

<sup>88</sup> Article 2 of the European Convention on Human Rights protects the right to life. The article contains a limited exception for the cases of lawful executions and sets out strictly controlled circumstances in which the deprivation of life may be justified.

She argued that Article 3<sup>89</sup> encompasses a government's positive obligation to protect people from degrading treatment, which is what she believed in the manner of her death if unassisted would amount to; that Article 8<sup>90</sup> encompassed the right to make decisions about one's own body and that the state's interference with this right was not justified; and that Article 9<sup>91</sup> protected her freedom to believe in the notion of assisted suicide, and that the blanket ban in the United Kingdom (UK) allowed no consideration of the applicant's personal circumstances.

Concerning Article 14<sup>92</sup>, the applicant alleged that she suffered discrimination by being treated in the same way as those whose circumstances were completely different. She was prevented from enjoying the right to end her own life as exercised by others because of her disability. The applicant submitted that the Government justified the ban in terms of protecting the vulnerable, but as she was not vulnerable there was no objective or reasonable justification for the

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<sup>89</sup> Article 3 of the European Convention on Human Rights prohibits torture, and "inhuman or degrading treatment or punishment". There are no exceptions or limitations on this right.

<sup>90</sup> Article 8 of the European Convention on Human Rights provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

<sup>91</sup> Article 9 of the European Convention on Human Rights provides a right to freedom of thought, conscience and religion. This includes the freedom to change a religion or belief, and to manifest a religion or belief in worship, teaching, practice and observance, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

<sup>92</sup> Article 14 of the European Convention on Human Rights, contains a prohibition of discrimination. This prohibition is broad in some ways and narrow in others. It is broad in that it prohibits discrimination under a potentially unlimited number of grounds. While the article specifically prohibits discrimination based on "sex, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status", the last of these allows the court to extend to Article 14 protection to other grounds not specifically mentioned such as has been done regarding discrimination based on a person's sexual orientation. Article 14 requires that all of the rights and freedoms set out in the Act must be protected and applied without discrimination. Discrimination occurs when you are treated less favorably than another person in a similar situation and this treatment cannot be objectively and reasonably justified.

difference in treatment. The Government submitted that Article 2 imposed primarily a negative obligation, and expressly provided that no one should be intentionally deprived of life saves in very restricted circumstances which did not apply to this case. It was submitted that Article 3 was not engaged in this case as again it had been found to comprise a primarily negative obligation except in three exceptional circumstances which did not apply to this case, and that even if it were engaged it would not confer a legally enforceable right to die. Also that Article 8 in providing a right to family life did not provide a right to die, and even if it was then the State was titled, within its margin of appreciation, to determine the extent to which an individual could inflict and injury on him/herself; and that the facts of the case did not fall within the ambit of Article 9 as it did not confer a general right of an individual to engage in any activity in pursuit of their beliefs. The Government argued that Article 14 did not apply as the applicant's complaint did not engage any of the substantive rights she relied upon. Further to this, it argued that even if Article 14 was engaged there would still be no discrimination as the applicant was in the same position as others who were unable to take their own lives without assistance, the Suicide Act 1961 conferred no right to commit suicide, and there were clear and reasonable justifications for any alleged differences in treatment. The Court determined that the facts of the case fell within the ambit of Article 8, which was examined in conjunction with Article 14, focusing on the claim that she was prevented from exercising a right enjoyed by others who could end their lives without assistance because they were not prevented from doing so by any disability. The Court emphasized that under the

Convention; discrimination may entail equal treatment of those in different conditions, but also reiterated that member states have a margin of appreciation in their application of the convention. In this case, the Court found the Government had reasonable justification for not creating different legal regimes concerning assisted suicide for those physically able and those physically unable due to risk of abuse and undermining of the protection of life safeguarded by the 1961 Suicide Act. For these reasons, the Court unanimously found no violation of Article 14 of the Convention, and no violation of Articles 2, 3, 8 and 9.<sup>93</sup> Where the ruling explained that Article 2 of the Convention:

*And the explanation of Article 2 is: Everyone's right to life shall be protected by law. No one shall be deprived of his own life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*<sup>94</sup>

The Court accordingly finds that no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2 of the Convention.” Within the same case, the ECHR has also held that the primary sentence of Article 2 (1) obliges the State not as it were to abstain from the intentional and illegal taking of life, but to require suitable steps to defend the lives of those inside its jurisdiction. Thus, on the off chance that there exists a positive commitment on the State, it isn't to encourage suicide, but to protect life. Under Article 2 of the Convention, the ECHR also considered the “right to die”<sup>95</sup> in the case of *Sanles Sanles v. Spain*<sup>96</sup>, where the ECHR dismissed

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<sup>93</sup> Case of *Pretty V. The United Kingdom*, (Application No. 2346/02). [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-60448%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60448%22]}). Judgment Strasbourg. 29 April 2002. Final. Accessed October 08 2019.

<sup>94</sup> <https://justice.org.uk/article-2/>. Accessed October 08 2019.

<sup>95</sup> Article 2 European Convention on Human Rights.

the application as inadmissible. On 23 August 1968, Ramón Sampedro Cameán<sup>97</sup>, aged 25 at the time, had an accident which resulted in the fracture of a *cervical vertebrae*<sup>98</sup> and irreversible *tetraplegia*<sup>99</sup>. On 12 July 1995, he initiated an act of non-contentious jurisdiction in the Court of First Instance in Noia, La Coruña<sup>100</sup>, pleading his right to die with dignity. Specifically, he requested that his doctor should, without having criminal proceedings brought against him, be authorized to supply him with the substances necessary to end his life. On 9 October 1995, the court dismissed his request, on the ground that it was punishable under article 143 of the Spanish Criminal Code<sup>101</sup> as the offence of aiding and abetting suicide, carrying a penalty of 2 to 10 years imprisonment. Ramón Sampedro lodged an appeal with the Provincial High Court in La Coruña, which rejected it on 19 November 1996, confirming the decision of the court of first instance. On 16 December 1996, Ramón Sampedro lodged an application for *amparo*

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<sup>96</sup> *Manuela Sanles Sanles v. Spanish*, which one Mr. Sanles suffer from Paraplegia (tetraplegia), request to be euthanasia.

<sup>97</sup> Ramón Sampedro Cameán (5 January 1943 – 12 January 1998) was a Spanish seaman and writer. Sampedro became a quadriplegic at the age of 25 (on 23 August 1968), following a diving accident, and fought for his right to an assisted suicide for the following 29 years.

<sup>98</sup> Cervical disc/vertebrae are a painful condition that attacks the neck. The neck (cervical) in the spinal column is made of 7 bones (vertebrae) separated by discs, shaped like a pillow. These Dics are like shock absorbers for the head and neck. It functions as a bone pad and helps the head and neck to be upright and bend. Cervical discs are a painful condition in the neck of the spine.

<sup>99</sup> Paraplegia (tetraplegia): is a decrease in motor or sensory function of body movements. The word comes from the Ionic Greek: “half-striking”. This is usually caused by spinal cord injury or congenital conditions such as *spina bifida* that affect the nerve elements of the *spinal canal*. The area of the *spinal canal* that is affected in the paraplegia is the thorax, lumbar, or other vital areas.

<sup>100</sup> The autonomous community of Galicia in northwestern Spain.

<sup>101</sup> *Ministerio de Justicia*, Spanish Criminal Code Article 143: (1) Whoever induces another to kill shall be punished with a sentence of imprisonment from four to eight years. (2) A sentence of imprisonment of two to five years shall be imposed on whoever co-operates in the necessary acts for a person to commit suicide. (3) Punishment shall involve a sentence of imprisonment from six to ten years if such co-operations were to reach the point of death ensuing. (4) Whoever causes or actively co-operates in the necessary, direct acts causes the death of another, at the specific, serious, unequivocal request of that person, in the event of the victim suffering a serious disease that would be unavoidably lead to death, or that causes permanent suffering that is hard to bear, shall be punished with a punishment lower by one or two degrees to those described in Sections 2 and 3 of this Article.



(constitutional protection) with the Constitutional Court, pleading a violation of his dignity and his rights to the free development of his personality, to life, to physical and psychological integrity, and to a fair trial. The appeal was accepted for consideration on 27 January 1997, and the 20-day period for Mr. Sampedro to formulate his final arguments commenced on 10 March 1997. In the early hours of 12 January 1998, Ramón Sampedro committed suicide, with the help of persons unknown. Criminal proceedings were instituted against the person or persons who may have aided and abetted his death. The case was dismissed, however, since no person could be identified as responsible. On 4 May 1998, he sent a letter to the Constitutional Court, claiming the right to continue the proceedings brought by the alleged victim, and reworded the pleadings of the application for *amparo*<sup>102</sup>. The new contention was that the Provincial High Court should have acknowledged Mr. Sampedro's right to have his own doctor supply to him the medication necessary to help him to die with dignity. On 11 November 1998, the Constitutional Court decided to dismiss the case, and to refuse the author the right to pursue the proceedings. Among its arguments the Court stated that, although the right of heirs to continue the proceedings of their deceased relatives in cases of civil protection of the right to honor, personal and family privacy and image was acknowledged in the Spanish legal system, in the case of Mr. Sampedro there were no specific or sufficient legal conditions which justified the author's continuing the proceedings. The Court also stated that the matter could not be identified with the rights cited by him, in view of the eminently

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<sup>102</sup> In most legal systems of the Spanish-speaking world, the writ of *amparo* (also called *recurso de amparo* or *juicio de amparo*) is a remedy for the protection of constitutional rights, found in certain jurisdictions.

personal nature, inextricably linked to the person concerned, of the claimed right to die with dignity. It further considered that the voluntary act in question concerned the victim alone and that the appellant's claim had lapsed from the moment of his death. It went on to point out that this conclusion was reinforced by the nature of the remedy of *amparo*, which was established to remedy specific and effective violations of fundamental rights. On 20 April 1999, the author applied to the European Court of Human Rights pleading violation of the right to a life of dignity and a dignified death in respect of Ramón Sampredo, the right to non-interference by the State in the exercise of his freedom, and his right to equal treatment. The European Court pronounced the application inadmissible *ratione personae*<sup>103</sup>, on the ground that the heir of Ramón Sampredo was not entitled to continue his complaints. With reference to the alleged excessive duration of the proceedings, the European Court stated that, even if the author could be considered a victim, in the circumstances the duration of proceedings had not been so great as to lead to the conclusion of a clear violation of the Convention: it accordingly declared the complaint manifestly ill-founded. The author argues that in, considering the intervention of a doctor to help Mr. Ramón Sampredo to die as an offence, the State party was in breach of the latter's right to privacy without arbitrary interference, as provided for in article 17 of the Covenant<sup>104</sup>. The author contends that, as the alleged victim, he requested euthanasia for himself and not

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<sup>103</sup> *Ratione Personae* is "By reason of the person", because of the nature or position of the relevant person. From "Oxford Reference".

<sup>104</sup> European Convention on Human Rights, Article 17 "prohibits the destruction of and excessive limitation on the rights and freedoms set forth in the Convention. It applies to States, groups and individuals". The text of Article 17 is derived from Article 30 of the Universal Declaration of Human Rights (1948). "No government, group or individual should act in a way that would destroy the rights and freedoms of the Universal Declaration of Human Rights".

for other persons, and that accordingly the interference of the State in his decision was unjustified. The case was later brought to the Human Rights Committee under the Optional First Protocol<sup>105</sup>, where it was again dismissed as inadmissible. The State party, in its written submission dated 2 January 2002, maintains that the communication is inadmissible under article 5, paragraph 2 (a)<sup>106</sup>, of the Optional Protocol, on the ground that the communication submitted to the Committee on this occasion concerns exactly the same matter as was submitted by the same person to the European Court of Human Rights. It adds that the inadmissibility decision by the European Court in this matter was not a mere formality, but was reached after a genuine examination of the merits, since the Court examined the nature of the right claimed by Mr. Sampedro when he was alive. The right to assisted suicide without criminal repercussions, according to the State party, the author of the communication wishes the Committee to review the decision on the merits previously adopted by another international body, and to find, contrary to the decision of the European Court of Human Rights, that “the right to die with dignity” or “assisted suicide without criminal repercussions” requested by Mr. Sampedro before his voluntary death is not an eminently personal or non-transferable right. It adds that the Spanish Constitutional Court was unable to take a decision on the matter because of the voluntary death of Mr. Sampedro, which

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<sup>105</sup> The first Optional Protocol to the ICCPR allows individuals, whose countries are party to the ICCPR and the protocol, who claim their rights under the ICCPR have been violated, and who have exhausted all domestic remedies, to submit written communications to the UN Human Rights Committee.

<sup>106</sup> Optional Protocol to the International Covenant on Civil and Political Rights Article 5, paragraph 2 (a) of the Optional Protocol, the Republic of Slovenia specifies that the Human Rights Committee shall not have competence to consider a communication from an individual if the same matter is being examined or has already been considered under another procedure of international investigation or settlement.

caused the abatement of the *amparo* proceedings. The State party recalls that Ramón Sampedro's heir has expressly asserted that he "died with dignity", that no one has been or is currently being prosecuted or charged for assisting him to commit suicide, and that the criminal proceedings initiated have been dismissed.<sup>107</sup> Similarly, judgment in the case *Haas vs. Switzerland*<sup>108</sup> from 2011 clearly rejected the claim to the "right to die".

On 8 June 2005 the applicant contacted various official bodies seeking permission to obtain *sodium pentobarbital* from a pharmacy without a prescription, through the intermediary of Dignitas<sup>109</sup>. The Federal Office of Justice found that it did not have jurisdiction to grant his request and rejected it on 27 June 2005. On 20 July 2005 the Federal Department of Public Health dismissed the applicant's claim on the ground that *sodium pentobarbital*<sup>110</sup> could only be obtained on prescription from a pharmacy. It also expressed its opinion that Article 8 of the Convention did not impose on the States Parties a positive obligation to create the conditions for committing suicide without the risk of failure and without pain. On 3 August 2005 the Health Department of the Canton

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<sup>107</sup> *Manuela Sanles Sanles v. Spain*, U.N. Doc. CCPR/C/80/D/1024/2001. Communication No. 1024/2001. 30 March 2004.

<sup>108</sup> The applicant has been suffering from a serious bipolar affective disorder for about twenty years. During this period he has twice attempted suicide and has stayed in psychiatric hospitals on several occasions. On 1 July 2004 he became a member of Dignitas, an association which offers, among other services, assisted suicide. Taking the view that his illness, for which treatment is difficult, made it impossible for him to live with dignity, the applicant asked Dignitas to assist him in ending his life. He approached several psychiatrists to obtain the necessary lethal substance, namely 15 grams of sodium pentobarbital, which is available only on prescription, but was unsuccessful.

<sup>109</sup> Dignitas – "To live with dignity - to die with dignity" is an association in accordance with Swiss law and was founded on 17 May 1998 at Forch (near Zurich).

<sup>110</sup> Pentobarbital, also known as *pentobarbitone*, is a short-acting barbiturate. In high doses, pentobarbital causes death by respiratory arrest.

of Zürich<sup>111</sup> also dismissed the applicant's request, finding that, in the absence of the necessary medical prescription, he could not be authorized to obtain the substance in question from a pharmacy. It too noted that such a right could not be inferred from Article 8 of the Convention. That decision was upheld by the Administrative Court of the Canton of Zürich on 17 November 2005. On December 20, 2005, the Federal Department of the Interior stated that it could not accept an appeal submitted by the applicant against the decision of July 20, 2005, on the grounds that this was not an emergency in which a substance that was normally subject to medical prescriptions could be sent without request. He noted that only a doctor could issue relevant prescriptions. The applicant appealed to the Federal Court against the decision of the Federal Department of the Interior and the Administrative Court of the Canton of Zürich. Relying particularly on Article 8 of the Convention, he alleges that this provision guarantees the right to choose to die and that State interference with this right can only be accepted under the conditions set out in the second paragraph of Article 8. In the applicant's opinion, the obligation to submit a medical prescription in order to obtain the substance necessary for suicide, and the impossibility of procuring such a prescription which, in his view, was attributable to the threat that hung over doctors of having their license withdrawn by the authorities should they prescribe the substance in question to mentally ill persons, amounted to interference with his right to respect for his private life. He argued that while this interference was admittedly in accordance with the law and pursued a legitimate aim, it was not, in his case,

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<sup>111</sup> Zurich is the largest city in Switzerland and the capital of the canton of Zürich. It is located in north-central Switzerland at the northwestern tip of Lake Zürich.

proportionate.<sup>112</sup>

The fact that there's no "right to die" in the universal law doesn't mean that there's no solution for the terminally ill or enduring patients. PACE in the Proposal 1418 (1999)<sup>113</sup> maintains the disallowance against intentioned taking the life of terminally sick or dying people, but also recognizes the elective: "*To give impartial get to suitable palliative care for all terminally sick or passing on persons*". In the Resolution on palliative care, adopted on 29 of January 2008 by the PACE: "Palliative Care: A model for innovative health and social policies Resolution 1649 (2009)".<sup>114</sup> The report states clearly the need for the development of palliative care in all European countries, to make palliative care available for all patients with life threatening diseases who need it. However, the report does not only support palliative care as a comprehensive approach for severely ill and dying patients. It commends palliative care as an innovative new way, which can be used as a model for other areas of health care.<sup>115</sup>

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<sup>112</sup> Case of Haas V. Switzerland. (Application No. 31322/07), Doc. Judgment Strasbourg. 20 January 2011.

<sup>113</sup> Protection of the Human Rights and Dignity of the Terminally Ill and the Dying. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16722&lang=en>. Accessed October 08 2019.

<sup>114</sup> Parliamentary Assembly Council Of Europe, Palliative Care: A Model For Innovative Health And Social Policies Resolution 1649 (2009).

<sup>115</sup> Hrvoje Vargić. *Op. Cit.*

## **E. Euthanasia in The Netherlands and Canada**

### **1. Euthanasia in the Netherlands**

Dutch Penal Code Articles 293<sup>116</sup> and 294<sup>117</sup> make both euthanasia and assisted suicide illegal, even today. However, as the result of various court cases, doctors who directly kill patients or help patients kill themselves will not be prosecuted as long as they follow certain guidelines.<sup>118</sup> In addition to the current requirements that physicians report every euthanasia/assisted-suicide death to the local prosecutor and that the patient's death request must be enduring (carefully considered and requested on more than one occasion), the Rotterdam court in 1981 established the following guidelines:

1. The patient must be experiencing unbearable pain.
2. The patient must be conscious.
3. The death request must be voluntary.
4. The patient must have been given alternatives to euthanasia and time to consider these alternatives.
5. There must be no other reasonable solutions to the problem.
6. The patient's death cannot inflict unnecessary suffering on others.
7. There must be more than one person involved in the euthanasia decision.
8. Only a doctor can euthanize a patient.

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<sup>116</sup> Article 293 of the Netherlands Penal Code states: "A person who terminates the life of another person at the other person's express and earnest request is liable to a term of imprisonment of not more than twelve years or a fine of the fifth category".

<sup>117</sup> Article 294 of the Netherlands Penal Code states: "A person who intentionally assists in the suicide of another or procures for that other person the means to commit suicide, is liable to a term of imprisonment of not more than three years or a fine of the fourth category, where the suicide ensues".

<sup>118</sup> Muh. Amiruddin "Perbandingan Pelaksanaan Euthanasia di Negara yang Menganut Sistem Hukum Eropa Kontinental dan Anglo Saxon". *Jurisprudentie*. volume 4 Nomor 1, Juni 2017. p 88.

9. Great care must be taken in actually making the death decision.<sup>119</sup>

Since 1981, this guideline has been interpreted by Dutch courts and the Royal Dutch Medical Association (KNMG)<sup>120</sup> in increasingly broad terms. One example is the interpretation of the “unbearable pain” requirement reflected in the decision of the Hague Appeals Court 1986<sup>121</sup>. The court ruled that pain guidelines were not limited to physical pain, and that “psychological suffering” or “potential for personality damage” could also be euthanasia reasons. The main argument in favor of euthanasia in the Netherlands has always been the need for more patient autonomy, that the patient has the right to make decisions at the end of his own life. However, over the past 20 years, the practice of Dutch euthanasia has finally given doctors, not patients, more strength. The question of whether a patient should live or die is often decided exclusively by a doctor or a team of physicians.<sup>122</sup> The Dutch define “euthanasia” in a very limited way: “Euthanasia is understood as an action which aims at taking the life of another *at the latter’s expressed request*. It concerns an action of which death is the purpose and the result.”<sup>123</sup> This definition applies only to *voluntary* euthanasia and excludes what the rest of the world refers to as *non-voluntary* or *involuntary* euthanasia, the

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<sup>119</sup> Carlos F. Gomez. “*Regulating Death: Euthanasia and the Case of the Netherlands*”. New York: The Free Press, 1991. p 32.

<sup>120</sup> KNMG (*Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst*) is the professional organisation for medical practitioners in the Netherlands. It was founded in 1849.

<sup>121</sup> Judgment of the The Hague Court of Appeal in the Case of Public Prosecutor’s Office. [https://www.refworld.org/cases,NTL\\_HCA,4905cb292.html](https://www.refworld.org/cases,NTL_HCA,4905cb292.html). Number 09-750007-07. Accessed October 08 2019.

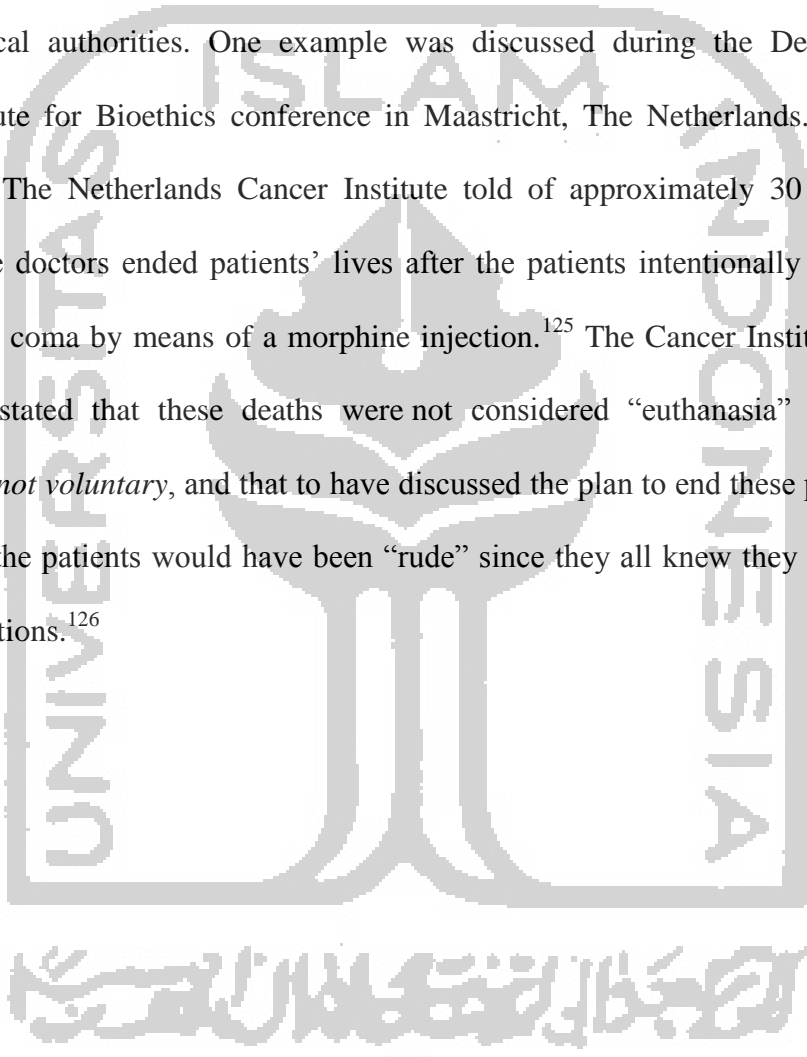
<sup>122</sup> H. Jochemsen, trans, “Report of the Royal Dutch Society of Medicine on ‘Life-Terminating Actions with Incompetent Patients, Part 1: Severely Handicapped Newborns.’” *Issues in Law & Medicine*, vol. 7, no.3 (1991), p 366.

<sup>123</sup> KNMG (*Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst*). Guidelines for the Practice of Euthanasia and Physician-Assisted Suicide, as quoted in *Regulating Death*, p 40.



killing of a patient without the patient's knowledge or consent. The Dutch call this "life-terminating treatment."<sup>124</sup>

Some doctors use the difference between "euthanasia" and "life-ending treatment" to avoid the death of patients classified as "euthanasia", thus freeing doctors from following established euthanasia guidelines and reporting the death to local authorities. One example was discussed during the December 1990 Institute for Bioethics conference in Maastricht, The Netherlands. A physician from The Netherlands Cancer Institute told of approximately 30 cases a year where doctors ended patients' lives after the patients intentionally had been put into a coma by means of a morphine injection.<sup>125</sup> The Cancer Institute physician then stated that these deaths were not considered "euthanasia" because they were *not voluntary*, and that to have discussed the plan to end these patients' lives with the patients would have been "rude" since they all knew they had incurable conditions.<sup>126</sup>



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<sup>124</sup> Patient's Rights Council, "Background about Euthanasia in the Netherlands". <http://www.patientsrightscouncil.org/site/holland-background/>. Accessed October 08 2019.

<sup>125</sup> Maurice A. M. de Wachter. "Euthanasia in the Netherlands". *The Hastings Center Report*. Vol. 22, No. 2 (Mar. - Apr., 1992), p 23.

<sup>126</sup> Alexander Morgan Capron, "Euthanasia in the Netherlands—American Observations". *Hastings Center Report*, April 1992, p 31.

## 2. Euthanasia in Canada

In February 2015, the Supreme Court of Canada concluded in *Carter v. Canada (Attorney General)*<sup>127</sup> that the Criminal Code provisions relating to aiding or abetting a person to commit suicide violate the *Canadian Charter of Rights and Freedoms* in certain situations of “physician-assisted death.”<sup>128</sup> In response to that decision, the federal government established an External Panel on Options for a Legislative Response to *Carter v. Canada* in July 2015. More recently, on 11 December 2015, Parliament established a Special Joint Committee of the Senate and the House of Commons. That committee will review the External Panel’s report and “other recent relevant consultation activities and studies” and will consult with Canadians, experts and stakeholders, and make recommendations on the framework of a federal response on physician-assisted dying that respects the Constitution, the Charter of Rights and Freedoms, and the priorities of Canadians. That committee is required to provide a final report to Parliament by 26 February 2016.<sup>129</sup>

Despite the fact that euthanasia has gained considerable media attention of late, neither the practice itself nor the controversy it engenders is new. Although we now stress the conceptual distinctions between euthanasia, suicide and

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<sup>127</sup> *Carter v. Canada (Attorney General)*, 2015 SCC 5. A landmark Supreme Court of Canada decision where the prohibition of assisted suicide was challenged as contrary to the Canadian Charter of Rights and Freedoms (“Charter”) by several parties, including the family of Kay Carter, a woman suffering from degenerative spinal stenosis, and Gloria Taylor, a woman suffering from amyotrophic lateral sclerosis (“ALS”). In a unanimous decision on February 6, 2015, the Court struck down the provision in the Criminal Code, thereby giving Canadian adults who are mentally competent and suffering intolerably and enduringly the right to a doctor’s assistance in dying.

<sup>128</sup> Martha Butler and Marlisa Tiedemann, [Carter v. Canada: The Supreme Court of Canada’s Decision on Assisted Dying](#), Publication no. 2015-47-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 7 October 2015.

<sup>129</sup> House of Commons, *Debates*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 11 December 2015, 1015.

cessation of treatment, in early times euthanasia was generally equated with suicide.<sup>130</sup> The impact of scientific and medical discoveries in recent times has changed the nature of the debate on suicide. The increasing ability of physicians to treat bodily ailments and to extend life has caused the state to take a more direct interest in questions of life and death in the medical context. In North America, the seminal case on the question of quality of life and cessation of treatment was that of Karen Ann Quinlan, a 21-year-old woman who suffered permanent brain damage, and went into a coma, after an episode involving the consumption of alcohol and drugs.<sup>131</sup> Ms. Quinlan's parents signed a release form to allow physicians to withdraw the use of a respirator in the treatment of their daughter. When the hospital refused to follow the directive, her parents asked the courts to reverse the hospital's decision. In 1976, following a ruling by the New Jersey Supreme Court,<sup>132</sup> the respirator was removed. Ms. Quinlan died in 1985 in a nursing home where she had remained in a coma, fed through tubes, for some 10 years. In Canada, there have been two high-profile court cases involving women with *Amyotrophic Lateral Sclerosis* (ALS)<sup>133</sup> seeking the right to a physician-assisted death. ALS causes progressive muscle paralysis, chronic pain, and

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<sup>130</sup> Medical assistance in dying. <https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html#a1>. Accessed October 08 2019.

<sup>131</sup> *In The Matter Of Karen Quinlan, an Alleged Incompetent*. The Supreme Court of New Jersey. 355 A.2d 647. 70 N.J. 10 (1976). Argued January 26, 1976. Decided March 31, 1976. The central figure in this tragic case is Karen Ann Quinlan, a New Jersey resident. At the age of 22, she lies in a debilitated and allegedly moribund state at Saint Clare's Hospital in Denville, New Jersey. The litigation has to do, in final analysis, with her life, its continuance or cessation, and the responsibilities, rights and duties, with regard to any fateful decision concerning it, of her family, her guardian, her doctors, the hospital, the State through its law enforcement authorities, and finally the courts of justice.

<sup>132</sup> *Ibid. In the Matter of Karen Quinlan, an Alleged Incompetent*. (1976).

<sup>133</sup> Amyotrophic lateral sclerosis (ALS) is a group of rare neurological diseases that mainly involve the nerve cells (neurons) responsible for controlling voluntary muscle movement. Voluntary muscles produce movements like chewing, walking, and talking. The disease is progressive, meaning the symptoms get worse over time.

eventual death without affecting cognitive functioning. The case of Sue Rodriguez<sup>134</sup> and, more recently, Gloria Taylor represents the main developments in law in Canada and is discussed in more detail below. The extent to which medical technology can prolong life, quite independent of consideration of the quality of life, has become common knowledge for most citizens. This means that many people give active consideration to the limits they will give to their own medical care and family members<sup>135</sup>. Increasing health care costs are another relevant consideration. Estimates indicating that individuals incur their highest health care costs in the final days of life<sup>136</sup> illustrate the delicate balance between sustaining life and containing health care expenses. This fact, some health policy analysts suggest, will become increasingly apparent as a greater proportion of the population moves into the older age groups, in which health care needs and their attendant costs increase. Current proponents for the legalization of euthanasia and assisted suicide list a number of justifications, including:

1. Concerns for the personal autonomy and freedom of choice of individuals,
2. Limitations in the effectiveness of palliative care in alleviating the pain and suffering of all individuals,
3. The argument that the law violates section 15 of the Canadian Charter of Rights and Freedoms (Charter) because able-bodied people may commit

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<sup>134</sup> Rodriguez v. British Columbia, [1993] 3 S.C.R. 519. Case number: 23476. May 20 1993 - September 30 1993.

<sup>135</sup> Julia Nicol and Marlisa Tiedemann, "Euthanasia and Assisted Suicide in Canada". [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/2015139E#txt7](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/2015139E#txt7). December 2015. Accessed October 08 2019.

<sup>136</sup> Peter Tanuseputro. "The Health Care Cost of Dying: A Population-Based Retrospective Cohort Study of the Last Year of Life in Ontario, Canada," PLoS ONE, 10(3): e0121759, 26 March 2015.

suicide but some with physical limitations cannot<sup>137</sup>,

4. Recognition that assisted suicide takes place despite its illegality and is occurring without adequate controls, and,
5. The argument that the distinction between withholding or withdrawing treatment (which are accepted practices) and assisted suicide does not stand up to scrutiny, as there is really no moral distinction between acts and omissions.<sup>138</sup>

In contrast, those who are against legalization often raise the following arguments:

1. The fundamental social value of respect for life should be maintained, and killing is intrinsically wrong.
2. Legalization could result in abuses, particularly with respect to vulnerable members of society.
3. Individuals might in some cases seek assisted suicide under the pressure of insufficient financial and institutional resources.
4. The “slippery slope” argument: allowing competent persons to access assisted suicide could lead to changes in the law with respect to incompetent persons, people under the age of 18 or those who are unable to make decisions for themselves for a variety of reasons, including mental

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<sup>137</sup> Note that this argument was rejected by the Supreme Court of Canada in [Rodriguez v. British Columbia](#), [1993] 3 S.C.R. 519. It was successful, however, in [Carter v. Canada](#), 2012 BCSC 886. The Supreme Court of Canada found that it was not necessary to consider this argument in its decision in *Carter*.

<sup>138</sup> Jocelyn Downie, *Dying Justice: A Case for Decriminalizing Euthanasia and Assisted Suicide in Canada*, University of Toronto Press, Toronto, 2004, p 86.

illness.

5. Legislation to permit euthanasia could limit developments to improve care for those who are dying, since advocating assisted suicide or euthanasia would be “quicker and easier” than conducting palliative care research.<sup>139</sup>

On 12 June 2013, Bill 52, An Act respecting end-of-life care, was introduced in the Quebec National Assembly; it received Royal Assent on 5 June 2014. The law establishes rights with respect to end-of-life care, rules for those who provide end-of-life care, rules relating to continuous palliative sedation, powers of the Minister of Health and Social Services (Minister), rules relating to advance medical directives, and rules relating to “medical aid in dying.” “Medical aid in dying” is defined as “care consisting in the administration by a physician of medications or substances to an end-of-life patient, at the patient’s request, in order to relieve their suffering by hastening death.”<sup>140</sup> Section 26 of the Act establishes that, to obtain medical aid in dying, a patient must:

1. Be an insured person under the Health Insurance Act (meaning the patient must either be a resident of Quebec or a temporary resident who is registered with the *Régie de l’assurance maladie du Québec*<sup>141</sup>),
2. Have attained the age of majority (18 in Quebec),
3. Have the capacity to consent to care,

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<sup>139</sup> Margaret A. Somerville, *Death Talk: The Case Against Euthanasia and Physician-Assisted Suicide*, McGill-Queen’s University Press, Montréal, 2001, p 82.

<sup>140</sup> [An Act Respecting End-of-Life Care](#), RSQ,c. S-32.0001, s. 3(6).

<sup>141</sup> The *Régie de l’assurance maladie du Québec* is the government health insurance board in the province of Quebec, Canada. Under the system, most residents of Quebec have basic health coverage. There are a few exceptions, such as college or university students from other provinces who are covered by their home province plans.

4. Be at the end of life,
5. Suffer from a serious and incurable illness,
6. Be in an advanced state of irreversible decline in capability, and
7. Experience constant and unbearable physical or psychological suffering which cannot be relieved in a manner the patient deems tolerable.<sup>142</sup>

A patient must make a request for medical aid in dying using a form prescribed by the Minister. Section 29 requires that before a physician may administer medical aid in dying, he or she must:

1. Be of the opinion that the patient meets the criteria set out above,
2. Ensure that the request is made freely,
3. Ensure that the patient is informed of the prognosis and therapeutic options,
4. Verify the persistence of suffering and the wish to proceed through discussions at “reasonably spaced intervals”,
5. Discuss the request with other members of the care team who are in regular contact with the patient and, if the patient wishes, with his or her close relations, and,
6. Obtain a second opinion from a physician who is independent of both the patient and of the physician seeking the second opinion.<sup>143</sup>

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<sup>142</sup> *Ibid.*, s. 26.

<sup>143</sup> *Ibid.*, s. 29.

Section 31 provides that if the physician practicing in an institution that operates pursuant to The Act respecting health services and social services or in a private health facility refuses the request for reasons not based on section 29, the physician must forward the form requesting medical aid in dying to the executive director of the institution or local authority, or to a designated person. The executive director is then required to find another physician who can deal with the request for medical aid in dying. The Act also establishes a commission on end-of-life care (section 38)<sup>144</sup>, consisting of health and social services professionals, members of the legal profession, people who use institutions, an ethicist, and someone to represent institutions (section 39)<sup>145</sup>. The Commission's mandate includes advising the Minister: evaluating end-of-life care legislation, and, every five years, submitting a report on the status of end-of-life care to the Minister (section 42)<sup>146</sup>.

A physician who administers medical aid in dying must notify the Commission within 10 days and submit information prescribed by regulations

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<sup>144</sup> Section 38: A commission on end-of-life care ("the Commission") is established under the name "*Commission sur les soins de fin de vie*". Act respecting end-of-life care. chapter S-32.0001.

<sup>145</sup> Section 39: The Commission is composed of 11 members, appointed by the Government. The Government must ensure that at least one member appointed under subparagraph 1 (five members are to be health or social services professionals, including) of the first paragraph is from the palliative care community. The members of the Commission are appointed for a term of not more than five years. Their terms of office may be renewed consecutively only once. At the expiry of their terms, members remain in office until they are replaced or reappointed. The Government designates, from among the members of the Commission, a chair and vice-chair; the vice-chair shall chair the Commission when the chair is absent or unable to act. The Government fixes the allowances and indemnities of the members of the Commission. Act respecting end-of-life care. chapter S-32.0001.

<sup>146</sup> Section 42: The mandate of the Commission is to examine any matter relating to end-of-life care. The Commission also has the mandate of overseeing the application of the specific requirements relating to medical aid in dying in compliance with this division. The Commission is to submit an annual activity report, not later than 30 September each year, to the Minister. Act respecting end-of-life care. chapter S-32.0001.



(section 46)<sup>147</sup>. The Commission then reviews whether the physician has complied with established procedures (section 47)<sup>148</sup>. Under section 50<sup>149</sup> of the Act, a physician who refuses to administer medical aid in dying because of his or her personal convictions must ensure that continuity of care is provided to the patient, and must follow the procedures for notifying the executive director of the institution or local authority (or other designated person) established in section 31.

Most of the Act's provisions were scheduled to come into force on 10 December 2015. However, on 1 December 2015, the Superior Court of Quebec declared that certain provisions of the law were in conflict with the federal Criminal Code, and that until the Supreme Court of Canada's declaration in *Carter* came into effect the paramountcy doctrine<sup>150</sup> (which establishes that where there is an inconsistency or conflict between a federal and a provincial law, the federal law prevails) applies, rendering the provisions of Bill 52 that relate to medical aid

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<sup>147</sup> Section 46: A physician who administers medical aid in dying must give notice to the Commission within the next 10 days and send the Commission, in the manner determined by government regulation, the information prescribed by regulation. This information is confidential and may not be disclosed to any other person, except to the extent that is necessary for the purposes of this section and section 47. Any person who notes that a physician has contravened this section must bring the breach to the attention of the *Collège des médecins du Québec* so that it can take appropriate measures. Act respecting end-of-life care. chapter S-32.0001.

<sup>148</sup> Section 47: On receiving the notice from the physician, the Commission assesses compliance with section 29 in accordance with the procedure prescribed by government regulation. On completion of the assessment, if two thirds or more of the members present are of the opinion that section 29 was not complied with, the Commission sends a summary of its conclusions to the *Collège des médecins du Québec* and, when the physician provided the medical aid in dying as a physician practicing in a center operated by an institution, to the institution concerned so that they can take appropriate measures. Act respecting end-of-life care. chapter S-32.0001.

<sup>149</sup> Section 50: A physician may refuse to administer medical aid in dying because of personal convictions, and a health professional may refuse to take part in administering it for the same reason. In such a case, the physician or health professional must nevertheless ensure that continuity of care is provided to the patient, in accordance with their code of ethics and the patient's wishes. In addition, the physician must comply with the procedure established in section 31. Act respecting end-of-life care. chapter S-32.0001.

<sup>150</sup> The doctrine of paramountcy is the legal principle that reconciles contradicting or conflicting laws in a federalist state, where both the central government, and the provincial or state governments, have the power to create laws in relation to the same matters.

in dying inoperative.<sup>151</sup>

## **F. Euthanasia In The Medical Code Of Ethics**

### **1. Indonesia Regulation**

The beginning of the history of medicine all mankind will also know about the fundamentals inherent in themselves, and reinforce, namely the purity of intentions, sincerity at work, humility, and social strategies that are not expected. For this reason, doctors throughout the world intend to base the tradition of the medical discipline in a professional ethic that for all times concedes treatment and the safety and interests of these sufferers. Since the beginning of the history of medicine, doctors also believe that a medical ethic is naturally based on ethical principles that govern the relationship between humans in general. Besides that, it must have its roots in the philosophy of society which is accepted and developed continuously in that society<sup>152</sup>. The Geneva Declaration was the result of a deliberation from the World Medical Association in Geneva in September 1948. In this declaration stated as follows:

*“I will maintain the highest respect for human life from the moment of contact, even under threat; I will not use my medical knowledge that is contrary to law and humanity”<sup>153</sup>*

Specifically in Indonesia, this statement has been expressly included in the Indonesian Medical Code of Ethics, which came into force on October 29, 1969, based on the Decree of the Minister of Health of the Republic of Indonesia

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<sup>151</sup> *D'Amico c. Québec (Procureure générale)*, 2015. QCCS, 5556.

<sup>152</sup> Djoko Prakoso dan Djaman Andhi Nirwanto. *Op. Cit.* p 79.

<sup>153</sup> Kode etik Kedokteran Indonesia - Lampiran III (Declaration of Geneva) oleh panitia Redaksi Musyawarah Kerja Susila Kedokteran Nasional, Jakarta, Yayasan Penerbitan IDI. 1969.

concerning: Statement of entry into force of the Indonesian Medical Code of Ethics, dated October 23, 1969. This Indonesian Medical Code of Ethics made based on the Regulation of the Minister of Health of the Republic of Indonesia dated August 30, 1969 No.55 / WKSJ / 1969.<sup>154</sup>

Lately there has been a lot of heated debate around the world regarding the possibility of euthanasia. It has been revealed that euthanasia has occurred in several countries in the world. In Indonesia it is suspected that negative euthanasia has developed. Whereas in our homeland which is based on *Pancasila*<sup>155</sup> which is at once religious, it should not accept euthanasia let alone do it. However, euthanasia cases are suspected too often occur in our homeland, namely in hospitals that already have an Intensive Care Unit (ICU).<sup>156</sup> All of these are interesting for every citizen to continue to uphold Indonesia as a rule of law, because this country is a state of law which in daily life leads the public to obey the laws that are inherited by the state.<sup>157</sup>

The development of euthanasia is inseparable from the development of the concept of death. Human efforts to prolong life and avoid death by using the advances in medical science and technology have brought new problems in euthanasia, especially with regard to determining when a person is declared dead.<sup>158</sup> The need for a new definition of death develops as a direct result rather than the increasing ability of the medical profession to sustain the life of someone

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<sup>154</sup> Djoko Prakoso dan Djaman Andhi Nirwanto. *Op. Cit.* p 80.

<sup>155</sup> Pancasila is the official, foundational philosophical theory of Indonesia. Pancasila comprises two Old Javanese words originally derived from Sanskrit: "*pañca*" ("five") and "*sīla*" ("principles").

<sup>156</sup> Arifin Rada, "Euthanasia Sebagai Konsekuensi dari Kebutuhan Sains dan Teknologi (Studi Hukum Islam)", *Jurnal Legal Dynamics* Vol. 13 No. 2 Mei 2013, p 336.

<sup>157</sup> *Ibid.* p 337.

<sup>158</sup> H. Sutarno. *Op.Cit.* p 91.

whose heart is beating, but whose brain has not functioned permanently, due to severe damage.<sup>159</sup> Natural birth and death or death is in the hands of God, but F. Tengker questions the number of deaths. From the womb, our lives have been determined by a network of health services that are as wide-ranging as vaccinations, hygiene, medical services and so on, that human life can no longer be called natural. This also applies and is perhaps more pronounced in the matter of terminating life.<sup>160</sup> Thus perhaps Tengker considers that almost all deaths are also not natural, but in the process there have been many other human interventions. That in euthanasia, the legal experts are less able to freely follow the development of the process of treatment or treatment of patients in the hospital because of complex problems.<sup>161</sup> In the euthanasia case, the doctor may be subject to criminal action because at this time there is no positive law that protects that action.<sup>162</sup> Physician mistakes can occur when treating or treating a patient, so the statement that the above cannot be used in the articles of the Criminal Code is an incorrect statement.<sup>163</sup> This issue depends on the results of the deepening of the event, therefore the application of the articles in the Criminal Code can still be used for certain euthanasia cases.<sup>164</sup>

In general, someone who suffers from unbearable pain will try to avoid the

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<sup>159</sup> Djoko Prakoso. *Op.Cit.* p 98.

<sup>160</sup> F.Tengker "Kematian Yang Digandrungi, Euthanasia dan Hak Menentukan Nasib Sendiri", Bandung: Penerbit Nova, 1991, p 108.

<sup>161</sup> Williams, John R, "Medical Ethics Manual", Pusat Studi Kedokteran Islam Fakultas Kedokteran Universitas Muhammadiyah Yogyakarta. 2005. p 15.

<sup>162</sup> Eko Sopyono, "Kebijakan Formulasi Pertanggungjawaban Pidana Dokter Yang Melakukan Euthanasia", *Diponegoro Law Review*. Volume 5, Nomor 2, Tahun 2016. p 4.

<sup>163</sup> Siregar, Khoiruddin Manahan, "Euthanasia Dalam Perspektif Hukum Positif Dan Politik Hukum Pidana di Indonesia". <http://repositori.usu.ac.id/handle/123456789/981>. Medan 2017. Accessed 08 October 2019.

<sup>164</sup> H. Sutarno. *Op.Cit.* p 97.

cause of the pain, but if it is not possible, let alone coupled with other factors and is quite severe, then it is possible that the patient will commit suicide. In patients who experience such conditions, suicide with the help of their doctor (Euthanasia) can be the most likely thing to do.<sup>165</sup> The doctor or the patient's family, even if there is a desire to carry out euthanasia, is generally due to the poor factor of seeing the patient concerned, although there are other possible reasons. Like maintenance costs or something else<sup>166</sup>.

Viewed from a civil perspective, the doctor performs medical actions based on the request of the patient or his/her family, followed by questions and answers, examinations on the patient and efforts to obtain healing<sup>167</sup>. So actually there has been an unwritten contract between the doctor and the patient. In this case, if there is default in the contract, the party doing so can be sued. In the case of euthanasia, civil disputes do not or rarely occur.<sup>168</sup> In the case of euthanasia, civil disputes do not or rarely occur, because generally the will to do euthanasia comes from the patient and his/her family. In terms of contracts, modern contract theory tends to abolish formal conditions for legal certainty and emphasize the fulfillment of a sense of justice. Even pre-contractual promises can be subject to legal consequences, based on the principles of good faith emphasized at the negotiation stage.<sup>169</sup> In the code of medical ethics Indonesia explained that article

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<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.* p 99.

<sup>167</sup> Mokh. Khoirul Huda. "Transaksi Terapeutik Sebagai Dasar Hubungan Hukum Dokter dan Pasien". *Dalam Perspektif Hukum*, Vol. 3, November 2003, p 1.

<sup>168</sup> Jadee Amartya, "Isu Kedokteran (euthanasia)". <https://www.kompasiana.com/jadeeamartyaputriwiranata9111/5d5aa6350d8230388f5795a3/isu-kedokteran-euthanasia?page=all>. Accessed October 08 2019.

<sup>169</sup> Lutfy Mairizal Putra, "Inilah Alasannya Indonesia Melarang Eutanasia". <https://sains.kompas.com/read/2017/05/07/19591261/inilah.alasannya.indonesia.melarang.eutanasi>

2 that:

*“A doctor must constantly strive to carry out their profession in accordance with the highest professional standards”.*

It explained that a doctor doing medical activities as a medical profession must be in accordance with science to cutting-edge medicine, law and religion. Indonesian medical ethics 7 d article also explains that:

*“Every doctor should keep in mind the obligation to protect human life”.*<sup>170</sup>

This means that in every act of a doctor should aim to maintain the health and human pleasure. So in their profession of a doctor should not do: Abortion (*abortion provocatus*<sup>171</sup>), ending the life of a patient according to the science and knowledge may not be healed again (euthanasia), regarding euthanasia, can be used in three senses:

1. Displacement to the afterlife quietly and safely without suffering, for believers with God’s name on the lips.
2. Time to life will expire (breathe his/her last) patients suffering commuted by giving a sedative.
3. Terminate suffering from an illness intentionally upon request patients and their families<sup>172</sup>.

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a?page=all. May 2017. Accessed October 08 2019.

<sup>170</sup> Pasal 7 d, Kode Etik Kedokteran Indonesia Dan Pedoman Pelaksanaan Kode Etik Kedokteran Indonesia, Januari 2002, *“Setiap Dokter Harus Senantiasa Mengingat Akan Kewajiban Melindungi Hidup MakhluK Insani”.*

<sup>171</sup> Abortion is the ending of a pregnancy by removal or expulsion of an embryo or fetus before it can survive outside the uterus. An abortion that occurs without intervention is known as a miscarriage or spontaneous abortion. When deliberate steps are taken to end a pregnancy, it is called an induced abortion, or less frequently “induced miscarriage”. The unmodified word abortion generally refers to an induced abortion.

<sup>172</sup> Nur Hayati. *Op. Cit.*

The element within the meaning of euthanasia within the meaning of the above is:

1. Do something or not to do something
2. Ending the life, death Hasten, or prolong a patient's life
3. Patients Suffering from a disease that is difficult, to cure,
4. Upon request of the patient and his family,
5. For the sake of interests of Patients and their families<sup>173</sup>.

## **2. The World Medical Association's Declaration on Euthanasia**

The World Medical Association's Declaration on Euthanasia<sup>174</sup> adopted by the 38<sup>th</sup> World Medical Assembly, Madrid, Spain, and October 1987 and reaffirmed by the 170<sup>th</sup> WMA Council Session, Divonne-les-Bains, France, May 2005 states:

*“Euthanasia, that is the act of deliberately ending the life of a patient, even at the patient's own request or at the request of close relatives, is unethical. This does not prevent the physician from respecting the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness.”*

The WMA Statement on Physician-Assisted Suicide, adopted by the 44<sup>th</sup> World Medical Assembly, Marbella, Spain, September 1992 and editorially revised by the 170<sup>th</sup> WMA Council Session, Divonne-les-Bains, France, May 2005 likewise states:

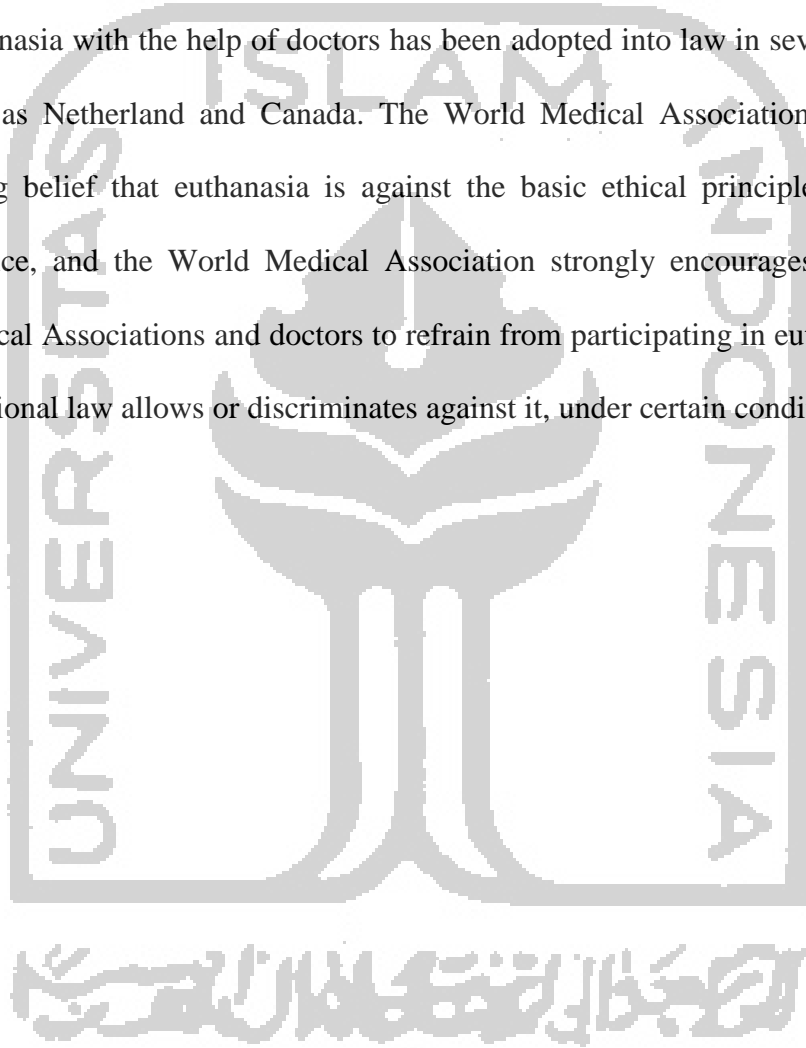
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<sup>173</sup> Arifin Rada. *Op. Cit.* p 336.

<sup>174</sup> The World Medical Association's Declaration on Euthanasia. Adopted by the 39<sup>th</sup> World Medical Assembly, Madrid, Spain, October 1987 and reaffirmed by the 170<sup>th</sup> WMA Council Session, Divonne-les-Bains, France, May 2005 and reaffirmed by the 200<sup>th</sup> WMA Council Session, Oslo, Norway, April 2015.

*“Physicians-assisted suicide, like euthanasia, is unethical and must be condemned by the medical profession. Where the assistance of the physician is intentionally and deliberately directed at enabling an individual to end his/her own life, the physician acts unethically. However the right to decline medical treatment is a basic right of the patient and the physician does not act unethically even if respecting such a wish results in the death of the patient.”*

The World Medical Association has noted that the practice of active euthanasia with the help of doctors has been adopted into law in several countries such as Netherland and Canada. The World Medical Association reiterates its strong belief that euthanasia is against the basic ethical principles of medical practice, and the World Medical Association strongly encourages all National Medical Associations and doctors to refrain from participating in euthanasia, even if national law allows or discriminates against it, under certain conditions<sup>175</sup>.



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<sup>175</sup> WMA Resolution on Euthanasia. <https://www.wma.net/policies-post/wma-resolution-on-euthanasia/>. September 2017. Accessed October 10 2019.



## G. Islamic Perspective on Euthanasia

In the Qur'an Al-Mulk verse 2, is reminded that life and death are in the hands of God that He created to test the faith, practice, and obedience of humans towards God, therefore, Islam is very concerned about the safety of life and human life since he/she in his/her mother's womb for the rest of his/her life. And to protect the safety of life and human life, Islam establishes various legal and civil legal norms along with the sanctions, both in the world in the form of hadist<sup>176</sup> and qisas<sup>177</sup>, including the death penalty, *diyat* (fines), or *ta'zir*, is a punishment determined by *ulul amr* or the judiciary, but in the hereafter will be the punishment of God in hell later. Because life and death are in the hands of God, Islam forbids people from committing murder, either to others or to themselves.<sup>178</sup>

Until now death is the biggest mystery, and science has not succeeded in uncovering it. The only answer is available in religious teachings. Death as the end of a series of life in this world is a right from God. No one has the right to delay a moment of his/her death, including accelerating the time of his death.<sup>179</sup> Islamic Sharia forbids active euthanasia, because it belongs to the category of

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<sup>176</sup> Hadits, also called Sunnah, are words (sayings), deeds, decrees and agreements of the Prophet Muhammad which are made the basis of Islamic law. Hadith takes the source of Islamic law other than the Qur'an, in this case the position of the hadith is the second source of law after the Qur'an.

<sup>177</sup> Qisas, is a term in Islamic law which means retaliation (giving the punishment accordingly), similar to the saying "debt of life is paid for life". In murder cases, the qisas law gives the victim's family the right to request the death penalty for the murderer.

<sup>178</sup> Muhammad Abduh Tuasikal, "*Faedah Surat Al - Mulk Allah Menguji Manusia Siapakah Yang Baik Amalnya*". <https://rumaysho.com/636-faedah-surat-al-mulk-allah-menguji-manusia-siapakah-yang-baik-amalnya.html>. Accessed October 08 2019.

<sup>179</sup> Mindawati Perangin Angin, "*Kematian Adalah Misteri*". <https://www.kompasiana.com/mindawatiperanginangin/55288115f17e6178548b45f9/kematian-adalah-misteri>. April 2003. Accessed October 08 2019.

deliberate killing (Al-qatlu Al-'amad), even though its intention is good to alleviate the suffering of patients.<sup>180</sup> The law remains unclear, even at the request of the patient himself or his family, and Islam really prohibit active or passive euthanasia, the arguments on this issue are very clear, namely the arguments that forbid murder. Both the killing of other people's souls and killing yourself<sup>181</sup>, for example the word of Allah SWT:

لَا تَقْتُلُوا أَوْلَادَكُمْ مِنْ إِمْلَاقٍ تَحْنُ قُلُوبُكُمْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ أَلَّا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا وَ لَا ذَلِكُمْ تَقْرُبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ نُرَزِّقُكُمْ وَإِيَّاهُمْ وَلَا وَصَاكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ

*“Let me read what is forbidden to you by your Lord: do not associate anything with Him, do good to your parents, and do not kill your children for fear of poverty, We will provide sustenance to you and them, and do not you approach despicable deeds, both apparent and hidden, and do not kill a soul that is forbidden by Allah (kill him) but with something (cause) that is right. That is what you are commanded to understand.” (QS Al-An'aam : 151)<sup>182</sup>.*

لَمَّةٌ إِلَىٰ أَهْلِهِ إِلَّا وَدِيَّةً مُّسَدِّدًا وَمَا كَانَ لِلْمُؤْمِنِ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَاً وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ  
 نَّ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ أَنْ يَصَدَّقُوا فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوًّا لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ وَإِنْ كَانَ مِنْ  
 مُّؤْمِنَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِنَ اللَّهِ وَكَانَ اللَّهُ عَلِيمًا قَدِيمًا فَدِيَّةٌ مُّسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ

حَكِيمًا

*“And it is not appropriate for a believer to kill a believer (the other), except because he is guilty (unintentionally), and whoever kills a believer*

<sup>180</sup> Eka Saripudin, “Euthanasia”. <https://www.kompasiana.com/mindasay/551b7233a33311be20b65e90/euthanasia>. April 2013. Accessed October 08 2019.

<sup>181</sup> Ustadz Abu Isma'il Muslim al-Atsari, “Bunuh Diri Mencelakan Diri Sendiri”. <https://almanhaj.or.id/6648-bunuh-diri-mencelakan-diri-sendiri.html>. Accessed October 08 2019.

<sup>182</sup> Al – Qur'an Online, “Surat Al – An'am Ayat 151”. <https://tafsirweb.com/2275-surat-al-anam-ayat-151.html> Accessed August 09 2019.

for his guilt (let) he frees a faithful servant of faith and pays the tribute surrendered to his family (the slain) ), unless they (family killed) give alms. If he (the slain) is from a group (infidels) that has an agreement (peace) between them and you, then (let the killer) pay the money given to his family (the slain) and free the faithful slave. Whoever does not get it, let him (the killer) fast for two consecutive months to receive repentance from Allah. And Allah is All-Knowing, All-Wise. (QS An-Nisaa` : 92)”<sup>183</sup>.

مِنْكُمْ ۖ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ  
اللَّهِ كَانَ بِكُمْ رَحِيمًا

“O you, who believe, do not eat your neighbor’s property in a false way, except in the way of trade that applies with equal conscience among you. And do not kill yourself; surely Allah is Most Merciful to you. (QS An-Nisaa` : 29)”<sup>184</sup>.

From the arguments above, it is clear that it is unlawful for doctors to perform active euthanasia. Because the action is included in the category of deliberate killing (al-qatlu al-‘amad) which is a criminal offense (jarimah) and a major sin. Doctors who carry out active euthanasia, for example by giving lethal injections, according to Islamic criminal law will be sentenced to qishash (capital punishment for killing), by the Islamic government (Khilafah), according to the word of God:

الْقِصَاصُ فِي الْقَتْلِ ۖ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأَنْثَىٰ بِالْأُنْثَىٰ ۚ فَمَنْ عُفِيَ لَهُ مِنْ يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ  
تَدَايٍ بَعْدَ ذَلِكَ فَلَنْ نَعْزِبَهُ شَيْءًا فَاتَّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ۗ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۗ فَمَنْ  
عَذَابُ الْيَمِّ

“O you who believe, are obliged upon you qishaash regarding those

<sup>183</sup> Al – Qur’an Online, ‘Surat An – Nisa Ayat 92’. <https://tafsirweb.com/1624-surat-an-nisa-ayat-92.html> Accessed August 09 2019.

<sup>184</sup> Al – Qur’an Online, “Surat An – Nisa Ayat 29’. <https://tafsirweb.com/1561-surat-an-nisa-ayat-29.html> Accessed August 09 2019.

*who are killed; free men with free men, servants with servants, and women with women. So whoever gets a forgiveness from his brother, let (those who forgive) follow in a good way, and let (those who are sorry) pay (diat) to those who give forgiveness in a good way (also). Such is a relief from your Lord and a mercy. Anyone who exceeds the limit after that, then for him a very painful punishment. (QS Al-Baqarah : 178)”*<sup>185</sup>

The unacceptable of the reason for active euthanasia that is often cited is pity to see the suffering of the patient so that the doctor facilitates his death. This reason only looks at the outward aspects (empirical), whereas behind that there are other aspects which are unknown and unreachable to humans<sup>186</sup>. By accelerating the death of a patient with active euthanasia, the patient does not get the benefit (wisdom) of the pain test God has given him/her, namely forgiveness of sins. Rasulullah SAW said:

*“It is not befall on a Muslim that a disaster, whether trouble, pain, sadness, distress, or disease, even thorns that pierced it, unless Allah blotted out his mistakes or sins with the calamity that befell him.” (Bukhari and Muslim).*<sup>187</sup>

*“There were already people before you, a man who got hurt, then he lamented. So he took a knife and cut his hand with the knife. Then the blood didn't stop until he died. Then God said: My servant had hastened his death before I killed. I forbid heaven to him”. (Bukhari and Muslim).*<sup>188</sup>

As for the passive euthanasia law, in fact the fact is included in the practice of stopping treatment. The action was carried out based on the doctor's belief that the treatment that was carried out was of no use anymore and did not

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<sup>185</sup> Al – Qur'an Online, “Surat Al – Baqarah Ayat 178”. <https://tafsirweb.com/677-surat-al-baqarah-ayat-178.html> Accessed August 09 2019.

<sup>186</sup> Amalia, “Pengertian Dan Macam - Macam Euthanasia”. [https://www.academia.edu/32359969/Pengertian\\_and\\_macam-macam\\_Euthanasia](https://www.academia.edu/32359969/Pengertian_and_macam-macam_Euthanasia). Accessed October 08 2019.

<sup>187</sup> Hadits Riwayat Bukhari, No. 5641.

<sup>188</sup> Hadits Riwayat Bukhari, No. 3463.

provide hope of recovery to the patient. Therefore, doctors stop treatment for patients, for example by stopping the artificial respirator from the patient's body. And whether treatment is mandatory, impure, permissible, or makruh in Islamic view? In this problem there are differences of opinion. According to jumhur ulama<sup>189</sup>, treatment or treatment is sterile (sunnah), not mandatory. However, there are some scholars who require treatment, such as the Syafiiyah and Hanabilah clerics, as stated by Syaikhul Islam Ibnu Taimiyah. The basis of the obligation of treatment by some scholars is the hadith that the Messenger of Allah said:

*“Allah will not reduce disease unless Allah also lowers the antidote for him/her” (HR. Bukhari).*<sup>190</sup>

There are several *qarinahs* in other hadiths which indicate that the above command is not mandatory other hadiths that allow no treatment. Among them is the hadith narrated by Ibn Abbas RA, that a woman had come to the Prophet SAW and said, “Indeed, I was affected by epilepsy<sup>191</sup> and often exposed my genitalia (aurat), (when relapse). Pray to Allah for my healing! “The Prophet SAW said”, If you want, you are patient and will get heaven. If I don't want to, I will pray to God that He will heal you. “The woman said”, Well, I will be patient, “then he said again”, Indeed, my genitalia (aurat) is often revealed (when the

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<sup>189</sup> Jumhur ulama is a complete contribution of scholars consisting of experts in Islamic law who can be held accountable to their mujtahidis and are scholars who are honest and never lie. and mastering their respective legal fields, such as fiqh, monotheism and other fields of science.

<sup>190</sup> Annisa Nurul Hasanah, “*Begini Cara Nabi Berobat Ketika Demam*”. <https://bincangsyariah.com/khazanah/begini-cara-nabi-berobat-ketika-demam/>. Accessed October 08 2019.

<sup>191</sup> Epilepsy is a central nervous system (neurological) disorder in which brain activity becomes abnormal, causing seizures or periods of unusual behavior, sensations, and sometimes loss of awareness.

disease recurs), then pray to God so that my genitalia is not revealed”. Then the Prophet SAW then prayed for her. (HR. Bukhari).<sup>192</sup>

The hadith shows you may not seek treatment. If this hadith is combined with the first hadith above which orders medical treatment, then this last hadith becomes an indication (*qarinah*), that the order of treatment is an order of sunnah, not a mandatory order. In conclusion, the law for treatment is sunnah (mandub), not mandatory. Thus, it is clear that treatment or legal treatment is sunnah, including in this case installing assistive devices for patients. If installing these tools is sunnah, then if the doctors have determined that the patient has died of brain organs, then the doctors have the right to stop treatment, such as stopping breathing apparatus and so on. Because basically the use of these assistive devices is included in the activities of medicine for which the sunnah is legal, not mandatory. The death of the brain means definitely no longer the return of life to the patient. Even though some other vital organs can still function, they will still not be able to return life to the patient, because these organs will soon also not function.<sup>193</sup> Based on the explanation above, the legal installation of assistive devices to patients is sunnah, because it includes the activities of medical treatment for which the law is sunnah.<sup>194</sup>

Therefore, the law of passive euthanasia in the sense of stopping treatment

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<sup>192</sup> Ummu Rumman Siti Fatimah, “*Wanita Penghuni Surga Itu...*”. <https://muslimah.or.id/337-wanita-penghuni-surga-itu.html>. September 2009. Accessed October 08 2019.

<sup>193</sup> Fian Kaunang, “*Yang Perlu Kita Ketahui Tentang Mati Otak*”. <https://www.manadonews.co.id/2016/09/03/yang-perlu-kita-ketahui-tentang-mati-otak/>. September 2016. Accessed October 08 2019.

<sup>194</sup> “*Kapan Seseorang Ditetapkan Telah Wafat?*”. <https://islamqa.info/id/answers/230086/kapan-seseorang-ditetapkan-telah-wafat>. May 2016. Accessed October 08 2019.

by pulling out aids to the patient - after death/damage to the brain organ - the law may (*jaiz*) and not haram for doctors.<sup>195</sup> So after removing the tools from the patient's body, the doctor cannot be said to be sinful and cannot be held liable for his actions. But for the free responsibility of the doctor, permission from the patient, guardian or *washi* is required (the *washi* is the person appointed to supervise and care for the patient). If the patient does not have a guardian, or *washi*, then permission must be required from the authorities (Al-Hakim/Ulil Amri).<sup>196</sup>



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<sup>195</sup> Raehanul Bahraen, “Mematikan Pasien Dengan Euthanasia”. <https://muslimafiyah.com/mematikan-pasien-dengan-euthanasia.html>. May 2015. Accessed October 08 2019.

<sup>196</sup> Mufidah Saggaf Aljufri, “Euthanasia dalam Pandangan Al-Qur’an dan Hadis Nabi” (*Jurnal Rausyan Fikr* Vol 10 No 2, Usuluddin IAIN Palu, Sulawesi Tengah, 2014). p 178.