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Passive Euthanasia and the Right to Human Dignity: Ethical and Legal Analysis

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Abstract

This study aims to examine the legal regulations related to passive euthanasia in Indonesia by highlighting the issues of the right to life, the right to die with dignity, and the ambiguity of regulations that affect patients and medical personnel. The study focuses on analyzing how positive law, bioethical principles, and human rights should guide end-of-life decisions. The research method used is normative legal research with an interdisciplinary approach, through the review of legislation, concept analysis, and comparison of practices in several countries. The results of the study found that Indonesia does not yet have specific regulations regarding passive euthanasia; Law Number 17 of 2023 concerning Health and Law Number 29 of 2004 concerning Medical Practice only regulate the right of patients to refuse treatment in general without providing implementable guidelines for medical decisions in terminal conditions. This void creates uncertainty and vulnerability for both doctors and patients. Comparisons with the Netherlands and Japan show that strict regulations, accompanied by oversight mechanisms, can prevent abuse while still respecting patient autonomy. Based on these findings, this study recommends regulatory reform through the drafting of provisions on health wills, living wills, and the strengthening of palliative care services as steps to ensure legal certainty and the protection of human dignity. Overall, the study emphasizes that more ethical, comprehensive, and human rights-based legal reforms are urgently needed to address contemporary medical challenges.

1. Introduction

Euthanasia is one of the most controversial issues in contemporary discourse on health law, bioethics, and human rights, continuing to spark global debate. In the context of modern medicine, euthanasia is the deliberate act of ending the life of a patient with experiencing a terminal illness or an incurable medical condition to relieve suffering, either through active measures (active euthanasia) or by discontinuing or withholding medical treatment that could prolong life (passive euthanasia).[1]

The phenomenon of euthanasia at the global level has shown significant development in recent decades. The first country in the world to legalize euthanasia was the Netherlands in 2002 through the Termination of Life on Request and Assisted Suicide Act, which allows doctors to end the life of a suffering patient under strict conditions that have been established.[2] Belgium followed in the footsteps of the Netherlands in 2014, which became the first country to legalize euthanasia for children without a minimum age limit. Meanwhile, Canada in 2016, Spain in 2021, and several states in the United States have also legalized various forms of euthanasia or physician-assisted suicide (PAS) through the Death with Dignity Act.[3] In Asia, although the majority of countries still prohibit euthanasia, Japan and South Korea have recognized the concept of death with dignity in a limited context, particularly in relation to the right of patients to refuse unwanted medical treatment.[4]

However, the legalization of euthanasia is not a universally accepted phenomenon. Many countries, including most countries in Asia, Africa, and Latin America, still prohibit euthanasia based on moral, religious, and philosophical considerations regarding the sanctity of human life. Even in countries where it has been legalized, the practice of euthanasia continues to spark public controversy. Criticism of euthanasia legalization includes concerns about the slippery slope risk, whereby initially strict criteria could gradually be relaxed, potentially leading to abuse of vulnerable groups such as the elderly, people with disabilities, or patients with mental disorders, as well as implications for the physician-patient trust relationship.[5] Data in the Netherlands shows a significant increase in the number of euthanasia cases from year to year, including the expansion of indications from physical terminal illness to psychological suffering, early-stage dementia, and even “tired of life” in elderly people without terminal illness, raising serious questions about the normalization of death as a medical solution and social pressure on patients who feel they are a burden on their families or society.[6]

In Indonesia, the issue of euthanasia has its own complexities that are influenced by social, cultural, and religious contexts. As a country with a Muslim majority, religious values that emphasize the sanctity of life and the belief that only God has the right to take human life greatly influence society's views on euthanasia.[7] From an Islamic perspective, life is a gift from Allah SWT that must be protected and respected, so active euthanasia is generally considered a form of murder that is prohibited under Sharia law. Similarly, in Catholic

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[1] Beauchamp, Tom L., and James F. Childress. Principles of Biomedical Ethics. 8th ed. Oxford: Oxford University Press, 2019.

[2] Kimsma, Gerrit K., and John Griffiths. Euthanasia and Law in the Netherlands. Amsterdam: Amsterdam University Press, 2016.

[3] Downie, Jocelyn, and Udo Schüklenk. Medical Assistance in Dying: The Law and Ethics of Assisted Dying in Canada. Toronto: University of Toronto Press, 2021.

[4] Rhee, Kyunghee, and Sung Hee Lee. “Right to Die with Dignity in South Korea: Focusing on the ‘Boramae Hospital Case’.” Journal of Law and Medicine 25 (2022).

[5] Battin, Margaret P. “Physician-Assisted Dying and the Slippery Slope: The Challenge of Empirical Evidence.” William and Mary Law Review 52, no. 5 (2011): 819–844.

[6] Regional Euthanasia Review Committees (RERC). Annual Report 2022: Euthanasia in the Netherlands. The Hague: Government of the Netherlands, 2023.

[7] Yusdani. Etika dan Hukum Islam dalam Isu Kesehatan Kontemporer. Yogyakarta: Pustaka Pelajar, 2018.

teaching, the Church firmly rejects euthanasia, emphasizing that "human life is sacred and inviolable," as stated in the Encyclical Evangelium Vitae (1995) by Pope John Paul II. However, it is important to note that there are nuances in the theological discussion about the difference between active euthanasia and passive euthanasia, particularly in relation to the concept of ordinary means vs. extraordinary means in medical care and the principle of "not prolonging futile suffering".[8]

Although public discussion about euthanasia is relatively limited in Indonesia, medical practice is no stranger to the complex dilemmas of end-of-life care. Hospitals in Indonesia often face cases of terminally ill patients who require decisions about the discontinuation or limitation of intensive medical care. Doctors and patients's families are faced with difficult questions: should they continue to sustain the patient's biological life through mechanical ventilation and artificial nutrition when there is no hope of recovery and the patient is currently in a persistent vegetative state with no evidence of conscious awareness? Or is it more humane to allow the patient to "die peacefully" by discontinuing medical interventions that only prolong the process of death without providing any meaningful benefit?[9] These decisions become increasingly complex due to the absence of clear and comprehensive legal guidelines regarding the ethical and legal boundaries of withdrawing or withholding life-sustaining treatment in Indonesia.

The discourse surrounding euthanasia fundamentally reflects a tension between two equally important human right, which may oppose each other in specific situations: the right to life and the right to die with dignity. The right to life repesents the most fundamental and universally recognized human right, protected under numerous international legal frameworks. Article 3 of the 1948 Universal Declaration of Human Rights (UDHR) states that "*everyone has the right to life, liberty and security of person*".[10] Article 6 paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR) 1966 affirms that *"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*".[11] In Indonesia, the right to life is constitutionally guaranteed in Article 28A of the 1945 Constitution of the Republic of Indonesia, which states that *"setiap orang berhak untuk hidup serta berhak mempertahankan hidup dan kehidupannya"*.[12]

In Indonesia, the positive legal system does not yet have explicit and comprehensive regulations regarding euthanasia, particularly passive euthanasia. The lack of a definitive legal basis leads to significant uncertainty for clinicians, patients, and their families in end-of-life decision-making. Although an update has been made through Law No. 17 of 2023 on Health, replacing Law No. 36 of 2009, the substance of the regulation is still general and does not specifically address the issue of discontinuing medical treatment for terminal patients. The law regulates a number of patient rights, including the right to obtain medical information, give informed consent for medical procedures, and the right to

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[8] Wartini, Sri. "Pandangan Hukum dan Agama terhadap Euthanasia di Indonesia." Jurnal Hukum dan HAM 16, no. 2 (2021): 101–115.

[9] Puspitasari, Diah Ayu. "Dilema Etis dalam Penghentian Pengobatan Pasien Terminal di Rumah Sakit." Jurnal Etika Kedokteran Indonesia 7, no. 2 (2023): 89–98.

[10] United Nations. Universal Declaration of Human Rights. Adopted 10 December 1948. General Assembly Resolution 217 A (III). Article 3.

[11] United Nations. International Covenant on Civil and Political Rights. Adopted 16 December 1966, entered into force 23 March 1976. Article 6(1).

[12] Republik Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Pasal 28A.

refuse some or all health care services.[13] Article 6 letter e of the Health Law explicitly states that everyone has the right to "menolak sebagian atau seluruh tindakan Pelayanan Kesehatan yang akan diberikan kepadanya setelah menerima dan memahami informasi tentang tindakan tersebut secara lengkap ".[14]

However, this provision fails to provide clear operational guidance on the exercise of the right to refuse treatment (informed refusal) in terminal patients, particularly those who have lost their legal or medical capacity to provide valid consent. The absence of regulations regarding medical treatment termination procedures, the role of families, and legal protection for healthcare professionals who withhold or withdraw treatment has led to uncertainty in medical practice.[15] As a result, many doctors choose to take a defensive stance to avoid legal risks, which ultimately impacts patients' rights to humane and dignified care.[16]

In the past three years, a number of studies have highlighted the issue of passive euthanasia from a legal and bioethical perspective. Slamet Sampurno Soewondo et al. emphasize the need to update health laws in Indonesia to keep pace with global developments, although their study is still conceptual in nature without clear operational recommendations.[17] I Gede Eka Agung Agastya Punia reviews euthanasia from medical, bioethical, and legal aspects using a normative-conceptual approach, but does not specifically discuss procedures for discontinuing medical treatment in Indonesia.[18] Meanwhile, Y. A. Triana Ohoiwutun et al. highlight the dilemma between the right to life and the right to dignity, but their analysis emphasizes theoretical aspects rather than applicable policy solutions.[19] Previous research has lacked a comprehensive analysis of the protection of human dignity in the practice of medical treatment withdrawal, as well as a lack of policy recommendations that can be implemented in the national health law system. The urgency of this study is even greater given the increasing number of terminal patients in Indonesian hospitals and the development of medical technology that can prolong biological life without regard to quality of life. Therefore, this study seeks to make an original contribution by comprehensively integrating legal, bioethical, and human rights perspectives, as well as proposing concrete policy instruments in the form of health wills, living wills, and palliative care as a form of protection for human dignity. Thus, this study strengthens its originality compared to previous studies because it is not only normative-conceptual in nature, but also offers a more humanistic and human rights-based direction for health regulation reform.

The urgency to examine passive euthanasia in the Indonesian context has grown stronger with the development of modern health law discourse that emphasizes the recognition of patient rights and the principle of patient autonomy. In contemporary medical practice,

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[13] Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 tentang Kesehatan, Lembaran Negara Republik Indonesia Tahun 2023 Nomor 142, Pasal 5–6.

[14] Ibid., Pasal 6 Huruf e.

[15] Heryanto. Hukum Kesehatan Indonesia. Jakarta: Kencana, 2021.

[16] Dwi Astuti. "Aspek Hukum Penghentian Perawatan Pasien Terminal di Indonesia." *Jurnal Hukum dan Pembangunan* 51, no. 2 (2021): 233–250.

[17] Soewondo, Slamet Sampurno, et al. "Konsep Euthanasia dalam Perspektif Hukum dan Pembaruannya di Indonesia." Media Iuris 6, no. 2 (2023): 145–162.

[18] Punia, I Gede Eka Agung Agastya. "Tinjauan Euthanasia dari Aspek Medis, Bioetik, dan Hukum." Jurnal Hukum dan Etika Kesehatan 4, no. 1 (2024): 45–60.

[19] Ohoiwutun, Y. A. Triana, et al. "Euthanasia dalam Perspektif Hukum dan HAM." Law Reform 20, no. 2 (2024): 201–220.

the concept of informed consent has become a fundamental principle that affirms that every individual with legal capacity and medical competence has the right to determine the medical treatment they will undergo, after obtaining complete, honest, and understandable information from health workers. Therefore, an in-depth study of the legal framework applicable in Indonesia regarding euthanasia, particularly passive euthanasia, is necessary because, to date, there has been no explicit, comprehensive, and consistent regulation in the national legal system that can provide certainty for medical personnel, patients, and families. This legal vacuum creates normative and ethical uncertainty in healthcare practice, especially in end-of-life care situations where medical decisions often involve considerations between preserving biological life and respecting the dignity of a person facing terminal suffering.

2. Research Methods

This research adopts a normative legal methodology with an interdisciplinary approach that combines legal, bioethical, and human rights perspectives to analyze positive legal norms related to passive euthanasia in Indonesia. This research was conducted through three main approaches, namely a statutory approach by examining Law Number 17 of 2023 concerning Health, the Criminal Code, and medical professional regulations, a conceptual approach that examines the concepts of human dignity, patient autonomy, and informed consent, and a comparative approach by comparing passive euthanasia practices in the Netherlands, Canada, and Japan as comparative legal lessons. The research materials were obtained from primary legal materials (laws and regulations, decisions of the Constitutional Court and the Supreme Court), secondary legal materials (books, scientific journals, reports from the WHO and UNESCO Bioethics Committees), and tertiary legal materials (legal dictionaries, encyclopedias, and online academic sources). All data were analyzed descriptively, interpreting legal norms based on human rights and medical ethics principles to identify legal loopholes and formulate directions for more humanistic health regulatory reforms in Indonesia that uphold human dignity.

3. Result and Discussion

3.1. The Position of Passive Euthanasia in Indonesian Positive Law

Etymologically, the term euthanasia comes from Greek, namely eu (good) and thanatos (death), which means “good death”. In medical practice, euthanasia is divided into two forms: active euthanasia, which is the direct act of hastening a patient's death through medical intervention (e.g., administering a high dose of medication), and passive euthanasia, which is the discontinuation of medical treatment that sustains the life of a terminally ill patient. In other words, passive euthanasia is not an active act of ending life, but rather allowing death to occur naturally by not providing medical interventions that are no longer beneficial.[20]

From the perspective of Indonesian health law, passive euthanasia is often associated with the patient's right to decline medical treatment (informed refusal). Law No. 17 of 2023 on Health does indeed give patients the right to refuse some or all health services after

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[20] Rarung, Octaviane K., et al. “Eutanasia Ditinjau dari Etika Kedokteran di Indonesia.” Medical Scope Journal 6, no. 2 (2024): 123–131.

receiving complete information,[21] but the norm does not explain the procedure for discontinuing medical care for terminal patients.

Muchammad Iqbal Dwidya Muzadi and Hartiwiningsih (2022) confirms that the regulation of passive euthanasia in Indonesia is still limited to general norms without operational mechanisms, causing uncertainty for doctors and patients families.[22] This situation differs from that in the Netherlands and Japan, which have established clear legal frameworks regarding the withdrawal of medical treatment, thereby providing legal certainty and protection for patients rights.[23] Therefore, Indonesia needs to immediately establish a national legal framework that regulates the procedures for discontinuing medical treatment, the role of families, and legal protection for health workers.

3.2. Passive Euthanasia from Human Rights Perspective

The right to life is a fundamental right guaranteed in Article 28A of the 1945 Constitution of the Republic of Indonesia, which states that "*setiap orang berhak untuk hidup serta berhak mempertahankan hidup dan kehidupannya*", and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which affirms that "every human being has the inherent right to life. This right must be protected by law. No one shall be arbitrarily deprived of his life". This right is often understood absolutely as the state's obligation to preserve the biological life of every individual. However, in the context of terminal patients, preserving biological life without regard for suffering can violate the principle of human dignity. Human dignity itself is affirmed in Article 28G paragraph (1) of the 1945 Constitution, which provides protection for the right to be free from degrading and inhumane treatment.[24]

Dylan Aldianza Ramadhan et al. (2022) emphasizes that the supremacy of human rights in the issue of euthanasia must be understood progressively, namely not only protecting the right to biological life, but also the right to be free from inhumane suffering.[25] This view is in line with General Comment No. 36 of the UN Human Rights Committee (2018), which states that the right to life should not be interpreted narrowly, but must include quality of life and freedom from unnecessary suffering.[26] Thus, the dilemma between the sanctity of life and quality of life is not a contradiction, but rather two aspects that must be balanced within the framework of human rights.

Within Indonesian context, this dilemma is even more complex because it is influenced by religious and cultural factors. The majority of the public rejects active euthanasia because it is considered contrary to religious values, but there are nuances in the

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[21] Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 6 huruf e.

[22] Muzadi, Muchammad Iqbal Dwidya, and Hartiwiningsih. "Pengaturan Mengenai Euthanasia Pasif di Indonesia Ditinjau dari Hukum Positif." Recidive 11, no. 1 (2022): 67–80.

[23] Kimsma, Gerrit K., and John Griffiths. Euthanasia and Law in the Netherlands. Amsterdam: Amsterdam University Press, 2016.

[24] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28A dan Pasal 28G ayat (1).

[25] Ramadhan, Dylan Aldianza, et al. "Implementasi Konsep Euthanasia: Supremasi Hak Asasi Manusia dan Progresivitas Hukum di Indonesia." Indonesian Journal of Human Rights Law 2, no. 1 (2022): 55–70.

[26] United Nations Human Rights Committee. General Comment No. 36 on Article 6 of the ICCPR. CCPR/C/GC/36 (2018).

discussion of passive euthanasia, particularly in relation to the principle of "not prolonging futile suffering." The Indonesian National Human Rights Commission (Komnas HAM RI) report (2023) also highlights the need for health regulations that are more responsive to patients' rights, including in the context of end-of-life care.[27] This shows that respect for the right to life must be interpreted comprehensively: not merely maintaining biological existence, but also guaranteeing the right to die with dignity.

3.3. Ethical Analysis: Patient Dignity and Autonomy

The issue of passive euthanasia in the perspective of medical ethics is rooted in the basic principles of bioethics: beneficence, non-maleficence, respect for autonomy, and justice. In the context of terminal patients, maintaining biological life without therapeutic benefit can be considered a violation of the principle of non-maleficence, because medical actions actually prolong suffering without a clear purpose. Research by Octaviane K. Rarung et al. (2024) confirms that the discontinuation of intensive medical care in Indonesia can be seen as a form of respect for human dignity, not a violation of it, if done with the consent of the patient or family.[28]

In addition, the principle of patient autonomy is becoming increasingly relevant in modern medical practice. Patients have the right to determine the medical treatment they undergo, including refusing interventions that only prolong the process of death. In the Indonesian context, a dilemma arises when patients lose their legal or medical capacity to give consent. Therefore, instruments such as advance directives or health wills are important to ensure that patients' decisions are respected. Recent research emphasizes that the application of the concept of informed refusal must be accompanied by clear legal mechanisms so as not to cause uncertainty for medical personnel.[29]

From an ethical perspective, passive euthanasia is acceptable if it meets three main conditions: the promotion of the patients best interests (beneficence), the prevention of harm or harm or futher suffering (non-maleficence), and respect for the patients autonomy as expressed by the patient or their legal family. Without a supporting legal framework, these ethical principles are difficult to apply consistently in medical practice in Indonesia.

3.4. Legal Analysis: Accountability of Medical Personnel

From a legal perspective, passive euthanasia poses a dilemma between protecting the right to life and protecting medical personnel. Law No. 17 of 2023 on Health does recognize the right of patients to refuse medical treatment,[30] However, it does not provide clarity regarding the procedure for discontinuing treatment in terminal patients. As a result, medical personnel risk facing criminal or civil charges if the decision to discontinue treatment is considered negligence or even murder. Research by I Gede Eka Agung Agastya Punia (2024) highlights that without explicit regulations, medical personnel are

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[27] Komnas HAM RI. Laporan Tahunan Komnas HAM 2023. Jakarta: Komnas HAM, 2023.

[28] Rarung, Octaviane K., et al. "Eutanasia Ditinjau dari Etika Kedokteran di Indonesia." Medical Scope Journal 6, no. 2 (2024): 123–131.

[29] Ramadhan, Dylan Aldianza, et al. "Implementasi Konsep Euthanasia: Supremasi Hak Asasi Manusia dan Progresivitas Hukum di Indonesia." Indonesian Journal of Human Rights Law 2, no. 1 (2022): 55–70.

[30] Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 6 huruf e.

vulnerable to criminalization even though their actions are in the best interests of the patient.[31]

The urgency of establishing a national legal framework in Indonesia lies in the need for legal certainty for medical personnel. Regulations must cover procedures for discontinuing medical treatment, the role of families, and legal protection for doctors who act in accordance with ethical principles and patient consent. Without such regulations, medical personnel will continue to be in a dilemma: maintaining the biological life of patients to avoid legal risks, or respecting the dignity of patients at the risk of criminalization. Accordingly, the revision of health laws constitutes an urgent necessity to achive an appropriate balance between safeguarding the right to life and upholding human dignity.

3.5. Comparative Analysis of National and International Regulations

Table 1. Comparison of Passive Euthanasia Regulations: Indonesia, Netherlands, Japan

Country	Primary Regulations	Scope	Oversight Mechanism	Notes
Indonesia	Law No. 17 of 2023 concerning Health; Law No. 29 of 2004 concerning Medical Practice	The right of patients to refuse medical treatment (informed refusal), but there are no explicit provisions regarding the discontinuation of terminal care.	There is no specific mechanism; it depends on the interpretation of medical personnel and the family.	Creating a legal vacuum; doctors tend to be defensive to avoid legal risks.
Netherlands	*Termination of Life on Request and Assisted Suicide Act* (2002)	Regulate active and passive euthanasia under strict conditions: unbearable suffering, voluntary request by the patient, and no medical alternatives.	Overseen by Regional Euthanasia Review Committees (RERC) that assess each case.	Providing legal certainty for doctors; cases are increasing but remain under strict supervision.
Japan	There are no specific laws; practice is regulated through case	The recognizing of death within the framework of patients right to	Supervision through hospitals and medical associations; decisions often	More limited practice; focus on the right of patients to

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[31] Punia, I Gede Eka Agung Agastya. "Tinjauan Euthanasia dari Aspek Medis, Bioetik, dan Hukum." Jurnal Hukum dan Etika Kesehatan 4, no. 1 (2024): 45–60.

	law and medical guidelines.	refuse unwanted medical treatment	involve the family,	refuse intensive care without therapeutic benefit.

The table above shows the fundamental differences between Indonesia, the Netherlands, and Japan in regulating passive euthanasia. Indonesia is still in a legal vacuum due to the absence of explicit regulations governing the termination of medical treatment for terminally ill patients. The right of patients to refuse medical treatment is recognized in Law No. 17 of 2023 concerning Health,[32] However, these norms are general in nature and do not provide legal certainty for medical personnel or patients' families. As a result, doctors often take a defensive stance to avoid legal risks, which can ultimately reduce the quality of palliative care.[33]

In contrast, the Netherlands has established comprehensive regulations through the Termination of Life on Request and Assisted Suicide Act (2002), which regulates both active and passive euthanasia under strict conditions. Each case is supervised by Regional Euthanasia Review Committees (RERC), so that the practice remains within a clear and transparent legal framework.[34] Japan, despite not having specific legislation, has recognized the concept of death with dignity through jurisprudence and medical guidelines. The practice of discontinuing medical treatment in Japan is carried out with the involvement of the family and hospital supervision, thereby respecting the patient's right to refuse futile medical intervention.[35]

This comparison highlights the urgency of establishing a national legal framework in Indonesia. Without clear regulations, the dilemma of end-of-life care will continue to cause normative and ethical uncertainty. Indonesia needs to adopting insights from the regulatory approaches of the Netherlands and Japan in formulating legal frameworks that ensure a balance the right to life with respect for human dinity. The legal framework must include procedures for discontinuing medical treatment, legal protection for health workers, and oversight mechanisms to prevent abuse. Thus, updating health regulations will provide legal certainty, protect medical personnel, and guarantee the right of patients to die with dignity.

3.6. Passive Euthanasia in The Perspective of Ius Constituendum

Normatively, Indonesian positive law does not yet explicitly regulate passive euthanasia. Law No. 17 of 2023 concerning Health does grant patients the right to refuse some or all

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[32] Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 6 huruf e.

[33] Dwi Astuti. "Aspek Hukum Penghentian Perawatan Pasien Terminal di Indonesia." *Jurnal Hukum dan Pembangunan* 51, no. 2 (2021): 233–250.

[34] Regional Euthanasia Review Committees (RERC). Annual Report 2022: Euthanasia in the Netherlands. The Hague: Government of the Netherlands, 2023.

[35] Rhee, Kyunghee, and Sung Hee Lee. "Right to Die with Dignity in South Korea: Focusing on the 'Boramae Hospital Case'." Journal of Law and Medicine 25 (2022).

health care services after receiving complete information,[36] However, these norms do not explain in detail the procedure for discontinuing medical treatment for terminal patients. Similarly, Law No. 29 of 2004 on Medical Practice emphasizes the obligation of doctors to provide services in accordance with professional and ethical standards, but does not provide guidelines on the discontinuation of intensive care.[37] In practice, the discontinuation of medical treatment such as ventilators, artificial nutrition, or resuscitation is often carried out based on medical considerations and family consent. However, because there are no legal norms that explicitly regulate this, such decisions risk being interpreted as negligence or even criminal acts. This shows that although patients rights are recognized, there is still no legal framework that guarantees the safe and ethical implementation of passive euthanasia.

The absence of explicit regulations creates a legal vacuum that directly impacts medical practice. Doctors often take a defensive stance to avoid legal risks, even though such actions can prolong the suffering of terminal patients. Research by Muchammad Iqbal Dwidya Muzadi and Hartiwiningsih (2022) shows that the regulation of passive euthanasia in Indonesia is still limited to general norms without operational mechanisms, creating uncertainty for medical personnel and patients families.[38] This situation also affects patients right to die with dignity. Without a clear legal framework, terminal patients risk undergoing medical treatment that no longer provides therapeutic benefits, but only prolongs the process of death. On the other hand, medical personnel who wish to respect the patient's wishes face the potential for legal action. This uncertainty shows that the legal vacuum is not only normative in nature, but also has an impact on the quality of health services and the protection of human rights.

The urgency of establishing a national legal framework on passive euthanasia lies in the need for legal certainty for medical personnel and protection of patients rights. The regulation must be designed comprehensively and contextually, taking into account the social, cultural, and religious values of Indonesian society. Several important components that need to be included in the legal framework include:

- Procedures for discontinuing medical treatment in terminal patients, including medical criteria, patient or family consent, and documentation of the decision.
- Supporting legal instruments such as advance directives and living wills, to ensure that patients' decisions are respected even if they lose legal or medical capacity.
- Legal protection for medical personnel who act in accordance with ethical principles and patient consent, so that they do not risk criminalization.
- Oversight and accountability mechanisms through hospital ethics committees or independent institutions, to prevent abuse and ensure practices comply with medical ethics standards.

The establishment of this legal framework will not only provide normative certainty, but also strengthen the preservation of human dignity as a fundamental principle within the healthcare system. Thus, Indonesia can strike a balance the protection of the right to life

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[36] Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 6 huruf e.

[37] Undang-Undang Republik Indonesia Nomor 29 Tahun 2004 tentang Praktik Kedokteran, Pasal 50.

[38] Muzadi, Muchammad Iqbal Dwidya, and Hartiwiningsih. "Pengaturan Mengenai Euthanasia Pasif di Indonesia Ditinjau dari Hukum Positif." Recidive 11, no. 1 (2022): 67–80.

and respecting the right to die with dignity, as has been implemented in countries such as the Netherlands and Japan.

Regulatory reform must begin with the establishment of clear operational definitions that delineate the clinical and legal scope of decisions to discontinue or withhold life-sustaining treatment. Without such definitional clarity, clinicians face persistent interpretive ambiguity that simultaneously jeopardizes patient welfare and exposes healthcare professionals to disproportionate legal risks. The proposed framework should distinguish between withholding treatment, defined as the decision not to initiate a life-sustaining intervention, and withdrawing treatment, defined as the termination of an ongoing intervention, given that the two categories carry different ethical and procedural implications.[39] Alongside these definitions, the regulation must establish tiered consent standards calibrated to the patient's decision-making capacity. When a patient retains full legal and medical competence, their autonomous and informed refusal of life-sustaining treatment must be given direct legal force. When a patient has lost this capacity, the law must provide a clear hierarchical framework: first, reliance on a valid advance directive or living will executed while the patient was competent; second, a formally designated healthcare proxy; and third, a surrogate decision-maker drawn from the immediate family, guided by the best-interests standard rather than substituted judgment. This tiered structure prevents arbitrary or conflicted decision-making while ensuring that the patient's dignity and previously expressed wishes remain central to the end-of-life care process.

Central to the application of tiered consent is the requirement for a formal patient capacity assessment, conducted by at least one qualified physician and thoroughly documented prior to any decision regarding life-sustaining treatment. This assessment must evaluate four core functional abilities: the patient's capacity to understand relevant medical information, to appreciate the consequences of their decision in light of their own values and condition, to reason through available alternatives, and to communicate a consistent and voluntary choice. The MacArthur Competence Assessment Tool for Treatment (MacCAT-T), developed and validated by Grisso and Appelbaum (1998)[40], represents an internationally recognized clinical instrument that can serve as a reference for developing Indonesian clinical guidelines in this area. For cases classified as high-risk, including patients who are unconscious, whose expressed wishes conflict with family interests, or whose clinical prognosis involves significant uncertainty, the proposed regulatory framework must require mandatory consultation with a hospital ethics committee before any decision to discontinue life-sustaining treatment is implemented. The ethics committee, composed of clinical, legal, ethical, and patient advocacy representatives, serves as a deliberative body that reduces the risk of arbitrary decisions and provides institutional accountability. Comparative evidence from the Netherlands demonstrates that structured ethics oversight significantly reduces the probability of abuse in end-of-life care decisions, while simultaneously ensuring that clinical practice remains grounded in professional and legal standards.[41] All decisions made following ethics committee review must be accompanied by standardized documentation formats that record the

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[39] Beauchamp, Tom L., and James F. Childress. Principles of Biomedical Ethics. 8th ed. Oxford: Oxford University Press, 2019.

[40] Kimsma, Gerrit K., and John Griffiths. Euthanasia and Law in the Netherlands. Amsterdam: Amsterdam University Press, 2016.

[41] Grisso, Thomas, and Paul S. Appelbaum. Assessing Competence to Consent to Treatment: A Guide for Physicians and Other Health Professionals. Oxford: Oxford University Press, 1998.

medical justification, the consent process, the results of the capacity assessment, and the committee's deliberation, ensuring that each case generates an auditable record that protects both patients and healthcare professionals.

3.7. The Urgency of Establishing National Legislation on Passive Euthanasia

To date, there is no legislation in Indonesia that explicitly regulates passive euthanasia. Law No. 17 of 2023 on Health only mentions the right of patients to refuse some or all health care services after receiving complete information (Article 6 letter e), but does not explain in detail the procedure for discontinuing medical treatment for terminal patients.[42] As a result, the practice of discontinuing treatment such as ventilators or artificial nutrition still depends on the interpretation of medical personnel and the consent of the family, without a clear legal basis. Research by Muchammad Iqbal Dwidya Muzadi and Hartiwiningsih (2022) shows that this legal vacuum creates normative uncertainty and the risk of criminalization for medical personnel, even though their actions are carried out in the best interests of patients.[43] In practice, doctors tend to take a defensive stance and maintain intensive care even when it no longer provides therapeutic benefits, in order to avoid lawsuits. This has an impact on the quality of health services and the right of patients to die with dignity.

From a health law perspective, the establishment of national regulations on passive euthanasia is an urgent necessity to ensure legal certainty and ethical protection. Law No. 29 of 2004 on Medical Practice emphasizes that doctors are obliged to provide services in accordance with professional standards and medical ethics (Article 50), but does not provide guidelines on the termination of intensive care.[44] Without clear regulations, medical personnel are in a dilemma between practicing the principle of non-maleficence and the risk of violating the law. Dwi Astuti (2021) emphasizes that the legal aspects of discontinuing treatment for terminal patients must be explicitly regulated so as not to cause multiple interpretations and fear in medical practice.[45] Clear regulations will provide legal protection for doctors who act in accordance with ethical principles and patient consent, while also guaranteeing the right of patients to decline medical treatment that is no longer beneficial. Thus, health law must evolve in line with ethical and human rights requirements in end-of-life care.

The right of patients to die with dignity is part of the right to human dignity guaranteed in Article 28G paragraph (1) of the 1945 Constitution. The Indonesian National Human Rights Commission (Komnas HAM RI) in its Annual Report (2023) emphasizes that health services must respect patients' rights, including in the context of end-of-life care.[46] Without legal instruments such as health wills or living wills, patients wishes risk being ignored, especially when patients lose their legal or medical capacity. On the other hand, the establishment of national laws is also important to prevent the abuse of medical

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[42] Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 6 huruf e.

[43] Muzadi, Muchammad Iqbal Dwidya, and Hartiwiningsih. "Pengaturan Mengenai Euthanasia Pasif di Indonesia Ditinjau dari Hukum Positif." Recidive 11, no. 1 (2022): 67–80.

[44] Undang-Undang Republik Indonesia Nomor 29 Tahun 2004 tentang Praktik Kedokteran, Pasal 50.

[45] Dwi Astuti. "Aspek Hukum Penghentian Perawatan Pasien Terminal di Indonesia." *Jurnal Hukum dan Pembangunan* 51, no. 2 (2021): 233–250.

[46] Komnas HAM RI. Laporan Tahunan Komnas HAM 2023. Jakarta: Komnas HAM, 2023.

treatment withdrawal practices. Clear regulations with oversight mechanisms through hospital ethics committees or independent institutions can ensure that decisions to discontinue treatment are made in a professional, ethical, and transparent manner. Thus, the establishment of national laws on passive euthanasia not only guarantees the protection of the rights of patients and medical personnel, but also strengthens accountability in the Indonesian healthcare system.

The protection of patients' rights in end-of-life care cannot be adequately guaranteed through procedural rules alone. The national legal framework must also establish measurable quality indicators for access to palliative care as a substantive component of the right to die with dignity. These indicators should include the proportion of terminal patients receiving adequate pain and symptom management in accordance with WHO palliative care standards, the geographic distribution and availability of palliative care services across Indonesian provinces, and the trained palliative care professional-to-patient ratio in both public and private hospital settings. The World Health Organization has long advocated the integration of palliative care into national health systems as a core element of universal health coverage, affirming that the failure to ensure adequate palliative care constitutes a denial of the patient's right to be free from unnecessary suffering.[47] Embedding quality indicators within the legal framework ensures that the right to die with dignity is not merely a normative aspiration, but a measurable standard of care subject to periodic review by relevant health authorities. Equally important is the requirement for transparency in case reporting: every decision to discontinue or withhold life-sustaining treatment must be documented using standardized forms and reported to a designated oversight institution, with records containing the clinical basis of the decision, the informed consent or surrogate decision-making process, the findings of the capacity assessment, and, where applicable, the ethics committee's recommendation. Transparent reporting creates an auditable institutional record that protects both patients and healthcare professionals while generating aggregate data to inform future policy evaluations.

Effective oversight of end-of-life care decisions must not rest at a single institutional level. The national legal framework should establish multiple and coordinated layers of supervision: at the facility level, through mandatory involvement of a hospital ethics committee; at the professional organization level, through monitoring by the Indonesian Medical Council (Konsil Kedokteran Indonesia/KKI) and the Indonesian Doctors Association (Ikatan Dokter Indonesia/IDI); and at the national regulatory level, through a dedicated oversight body under the Ministry of Health, modeled on the Regional Euthanasia Review Committees (RERC) of the Netherlands. This multilevel architecture ensures that accountability is both distributed across institutional actors and coordinated through a coherent national system, thereby preventing regulatory gaps and enabling systemic response to emerging patterns of non-compliance or abuse. Healthcare professionals who act in strict compliance with established procedures, including completion of required documentation and ethics committee review, must be afforded explicit legal protection against criminal and civil liability, thereby removing the defensive medicine incentives that currently undermine the quality of palliative care in Indonesia. Finally, the regulatory framework must institutionalize periodic implementation evaluations, conducted at least every three years by an independent

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[47] World Health Organization. Integrating Palliative Care and Symptom Relief into Primary Health Care: A WHO Guide for Planners, Implementers and Managers. Geneva: World Health Organization, 2018.

expert panel, to assess the measurable impact of the regulations on patient safety outcomes, the clarity of institutional accountability chains, and the consistency of clinical practice across healthcare settings. Evaluation findings must be published transparently and used to update clinical guidelines and revise legal provisions where necessary, ensuring that Indonesia's health legal framework remains responsive to advances in medical technology, demographic changes, and evolving standards in international health law.

4. Conclusion

This study shows that passive euthanasia, as a form of discontinuing medical treatment for terminal patients, does not yet have explicit regulations in Indonesian positive law. Although Law No. 17 of 2023 concerning Health recognizes the right of patients to refuse medical treatment, this norm is not sufficient to provide legal certainty for medical personnel or comprehensive protection of patients rights. As a consequence, the practice of discontinuing intensive care remains in a legal uncertainty that poses ethical and legal risks.

From a human rights perspective, preserving biological life without regard for suffering is contrary to the principle of human dignity as guaranteed in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This study affirms a progressive understanding of the right to life, which extends to the right to die with dignity and freedom from non-beneficial medical interventions. Within the framework of medical ethics, the discontinuation compliance with medical treatment requests made by the patient or their family reflects respect ethical principle for patient autonomy and non-maleficience, not amount to a violation of the legally protected right to life.

Legally, the ambiguity of norms regarding passive euthanasia places medical personnel in a vulnerable position against legal claims. Without clear regulations, doctors tend to maintain unnecessary medical procedures to avoid the risk of criminalization, which ultimately can reduce the quality of palliative care. Therefore, the establishment of a national legal framework governing the procedures for discontinuing medical treatment, legal instruments such as health wills, and oversight mechanisms is an urgent need in Indonesia's health law system.

This study makes an original contribution by comprehensively integrating legal, ethical, and human rights analysis, as well as proposing directions for more humanistic and human rights-based health regulation reform. With a clear national legal framework, Indonesia can balance the protection of the right to life and respect for human dignity, while providing legal certainty for medical personnel in carrying out ethical and responsible professional practices.

In light of these findings, this study recommends a comprehensive reform of Indonesia's health legal framework through several interlocking components. At the normative level, the law must establish clear operational definitions for decisions to discontinue or withhold life-sustaining treatment, tiered consent standards that reflect varying degrees of patient decision-making capacity, and mandatory ethics committee consultation for high-risk cases. At the procedural level, formal patient capacity assessments, standardized documentation formats, and explicit legal protection for healthcare professionals who act in compliance with established procedures are essential to creating a safe and legally certain clinical environment. At the systemic level, quality indicators for palliative care access and mandatory case reporting requirements must be embedded in the regulatory framework, supported by multilevel oversight at the facility, professional organization, and national regulatory levels. Periodic implementation evaluations, conducted at least every three years, should assess outcomes on patient safety, institutional accountability, and clinical consistency, ensuring that the regulatory framework evolves in tandem with advances in medicine and human rights law. Through this multidimensional reform agenda, Indonesia can move beyond the current legal vacuum and establish a health legal system that genuinely protects the dignity of every patient in the final stages of life.

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