

THE CONSTITUTIONALITY OF THE PRACTICE OF EUTHANASIA AGAINST PARENTS IN MAQASHID SHARIA AND HUMAN RIGHTS

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Abstract

Efforts to take a conscious action that can hasten the death of a person due to compassion and pity for the condition experienced by that person is called euthanasia or "*qatlurrahmah*" (killing out of compassion and sympathy). This study wanted to analyze whether or not a child should practice euthanasia against their parents who have been sick for a long time or suffer from chronic diseases that cannot be cured and even coma for a long time. The method used in this study is a normative legal method with a conceptual approach (conceptual approach) and legislation (statute approach). The results showed that the practice of euthanasia against parents was against maqashid sharia namely to realize the benefit of human life, especially the protection of the human body and soul (*hifz bun Nafs*), the right to live, and life as a form of protection of human rights as regulated in the Indonesian Constitution Article 28 A of the 1945 Constitution and reinforced by Article 28 I of the 1945 Constitution.

Keywords: *Maqashid Sharia, Human Rights, Euthanasia, Parents*

Introduction

One of the basic human needs is health, so every citizen has the right and has the right to have a healthy life guaranteed and protected by the constitution and regulations. It is the duty of the state to prosper its people's health which is the most important and greatest asset to create a prosperous state. The state plays a role in providing all the basic needs of every citizen in the form of health services.¹

It is recognized that human rights, especially the right to have a healthy life are basic rights that can never be separated from the existence of human life which is respected, and protected by everyone, the law, and even the state. A gift from God Almighty to every human being who has been given health as a tangible manifestation of human rights that must be respected, guaranteed, and protected by law and even the state to maintain their honor and dignity.²

The right to have a healthy life is part of essential human rights that must be respected, upheld, and even protected by every human being and the state. The development of science and technology in the health sector will remain to continue and develop along with the times. The many discoveries of scientists provide a wealth of knowledge in the health sector, one of the examples is euthanasia, and this term is used as a reference to a practice and action accelerating the dying process of a patient fairly backed by reasons and aims to relieve the person's suffering.

Euthanasia is a complex and highly controversial issue raising, many confusing questions and the pros and cons. Even this issue has not only developed in Western countries, but also the Eastern

¹Mikho Ardinata, "Tanggung Jawab Negara Terhadap Jaminan Kesehatan Dalam Perspektif Hak Asasi Manusia (HAM)," *Jurnal HAM* 11, no. 2 (2020): 319–333.

²Mikho Ardinata, "Tanggung Jawab Negara Terhadap Jaminan Kesehatan Dalam Perspektif Hak Asasi Manusia (HAM)," *Jurnal HAM* 11, no. 2 (2020): 319–333.

³I Gede Agus Pande Wijaya and I Gusti Ngurah Parwata, "Hukuman Mati Dan Euthanasia Dalam Perspektif Hak Asasi Manusia Dan Peraturan Perundang-Undangan," *Jurnal Kertha Negara*, (2021): 1-15.

⁴Sri Warjiyati, "Implementasi Euthanasia Dalam Perspektif Ulama Dan HAM" *al-Jinayah: Jurnal Hukum Pidana Islam* 6, no. 1 (2020): 1-28.

hemisphere and Indonesia.³ Ending the individual life is painless, and this action can be said to be an aid in alleviating the individual suffering who is about to end his life. Death is what in medical terms is called euthanasia, which today is defined as killing a patient who has little hope of recovery.⁴

Since ancient Greece, euthanasia has existed and was known to the public at that time. This means that euthanasia is not a new problem, it is from Greece that euthanasia is known and has spread to several countries in the world, it exists in Europe, America, and Asia. In general, in Western countries such as Switzerland, the practice of euthanasia is not considered an act of murder, even though euthanasia has been legalized and regulated in their Criminal Law.⁵ The act of euthanasia is something that has never been heard in Indonesia, but there have been several requests for euthanasia cases that have occurred. For example, in the case of SJ, occurring around 2005, he asked the court for his husband and family to allow euthanasia to be carried out on the patient because the patient had suffered for a long time.⁶

According to Syamsul Anwar, many rejections against practical euthanasia in today's modern world have risen to various perceptions and views. The Rise of Euthanasia among the people who oppose it vehemently, not least among the Clergies. It was declared on October 28, 2019, in the Vatican against the practice and act of euthanasia being seen as a contradictory act to religion, therefore euthanasia is prohibited without exception.⁷

The act of euthanasia raises the pros and cons to date and remains to continue. The complex issues intended in euthanasia require legal clarity and certainty in people's lives, especially Muslims and religious

⁵Arifin Rada, "Eutanasia Dalam Perspektif Hukum Islam," *Perspektif* 18, no. 2 (2013): 108–117.

⁶Syamsul Anwar, Eutanasia, Physician-Assisted Suicide, Dan Palliative Care: Tinjauan Maqasid Syariah, vol. 15, 2016. <https://tarjih.or.id/eutanasia-physician-assisted-suicide-dan-palliative-care-tinjauan-maqasid-syariah/> accessed 11 Juni 2022

⁷Syamsul Anwar, *Eutanasia, Physician-Assisted Suicide, Dan Palliative Care : Tinjauan Maqasid Syariah*, vol. 15, 2016. <https://tarjih.or.id/eutanasia-physician-assisted-suicide-dan-palliative-care-tinjauan-maqasid-syariah/> accessed 11 Juni 2022

communities in this state of Pancasila law. In June 1997, the Indonesian Ulama Council (MUI) conducted a study (*mudzakarah*) in Jakarta resulting in a legal argument that euthanasia is a suicidal act and an act violating the Sharia law.⁸

Based on the literature review, the authors found several previous legal studies that are relevant to the discussion on the review of human rights law and maqashid sharia regarding the practical euthanasia against parents. First, Sri Warjiati conducted a research entitled Implementation of Euthanasia in the Ulama's Perspective and Human Rights. The focus of her research is on euthanasia as a problem that remains a dilemma among doctors, legal practitioners, and religious circles and has been a discussion topic in various countries, particularly in Indonesia and Malaysia, especially when it is viewed from the perspective of scholars and human rights. Comparative study on those conditions has been conducted in the two countries, Indonesia and Malaysia.⁹

Second, I Gusti Agung Gede Utara Hartawan, Anak Agung Sagung Laksmi Dewi, I Nyoman Sutama focused on his research entitled Euthanasia in the Perspective of Human Rights and Positive Law in Indonesia. The results of his research explain that there is no legal norm regulating euthanasia¹⁰ in Indonesia

Third, Arifin Rada, in his research entitled Euthanasia in the Perspective of Islamic Law. The focus of his research concludes that practical euthanasia is a law-violating act and a contradictory act to applicable law in Indonesia as referred to in positive law and health law and medical code of ethics. Therefore, the practice of euthanasia is prohibited.¹¹

⁸Arifin Rada, "Eutanasia Dalam Perspektif Hukum Islam," *Perspektif* 18, no. 2 (2013): 108–117.

⁹Warjiyati, "Implementasi Euthanasia Dalam Perspektif Ulama Dan HAM." *Al-Jinayah : Jurnal Hukum Pidana Islam* 6, no 1 (2020): 257-284

¹⁰I Gusti Agung Gede Utara Hartawan, Anak Agung Sagung Laksmi Dewi, and I Nyoman Sutama, "Eutanasia Dalam Perspektif Hak Asasi Manusia Dan Hukum Positif Di Indonesia," *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 310–314.

¹¹Arifin Rada, "Eutanasia Dalam Perspektif Hukum Islam," *Perspektif* 18, no. 2 (2013): 108–117.

Fourth, Lefri Mikhael, in his research entitled *The Responsibility of the State of Fulfilling the Right to Mental Health Associated with Human Rights*. The focus of his research is that the state as a policy maker has the obligation and responsibility to provide protection and respect for every basic right of its citizens. The right to mental health is integrated with the right to health, which is the main responsibility of the state to fulfill it. Basically, the state constitution is obliged to fulfill it as a tangible manifestation of the fulfillment of these human rights.¹²

Fifth, Mikho Ardinata, with the title of his research on *State Responsibility for Health Insurance in the Perspective of Human Rights*. The focus of the research is that the government has the responsibility to guarantee the right to health of every citizen properly and adequately. The purpose is in the context of efforts to guarantee and provide protection for the right to health.¹³

Sixth, I Gede Agus Pande Wijaya and I Gusti Ngurah Parwata with their research entitled *Death Penalty and Euthanasia in the Perspective of Human Rights and Legislation*. The focus of their research explains that euthanasia is a violation of the patient's right to life. Although the laws and regulations in Indonesia have not clearly regulated euthanasia, however, doctors violating their authority may be subject to Article 344, Article 340, and Article 304 in conjunction with Article 306 paragraph (2) of the Criminal Code.¹⁴

Seventh, Endang Suparta with the title of his research *Prospective Regulation of Euthanasia in Indonesia from a Human Rights Perspective*. The results of his research conclude that in practice euthanasia raises debatable issues that will never end. Do you want to see it from the perspective of religion, human rights, and others? So in

¹² Lefri Mikhael, "Tanggung Jawab Negara Dalam Pemenuhan Hak Atas Kesehatan Jiwa Dihubungkan Dengan Hak Anak," *Jurnal HAM* 13, no. 1 (2022): 151–166.

¹³ Ardinata, "Tanggung Jawab Negara Terhadap Jaminan Kesehatan Dalam Perspektif Hak Asasi Manusia," *Jurnal HAM*, 11, no 2 (2020): 319-333.

¹⁴ Wijaya and Parwata, "Hukuman Mati Dan Euthanasia Dalam Perspektif Hak Asasi Manusia Dan Peraturan Perundang-Undangan," *Jurnal Kertha Negara* 9, no 2 (2021): 92-106

the end, the issue of euthanasia needs to be regulated as referred to in the Criminal Code.¹⁵

A review of previous research has been carried out to find similarities and differences. The difference between this research and other research is about the practice of euthanasia carried out on the parents themselves using the maqashid sharia approach and human rights law. It was found that there is still no research that specifically discusses the formulation of the problem initiated in this study as described below.

Based on the phenomena above, several problems can be formulated in this study including; Is it permissible for a child to practice euthanasia against his parents who have been chronically ill for a long time and even in a coma for a long time and there is no guarantee of life for him? What are the legal consequences when a child euthanizes his parents, can he be categorized as having committed murder?

Methods

This research leads to normative legal research, namely research aimed at written regulations so this research is closely related to a literature study using secondary data in the form of primary, secondary, and tertiary legal materials. Primary legal materials consist of the Qur'an, Hadith, Maqashid Sharia Theory, Universal Declaration of Human Rights (UDHR), the 1945 Constitution, MPR Decree No. XVII/MPR/1998 on Human Rights, Law No. 39/1999 on Human Rights.

Secondary legal references refer to books and scientific works of legal experts that are published or obtained electronically and tertiary legal references in the form of legal dictionaries and the Great Indonesian dictionaries. Data collection is undertaken by conducting a literature study. Data analysis was carried out with a qualitative approach, which is a way in which the results will be described following the objectives of the research and the validity of the data, the conclusions of the study are determined by the researchers themselves. Therefore, the type of writing in this article is prescriptive, that is, to

¹⁵Endang Suparta, "Prospektif Pengaturan Euthanasia Di Indonesia Ditinjau Dari Perspektif Hak Asasi Manusia," *Jurnal Ilmiah Penegakan Hukum* 5, no. 2 (2019): 76–85.

notify legal provisions regarding the practice of euthanasia against parents in the maqashid sharia measure and human rights law.¹⁶

Discussion

The practice of euthanasia against parents in the maqashid sharia measure.

The purpose of Islamic law is for humans to realize happiness and benefit for human life, not only worldly and temporal life but even eternal *ukhrawi* life. A happy and good life can be viewed from two aspects, namely achieving all benefits and benefits while always avoiding all evil and things that will damage the joints of life.¹⁷ The above means that it is a necessity and obligation for every human being to act by considering things that contain benefit or goodness and not to turn a blind eye to avoid every evil and evil.

Taking all forms of benefit for everyone is an obligation by always concern the implications that will arise in legal behavior and actions, when the legal action will result in harm and damage, then it is prohibited. When an action brings goodness and benefit, then something is permissible. This is the meaning of the term in maqashid sharia "*jalbil mashalaih wadar'il mafasid*"¹⁸

Etymologically maqashid sharia means the goals or purposes to be achieved by the makers of sharia through the text of the sharia itself, either in the form of orders or prohibitions, as well as on things that are considered permissible (free to choose between doing or leaving).¹⁹ Terminologically maqashid can be equated with the word wisdom behind the implementation of law, because Allah Almighty as the lawmaker has never set His law in vain, therefore many of the wisdom contained in it are known or unknown to everyone or not who other.

¹⁶Irwansyah, "Penelitian Hukum" (2020): 94–104.

¹⁷Helmi Basri, "Teori Maalatul Af'al Dalam Maqashid Syari'ah Dan Aplikasinya Pada Permasalahan Fiqh Kontemporer," *Ijtihad; Jurnal Wacana Hukum Islam dan Kemanusiaan* 19, no. 2 (2019): 205–221.

¹⁸Helmi Basri, "Teori Maalatul Af'al Dalam Maqashid Syari'ah Dan Aplikasinya Pada Permasalahan Fiqh Kontemporer," *Ijtihad; Jurnal Wacana Hukum Islam dan Kemanusiaan* 19, no. 2 (2019): 205–221.

¹⁹Helmi Basri, *Teori Maalatul Af'al*, 1st ed. (Jakarta: kencana, 2021), 38.

Wisdom is the benefit to be addressed through the establishment of a legal provision. The manifestation of the determination of a legal provision is the existence of benefits. Benefit or goodness and benefit in human life is the goal of law. Therefore, the wisdom in question is the purpose of the law itself. Wisdom according to *at-Thufi* (d. 716/1316), as quoted by Syamsul Anwar, is the purpose and intent of the law embodied in a stipulation of legal provisions, for example, the stipulation of *qisas* and *hudud* to protect life and property.²⁰

Al-Qur'an as a source of Islamic law confirms in Qs. Al-Anbiya '(21): 107 that Allah Almighty says, "And We (Allah) did not send you (Muhammad) but to be a mercy for the universe". In this verse, there is the word "becomes mercy" which means the goal (maqashid sharia) that you want to realize is benefit.

This benefit is reflected in the preservation, protection, and maintenance of *adh-dharuriyatul khamsah* (five essential human interests), namely religion (*ad-din*), soul and self (*an-nafs*), reason (*al-aql*), family (*an-nasl*), and wealth (*al-maal*).²¹ Protecting and maintaining the human body and soul is an essential interest in human life. In the review of maqashid sharia along with the content of the Qur'an as referred to in Qs. An-Nisa'(4): 29 "And do not kill yourself, for verily Allah loves you very much"

This is also confirmed in Qs. Al-Maidah (5): 32 "Whoever takes the life of a person without a reason for killing (what he did) or without a reason for doing mischief on the earth, it is as if he killed all mankind, and whoever brings life to one soul, it is as if he revives all mankind"²² Maqashid sharia in terms of the universality of Islam can be divided into three parts, namely: first, *maqashid 'ammah*, namely the general and universal goals of sharia as a whole. So maqashid sharia '*ammah* is the

²⁰Syamsul Anwar, *Eutanasia, Physician-Assisted Suicide, Dan Palliative Care : Tinjauan Maqasid Syariah*, vol. 15, 2016. <https://tarjih.or.id/eutanasia-physician-assisted-suicide-dan-palliative-care-tinjauan-maqasid-syariah/> accessed 11 Juni 2022: 15:38.

²¹Helmi Basri, *Teori Maalatul Af'aa*, 1st ed. (Jakarta: kencana, 2021), 38-40.

²²Syamsul Anwar, *Eutanasia, Physician-Assisted Suicide, Dan Palliative Care : Tinjauan Maqasid Syariah*, vol. 15, 2016. <https://tarjih.or.id/eutanasia-physician-assisted-suicide-dan-palliative-care-tinjauan-maqasid-syariah/> accessed 11 Juni 2022: 15:38.

purpose and intent of the law, namely the realization of benefit (*taqiqul mahali*).

Second, Maqashid Khashab, namely the aims and objectives as referred to in certain fields in the Sharia. That is the purpose of certain parts of the Sharia provisions, such as the purpose behind the determination of the law/legal provisions relating to legal issues of sale and purchase, financial legal issues, inheritance law, or issues relating to marriage. *Third, maqashid juz'iyah*, namely the goals and objectives to be achieved in determining each law individually or interpreted maqashid sharia in a certain legal provision, such as maqashid requiring marriage to have a dowry from the male side with the intention of creating a sense of affection (*mawaddah*) between husband and wife.²³

According to Helmi Basri, maqashid sharia can be divided into three categories, namely *dharuriyah*, *hajiyyah*, and *tahsiniyah*. First, *maqashid dharuriyah* (the basic and main matter) is the benefit that must exist and be maintained in human life. If not then the life of mankind will be chaotic and the existence of life will be destroyed. This benefit contains five basic things in life, namely religion, soul, mind, lineage, and property.

Second, maqashid hajiyyah is the benefit associated with something that can provide convenience in living life. Even if this second element is not present, it will not be life-threatening as in the *dharuriyah* element; it will only create a little difficulty. Therefore, there was a legal provision that came from Allah and the Messenger by means of this law humans were spared from these difficulties. Such as the stipulation of the law of *rukhsah* and waivers in matters of worship, examples of the permissibility of congregating and offering prayers for travelers, and the permissibility of *tayammum* when there is no water, these are all benefits that are *hajiyyah* which will facilitate mankind in carrying out their worship.

Third, maqashid tahsiniyah is a benefit that implies that its absence will not result in a threat to life and also does not make humans difficult, but only from an aesthetic point of view, life will feel reduced. Like

²³Helmi Basri, *Teori Maalatul Af'al*, 1st ed. (Jakarta: kencana, 2021), 38-40.

wearing perfume in prayer, it is seen from the function of *tahsiniyah* as a complement to the previous benefit.²⁴

So hierarchically, sharia norms that aim to realize maqashid sharia can be seen from top to bottom so that the highest norm overshadows the norms below it and the norms below underlie the norms above it.²⁵ Talking about euthanasia in the rules of sharia law, euthanasia is prohibited and contradictive act to sharia law. Here are the reasons:

First, in terms of maqashid sharia. The scholars of Islamic jurists agree that Sharia aims to uphold the benefit. Protection of body, soul, and human life is a form of benefit to be realized. According to Imam al-Ghazali as quoted by Syamsul Anwar²⁶, the purpose of sharia (lawmaker) is to protect religion, reason, soul, lineage, and human property. Thus, even though euthanasia with medical assistance is still declared not following the objectives of Islamic law, it is prescribed. The legitimacy of practical euthanasia is the same as destroying the foundations of the goals of Islamic law prescribed to protect and maintain the five main interests of human life (*dharuriyatul khamsah*).

Second, the arrival of the purpose of the law is largely determined by legal norms, both general and specific and in stages. Islamic jurists divide these norms into two types *ushul* and *fur'u*. It is important to look at the philosophy of the legal norms as follows: basic values are the basic foundations of comprehensive Islamic teachings. For example, the case in the pillars of faith concerning the obligation to believe in Allah Almighty and believe in the Day of Judgment as stated in Qs. An-Nisa'(4): 36. Believing in Allah means believing that Allah is the One and Only as stated in the Qs. Al-Ikhlâs (112):1 Allah is the Creator and therefore, the owner of the universe including humans and their lives. Likewise, it must be understood that God is omnipotent, the owner of man, and his life.

²⁴Helmi Basri, *Teori Maalatul Af'aa*, 1st ed. (Jakarta: kencana, 2021), 39–40.

²⁵Syamsul Anwar, *Eutanasia, Physician-Assisted Suicide, Dan Palliative Care : Tinjauan Maqasid Syariah*, vol. 15, 2016. <https://tarjih.or.id/eutanasia-physician-assisted-suicide-dan-palliative-care-tinjauan-maqasid-syariah/> accessed 11 Juni 2022: 15:38.

²⁶Syamsul Anwar, *Eutanasia, Physician-Assisted Suicide, Dan Palliative Care : Tinjauan Maqasid Syariah*, vol. 15, 2016. <https://tarjih.or.id/eutanasia-physician-assisted-suicide-dan-palliative-care-tinjauan-maqasid-syariah/> accessed 11 Juni 2022: 15:38.

Life and human life is a gift from Allah Almighty, the One who has given life and death to humans. Allah Almighty says in Qs. Al-Mulk (67):1-2 "Glory be to Allah who owns all kingdoms, who created death and life to test you which of you is best in deeds." Allah Almighty also says in Qs. An-Nahl (16): 78 "And Allah brought you out of your mother's womb knowing nothing, and He gave you hearing, sight, and a conscience so that you would be grateful." Life must be guarded and protected because life is a gift from God that cannot be measured by anything.

Allah Almighty has bestowed human beings with life. If Allah Almighty gives humans life, then Allah is the one who has death for all His creatures. This is explained in Qs. At-Taubah (9):116, "Verily Allah is the owner of the kingdom of the heavens and the earth, He gives life and causes death, and there is no protector and helper for you but Allah" Likewise in Qs. Al-Hadid (57): 2 "To Him belongs the kingdom of the heavens and the earth, He gives life and causes death, and He has power over all things."

In Islamic terminology, euthanasia is unknown because euthanasia is often interpreted as hastening death. In fact, death belongs to Allah. Practicing euthanasia against parents and other people is an act that is against God's decree and means that it has violated God's rights. Humans are commanded to always try, but when they practices euthanasia, it means he is pessimistic and skeptical of the blessings that God has given him.²⁷

From the explanation of these verses, euthanasia of parents is prohibited because it is contrary to divine and spiritual values as referred to in Islamic teachings. That filial piety to parents is something that is commanded in Islamic teachings. Devotion to both parents is conducted in all aspects of life. The Qur'an explains in Qs. Al-Isra'(17): 23-24 which reads:

وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا ۖ إِمَّا يَبُلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلَاهُمَا فَلَا تَقُلْ لَهُمَا أُفٌ وَلَا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلًا كَرِيمًا ۖ وَأَخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ وَقُلْ رَبِّ ارْحَمْهُمَا كَمَا رَبَّيَانِي صَغِيرًا

²⁷Ahmad Zahro, *Fikih Kontemporer*, ed. Siti Qomariah, 1st ed. (Jakarta: PT Qaf Media Kreativa, 2016), 87–89.

"And your Lord has commanded that you should not worship other than Him and be good to your parents as well as possible. If one of them or both of them reach old age in your care, then never say to them the word "ah" and do not yell at them and say to them a noble word."

According to Yunahar Ilyas, the verse above means, that Allah Almighty and His Messenger put the position of both parents very special so that doing well to both of them occupies a very noble position, and on the contrary, disobedience to both of them also occupies a very contemptible position.²⁸

In the interpretation of Al-Bayan by TM Hasbi As-Shiddieqy²⁹ explaining the word *busn* according to Raghīb al-Asfahani (W. 502 H/1108 AD) is a word that has the same root as the word *ih̥san*, its scope is all forms of joy and pleasure. While the word *hasanah* is intended to describe all things that are fun and exciting after humans are awarded all favors both to themselves, physically and spiritually with all their situations and circumstances.

Al-Asafahani explained further, the word *ih̥san* means treating both parents must be better than treating oneself. The word *ih̥san* also means to give more than what should be given to oneself and others and if you take less than you should take. The word "*ila*" means distance. Allah Almighty wants the relationship between children and their parents to be very close. As a child, you should be close to your parents, even very close. Therefore, the verse of the Qur'an shows the word close to the word "*bi*" which means sticky, attached. So the principle and essence, of the filial piety of a child to his parents is for the child himself. This is the reason why the word "*li*" is not used as a contact word with the meaning of designation.³⁰ Devotion to both parents is obligatory in accordance with the values and norms contained in the *syara'* law. The meaning of *birrul walidaian* means filial piety and charity, even though both parents are old, senile, and in a state of continuous illness, which often results in difficulties for the child. However, this is

²⁸Yunahar Ilyas, *Kuliah Akhlaq* (Yogyakarta: LPPI, 2014), 151.

²⁹Hasby As-Shiddieqy, *Tafsir Al-Bayan* (Bandung: PT Al-Ma'arif, n.d.), 812.

³⁰Hasby As-Shiddieqy, *Tafsir Al-Bayan* (Bandung: PT Al-Ma'arif, n.d.), 812.

a sign of charity for every child towards his parents and as atonement for all sins and mistakes.

If the word "*cis*" is forbidden to come out of the mouth of a child against his parents, the prohibition of euthanasia to parents is even greater, both actively and passively, and includes disobedient behavior to parents (*'uququl walidain*). Disobedience to both parents is a major sin. This is following the opinion of Ibn 'Abbas who said that there are 70 major sins, one of which is disobedience to both parents.³¹

Based on several opinions of scholars regarding emergency limits, no opinion justifies euthanasia being carried out on one or both parents. As some of the opinions of scholars, some hold to the following rule "*al-Irtifaqu Akhaffu Dharurain*", doing the lighter of the two harms. Likewise, it is stated in a rule "*al-Dharuratu Tubihu al-Mahzburat*" that emergency allows the unlawful. This was commented on KH. Hasan Basri, the former chairman of the MUI during the New Order government era, according to him, this rule is not relevant to be used as evidence and is not contextual to euthanasia against parents. It is because this rule will fall automatically if there is no clear and firm legal argument (*qath'i*) both from the Qur'an and Sunnah regarding the legality of euthanasia against both parents.³²

Even among the patient's rights are 1) to get the best and humane service from health workers; 2) to get protection from external threats to the safety of their souls and creed/religion; 3) to demand the responsibility of the health officer for the calamity that befell him if the accident occurs due to the fault and negligence of the health worker; 4) to refuse health services that are contrary to Islamic teachings.³³ Behind the suffering that is borne by the sufferer/patient whether it contains harm or not, then in fact that is where Allah Almighty has given glory through the rights and dignity of human beings.³⁴

³¹Yunahar Ilyas, *Kuliah Akhlaq* (Yogyakarta: LPPI, 2014), 151.

³²Arifin Rada, "Eutanasia Dalam Perspektif Hukum Islam," *Perspektif* 18, no. 2 (2013): 108–117.

³³Ahsin W Alhafidz, *Fikih Kesehatan*, 1st ed. (Jakarta: AMZAH, 2010), 314.

³⁴Arifin Rada, "Eutanasia Dalam Perspektif Hukum Islam," *Perspektif* 18, no. 2 (2013): 108–117.

Legal and human rights review of the practice of euthanasia.

Talking about human rights means talking about the dynamics and sides of human life. The existence of human rights, recognized by the large community and the State. Humans as living beings have been awarded many advantages by Allah Almighty, the Merciful God therefore all forms of these advantages exist in human rights in the form of basic rights that cannot be interfered with by anyone throughout their lives.

Human rights are basic rights that are owned by everyone including the right to life, the right to have a family, the right to develop oneself, the right to justice, the right to freedom, the right to communication, the right to security, and the right to welfare, these rights must be upheld and respected. Pancasila as the nation's philosophy of life and the legal basis of the state highly upholds human rights values in the context of realizing a civilized Indonesia³⁵

The discussion of human rights as a contemporary issue has received much attention from the world community; the study can be viewed from a legal perspective including the General Declaration of Human Rights (UDHR), the International Covenant on Economic and Social Rights, the International Covenant on Civil and Political Rights and equivalent degrees both internationally and nationally. Next, from the socio-legal side, it covers the science of history, sociology, anthropology, and international relations.³⁶

It has become *sunatullah* (natural law) there is life death. Regarding the problem of death from a scientific perspective, death is divided according to the way it occurs in three things: first, death occurs naturally (*orthothanasia*); Second, the death that occurs outside the

³⁵Endang Suparta, "Prospektif Pengaturan Euthanasia Di Indonesia Ditinjau Dari Perspektif Hak Asasi Manusia," *Jurnal Ilmiah Penegakan Hukum* 5, no. 2 (2019): 76–85.

³⁶Lukman Hakim dan Nalom Kurniawan, "Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia," *Jurnal Konstitusi* 18, no. 4 (2021): 869-897.

normal (*dystanasia*); Third, death because of love and pity or with help (*euthanasia*).³⁷

In Indonesia, in the reform era, the amendment of the 1945 Constitution in the second amendment experienced substantive progress in the protection of human rights as regulated in Chapter XA on Human Rights, from Article 28A to Article 28J. All of this relates to the recognition and guarantee of human rights in Indonesia.³⁸

HAM is an abbreviation of Human Rights, which is an inherent right in a person who has been bestowed by God Almighty since he was in his mother's womb and cannot be disturbed by any party whom he respects, upholds and protects, law, government, and state for the realization of honor and protection of human dignity. This is following Article 1 point 1 of Law No. 39 of 1999.³⁹

In the concept of human rights in Indonesia, the protection of individual rights has been known. Individual protection must be maintained to realize protection for all citizens. The state is obliged to guarantee freedom for every citizen to act and is given independence to achieve the ideals nation as referred to in the fourth paragraph of the preamble of the 1945 Constitution.⁴⁰

Along with human rights, there are also human obligations. This is stated in Article 1 No. 2 which reads: "Basic human obligations are a set of obligations which, if not implemented, will not allow the implementation and upholding of human rights." Therefore, human rights will give rise to human obligations and human responsibilities for the sake of respecting the human rights of others. Likewise, the state as a legal subject has a very urgent role resulting in the state being obliged

³⁷Endang Suparta, "Prospektif Pengaturan Euthanasia Di Indonesia Ditinjau Dari Perspektif Hak Asasi Manusia," *Jurnal Ilmiah Penegakan Hukum* 5, no. 2 (2019): 76–85.

³⁸Lefri Mikhael, "Tanggung Jawab Negara Dalam Pemenuhan Hak Atas Kesehatan Jiwa Dihubungkan Dengan Hak Anak," *Jurnal HAM* 13, no. 1 (2022): 151–166.

³⁹Wijaya and Parwata, "Hukuman Mati Dan Euthanasia Dalam Perspektif Hak Asasi Manusia Dan Peraturan Perundang-Undangan." *Jurnal Kertha Negara* 9, no 2 (2021): 92-106.

⁴⁰Lukman Hakim dan Nalom Kurniawan, "Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia," *Jurnal Konstitusi* 18, no. 4 (2021): 869-897.

to fulfill, respect, and protect, and guarantee the upholding of human rights.⁴¹

The Universal Declaration of Human Rights (UDHR) was accepted by the General Assembly of the United Nations (UN) on December 10, 1948. The chronology of the acceptance of the UDHR cannot be separated from the atrocities during the Second World War with the crime of genocide.⁴² Human rights concepts and regulations are found in the 1945 Constitution of the Republic of Indonesia, TAP MPR RI No. XVII/MPR/1998 on Human Rights, Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on Human Rights Courts.

The preamble to the 1945 Constitution of the Republic of Indonesia contains an explicit statement of respect for human rights as referred to in the Universal Declaration of Human Rights (UDHR). This means that Indonesia is a State of Law that respects human rights. Among the characteristics of the rule of law, there are the recognition of justice and the right to freedom of character from human rights as referred to in the preamble of the 1945 Constitution of the Republic of Indonesia.⁴³

Furthermore, in Article 27 paragraph (1) of the UDHR and following the third paragraph of the preamble of the 1945 Constitution that everyone has rights and freedoms in the cultural life of the community. The rights in the economic, social, cultural, and political fields are stipulated in the fourth paragraph. Respect for human rights as a whole is stipulated in the fourth paragraph stipulating the precepts of Pancasila. The derivatives of human rights principles are also

⁴¹Wijaya and Parwata, "Hukuman Mati Dan Euthanasia Dalam Perspektif Hak Asasi Manusia Dan Peraturan Perundang-Undangan." *Jurnal Kertha Negara* 9, no 2 (2021): 92-106

⁴²Wijaya and Parwata, "Hukuman Mati Dan Euthanasia Dalam Perspektif Hak Asasi Manusia Dan Peraturan Perundang-Undangan." *Jurnal Kertha Negara* 9, no 2 (2021): 92-106

⁴³I Gusti Agung Gede Utara Hartawan, Anak Agung Sagung Laksmi Dewi, and I Nyoman Sutama, "Eutanasia Dalam Perspektif Hak Asasi Manusia Dan Hukum Positif Di Indonesia," *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 310–314.

stipulated in the body of the 1945 Constitution of the Republic of Indonesia.⁴⁴

The regulation of the right to life is regulated in Article 28A of the 1945 Constitution of the Republic of Indonesia which reads "everyone has the right to live and has the right to defend his life" as well as stated in Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Human rights under no circumstances can be reduced.⁴⁵

Law No. 39 of 1999 Article 4 states "the right to life is a right owned by everyone and may not be taken in part or whole under any circumstances and by anyone". Article 9 paragraph 1 states "Everyone has the right to live, maintain life and improve his standard of living". It is stated in Article 33 paragraph (2) that "everyone is free from feelings of fear of enforced disappearances and loss of life".⁴⁶

The fulfillment of the right to a healthy life is a basic right that must be protected, one of the basic needs of every human being is health. Every human being will be able to carry out his activities if the state of his soul and body is healthy. Healthy living is the main thing towards a more prosperous life. Welfare is not only coveted in this world but happiness is also expected by every servant in the hereafter.⁴⁷

The obligation to accept, respect and uphold universal human rights is the consensus of Indonesian scholars as stated in the MUI fatwa No. 6/MUNAS VI/MUI/2000 on Human Rights (HAM). Then the importance of understanding and implementing human rights must pay attention to the balance between individual rights

⁴⁴I Gusti Agung Gede Utara Hartawan, Anak Agung Sagung Laksmi Dewi, and I Nyoman Utama, "Eutanasia Dalam Perspektif Hak Asasi Manusia Dan Hukum Positif Di Indonesia," *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 310–314.

⁴⁵Wijaya and Parwata, "Hukuman Mati Dan Euthanasia Dalam Perspektif Hak Asasi Manusia Dan Peraturan Perundang-Undangan." *Jurnal Kertha Negara* 9, no 2 (2021): 92-106

⁴⁶I Gusti Agung Gede Utara Hartawan, Anak Agung Sagung Laksmi Dewi, and I Nyoman Utama, "Eutanasia Dalam Perspektif Hak Asasi Manusia Dan Hukum Positif Di Indonesia," *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 310–314.

⁴⁷Mikho Ardinata, "Tanggung Jawab Negara Terhadap Jaminan Kesehatan Dalam Perspektif Hak Asasi Manusia (HAM)," *Jurnal HAM* 11, no. 2 (2020): 319–333.

and individual obligations, the balance of individual rights with community rights, the balance of freedom and responsibility rights.⁴⁸ It means that everyone has the right to live and defend his life in order to maintain the dignity of his life. Therefore, the legally practical euthanasia and human rights are certainly not in line and cannot be justified because it is contrary to law and order Article 28A, Article 28G paragraph 2, and Article 28I of the 1945 Constitution of the Republic of Indonesia as well as Article 4, Article 9 paragraph (1), and Article 33 paragraph (2) of Law No. 39 of 1999 on Human Rights.

CONCLUSION

The practical euthanasia against parents in the maqashid sharia measure is prohibited and forbidden because it is contrary to the objectives of Islamic law prescribed, namely to save, maintain, and protect the soul (hifz al-nafs). As for the practice of active euthanasia against parents, it is still prohibited, except in some emergency cases, such as saving the life of a mother by killing the fetus in her womb if it is known that the birth of the baby can result in the death of the mother. Then for the practice of passive euthanasia, if it is interpreted as a means of stopping treatment in practice because the patient's organs after being diagnosed have no hope of healing and are no longer functioning, the law is permissible (jaiz). Finally, always keep istiqamah by strengthening belief, faith, and piety to Allah Almighty, the Merciful God, because by strengthening belief and faith in Allah Almighty will not allow humans to surrender and give up the practice of euthanasia.

⁴⁸Ma'ruf Amin dan Kawan-kawan, *Himpunan Fatwa MUI Sejak 1975*, 1st ed. (Jakarta: Erlangga, 2011), 400–404.

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