

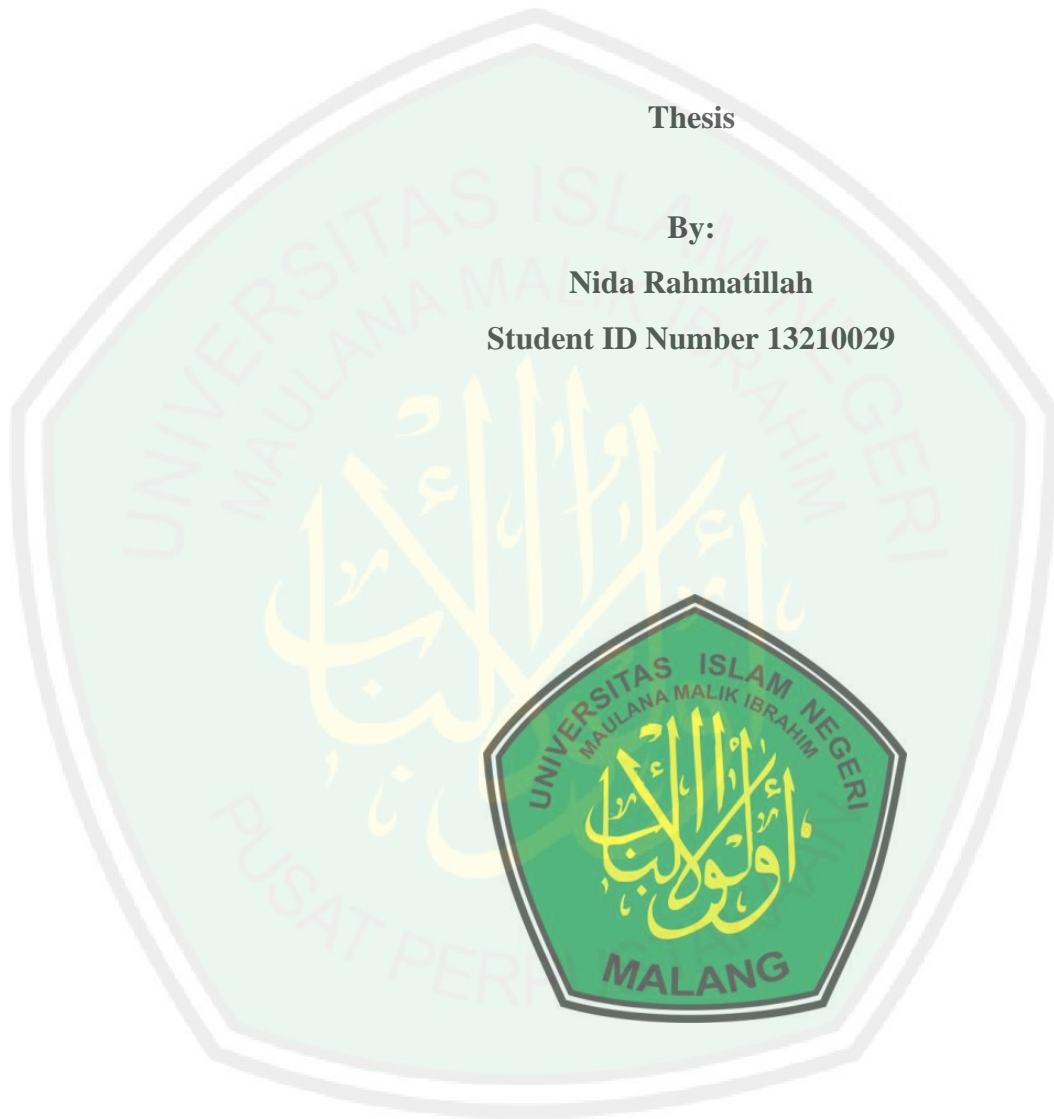
**THE VIEWS OF THE INDONESIAN MEDICAL  
ASSOCIATION AND THE COUNCIL OF INDONESIAN ULAMA  
OF MALANG ON EUTHANASIA**

Thesis

By:

**Nida Rahmatillah**

**Student ID Number 13210029**



**AL-AHWAL AL-SYAKHSIYYAH DEPARTEMENT  
SHARIA FACULTY  
STATE ISLAMIC UNIVERSITY  
MAULANA MALIK IBRAHIM MALANG**

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STATE ISLAMIC UNIVERSITY  
MAULANA MALIK IBRAHIM MALANG**

**2017**

**STATEMENT OF THE AUTHENTICITY**

In the name of Allah SWT,

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**THE VIEWS OF THE INDONESIAN MEDICAL ASSOCIATION AND THE COUNCIL OF INDONESIAN ULAMA OF MALANG ON EUTHANASIA**

Is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 26<sup>th</sup> May 2017

Author,



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**APPROVAL SHEET**

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**THE VIEWS OF THE INDONESIAN MEDICAL ASSOCIATION AND THE COUNCIL OF INDONESIAN ULAMA OF MALANG ON EUTHANASIA**

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

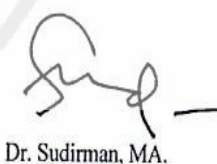
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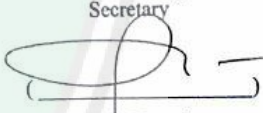
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## MOTTO

فَإِذَا جَاءَ أَجْلُهُمْ لَا يَسْتَأْخِرُونَ سَاعَةً وَلَا يَسْتَقْدِمُونَ

Maka jika datang waktu kematian mereka, tidak bisa mereka tunda dan mendahulukannya sedetikpun.<sup>1</sup>



---

<sup>1</sup> QS. An-Nahl (16): 61

## ACKNOWLEDGEMENT

All praise due to Allah (SWT), the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Garce and Gidance, this thesis entitled “The Views of The Indonesian Medical Association And The Council of Indonesian Ulama of Malang On Euthanasia” could be completed, and also with His benevolence and love, peace and tarnquallity of the soul. Peace be upon the Prophet Muhammad (saw) who had broght us from the darkness into the light, in this life. May we be together with those who believe and recieve intercession from Him in the day of Judgment. Amîn.

With all the support and help, discussions, and guidance and directions from all parties involved during the process of completing thsi thesis, the author wishes to express his utmost gratitude to the following:

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completing this thesis. May Allah (swt) shower him and his family with His blessings.

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5. Staff of the Sharia Faculty of State Islamic University of Maulana malik Ibrahim of Malang. The author expresses gratitude for all their support and co-operation during the course of completing this thesis.
6. Ministry of Religious Affairs Republic of Indonesia that giving to the author chances to study at university.
7. My beloved father H.Asep Saepudin and mother Hj.Heni Yudhaningsih and also my young sister Nurrahmi Islamiati and young brother Muqobbal Al-gifari who always giving supporting, and my lovely granny Hj.Yayah who always to be my inspiration and praying to the author so that it can be finished in time.
8. Community of Mahasantri Azqiya's and Ustad Dr. Khudori Sholeh and Ustadah Erik Sabti Rahmawati, M.A as headmaster of Azqiya's Dormitory who have been giving to the author chance therefore knowing to the way makes communication with other.
9. My friends in International Class Program (ICP) of Al-Ahwal Al-Syakhsiyyah Department 2013 who always give the author support, encouragement, and knowledge and discussion that have helped and accompanied during their education.



10. My friends of Al-Ahwal Al-Syakhsiyyah Department 2013 and Sharia Faculty generally who always accompany and fight together from begin until the end and because by your support the author's finished this thesis.

11. The informants who have taken the time to the author to provide information on Euthanasia and helped the author in the research to get the data.

Hopefully, by imparting what has been learned during the course of study in the Faculty of Sharia of State Islamic University, Maulana Malik Ibrahim, Malang, the benefit will be gotten all readers and the author herself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far perfection, the author appreciates constructive criticism and suggestions for the improvement and betterment of this thesis.

Malang, 26<sup>th</sup> May, 2017  
Author,



Nida Rahmatillah  
Student ID Number 13220029

## TRANSLITERATION GUIDENCE

### A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

### B. Consonants

ا	=	unsigned	ش	=	sy	ن	=	n
ب	=	b	ص	=	sh	و	=	w
ت	=	t	ض	=	dl	ه	=	h
ث	=	ts	ط	=	th	ي	=	y
ج	=	j	ظ	=	dh			
ح	=	h	ع	=	' (comma facing up)			
خ	=	kh	غ	=	gh			
د	=	d	ف	=	f			
ذ	=	dz	ق	=	q			
ر	=	r	ك	=	k			
ز	=	z	ل	=	l			
س	=	s	م	=	m			

The hamzah ( ء ) which is usually represented by *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards ( ˆ ), as oppose to a comma ( , ) which replaces the “ع”

### C. Vocal, long and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written such as:

Elongated (a) vowel = â for example قال becomes qâla

Elongated (î) vowel = î for example قيل becomes qîla

Elongated (u) vowel = û for example دون becomes dûna

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by “i”, unless it is written as “iy” so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after *fathah* it is written as “aw” da “ay”. Study the following examples:

Diftong (aw) = و for example قول becomes qawlun

Diftong (ay) = ي for example خير becomes khayrun

### D. Ta' marbûthah (ة)

*Ta' marbûthah* is transliterated as “ṭ” if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as “h”.

For example: الرسالة للمدرسة will be *al-risalaṭ li al-mudarrisah*, or if

it happens to be in the middle of a phrase which constitutes *mudlaf and mudlaf ilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example *في رحمة الله* becomes *fi rahmatillah*.

#### **E. Definite Article**

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of word while “al” in the pharase of lafadh jalalah (speaking of God) which is in the middle of a sentence and supported by and (idhafah), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said....
2. Al-Bukhâriy explains in the prologue of his book....
3. *Masyâ’ Allâh kâna wa mâ lam yasya’ lam yakun.*
4. *Billâh ‘azza wa jalla*

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## ABSTRAK

Nida. Rahmatillah, 13210029. 2017. *Pandangan Ikatan Dokter Indonesia dan Majelis Ulama Indonesia Kota Malang tentang Euthanasia*. Skripsi Jurusan Al-Ahwal Al-Syakhsiyah, Fakultas Syari'ah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Sudirman M.A

---

**Kata Kunci:** Euthanasia, Dokter, Ulama.

Euthanasia merupakan awal dari kematian yang dialami oleh seorang pasien untuk menghilangkan penderitaan berkepanjangan atas penyakitnya. Di Indonesia tidak disebutkan secara eksplisit dalam hukum yuridis tentang Euthanasia, sehingga sebagian orang yang ingin melaksanakan proses Euthanasia harus melalui pengadilan. Begitupun dengan fatwa majelis ulama Indonesia tidak terdapat fatwa eksplisit tentang Euthanasia, hukuman bagi pihak yang berkehendak dalam proses Euthanasia belum bisa dinyatakan sebagai tindakan pidana, karena tujuan proses Euthanasia tersebut untuk kemaslahatan pasien agar terhindar dari rasa sakit yang berkepanjangan.

Tujuan utama dari penelitian ini adalah untuk menganalisis tentang pandangan dokter pada Ikatan Dokter Indonesia tentang Euthanasia kota Malang, dan menganalisis pandangan komisi fatwa Majelis Ulama Indonesia Kota Malang tentang Euthanasia, dan juga menganalisis perbedaan dan persamaan pandangan antara dokter dan komisi fatwa majelis ulama Indonesia kota Malang tentang Euthanasia.

Penelitian ini bersifat empiris dengan menggunakan pendekatan kualitatif yang bersifat komparatif, untuk mengetahui perbandingan pandangan dari komisi fatwa majelis ulama Indonesia dan ikatan dokter Indonesia kota Malang terhadap Euthanasia. Mengenai data primer peneliti dapatkan dari hasil observasi lapangan dan wawancara dengan informan, kemudian didukung dengan sumber data sekunder dalam menganalisis hasil penelitiannya.

Berdasarkan hasil penelitian dan analisis dapat disimpulkan bahwa pandangan dari dokter dan ulama tidak jauh berbeda. Perbedaan pandangan dari dokter dan ulama adalah dari segi dasar argumen yang mereka ungkapkan terhadap Euthanasia. Argumen dokter terhadap Euthanasia berdasarkan pada kode etik kedokteran Indonesia dan kitab undang-undang hukum pidana. Sedangkan ulama menggunakan dasar argumen dari Al-Qur'an, hadits, dan qowaid fiqhiyyah. Perbedaan lainnya mengenai Euthanasia pasif dokter pro dengan proses Euthanasia pasif yang terjadi di Indonesia. Berbeda sebaliknya dengan pandangan ulama kontra dengan Euthanasia pasif. Adapun persamaan pandangan antara dokter dan ulama adalah mengenai Euthanasia aktif termasuk pada proses mempercepat kematian/pembunuhan, dan mengenai Euthanasia pasif mereka berpendapat sama bahwa bukan termasuk pembunuhan.

## ABSTRACT

Nida Rahmatillah, 13210029, 2017. *The Views Of The Indonesian Medical Association And The Council Of Indonesian Ulama Of Malang On Euthanasia*. Thesis. Al-Ahwal Al -Syakhsyah Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University of Malang. Supervisor: Dr. Sudirman M.A

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**Keywords:** Euthanasia, Doctor, Ulama.

Euthanasia is the beginning of a person's death, which is experienced by patient for disappearing suffering illness. There is not explicitly juridical law on Euthanasia In Indonesia, thus some people who want to do Euthanasia process have to go the courts. Moreover the fatwa's of the council of Indonesian ulama there is no explicit fatwa on Euthanasia, the punishment for who want to do Euthanasia process can not be declared as criminal act, because the purpose of Euthanasia process is for the benefit of patients to avoid suffering illness.

The main purpose of this research is to analyze the doctors in the Indonesian Medical Association view's on Euthanasia in Malang city and analyze the views of fatwa commission the Council of Indonesia Ulama in Malang City on Euthanasia, and also to analyze the differences and similarities between doctors and fatwa commission of the Council of Indonesian Ulama in Malang on Euthanasia.

The method used in this research is empirical research by using qualitative method and by using comparative approach method. In order to know comparison of views between fatwa comission the council of Indonesian ulama and Indonesian medical association of Malang city on Euthanasia. Primary data are collected directly from informants by using interview method. The data in this research by classifying data collected in line with the specific issue. So that, it can be concluded in line with the purpose of this research.

Based on the result of this research reveal that the doctors and ulama have such same opinion on Euthanasia. Wherease, The differences argument between doctor and ulama is based on their views. Doctor's view is based on criminal ethic of code and criminal law. While, the ulama's argument is based on qur'an, hadith, and rules of fiqhiyyah. Other differences is about pasive euthanasia which the doctor is pros with the process of pasive euthnasia in Indonesia. In contrast with the views of ulama is cons on pasive euthanasia. Then the similiarities the views of doctor and ulma on active euthanasia is not include accelerate the death process/murder, and their argument on pasive euthanasia is not include the death process/murder.

## ملخص البحث

نداءرحمة الله، 13210029، 2017. آراء الجمعية الطبية الإندونيسية ومجلس العلماء إندونيسيا في مالانج على قتل الرحيم. بحث جامعي. شعبة الأحوال الشخصية، كلية الشريعة بجامعة مولانا مالك إبراهيم الإسلامية الحكومية بمالانج. المشرف: دكتور سدرمان، الماجستير.

### الكلمات الرئيسية: القتل الرحيم، الطبية، العلماء.

قتل الرحيم هو بداية وفاة الشخص عملها المريض. في إندونيسيا لم يوجد صراحة في القانون القضائي على قتل الرحيم، لذلك معظم الناس الذين يعملون في تنفيذ قتل الرحيم يجب عليهم بوصيلة الحكمة. وكذلك الفتاوى لمجلس علماء إندونيسيا لا توجد فتوى صريحة حول قتل الرحيم، والعقوبات لأولئك الذين عملوا عملية قتل الرحيم لا يمكن التعبير باعتباره عملا إجراميا، لأن الغرض من عملية قتل الرحيم لصالح المرضى لتجنب الألم.

وكان الهدف الرئيسي من هذه الدراسة هو تحليل حول آراء الأطباء في جمعية الأطباء الإندونيسية على القتل الرحيم في مالانج، وتحليل فتوى اللجنة وجهات آراء مجلس العلماء الإندونيسية في مالانج على قتل الرحيم، وأيضا تحليل أوجه الشبه والاختلاف النظر بين الطبيب ولجنة الفتوى مجلس علماء إندونيسيا مالانج حول قتل الرحيم.

والبحوث باستخدام نهج نوعي هو المقارن، لمقارنة إختلاف آراء لجنة مجلس فتوى إندونيسيا والجمعية الطبية الإندونيسية مالانج على قتل الرحيم. بخصوص الباحثون بيانات الأساسي الحصول على النتائج من الملاحظات الميدانية والمقابلات مع المخبرين، ثم احتياطيا مع مصادر البيانات الثانوية في تحليل نتائج بحثه.

نتائج البحث وخلصت التحليل على آراء الأطباء والعلماء على قتل الرحيم غيرمختلف كثيرا. واختلاف من وجهة أسس نظرهم أن عملية قتل الرحيم. ويرى الأطباء أنّ القتل الرحيم من الدليل رموز إندونيسيا لآداب مهنة الطب وقواعد القانون الجنائي القانون، بما في ذلك القتل الرحيم من وجهة نظر العلماء أن قتل الرحيم من الدليل القرآن، الحديث، وقواعدالفقهية. وإختلاف الأخرى وجهات نظر الأطباء حول القتل الرحيم السلي أنهم موقفا. ضد إختلاف على وجهات النظر العلماء على حول القتل الرحيم السلي أنهم غير موقفا. أما بالنسبة معادلة بين الأطباء والعلماء حول القتل الرحيم النشاط المدرجة في عملية تسريع الموت / القتل، وحول القتل الرحيم السلي على الرأي أنه بدلا من بينها القتل.

## CHAPTER I INTRODUCTION

### A. Background of Research

Euthanasia is a dilemmatic problem among doctors, law practitioners, and religionist. Euthanasia action is still pros and cons, based on the context of the development of science, there is no problem on euthanasia because it is a consequence of the research process and also the development. Likewise, in terms of humanity, euthanasia seems to be a commendable act of helping humanity in ending misery. However, problems arise when euthanasia is based on other contexts such as law and religion, especially Islam. In the context of law, euthanasia becomes problematic because it relates to the soul or person life by law is highly protected. Whereas in the context of Islam, euthanasia is a problem because life and death are from His creator (god).

Euthanasia is not a new problem. It has been known by people, even often done formerly. According to Ilyas Efendi, Euthanasia was

practiced in Roman and Ancient Egypt Era. In past time, suicide was a strange action. However, the act often happens, even through the legality of the court, as happened in some Western countries. There is motto *'that anyone (including the government) should not interfere and disturb the rights of individuals, including into determining their own death'*.<sup>2</sup> It means that the Western societies have been following liberal democratic system, where individual rights are upheld, and moral values are separated from the religion axis, those characterized by growth of the secularism concept.

In the past, Euthanasia action was supported by many great figures in history, such as Plato who has supported suicide committed by people at that time in ending the agony. As Aristoteles was confirmed the act of "infanticide", which is killing child illness from birth and they can not live normally. Other figures such as Pythagoras and his colleagues also supported the murder of people who had mental weakness and moral.

Technological developments in medical science is very rapid, the diagnosis of a disease can be carried out more fully and accurately, so that treatment can be done effectively. But in reality, despite increasingly sophisticated technology there are some patients who cannot be prevented from suffering illness. Like a malignant cancer, the patient will experience great suffering. Anguish will be off when the death has come, but death is

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<sup>2</sup> Yanggo. Chuzaimah T, *Problematika Hukum Islam Kontemporer Buku Ke-IV*, (Jakarta: PT Pustaka Firdaus, 1995), 50.

a mystery that is difficult and cannot be determined by anyone who wanted it.<sup>3</sup>

The patients who is suffered the long pain can be commuted by modern doctors device, life of a patient can be extended to long period by installing a "respirator". Even the calculation of a person's death when people with certain diseases can be done more precisely. In the developed country has been able to do birth of technology and biological engineering. Thus, the fast or slow problem process of death who has disease can be arranged by modern technology.

Death is distinguished in three types of death according to the happened manner, such as:

1. Orthotanasia, the death is caused by a natural process.
2. Dysthanasia, the death is caused by unnaturally process.
3. Euthanasia, the death is happened by helping or not from the doctor.<sup>4</sup>

The third kind of death is euthanasia, the doctor in assisting the process of euthanasia whether it has the legal right to end the patient life at from request of the patient himself or their family by the reason to eliminate or end the prolonged suffering.

In the fact, the Doctor action in their duties is treating patients, the aims are to cure disease and save their life. It is included into code of

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<sup>3</sup> Ahmad Wardi Muslich, *Euthanasia Menurut Pandangan Hukum Positif dan Hukum Islam*, (Jakarta: PT Raja Grafindo Persada, 2014), 1-2.

<sup>4</sup> Djoko. Prakoso dkk, *Euthanasia Hak Asasi Manusia Dan Hukum Pidana*, (Jakarta Timur: Ghalia Indonesia, 1984), 9-10.

ethics in medical treatment in Indonesia in chapter II number 9  
*"Obligation of Doctor to Patient: A doctor should to remember their obligation to protect the human life "*.

Doctors are obliged to maintain and preserve/protect human life although the condition patient was critically. The patient's condition is not curable anymore and has been dying for months, but a doctor should not escape the obligation to preserve the patient's life, so it is not allowed to do the actions that will cause ending life the patient.

In beginning of history people have recognized the existence of some fundamental properties doctor's, which are pure seriousness, humble character, and scientific and the world social integrity. Therefore, all of doctor in the world is based on their tradition and the medical discipline in a professional ethics that is called as Medical Ethics Code.

Based on Indonesia Medical Ethics of Code, a doctor is obligated to maintain and preserve human life. Each doctor must protect and maintain the patient's life; a doctor is not allowed to do the actions that will cause to the death of patient. This understanding can be taken from the Indonesia Medical Ethics Code in Article 7 d on General Obligations which states: *"Every doctor should remember their obligation to protect the human life."*<sup>5</sup>

Euthanasia process is an effort to help a person (patient) in accelerating the death process, in order to avoid the long pain when there

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<sup>5</sup> MKEK Ikatan Dokter Indonesia, *Kode Etik Kedokteran Indonesia dan Pedoman Pelaksanaan Kode Etik Kedokteran Indonesia*, 1.

is no wish for a cure. This action is still controversial regarding the impact caused by euthanasia (deliberate and conscious behavior to end a person's life due to incurable diseases) in the medical world, and it has spread the controversy in the view of contemporary Islamic scholars.<sup>6</sup>

The Council of Indonesian Ulama is an Islamic organization as the umbrella of Ulama, zu'ama and muslim scholars. They can protect people from issues that will become problems that are occurred in pluralistic Indonesian society.

Fatwas of the Council of Indonesian Ulama is issued in addition to give fatwa's request from individuals and institutions (petitioner), but also issued a fatwa, advice (tausiyah), or a recommendation to respond every problem in society life, nation and state. The function of the Indonesian Ulama Council is giving legal opinions and advice regarding religious and social to the Government and Muslims generally, as commanding the goodness and avoids the badness.<sup>7</sup>

Based on Islamic law, Allah has ordered us to keep struggling and put the result into Allah, the Wisest Lord. In Sahih Bukhari Prophet Muhammad told that,

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<sup>6</sup> Arifin Rada, "Euthanasia dalam Perspektif Hukum Islam," *Perspektif*, 2 (Mei, 2013), 3.

<sup>7</sup> M Atho Mudzhar, Choirul Fuad Yusuf, dkk, *Fatwa Majelis Ulama Indonesia Dalam Perspektif Hukum dan Perundang-undangan*, (Jakarta Pusat: Puslitbang Lektur dan Khazanah Keagamaan Badan Litbang dan Diklat Kementerian Agama, 2012), 3-4.



حدثنا محمد بن المثني: حدثنا ابو احمد الزبيري: حدثنا عمر بن سعيد بن ابي حسين

قال: حدثني عطاء بن ابي رباح: عن ابي هريرة، عن النبي قال: مَا أَنْزَلَ اللَّهُ دَاءً إِلَّا أَنْزَلَ لَهُ

شِفَاءً

'God never create disease without its medicine'.<sup>8</sup> People who expect death in order to avoid the disease are those whose heart is frozen.

In Islam, every incident that happened to Muslims is good for them and it can remove their sins or may raise their level. Prophet Muhammad once said, Muslims may feel tired, chronic disease, anxiety, sorrow, or grief, although it is trivial thorn which beak his feet, but with all the suffering that God will wipe their sins'.

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ وَعَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : قَالَ مَا

يُصِيبُ الْمُسْلِمَ مِنْ نَصَبٍ وَلَا وَصَبٍ وَلَا هَمٍّ وَلَا حُزْنٍ وَلَا أَذًى وَلَا غَمٍّ حَتَّى الشُّوْكَةِ

يُشَاكُهَا، إِلَّا كَفَّرَ اللَّهُ بِهَا مِنْ خَطَايَاهُ.

*'It is not a Muslim weariness, chronic disease, anxiety, sorrow, or grief, although there is thorn on the foot, but God will wipe the sins by with all the suffering'.<sup>9</sup>*

<sup>8</sup> Imam Abi 'Abdillah Muhammad bin Ismail Al-Bukhori, *Shohih Al-Bukhari*, (Riyadh: Baitul Afkar Addauliyah Watta'uzi', 1998), 1116.

<sup>9</sup> Imam Abi 'Abdillah Muhammad bin Ismail Al-Bukhori, *Shohih Al-Bukhari*, 1109.

People who do not devout in Allah and believe in the final day are the ones who hasten their death, they assume that the life in this world will end up with their lost soul and end in the grave. They even forget about good deed calculation after living in the world, retribution which done after living in the world, resurrection after death, and the man's return to God after death.<sup>10</sup>

Based on the description of the background above, the writer is interested in investigating and conducting research to find out the views of Fatwa Commission of the Council of Indonesian Ulama and the Indonesian Medical Association of Malang on Euthanasia. The reason of writer analyzes views of the commission fatwa of the Council of Indonesian Ulama and the Indonesian Medical Association, because the commission fatwa of the Council of Indonesian Ulama as consideration for helping muslim people resolve problems that have not been established in the texts Qur'an and hadith, because the norms legal issue and aspiration social moved, the highest position is settled by the societies needs and aspirations based on the previous statement, there are a lot of law product that have just made.<sup>11</sup>

Furthermore, the Indonesian Medical Association is a medical expert who knows the practical and technical knowledge in medicine field,

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<sup>10</sup> Al-Musayyar Ahmad Sayyid, *Islam Bicara Soal Seks, Percintaan, & Rumah Tangga*, (Jakarta: Erlangga, 2009), 367-369.

<sup>11</sup> M. Atho Mudzar, Choirul Fuad Yusuf dkk, *Fatwa Majelis Ulama Indonesia Dalam Perspektif Hukum dan Perundang-undangan*, 3-4.

a doctor in their profession with accountability which is bound by the oath of medicine in medical ethics.<sup>12</sup>

### **B. Statement of Problem**

1. What are the views of doctors of the Indonesian Medical Association on Euthanasia?
2. What are the views of ulama of the Council of Indonesian Ulama on Euthanasia?
3. What are the differences and similarities between views of the doctors and ulama about Euthanasia?

### **C. Objective of Research**

1. To analyze the views of doctors of the Indonesian Medical Association on Euthanasia.
2. To analyze the views of ulama of the Council of Indonesian Ulama on Euthanasia.
3. To analyze the comparative similarities and differences views between the doctors and the ulama about Euthanasia.

### **D. Significance of Research**

1. Theoretical Contribution

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<sup>12</sup> Oemar Seno Adji, *Etika Profesional dan Hukum Pertanggungjawaban Pidana Dokter Profesi Dokter*, (Jakarta: Erlangga: 1991), 108-111.

a. The results of this research are expected to give contribution knowledge to the treasury of thought in the field of law.

b. To clarify the law between the realities of a society, this research will provide theoretical contributions in designing the Islamic law.

c. It's also expected to be a reference for students to learn a lot of things in the field of law, especially with to the effect of euthanasia.

## 2. Practical Contribution

It can be used as a consideration for the purpose in decision-making, especially for the general in determining the harm of early death in peace condition.

## E. Discussion Structure

So that this research can be focused and its discussion comprehensively discussion, so the systematical discussion is structured as follows :

CHAPTER I is Introduction, in this chapter described the framework of research . Like building a house, this chapter is its foundation. Therefore, this chapter contains a discussion of the background of the problem, formulation of the problem, the purpose and usefulness of discussion, the theoretical framework, methods and systematic discussion. Research methods, sources of data, processing and data analysis techniques.

CHAPTER II is theoretical framework of research which is needed

to make more obvious. Theoretical framework will explain or describe the title to makes the reader easy in understanding this research. Theoretical framework of research, describes Definition Of Euthanasia, types of Euthanasia, Definition Of the Indonesian Medical Association and the Council of Indonesian Ulama, describes of Euthanasia in Medical Ethic of Code, describes of Euthanasia in Criminal Law, describes of Euthanasia in Islamic Law, describes of Euthanasia in Hereditary Law.

CHAPTER III is the section that describes research methods the researchers used in this discussion. The research method is the steps that will be used to easier obtain datas associated with this discussion and facilitate research in their nets, which ended with a systematic discussion that informs about the order of writing the study.

CHAPTER IV is basic information that will be footing the reader to know how "Comparative Studies views of ulama and doctor at Indonesian Medical Association on Euthanasia" and is therefore better understand and deepen research in the area.

CHAPTER V is the analysis, comparative analyzing views of the Ulama and Doctor at Indonesian Medical Association about Euthanasia.

CHAPTER VI is a closed, this chapter contains the conclusions from the discussion that has been described in previous chapters, and in this chapter intends to provide and indicate that the problem posed in this study can be explained comprehensively and end with suggestions for the development of further studies.

## CHAPTER II

### REVIEW OF RELATED LITERATURE

#### A. Previous Research

The previous research is a summary about of study or research that has been done, so the study will not be plagiarism or duplicated from the previous study.

Thesis on *Euthanasia reviewed from Medical Point and Criminal Law* researched by Andika Priyanto<sup>13</sup>, the student ID number B 111 07 920, student of Hasanuddin Makassar University, Legal Studies Program. The Statement of Problem is (1) How is Euthanasia reviewed from medical aspect? (2) How is criminal law regulated on Euthanasia? (3) What is criminal law responsibility on Euthanasia?. Thesis analyzed on Euthanasia used medical aspect perspective which was regulated in Indonesia medical ethic code, those researched about doctor is forbidden to end patient's life (euthanasia) although medical science and patient

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<sup>13</sup>Andika Priyanto, *Euthanasia Ditinjau dari Segi Medis dan Hukum Pidana*, PDF thesis file, (Makassar: Universitas Hasanuddin 2013).

condition could not cure the illness. Therefore responsibility of doctor especially on Euthanasia was included in criminal law, ethic, and profession. .

The second thesis is on *Euthanasia seen from the Perspective of Islamic Law* researched by Irma Nurjannah<sup>14</sup>, the student ID number E 0005194, student of Sebelas Maret University in Surakarta. The focus of her research is on "How is Euthanasia from the perspective of Islamic law". The Statement of Problem is (1) How is Euthanasia on Islamic Law perspective?. Thesis analyzed on Euthanasia according to Islamic Law perspective based on primer data is al-Qur'an. Euthanasia is act forbidden in Islamic Law, the reason is Islamic regulated that died was god right. Islam has commanded from god who is anyone against power of god and Euthanasia action.

The third thesis is *Euthanasia dalam Pandangan Hak Asasi Manusia dan Hukum Islam* researched by Ahmad Jaelani<sup>15</sup>, the student ID number 104045101542, student of Syarif Hidayatullah State Islamic University in Jakarta 2008, Siyasaah Jinayah studies program. The statement problem: (1) What is the general description on Euthanasia? (2) What are the Islamic Law and the Doctrine of Human Rights on perspectives Euthanasia? (3) What are the similarities and differences in law between the Doctrine of the Islamic Law and Human Right's

<sup>14</sup> Irma Nurjannah, *Euthanasia dilihat dari Sudut Pandang Hukum Islam*, PDF thesis file, (Surakarta: Universitas Sebelas Maret, 2009).

<sup>15</sup> Ahmad Jaelani, *Euthanasia dalam Pandangan Hak Asasi Manusia dan Hukum Islam*, PDF thesis file, (Jakarta: Uin Syarif Hidayatullah, 2008).

perspective on Euthanasia?. Thesis describes on Euthanasia according to doctrine of Human Rights perspective that Euthanasia is categorized in killings and human rights violations, and the Islamic law's perspective that all kinds that infringers upon person's life such as killing, torturing and injuring others is forbidden by Islamic law. Then the researcher compared between the Doctrine of Human Right and Islamic Law on similarities and differences Euthanasia.

The fourth Thesis is *Legacy Rights of Euthanasia Applicant Perspective of Islamic law* researched by Abdul Rouf<sup>16</sup>, the student ID number 08210057, UIN Maliki Malang's student In 2012, Major al-Ahwal Al-syakhsiyah. The formulation of the problem: (1) What is the used methodology in determining inheritance rights for heirs who pleaded Euthanasia? (2) What is istinbat law in determining rights of the heir to the heir who pleaded Passive euthanasia to the applicant? (3) What is the legal position of heir to the perspective applicant Passive euthanasia Islamic law?. Thesis explained about law method in determining rights of heir to the heir who pleaded passive euthanasia to the applicant, the legal position of heirs who pleaded passive euthanasia, researcher take from the act of murder which is contained in hadith of Prophet, and inheritance rights for the applicant Euthanasia hindered his right to inherit property heir who became the defendant.

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<sup>16</sup> Abdul Rouf, *Hak Waris Bagi Pemohon Euthanasia Perspektif Hukum Islam*, PDF thesis file, (Malang: Uin Maulana Malik Ibrahim, 2012).



The similarity between the writer and the researcher above are obtaining a deep understanding of Euthanasia. The only difference is in the author's desire in using field method to make conclusion from the views of doctor at Indonesian Medical Association and the Council of Indonesian Ulama in Malang. The author takes the field research to make sure that the law which is gotten is accordance with the phenomenon.

Table 2.1

## Thesis about Euthanasia

N O	Writter	Tittle	Kind of Research	Research Focus
1.	Andika Priyanto	Euthanasia Ditinjau dari Segi Medis dan Hukum Pidana	Normative Research	The focus of his research is "How is Euthanasia reviewed from medical aspect and the setting of the criminal law through Euthanasia". The conclusion shows that doctors are prohibited to ending the patient's life (euthanasia), although medical science told from their experience that the patient will not recover.
2.	Irma Nurjannah	Euthanasia dilihat dari Sudut Pandangan Hukum Islam	Normative Research	The focus of his research is on "How is Euthanasia from the perspective of Islamic law". The conclusion of the research shows that Euthanasia is forbidden based on Islamic law which is derived from the primary source Qur'an.
3.	Ahmad Zaelani	Euthanasia Pandangan Hak	Normative Research	The focus of his research is on "How are

		Asasi Manusia dan Hukum Islam		the view of Islamic Law and Human Rights to the Doctrine of Euthanasia". The conclusion is Euthanasia is forbidden under Islamic law, and Euthanasia is categorized as a murder and common human rights violations.
4.	Abdul Rouf	Hak Waris bagi Pemohon Euthanasia Perspektif Hukum Islam	Normative Research	The focus of his research is "How to maintain the law in determining the legacy relative right for the passive Euthanasia appellant through the appellant applicant". The conclusion is that the maintain researcher took from the murder action contained in the prophet hadith and legacy rights for the Euthanasia appellant is tied to inherit the heir's wealth who become the dependent.

From the table above, it can be looked that the previous researchs as like as object writer about euthanasia, but the same as other previous researchd with other is using normative research methods based on Islamic law, criminal law and medical. In writer research will take the field method which is using a comparative approach views commission fatwa of the Council of Indonesian Ulama and the Indonesian Medical Association Malang about Euthanasia.

## **B. Theoretical Framework**

In an effort to answer the problems in this paper, the author will present a theory, arguments, and laws that serve as a reference and used to solve the research problems. In this case, it will be explored matters, which is relating to doctors position and fatwa commission of the Council of Indonesian Ulama on Euthanasia, with a comparison of their views on Euthanasia in Malang. It does can be known comparison views of the Euthanasia.

### **1. The Indonesia Medical Association**

Indonesian Medical Association is an organization of medical Indonesia professionally and functionally in service, education and health medical research that is bound by the medical oat in medical ethics.<sup>17</sup>

Council which is relating whit code ethic known as the Honorary Council of Professional Ethics duty to examine and determine and impose sanctions for violations of the code ethic. The President Decision No. 56 of 1995 on Disciplinary Council of Health Workers (MDTK). Member of MDTK is comprised of legal scholars, health professionals representing professional organizations in the health part, religious scholars, psychologists, and sociologists. The leader of MDTK held by a law degree that is knowledgeable in the field of health law. Tasked council is to

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<sup>17</sup> Oemar Seno Adji, *Etika Profesional dan Hukum Pertanggungjawaban Pidana Dokter Preofesi Dokter*, 111.

determine an error or omission committed by medical member in doing their duties.<sup>18</sup>

The norms of medical ethics were used since the people in the community who had the task of treating pain. While norms are unwritten, those norms are about behavior of people who treat their patients. Among these norms is the oldest Hindu oath which was written in 1500 B.C. Among the most important themes that are included in this oath is "*do not harm patients who are being treated*".<sup>19</sup>

Famous Hippocratic Oath, that the doctor must give priority to the patients. Firstly, that oath is basis and give inspiration for International Code of Medical Ethics, then reformulated in a statement the Medical Association World in London in October 1949. Later, this formulation was restored in Session 22 of the Medical Association in Sydney in August 1968.

Based on the International Code of Medical Ethics and created national code of medical ethics which suitable with aspiration and nation culture. In Indonesia, the Ethics Code created and discussed by the Editorial Committee of the National Working Group, which was subsequently used as the basis for every doctor in Indonesia, and declared effective by the Minister of Health for base on Medical Ethics Code Applicability Statement of Indonesia, dated 23 October 1969. The text of the medical ethic code is National Code Medical Ethics II in 1981, and

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<sup>18</sup> Hendrik, *Etika & Hukum Kesehatan*, (Jakarta: Buku Kedokteran EGC, 2012), 21-22.

<sup>19</sup> Imron Halimy, *Euthanasia*, (Solo: Ramadani, 1990), 84.

completed in the National Working Group Indonesian Medical Association 13th, 1983.<sup>20</sup>

Indonesia Medical Ethics of Code included into four chapters. Chapter I is general obligations, Chapter II is obligation to the patients, Chapter III is obligations of the doctors to their close friends, and Chapter IV is obligation to their self. Among the important article is Article 9 at Chapter II is obligation of doctors to patients, which reads: "*A doctor has to remember obligation to protect the lives of human beings*".<sup>21</sup> This article in the revisions contained in the Indonesian Medical Association SK PB No: 221 / PB / A.4 / 04/2002 dated 19 of April 2002 about the implementation Indonesian Medical Code Ethic have changed into Article 7d Chapter I is General obligations, the same statement (do not change).<sup>22</sup>

The main obligation doctor is giving help on the basic of agreement between doctors and patients or regardless that approval. In Medical Code Ethics Indonesia there are provisions relating to the law, and the defined explanation defined in the chapters' medical ethics. Example in Chapter II, it is about the obligations doctor to the patients, states that "A physician should keep in mind the obligation to protect human beings". A physician must strive to protect and maintain living human beings. According to the religious, state laws and medical ethics are not allowed to hold provocatus

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<sup>20</sup> Ikatan Dokter Indonesia, *Kode Etik Kedokteran Indonesia dan Pelaksanaan Kode Etik Indonesia*.

<sup>21</sup> Imron Halimy, *Euthanasia*, 87.

<sup>22</sup> Ahmad Wardi Muslich, *Euthanasia Menurut Pandangan Hukum Islam Positif dan Hukum Islam*, 24-25.

abortion, and euthanasia act (ending the patient's life, which according to the science of experience would not recover again).<sup>23</sup>

Every doctor is obliged to maintain and preserve human life. However the condition and the urgency of a patient, every doctor must protect and maintain the patient's life. Even though the patient conditions is not curable anymore, but the doctor can not escape the obligation to preserve life. Moreover the doctors perform the dangerous action perfectly, but it is considered very deeply that there is no other ways to save the patient from death threats. However the doctor is not allowed to perform the actions that the effect can end the patient life whereas it is in critical condition.<sup>24</sup>

## 2. The Council of Indonesian Ulama (MUI)

The Council of Indonesian Ulama (MUI), it is assemblies or gathering, Ulama have meaning people who have knowledge or know the result of something.<sup>25</sup> Beside that the Council of Indonesian Ulama as the umbrella of Ulama, zu'ama and muslim scholars. The Council of Indonesian Ulama fatwas is issued in addition to give fatwa's request from individuals and institutions (petitioner), but also issued a fatwa, advice (tausiyah), or a recommendation to respond every problem in society life, nation and state.

<sup>23</sup> Oemar Seno Adji, *Etika Profesional dan Hukum Pertanggungjawaban Pidana Dokter Profesi Dokter*, 21.

<sup>24</sup> Ahmad Wardi M, *Euthanasia Menurut Pandangan Hukum Islam Positif dan Hukum Islam*, 25.

<sup>25</sup> Luis Ma'luf, *Al-Munjid fi Luhah wal Adab wal Ulum*, (Beirut: Al-Maktabah al-Katulikiyah), 527.

In khithah (the ideals of nations) devotion the Council of Indonesian Ulema have been formulated in five main functions and role of the Council of Indonesian Ulema, namely: 1). As heir of the Prophet (Warasatul Anbiya), 2). As a fatwa (mufti), 3). As a mentor and servant of the people (history khadim wa al ummah), 4). As the movement of al Islah wa Tajdid 5). As upholder commanding of the good and bad .

The Council Indonesian Ulema is issuing authority and establish religious edicts (mufti) as a point of reference for the Indonesian Muslim community.<sup>26</sup> Even though the Council of Indonesian Ulema fatwa is not legally binding, but it is used as a reference by the public and government behaves in various aspects of life of the nation.

The Council of Indonesian Ulama (MUI) on July 28, 1975, in article 4 the basis consideration of the The Council of Indonesian Ulama has emphasized that one of the main functions of the The Council of Indonesian Ulama is give fatwa about religious and society to the government and Muslims generally. Fatwa emerged as an answer to the various problems in humanity over the centuries. Starter's fatwa is when the Prophet asked about the various problems that arise in everyday life. The friend (sahabat) ask the question to the Messenger of Allah, which means they ask for a fatwa (istifta '), as in the Qur'an.

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<sup>26</sup> M. Atho Mudzhar, *Fatwa-fatwa Majelis Ulama Indonesia: Sebuah Studi Tentang Pemikiran Hukum Islam Indonesia 1975-1988*, terj. Soedarso Soekarno, (Jakarta: INIS, 1993), 63.

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنَّ أَمْرُهُ هَلْكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا

نِصْفٌ مِمَّا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الشُّلْثَانِ مِمَّا تَرَكَ وَإِنْ

كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلَّذَكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا وَاللَّهُ بِكُلِّ

شَيْءٍ عَلِيمٌ

They asked for a fatwa to you (about kalalah). Say: "Allah gives fatwa to you about kalalah: if one dies, and he does not have children and have a sister, then for his brother that her half of the property left behind, and his brother were males inherit (the entire property sister), if he did not have children; but if the sisters were two men, then for both of them two-thirds of the estate left by the deceased. And if the heirs consisted of brothers and a female, the Courant a brother as much share of two sisters. God explained (this law) to you, lest you go astray. And Allah knows everything.<sup>27</sup>

Fatwa The Council of Indonesian Ulama fatwa is including an advice, suggestions, and command. Fatwa is issued by the The Council of Indonesian Ulama because there is a request or questions from individuals, governments, social institutions or the The Council of Indonesian Ulama which is needed to be fatwa. The function of the The Council of Indonesian Ulama is giving legal opinions and advice regarding religious and social to the Government and Muslims generally, as commanding the goodness and avoids the badness.<sup>28</sup>

Fatwa of The Council of Indonesian Ulama is a legal instrument of the The Council of Indonesian Ulama that is not binding and there is no

<sup>27</sup> QS. An-Nisa' (4):176.

<sup>28</sup> Atho Mudzhar, Choirul Fuad Yusuf dkk, *Fatwa Majelis Ulama Indonesia Dalam Perspektif Hukum dan Perundang-undangan*, 3-4.



legal compulsion on addresat to comply provisions of the fatwa. Besides that, through certain patterns, the included substance in Fatwa of The Council of Indonesian Ulama can be absorbed and transformed into substance of the legislation which has power law and bind the public.

### 3. Euthanasia

#### a. Definition of Euthanasia

Euthanasia derived from Greek word is Eu that means good, and Thanatos that means death. The meaning is ending life in an easy way without pain. Therefore, Euthanasia is also often called by mercy killing (die quietly).<sup>29</sup> Looked from whom have an intention and wanted, Euthanasia can arise from the patient's wishes, familiar requests with patient agreement (if the patient is conscious), or (if the patient is unconscious).<sup>30</sup>

In medical definition, according to dr. Kartono Muhammad, Euthanasia is something that can help to accelerate person's death to be free from the death. According to dr.med. Ahmad Ramli and K. St. Pamuncak, Euthanasia is doctor's effort to lighten the suffering of death's agony. According to Anton M. Moeliono and comrades, Euthanasia is the action to end the life of creatures (people or pets) being sick deliberately or seriously injured by the calm death and easy on humanitarian grounds.<sup>31</sup>

<sup>29</sup> Hendrik, *Etika & Hukum Kesehatan*, 100.

<sup>30</sup> Yanggo. T Chuzaimah, *Problematika Hukum Islam Kontemporer Buku Ke-IV*, 50.

<sup>31</sup> Anton, M. Moeliono, *Kamus Besar Indonesia*, (Jakarta: Balai Pustaka, 1989), 237.

Detailed definitions according to "Euthanasia Study Group" of KMNG Holland (like as IDI in Indonesia) said Imron Halimy as follows: Euthanasia is deliberately not doing anything (nalaten) to extend life the patient and all this was done specifically for importance the patients themselves.<sup>32</sup>

#### b. Type of Euthanasia

Looked from the condition of the patient, euthanasia action can be categorized into two kinds are *active* and *passive*. Active Euthanasia is an act to haste the process of death by giving injection or unscrewing medical assistive devices, such as removing acidic substances channels, removing heart pacemakers, etc. This is including into death hastening process when the patient's condition shows the possibility of live according to medical measurement and experiences.

In doctor experience that the patient can be cured from suffering the illness, than the doctor was doing injections to accelerate the patient's death, and he was the perpetrator of Euthanasia. The actions were taken by the nurse at the hospital Lainz, Vienna. It was including an active euthanasia.<sup>33</sup>

Active euthanasia is divided in two parts, either directly or indirectly. The active euthanasia is directly occurs when a doctor or nurses is doing medical action, the purpose is to ease the suffering the patient, that the effect of life the patients shortened or terminated. Even though the

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<sup>32</sup> Imron Halimy, *Euthanasia*, 36.

<sup>33</sup> Ahmad Wardi M, *Euthanasia Menurut Pandangan Hukum Islam Positif dan Hukum Islam*, 18.

active euthanasia is indirect occurs when a doctor or nurses are acting the medical measures to ease the suffering the patient life without short or end the patient life, although it is known the existence of a risk could shorten or end of life patients.

While the definition of passive euthanasia is an act of letting the patient/sufferer in unconsciousness (coma), it is because there's no possibility of live according to medical measurements and experiences, or there's no live indication anymore, it's because one of the important organ is damaged or weak, such as the leaking of blood vessels that connect to the brain (stroke) due to the high blood pressure is too high, malfunction of the heart, and etc. These conditions are often called by "between phase", or people commonly considered it as "between life and death".<sup>34</sup>

In passive euthanasia, the doctor does not provide active assistance to accelerate the death of patient. Patient who is suffering from the disease in the terminal stage, which in the opinion of the doctor was possible to be cured, the family can not bear to see one member their family stay longer in hospitals, than they ask the doctor to discontinue treatment. These actions include the Passive euthanasia.

In the type between Euthanasia based on request and not based on request, euthanasia which is based on request concerning the approval or consent of the patient's family or the patient's own consent. Meanwhile, Euthanasia that is not based on request actions taken without their request

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<sup>34</sup> Yanggo. T Chuzaimah, *Problematika Hukum Islam Kontemporer Buku Ke-IV*, 51-52.

or consent of the patient is not conscious and it is usually the requested by the patient's family.<sup>35</sup> Both types of euthanasia can be merged, such as voluntary passive euthanasia, involuntary active euthanasia, and so forth.<sup>36</sup>

According to dr. Rully Roesli, there is based on other Euthanasia which is based on situation and condition "sikon", it is type of Euthanasia which is done because of circumstances and economic conditions. If a patient still wants and great hope for life, and doctors are able to treat the patient, but the economic and financial condition of patients can not afford the cure, then treatment efforts had to be stopped. Then the result of patient might die, description of the event including the "Euthanasia Sikon".

"Terminal Stage Renal Failure (GGT)". As example disease which is applicable in the terminal stages of the disease, patients GGT who is without treatment in a few days or a few weeks she will die. Medical technology has enabled the treatment of patients GGT by the dialysis action. However, due to the high cost of dialysis treatment is about 1.5 or 2 million rupiah every month and should be done on an ongoing basis, then the patient is weak economic conditions will not be able to do, and as a result the patient will die.<sup>37</sup>

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<sup>35</sup> Ahmad Wardi Muslich, *Euthanasia Menurut Pandangan Hukum Islam Positif dan Hukum Islam*, 18-19.

<sup>36</sup> Hendrik, *Etika & Hukum Kesehatan*, 101.

<sup>37</sup> Ahmad Wardi Muslich, *Euthanasia Menurut Pandangan Hukum Islam Positif dan Hukum Islam*, 21-22.

According to Prof. H.J.J. Leenan called pseudo of euthanasia because similar to euthanasia, but in fact not included euthanasia. which is included in the pseudo of Euthanasia is as follows: 1) To discharge treatment (treatment) medical will be no use (zinloos). 2) Denial of medical care by the patient (family). 3) To discharge treatment (treatment) because the medical brain is dead (braindeath). 4) Termination of life of patients due to limited inventory of medical equipment (emergency). 5) Euthanasia due to "sikon".<sup>38</sup>

According H.J.J. Leenan that "the doctor has authority to act are useful, if the action are unless is no use anymore. The doctor does not perform juridical persecution during his act in purpose as a doctor who wants to achieve and as long as he has received permission or consent of the patient".

Based on the opinion of Leenan above, it can be concluded that a doctor should not begin a therapy or not to continue therapy, if it is legally no longer be expected to result, even though it resulted in the death of the patient. In such case, there is no euthanasia (passive), and there is no act that can be punished, because the doctor is not competent to perform the medical procedure. When doctors still perform medical actions, he has threatened to persecution.

Patients have the right to reject all or partial therapeutic therapy. Based of that the patient have right to reject the treatment is the right of self-determination on their own bodies. Hoge Raad Netherlands has issued arrest in HR June 14, 1974, NJ 1974, 436 : generally, the doctor does not

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<sup>38</sup> Petrus, Karyadi Yoyo, *Euthanasia dalam Perspektif Hak Asasi Manusia*, (Yogyakarta: Media Pressindo, 2001), 33-34.

have the right to perform a medical procedure on a patient, if the medical action was not desired by the patient.

So, if the patient has refused medical treatment then the patient died, the doctor can not to be blamed that she/he has committed euthanasia (passive). The death of these patients just as the apparent form of euthanasia. In 1974 the Dutch Health Council had set criteria when a person can be declared brain dead, ie if: 1) the absolute brain is no longer functioning. 2) The brain functions is absolutely no longer be recovered.

According to Kartono Muhammad that: The centers of that build-up in the human body that is the brain stem. Therefore, if the brain stem is dead, believed that the human was dead. That brain stem death criteria as a guideline to halt auxiliary machines. In religion also the extension of using of tools may not be justifiable. Because in essence these patients already a corpse. If signs of brain stem death has been proved, fatwa's of Indonesian Medical Association stating that doctors should stop from all actions crutch that had been done. Because when the brain stem is dead, the person had really died, then the action is no longer Euthanasia cessation aid. So it does not appropriate to be confused understanding of the determination of brain stem death by euthanasia.<sup>39</sup>

#### 4. Euthanasia in Medical Ethics

Knowledge development to avoid the danger of death is the duty of doctor. Doctor must protect human beings and to sustain life. Thus, doctor are prohibited for ending the patient's life (euthanasia) although according to medical science and experience of these patients may not be recovered.

One of relevant Indonesian Medical Ethic about Euthanasia at article 9 "A doctor has to remember obligation to protect the lives of human

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<sup>39</sup> Petrus, Karyadi Yoyo, *Euthanasia dalam Perspektif Hak Asasi Manusia*, 38-39.

*beings*".<sup>40</sup> This article in the revisions contained in the Indonesian Medical Association SK PB No: 221 / PB / A.4 / 04/2002 dated 19 of April 2002 about the implementation Indonesian Medical Code Ethic had changed into Article 7d Chapter I is General obligations, the same redaction (do not change).

Guidance and explanation in Article 7d that God Almighty creates that at one time would be doomed. Their is not doctor whom is smart would be able to prevent it. The strongest instinct in every animate creatures, including human beings are to survive. For that man was given intellect, the ability to think and gather experience, therefor to develop science and attempt to escape from the danger of death. All of these efforts is the duty of a doctor. Doctor must strive to protect and defend human beings live. Both of religion, the State of Law, Medicine and Ethics, a doctor is not allowed: a. An abortion (abortion provocatus). b. Ending the life of a patient according to the science and knowledge will not recover again (Euthanasia).<sup>41</sup> Euthanasia action is against of Indonesian Medical Ethic which is Euthanasia active. Doctor don't play as god. Medical Ethics must be pro life, not pro death. Doctor is life savers, not life judgers.

According to the Hippocratic that 'Medicine is an effort to reduce the suffering of the sick, get rid of the disease and do not treat the cases that do not require treatment'. From these sates that doctor should not attempt to treat the cases that longer impossible to be cured. The patient has felt the disease can not be cured, the better the doctors let patients die by itself, do not need to end to patient life, and also do not need to try hard to maintain his life, because his death was not inevitable. However, treatment (treatment) accordingly still remain to be done.

The task of medical science in Indonesia to help alleviate the suffering of patients, to cure the patient disease in Indonesian Medical Ethics, the doctors embraced passive Euthanasia, they have carried out

<sup>40</sup> Imron Halimy, *Euthanasia dalam Perspektif Hak Asasi Manusia*, 87.

<sup>41</sup> Ikatan Dokter Indonesia, *Kode Etik Kedokteran Indonesia dan Pelaksanaan Kode Etik Indonesia*.

although sometimes indirectly. Thus, in Indonesia the doctor does not allow active euthanasia action.<sup>42</sup>

## 5. Euthanasia in Criminal Law

According to Moeljatno, in terminology the meaning of criminal act is prohibited action and punished by criminal<sup>43</sup> whoever violates that prohibition, prohibition addressed for his actions, while the threats was addressed to the person. Between prohibition and threat the criminal have a close connection.<sup>44</sup>

The Code of Criminal regulate a person can be punished, if he takes the lives of others deliberately or inadvertently. In Indonesia there is not legislation roles explicitly regulated euthanasia, but in the Code of Criminal implying about Euthanasia on Article 304, 306, 338, 340, 344, 345, 359.<sup>45</sup>

### 1. Active Euthanasia

Active euthanasia is occurred when a doctor or other health personnel intentionally commit an act to shorten (terminate) the patient's life intentionally . Active euthanasia is divided into two groups, namely:

#### a. Active euthanasia on request Patients

<sup>42</sup> Ahmad Wardi M, *Euthanasia Menurut Pandangan Hukum Islam Positif dan Hukum Islam*, 23-28.

<sup>43</sup> Moeljatno, *Perbuatan dan Pertanggungjawaban dalam Hukum Pidana*, (Jakarta: Bina Aksara, 1983), 11.

<sup>44</sup> Sutarno, *Hukum Kesehatan Euthanasia, Keadilan Dan Hukum Positif Di Indonesia*, (Malang: SETARA Press, 2014), 69.

<sup>45</sup> Hendrik, *Etika & Hukum Kesehatan*, 102.



Active euthanasia action on patient request has been set explicitly in article 344 of the Criminal Code. Article 344 of the Criminal Code explains that *'Who is ending life another person on request of the person himself clearly with sincerity, it will be punished by a maximum imprisonment of twelve years'*.<sup>46</sup>

In Article 344 of the Criminal Code does not have a subjective element, but has elements of objective, as follows:

- 1) Broven or taken
- 2) Leven or life
- 3) Een ander or others
- 4) Op verlangen or on request
- 5) Uitdrukkelijk en ernstig or the explicit and hardly

In the case of active euthanasia on request patient, then the doctor can be held accountable for criminal and it can be prosecuted by imprisonment for twelve-year-old. In Article 345 is reinforced doctor's help in active Euthanasia on request patient, Article 345 of the Criminal Code *'Whoever is intentionally encouraging another person to commit suicide, helping her in that action or giving means to him, it will be punished maximum imprisonment of four years if He became suicidal'*.

b. Active euthanasia on unrequest Patients.

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<sup>46</sup> Djoko Prakoso. Djaman Andi Nirwanto, *Euthanasia Hak Asasi Manusia dan Hukum Pidana*, (Jakarta Timur: GHALIA, 1984), 71.

Article 338 of the Criminal Code Whoever is intentionally ending another person's life, it will be threatened by a maximum imprisonment of fifteen years because of murdering.

Article 340 of the Criminal Code Whoever is intentionally and with planning in advance to end another person's life, it will be threatened by the death penalty or imprisonment for life or for a certain time, the punish is maximum of twenty years because of planning murder.<sup>47</sup>

In the case of active euthanasia on unrequest patient, the doctor had deemed to plan in advance on committed Euthanasia acts on patients, that action adherer bare in the Criminal Code article number 340. In the draft of the Criminal Code in 1992 Article 445 about the Seize Life, Murder On Demand Self: "Whoever is ending life another person on the person request himself clearly with sincerity or on the families request in terms of the person's own unconscious, will be punished by imprisonment nine years old."<sup>48</sup>

## 2. Passive Euthanasia

Passive euthanasia is occurred when a doctor or other medical staff are not deliberately provide medical assistance to patients who can extend its life. Passive euthanasia is divided into 2 groups.

### a. Passive euthanasia on request Patients

<sup>47</sup> Ns. Ta'adi, *Hukum Kesehatan Sanksi & Motivasi bagi Perawat Edisi 2*, (Jakarta: Buku Kedokteran EGC, 2012), 48.

<sup>48</sup> Sutarno, *Hukum Kesehatan Euthanasia, Keadilan Dan Hukum Positif Di Indonesia*, 75.

Passive euthanasia on on request patients is relating with the patient rights of patients, as follows:

- 1) The right on information
- 2) The right to give consent
- 3) The right to choose a doctor
- 4) The right to choose the hospital
- 5) The right on medical confidentiality
- 6) The right to refuse treatment
- 7) The right to refuse a certain medical treatment
- 8) The right to discontinue treatment

The patient has asked to doctors for doing passive euthanasia on him, and then he has done his rights, namely 'the right to discontinue treatment'. Thus, the doctors had not competent to carry out the treatment on patients. Doctors are separate from lawsuits, because there is no strafbaarfeit on him. Even though the patient is died soon after doing passive euthanasia, if doctors still gives treatment (without patient permission), then doctors will be threatened on persecution action. Consequently, threatened by Article 359 of the Criminal Code 'whoever

was causing another person, die with his mistake (omission) by imprisonment of five years or imprisonment for a maximum of one year'.

b. **Passive euthanasia without request Patients**

Passive euthanasia on request of the patient, the doctor who took the initiative to act passively without doing treatment. Doctors take action euthanasia because of the perceived medical that committed medical action on patients has not used anymore (zinloos). If the doctor can not prove that the committed medical action has not used anymore, then the doctor will be threatened by Article 304 in conjunction with Article 306 (2) of the Criminal Code.<sup>49</sup>

Article 304 of the Criminal Code 'Whoever is intentionally causing or neglecting someone in misery condition, while according to the law for him or for approval, he must give life, care or maintenance to person, will be punished by imprisonment for a period of two years and eight months, or a fine four thousand five hundred rupiah '.

Article 306 of the Criminal Code (2) 'When it is resulted in death, guilty person will be sentenced by a maximum imprisonment of nine years'.

**6. Euthanasia in Islamic Law**

One of purpose Islamic religion is to preserve human life. Human make efforts in order to survive, if he is sick then ordered to get treatment. The undermining human life, such as murder forbidden to do and required people to reject it. In the holy Qur'an, many verses which

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<sup>49</sup> Sutarno, *Hukum Kesehatan Euthanasia, Keadilan Dan Hukum Positif Di Indonesia*, 79.

prohibit a murder, even threaten with punishment. The verses among other things:

وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقتُلَ مُؤْمِنًا إِلَّا خَطَأً وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ

وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا

“It is not worthy to kill a believer (in the other), but because by mistake (unintentionally), and whoever kills a believer because by mistake (let) it is giving independent to who believe and pay blood money (diat) given to the family (who is killed it), unless they (the family was killed) charity.”<sup>50</sup>

In Islamic criminal law, The main punishment of Murder is Diat and Kifarat, the punishment was based at Al-Qur'an Surat an-Nisa (4) verse 92 which has been mentioned before. As well as the euthanasia process, it aims to kill someone deliberately. The process is very contrary with Islamic criminal law.

وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنَّ قَتْلَهُمْ كَانَ خِطْئًا كَبِيرًا

“Don't kill your children caused of poverty. We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin.”<sup>51</sup>

<sup>50</sup> QS: An-Nisa (4): 92.

<sup>51</sup> QS: Al-Isra (17): 31.

In the Qur'an Surah Al-Isra verse 31 explains that humans are at the stage of despair to the will of Allah SWT, when people are faced with severe illness conditions of and can not be cured by medical experience. Thus state make people despair in medicine. Euthanasia process as a way out of their choosing, but the Qur'an wants to not despair, and look for other treatment alternatives can still be executed, because Allah SWT has another whim of a calamity that is given to every human being.

The doctor making active efforts to help accelerating the patient death (active euthanasia) is forbidden by Islam, which according to assumption and estimation it can not last for life despite on the request and the patient consent. Because that actions is including into murder intentionally. Based on the verses of Qur'an, as follows:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ

“Do not kill the soul which Allah has forbidden (to kill), but with a (reason) is true. And whoever killed wrongfully, then We have given power unto his heir, but let's heir exceed the limit in killing. Indeed, he is the one who gets help.”<sup>52</sup>

Killing in the verse implies all forms and types of murder, including the killing by euthanasia process that is killing deliberately on someone with the help from others. In this sense, there is a subject that is

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<sup>52</sup> QS: Al-Isra (17): 33.

people who help to make the process of killing and objects. That is patients who have suffered tragic.<sup>53</sup>

وَلَا تَقْرَبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا

بِالْحَقِّ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ

“Do not approach deeds indecency, both visible in between clear and hidden, and do not kill the soul which Allah has forbidden (to kill), but with something (cause) is right. "So it was commanded by the Lord to you so that you understand (his).”<sup>54</sup>

In Islam not only forbidding of murder but also forbidding to do suicide, like in holy Qur'an verse, as follows;

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ

مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

“Who believer, do not eat each other neighbor's property by way of vanity, except by way of commerce that goes with the same loves between you. And do not kill yourselves; surely Allah is Merciful to you.”<sup>55</sup>

From these verses that in the view of Islam, humans do not have the right to determine their death by themself, as recognized by the medical community. Therefore, the consent given by patients to physicians for helping speed up his death did not exist and did not affect the

<sup>53</sup> Arifin Rada, “Euthanasia Dalam Perspektif Hukum Islam” *Perspektif*, 2 (2013), 115.

<sup>54</sup> QS: Al-An'am (6): 151.

<sup>55</sup> QS: An-Nisa' (4): 29.

prohibition of murder. Thus, doctors who perform euthanasia process is still considered as agent of crime and should be punished.<sup>56</sup>

In the hadith prophet of Muhammad SAW, the prohibition of murder or suicide has been listed on the hadith of Aisha r.a, Abdullah Ibnu 'Umar and Abu Hurayrah, as follows:

وَعَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا، عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: ( لَا يَحِلُّ قَتْلُ مُسْلِمٍ إِلَّا فِي إِحْدَى ثَلَاثِ خِصَالٍ: زَانٍ مُحْصَنٌ فَيُرْجَمُ، وَرَجُلٌ يَقْتُلُ مُسْلِمًا مُتَعَمِّدًا فَيُقْتَلُ، وَرَجُلٌ يَخْرُجُ مِنَ الْإِسْلَامِ فَيُحَارِبُ اللَّهَ وَرَسُولَهُ، فَيُقْتَلُ، أَوْ يُصَلَّبُ، أَوْ يُنْفَى مِنْ الْأَرْضِ) (رَوَاهُ أَبُو دَاوُدَ، وَالنَّسَائِيُّ، وَصَحَّحَهُ الْحَاكِمُ)

“From 'A'ishah that Rasulullah SAW said: "It is not lawful to kill a Muslim unless one of three things: adulterous People who have been married, he would be stoned; people who kills a Muslim intentionally, he would killed; and people who convert from Islam and he fought against Allah and His Messenger, he would be killed or crucified or thrown away from his land. ".<sup>57</sup>

Based on the hadith, the killing is allowed by Islam, there is murder which is committed for legitimate reasons by personality, while euthanasia is not included in the types of those reasons. Euthanasia on request of the

<sup>56</sup> Ahmad Wardi M, *Euthanasia Menurut Pandangan Hukum Islam Positif dan Hukum Islam*, 81.

<sup>57</sup> Muhammad bin Ismail al-Amir al-shon'ani, *Subul al-salam syarh bulugh al-maram juz 7*, (Riyadh: dar ibn jauzy, 2007), 6-7.



patient or his family was showed the attitudes and feelings of hopelessness. Desperation disliked and forbidden by Allah SWT.

عَنْ أَبِي هُرَيْرَةَ رَضِيَ قَالَ: قَالَ رَسُولُ اللَّهِ ص: مَنْ تَرَدَّى مِنْ جَبَلٍ فَقَتَلَ نَفْسَهُ فَهُوَ

فِي نَارٍ جَهَنَّمَ يَتَرَدَّى فِيهَا خَالِدًا مُخَلَّدًا فِيهَا أَبَدًا، وَ مَنْ تَحَسَّى سُمًّا فَقَتَلَ نَفْسَهُ فَسُمُّهُ فِي

يَدِهِ يَتَحَسَّاهُ فِي نَارٍ جَهَنَّمَ خَالِدًا مُخَلَّدًا فِيهَا أَبَدًا، وَ مَنْ قَتَلَ نَفْسَهُ بِحَدِيدَةٍ، فَحَدِيدَتُهُ فِي

يَدِهِ يَتَوَجَّأُ بِهَا فِي نَارٍ جَهَنَّمَ خَالِدًا مُخَلَّدًا فِيهَا أَبَدًا. البخارى و مسلم و الترمذى و النسائى

“From Abu Hurairah RA said: Rasulullah SAW said, "Whoever threw himself from the mountain for committing suicide, then he threw himself in hell and forever inside. And whoever drank poison to commit suicide, then the poison in her hand he drank it in Hell than eternal hell again conserved in it forever. And whoever killed himself with a sharp weapon, then a sharp weapon in his hand he hurt himself using it in hell, eternal again conserved in it for ever".<sup>58</sup>

The hadith above describes the active euthanasia, which doctor makes an active effort to help accelerate the process of death of a patient that the assumption it will not be able to survive. Even at the request and approval of the patient or family. The process is clearly forbidden by Islam, because it belongs to the killing deliberately.

The reason about prohibition of active euthanasia is to ask the dead, that prohibition was contained in the hadith of Nabi Muhammad SAW, as follows:

<sup>58</sup> Sayid Sabiq, *Fiqh Sunnah Juz 2 bab Jinayat*, (Qohiroh: Al-Fath for Arab Media, ), 235.

حديث حسن صحيح وقد روي عن أنس بن مالك عن النبي صلى الله عليه وسلم أنه قال لا

يَتَمَنَّيَنَّ أَحَدُكُمْ الْمَوْتَ لِضُرِّ نَزَلَ بِهِ فَإِنْ كَانَ لَا بُدَّ مُتَمَنَّيًّا فَلْيُقَلِّلْ اللَّهُمَّ أَحْيِي مَا كَانَتْ

الْحَيَاةُ خَيْرًا لِي وَتَوَفَّنِي إِذَا كَانَتْ الْوَفَاةُ خَيْرًا لِي

"Don't one of you expecting a death because misery. Even if he has to expect it, then he should pray, "Lord, give me life if a life is better for me and turn off me death is better for me".<sup>59</sup>

Euthanasia is an attempt to help someone who is experiencing pain or suffering and impossible to be cured in order to hasten death by reason of eliminating suffering. The islamic law response on euthanasia generally provides a concept for avoiding the occurrence of euthanasia, especially active euthanasia Muslims are expected to cling the belief that looking at all the disaster (including pain sufferers) as a provision which comes from Allah SWT.

## 7. Euthanasia in Heritage Law

In Civil Law Article 830 of the Civil Code, that the principle of inheritance is the inheritance only happens because of death. In the sense of treasure open new inheritance (can be passed on to others) if the occurrence of a death. Inheritance has a very important position in Islam, because with the inheritance of a person who has died can distribute

<sup>59</sup> Muhammad. Nasiruddin. Al-Bani, *Kitab Shohih Sunan At-Turmuzi*, (Riyadh: Maktabah Al-Ma'arif An-Nasr, 2002), 498.

wealth legacy to those who deserve and are divided fairly in accordance with the provisions of Personality '. So that neither party feels aggrieved.

Deaths process caused of Euthanasia is a criminal offense that prohibited by positive law in Indonesia, as well as in Islamic law. Because the process of euthanasia is same as murder. Murder in Islam is barricade for heirs who pleaded passive euthanasia. Passive euthanasia is not entitled to inheritance of the deceased.

The purpose of distribution of inheritance or legacy is addressed to people who are entitled to receive in accordance with the provisions of Personality ', than the killer did not receive the gathered remnants from the property or inheritance. The division of the estate to the heirs conducted in a fair and true, then there is no dispute between the other heirs.

A barrier that makes null receive heir one of them is killed, the applicant Passive euthanasia there are certain reasons, thus blocking the acceptance of inheritance. Thus equated same as status on the legal act of murder contained in the hadith of Nabi Muhammad SAW, as follows:

وَرَوَى عُمَرُ ابْنُ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَيْسَ لِلْقَاتِلِ مِنْ

الْمِيرَاثِ شَيْءٌ (رواه النسائي والدارقطني وقواه ابن عبد البر)

From Amr bin Shu'ayb, from his father from his grandfather, that the Prophet said, "There is no heir at all for a killer."<sup>60</sup>

The problem for the applicant of Euthanasia is intentionally murder, thus blocking the division of the inheritance. Because Islam is forbids murder. Passive euthanasia applicant as a subject who commit murder can not accept the division of the inheritance. As in the verse of the Qur'an, as follows:

وَإِذْ قَتَلْتُمْ نَفْسًا فَادَّارَأْتُمْ فِيهَا وَاللَّهُ مُخْرِجٌ مَا كُنْتُمْ تَكْتُمُونَ

And (remember) when you killed a man then you mutual recriminations about it. And God wants to reveal what many have you hiding.<sup>61</sup>

In the verse explained about the prohibition of murder, people who kill will be hindered by his actions to get the estate from the person who killed. If the killing is not hindered in obtaining inheritance, people will murder of his biological mother or father, because he wanted to quickly obtain the inheritance. Therefore, the madzhab of ulama agree that murder is one reason for the abort acceptance of inheritance.<sup>62</sup>

According to scholars of Shafi'ites that murder can barricade of inheritance rights, though only give false testimony in execution by

<sup>60</sup> Muhammad bin Ismail al-Amir al-shon'ani, *Subul al-salam syarh bulugh al-maram juz 7 bab jinayat*, (Riyadh: dar ibn jauzy, 2007), 332.

<sup>61</sup> Q.S. Al-Baqoroh (2): 72.

<sup>62</sup> Beni Ahmad. S, *Fiqh Mawaris*, (Bandung: Pustaka Setia, 2009), 115-116.

stoning (rajam), or justifies another testimony of witnesses in the implementation of Qisas or the death penalty generally. As well as passive euthanasia request, there is an element of deliberate murder. As in the Compilation of Islamic Law Article 173 of unobstructed be heir by murder.

In Article 173 of Compilation of Islamic Law (Kompilasi Hukum Islam), One can be prevented from becoming an heir if decided by a judge, it would be punished of:

- a) It has been blamed for killing or attempting to kill or injure the heirs;
- b) It is blamed by slander filed a complaint that the heir has committed a crime punishable by five years imprisonment or more severe punishment.

## CHAPTER III

### RESEARCH METHOD

#### A. Reseach Method

This chapter discusses the methodology that is applied in this research. In a research, it is required to use appropriate research methods, in order to get valid data and to produce good scientific work. This research applied these following methodologies:

##### 1. Type of Reseach

In a scientific research, there are two kinds of researches. The first is quantitative research; this research uses structured numerical data. The second is qualitative research.

In Bungin book told the purpose of field study is to understand the social situation deeply.<sup>63</sup> Qualitative research is systematic activity to find theory in the field area but not to examine the theory or hypotheses.<sup>64</sup>

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<sup>63</sup> Andi Prastowo, *Metode Penelitian Kualitatif*, (Jogjakarta: Ar ruzz media, 2011), 179.

<sup>64</sup> Burhan Bungin, *Metodologi Penelitian Kualitatif*, (Jakarta: Grafindo persada, 2001), 27.

So the type of this research is empirical research, because the data collected in this research by using interview method. The writer asks directly to the informants about the problem that is taken in this research.

## 2. Research Approach

There are several approaches used in the study. The research approach suitable to the type of research, formulation of the problem, and research objectives.

The author tried to examine the views of Ulama and Doctor at Indonesian Medical Association and examines the issue of euthanasia result.

The author used a comparative approach (*comparative approach*) to compare the two views of the Council of Indonesian Ulama and Doctor at Indonesian Medical Association.<sup>65</sup>

## 3. Location Of Study

The writer undertake this research at Indonesian Medical Association in Tangkuban Perahu street No. 1b the second floor of Kartini's building complex telephone. /Fax. (0341) 353377 Malang East Java 65119 E-mail : [idimlg@yahoo.com](mailto:idimlg@yahoo.com) Website : [www.idimalang.org](http://www.idimalang.org). and the Council of Indonesian Ulama at Kartini Imperial Ballroom, Tangkuban Perahu Ib. 82 Malang East Java, telephone (0341) 553273 / 7066700.

<sup>65</sup>Pedoman penulisan karya ilmiah, fakultas syari'ah UIN MALIKI Malang, 2015.

#### 4. Data source

Empirical kind of research used qualitative data sources. All of materials, information, facts cannot be measured mathematically but only tangible narrative description. The study also did not use the figures but many describe the views already expressed.

In this study, the authors take two sources of data source from primary data sources and secondary data sources. The primary data source is taken from:

a. The primary data source is obtained from the first source is interview of Ulama and Doctor at Indonesian Medical Association already authors specify.

b. While secondary data sources to be used in the form of primary data and secondary data. Primary data using literature study, studying some of literature, documents, records and books related to euthanasia.<sup>66</sup>

Secondary data is data that is to support the research. Examples are thesis, KBBI Dictionary, Dictionary English-Indonesian and others.

After the primary data was collected author will complement secondary data. If the two data source is completed, the authors start for data processing.

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<sup>66</sup> Pedoman penulisan karya ilmiah, fakultas syari'ah UIN MALIKI Malang, 2015.28.



## 5. Method of Data Collection

The collection of data is systematic and standardized procedures to obtain data that will be presented.<sup>67</sup> In this section, the authors used data collection techniques:

### a. Interview

One of the techniques of data collection by interview (interview guide),<sup>68</sup> this interview contains a list of questions that are open, structured and want to gain in-depth answers to euthanasia due to a variety of views Ulama and Doctor at Indonesian Medical Association Malang. In simple interview are signs that the researchers used in order to do not get caught up in looking beyond the problems of data and research purposes.

Those Data can be look at from table:

Table 3.1

Informant From the Indonesia Medical Association Malang

No	Informant	Position
1.	Dr. Enny Sekar Rengganingati, MM	The chief of Indonesian Medical Association Malang
2.	Dr. dr. H. Herry Darsim Gaffar, M.Kes.	Member of Indonesian Medical Association and lecturer
3.	drg. Anik Listiyana, M.Biomed	Member of Indonesian Medical Association and lecturer
4.	dr. Lia	Member of Indonesian Medical Association and lecturer

<sup>67</sup> Nazir, *Metode Penelitian*, (Bogor: Ghalia Indonesia, 2011), 174.

<sup>68</sup> Using a list of questions to guide the respondent, in order to collect some information or facts obtained from the first source.

Table 3.2

## Informant from the Council of Indonesian Ulama Malang

No	Informant	Position
1.	Drs. KH. Chamzawi	The chief of Fatwa Commission and Lecturer
2.	Dr. KH. Muhtadi Ridwan	Member of Fatwa Commission and Lecturer
3.	H.Muhammad Nurhakim	Member of Fatwa Commission and Lecturer
4.	Drs. Murtadho Amin	Member of Fatwa Commission and Lecturer
5.	Drs.Athoilah Wijayanto	Member of Fatwa Commission

## b. Documentation

Documentation, in this technique the author uses asus digital camera to take pictures, Android mobile phone to record sounds.

Collecting data in this research to carried out the documentation, as collection techniques to carry out the research subject.<sup>69</sup> Meanwhile, according to Suharsimi Arikunto the documentation is investigating research of written objects such as books, articles, documents, regulations etc.<sup>70</sup>

<sup>69</sup> Sukandarumidi, *Metodologi Penelitian; Petunjuk Praktis Untuk Peneliti Pemula*, (Yogyakarta: Gajah Mada Universitas Press, 2006), 100.

<sup>70</sup> Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan, Praktek*, (Jakarta: Rineka Cipta, 2002), 10.

## 6. Data processing Method

According to Miles and hiberman, qualitative data analysis is an analytical process that consists of three flows of activities that togethrness event: data reduction, presentation data and conclusion or verification.<sup>71</sup>

According to data collected by researchers, namely: qualitative data in the form of data (sentence), then that data were analyzed by qualitative data analysis techniques with interactive analysis model.

The analisys process data is reducestion the data that has been collected, which the manner is simplifying or remove data that is not relevant to the research, and then held the presentation of data to be taken the conclusion. However, if it is still there is a lack in taking conclusions due to lack of insufficient data are available, the researchers can conduct research in the field back, so later can be concluded again that more striking with the goals and objectives of the study.

To manage all of data that has obtained, then need for data analysis and processing procedures are in accordance with the approach data analysis techniques used by researchers is:

- 1) Edit (Editing)

Editing is activity that has done after researchers finished collecting the data obtained. This activity is important because the fact that the collected data is sometimes not met the expectations of researchers, including less or missed, overlapping, redundant and even forgotten.

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<sup>71</sup> Andi, *Metode Penelitian Kualitatif*, 251.

## 2) Classification

Classification is reduction data that arranging and classifying the data obtained in sure pattern or specific issues to easier the discussion. According Soerjono Soekanto (2006) classification is grouping or classification of library materials is a source of legal materials in research.

<sup>72</sup>

## 3) Analysis

The analysis is grouped, create a sequence, manipulate and compress data so easy to read, then the analysis of legal materials is done by connecting what has been getted from the working process from the beginning.<sup>73</sup> The purpose of this research is the analysis within the constricting and limiting the inventions until become a regular data, as well as structured and more meaningful.

## 4) Verification and Conclusion

The final of material processing that has obtained was concluding stage of research materials were obtained, it is mean to make easier to translate in the form of research. This stage also aims to answer what is the background of the research as well as answering the formulation of the problem that has been presented.<sup>74</sup>

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<sup>72</sup> Soerjono Soekanto, dan Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta: Raja Grafindo Persada, 2006), 50.

<sup>73</sup> Cik Hasan Bisri, *Model Penelitian Fiqh*, (Bogor: Kencana, 2003), 185.

<sup>74</sup> Saifullah, *Tipologi Penelitian Hukum*, 162.

## CHAPTER IV

### FINDINGS AND DISCUSSION

#### A. Findings

##### 1. The Condition of Research Location

This chapter discuss about geographical condition and population in Malang city East Java. It is related to the research of this theses about the views of the council of Indonesian ulama and Indonesian medical association in Malang city on Euthanasia.

##### a. Geographical Condition

Malang is located at 440-667 meters above sea surface, it is one of tourist destination in East Java because of its natural and climatic potential. Malang is located in  $112.06^{\circ}$  -  $112.07^{\circ}$  East Longitude and  $7.06^{\circ}$  -  $8.02^{\circ}$  South latitude.

##### b. Climatic Conditions

Malang climatic conditions during 2008 until now has recorded an average temperature ranges between  $22.7^{\circ}$  C -  $25.1^{\circ}$  C. While the maximum temperature reached  $32.7^{\circ}$  C and a minimum temperature of  $18.4^{\circ}$  C. Average

air humidity ranging from 79% - 86%. With a maximum moisture content of 99% and a minimum of 40%. other area in Indonesia, Malang following the second round of climate change, the rainy season and dry season. The observation Climatology Station of Karangploso relatively high rainfall occurs in February, November, December. Meanwhile, in June and September rainfall is relatively low. Maximum wind speeds occur in the months of May, September, and July.

c. Population Conditions

According to the Department of Population and Civil Registration in Malang city, Malang population from every year is growing. In 2015 the number of population society was 881 794 people and until April 2016 887 443 people.

The Chief of Information Session Office of Population and Civil Registration in Malang city said that the growth of Malang population is 1.58% every month. The increasing population in Malang is caused by the newcomers.

Table 4.1

Development of Population in Malang City

NO	Subdistrict	POPULATION			BIRTH			DEATH		
		M	F	M + F	M	F	M + F	M	F	M + F
1	Blimbing	98.259	98.430	<b>196.689</b>	22	27	<b>49</b>	10	10	<b>20</b>
2	Klojen	53.960	56.049	<b>110.009</b>	13	8	<b>21</b>	14	16	<b>30</b>
3	Kedung Kandang	104.598	104.128	<b>208.726</b>	15	21	<b>36</b>	6	9	<b>15</b>
4	Sukun	103.311	102.692	<b>206.003</b>	24	22	<b>46</b>	10	11	<b>21</b>
5	Lowokwaru	85.917	86.390	<b>172.307</b>	16	18	<b>34</b>	14	20	<b>34</b>
	<b>Total</b>	<b>446.045</b>	<b>447.689</b>	<b>893.734</b>	<b>90</b>	<b>96</b>	<b>186</b>	<b>54</b>	<b>66</b>	<b>120</b>

Table 4.2

NO	Subdistrict	IMMIGRANT			TRANSFER			POPULATION		
		M	F	M + F	M	F	M + F	M	F	M + F
1	Blimbing	162	160	<b>322</b>	145	163	<b>308</b>	98.289	98.443	<b>196.732</b>
2	Klojen	77	95	<b>172</b>	79	81	<b>160</b>	53.964	56.048	<b>110.012</b>
3	Kedung Kandang	218	216	<b>434</b>	109	107	<b>216</b>	104.709	104.256	<b>208.965</b>
4	Sukun	155	185	<b>340</b>	105	110	<b>215</b>	103.387	102.766	<b>206.153</b>
5	Lowokwaru	164	177	<b>341</b>	114	117	<b>231</b>	85.961	86.456	<b>172.417</b>
	<b>Total</b>	<b>776</b>	<b>833</b>	<b>1.609</b>	<b>552</b>	<b>578</b>	<b>1.130</b>	<b>446.310</b>	<b>447.969</b>	<b>894.279</b>

From five sub-districts in Malang City, Kedungkandang and Sukun subdistricts are the most populous sub-districts, because of the wide area and the location of the suburbs has been built new housing.<sup>75</sup>

## B. Explanation and Data Analysis

### 1. Euthanasia According to Indonesian Medical

#### Association of Malang City

In the previous chapter, it has been mentioned that Euthanasia is the beginning of ending the life process in easy way without pain. It is an act of intentional ending of the life of a creature (person or pet) who suffers from serious illness by a calm and easy death on the basis of humanity.

#### a. Definition Of Euthanasia

Euthanasia or dead injection is a very serious ethical problem and still a problematic in various medicine parts of the world, especially in

<sup>75</sup> <http://malangkota.go.id/layanan-publik/kependudukan/> accessed on 02 April 2017 pada pukul 16:23.

Indonesia. On the other side Euthanasia means holding up right of person life, and it is an effort to eliminate the endless suffering experienced by the patient and his family.<sup>76</sup> According to dr. Enny<sup>77</sup> as chairman of the Indonesian Medical Association of Malang City that:

Actually, Euthanasia is ending life of someone with deliberate purpose, and according to medical there is no wish for cure, the patient will depend to medical devices. Medically, everything can't separate with ethic. Euthanasia which is same as murder although the person without wish for cure. Usually, Euthanasia occurred to patient who unconscious and request from the family.

According to information above, it can be known that Euthanasia is ending of a person's life with deliberate purpose, and the condition patient is impossible to recover again, so the resulting is dependence on medical device. Euthanasia is same as murder, even though the patient has no wish for cure. Euthanasia occurs in patients who can not do anything (coma), and the process of Euthanasia occurs come from the family request.

Active Euthanasia occurs when the doctor or other health professional does a medical action, in order to ease the patient's pain, because it has predicted that the patient's life is shorter. Although the risk is known that his actions can shorten or end the patient's life.

While the definition of passive Euthanasia is an act of letting the patient/sufferer in unconsciousness (comma), it is because there's no possibility of life according to medical measurements and experiences, it's

<sup>76</sup> Muhammad. Yusuf, *Kematian Medis (Mercy Killing)*, (Yogyakarta: TERAS, 2009), 41.

<sup>77</sup> Enny, *Interview*, (Malang, 2<sup>nd</sup> Januari 2017)



maybe because one of the important organ is damaged or weak, such as the leaking of blood vessels that connect to the brain (stroke), it is because the blood pressure is too high, malfunction of the heart, and etc. dr. Anik<sup>78</sup> said that:

Euthanasia condition is patient who has long coma, in the fact condition patient in long coma is still has wish for life. All of organ vital in patient body still function like heart cell before, unlike with a broken brain stem indeed he had died without medical devices helping, because the device is assisted so that blood circulation is still running, and the heart is still pulsating. Euthanasia is prolonged coma and prolonged pain, eventually the medical devices is removed. Active Euthanasia is actively injected to die intentionally, whereas passive Euthanasia is a prolonged pain then assisted with the medical devices for the cure someday, if continue the treatment it could be really healed. The medical devices is revoked because it is actually dead, but because still wait with the medical devices able to motivated his heart beat, in the fact it was waited all day and no reaction, the medical devices have been released.

From the informant above, it can be known that differences active and passive Euthanasia is about the medical devices, active Euthanasia uses the medical devices actively to eliminate the patient's death process. While, passive Euthanasia is not using the medical devices. If a patient suffers from terminal disease, which in the opinion of the doctor is impossible to be cured, then the family ask the doctor to stop the treatment. active Euthanasia is murder and passive Euthanasia is a suicide, both of active and passive Euthanasia are remanded court.

Both of active and passive Euthanasia is dead, dr. Lia<sup>79</sup> said that:

Both of active and passive Euthanasia is dead effect and there is no cure. active Euthanasia is injection to the patient in order to end life, so it

<sup>78</sup> Anik, *Interview*, (Malang, 28 November 2016).

<sup>79</sup> Lia, *Interview* (Malang, 23 November 2016)

is do actively. passive Euthanasia is for example there is accident person, then be given medical devices for breathing. In the fact it has been waited, the cost of medical devices is three million in everyday, finally the family's patient decision to skip the treatment.

According to information above, it can be known that both of active and passive Euthanasia have bad effect, active Euthanasia is injection something to the patient in order ending life, it is same as suicide. While passive Euthanasia for example there is accident person and be given medical devices, then discontinued the treatment caused impossible economical to pay the cost of the medical devices.

According to the Lisbon Declaration in 1981, Euthanasia from the humanity is justified and the right for patients who are suffering from incurable illness. But in practice there are two obstacles that doctors are not easy to do euthanasia process, as follows<sup>80</sup>:

- 1) The doctor is bound by a code of medical ethics that he or she is required to help relieve the suffering of the patient.
- 2) The act of ending person's life is a criminal act in any country.

The act of ending person's life is a criminal act in Indonesia, this is because the Euthanasia process is contrary to human rights that is depriving every human right of being to live. Like the opinion from dr. Anik<sup>81</sup>, that:

All of kinds of Euthanasia are suicide; if it is come from the other request is a murder. Difference between active and passive Euthanasia is about medical devices. passive Euthanasia is remove the medical devices, and active Euthanasia is use medical devices actively.

<sup>80</sup> <http://dokumen.tips/download/link/agama-euthanasia>, accessed on 20 April 2017, pukul 08.00 wib.

<sup>81</sup> Anik, *Interview* (Malang, 28 November 2016)

However the active or passive Euthanasia is according to dr. Ani are included in the category of murder. Both of Euthanasia active and passive is difference in using the medical devices or not using. In contrast to the opinion of dr. Heri<sup>82</sup> about Euthanasia with murder as follows:

According to myself Euthanasia is not include to murder, if it has been passed away.

According to information above, it can be known about Euthanasia does not include murder, it is because destiny a person's death pass the process of Euthanasia, and it is not including murder. Because the interview thought that Euthanasia belongs to the effort in treatment. The interview is pro with foreign countries that have legalized the process of Euthanasia as dr. Heri said<sup>83</sup> as follows:

Euthanasia is the first effort in treatment, and the second is end life process. In foreign country that was legally is benefit and action normally. People who want to easy dead and against the suffering illness, it is legally action in the law. But in Indonesia is forbidden on religion, it same as murder. Thus, Indonesian country does not legally on Euthanasia process.

From the information above, it can be known that Euthanasia occur in Indonesia which has been legalized is considered reasonable as a normal. Indonesian is Muslim majority country so that in Islam does not allow Euthanasia. It is forbidden, because same as suicide. Thus, it cannot be legalized as juridical in Indonesian country. Medically, the benefit to the process of Euthanasia is considered reasonable in accordance with

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<sup>82</sup> Heri, *Interview*, (Malang, 23 November 2016)

<sup>83</sup> Heri, *Interview*, (Malang, 23 November 2016)

medical science, but still controversy in Islamic religion. So it cannot become benefit, legal, or social in Indonesian country.

While the patient refused for medical treatment after the patient was died, then the doctor can not be expected by who's taken action Euthanasia. In active Euthanasia which is the offender (doctor) can be held responsible and punishment in prison for twelve-year. In article 345 is reinforced on the help of physicians in the active Euthanasia process, article 345 of the Criminal Code 'Whoever intentionally encourages another person to commit suicide, rescues him in the act or provides it, it is punishable by a maximum imprisonment of four years if that person becomes suicide'.

Regarding with opinion of dr. Enny and dr. Anik previously about the difference between active and passive Euthanasia. The researcher concluded that active Euthanasia is the doctor's action to end the patient's life by giving a deadly injection at the patient's request. The other meaning is intentionally actioned by doctors with the purpose is shortening or ending the patient's life, whether voluntary or not. While passive Euthanasia is a medical decision to discontinue treatment, it is because of life expectancy is no longer available or the actions of doctors do not provide medical assistance, it can be prolonged the life of the patient, whether voluntary or not.

From the view of the four doctors above, it is explained that Euthanasia both active and passive there is prominent difference, they reveal that the process of active and passive Euthanasia only different in using of medical devices or not, in active Euthanasia process is using medical devices are active, while passive euthanasia is the removal medical devices in the treatment process. So the impact that resulted in the

effect of the killing. However, between active and passive Euthanasia are differences the impact of the death process patient, with active Euthanasia the process of accelerating death directly, while passive euthanasia is more likely to result from the remove of the medical devices that affects the patient by returning the destiny of god.

The view of doctors majority about Euthanasia is murder/killing but with different processes. Active Euthanasia is a deliberate killing to accelerate death without enduring prolonged illness. While passive Euthanasia is the remove of medical devices that support the patient's life and result in death easily. Both are equally bad for death, the doctor's view both of the pros and cons. Which is the process of active Euthanasia is contrary with the code of Indonesian medical ethics and passive Euthanasia result is the return to Allah SWT.

#### **b. The Authority in Euthanasia process**

There are several people who are authorized in determining of Euthanasia process, in addition are the requests from the patient or his family. Doctor as important role in Euthanasia process, in spite of the patient or family has right in the filing of the process of Euthanasia, but the doctor has the right to receive or refuse the process, as said by dr. Enny<sup>84</sup> as follows:

The doctor is not authorized in Euthanasia process, because Euthanasia is contrary with the code of medical ethics, doctors is only predict the condition of this patient's illness, there is wish or not in medical considerations to cure, so doctors do not have the right in

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<sup>84</sup> Enny, *Interview*, (Malang, 2<sup>nd</sup> Januari 2017)

Euthanasia process. So the doctor can only determine a disease or a patient has a life expectancy or not, there is wish to recover or not. The patient's right to ask, but doctor's ethics does not allow. It is may ask to the doctor, but the question is filled or not it goes back to 1) medical ethics, 2) the rule of law. The person right to ask, but it is a matter of implementation or not, because the implementing Euthanasia was been there in code of medical ethics and is bound to the applicable laws, in Indonesia is different from in the Netherlands America. Euthanasia is similar to abortion.

From information above, it can be known that doctors are not authorized in determining the process of Euthanasia to patients because it is against the medical code of ethics, doctors have just predict the condition of a patient's illness. Patient has the right to request the process of Euthanasia to the doctor, but the doctor has the right to receive and refuse. Because in the medical process is allowed to request the process but with some conditions as follows: 1) ethics, 2) rule of law. While the process of Euthanasia is illegally in Indonesian medical ethics and there is no specific legal rule regarding Euthanasia.

Indonesian Medical Association (IDI) is actually had quite anticipation in the developing of medical science and technology, and it has prepared software in the form of SK-PB IDI No.319 / PB / 4/88 on "Statement of Indonesian Doctor on *Informed Consent*". Doctors cannot to take medical action for againsting the patient's request, even though for benefiting the patient.<sup>85</sup> As the opinion has said by dr. Heri<sup>86</sup> as follows:

According to my personal with future forecast, when the facility is already advanced and doctor's ability has been deemed Euthanasia may happen, with family's request that is called Informed Consent. We are as doctor was bound by agreement in doctor action and the patient or

<sup>85</sup> Muhammad. Yusuf, *Kematian Medis (Mercy Killing)*, 46.

<sup>86</sup> Heri, *Interview*, (Malang, 23 November 2016)

family's patient, even though the doctor would refuse, as opposed to the doctor's oath and the code of medical ethics.

According to informant above, it can be known that Euthanasia can occur although sophisticated facility and developed of doctor's skill. Euthanasia on family's request is named by *Informed Consent* which is action agreement by the doctor and agreement form the patient or family on patient's name. In spite of the doctor was rejected because against with code of medical ethic.

According to doctor, who is the authorized part in the Euthanasia process is the doctor, it is because the doctor who is treater the patient, besides from the patient request or the patient's family. The existence of an agreement between both of the patient and doctor is called *Informed Consent* which is bound the approval of the action by the doctor approved and the patient or patient's family. Even so, the doctor refused because it is contrary with the code of medical ethics. Thus, the authority in Euthanasia process is agreement doctors.

### c. **Euthanasia practice in Indonesia**

Euthanasia practice is controversy with code of Indonesian Medical Ethic about Euthanasia at article 9 "*A doctor has to remember obligation to protect the lives of human beings*". dr. Anik<sup>87</sup> said about Euthanasia practice in Indonesia:

I known that there is no Euthanasia practice in Indonesia, but there is who ask to the health minister at that time, because his wife after a cesarean has been suffering from prolonged, so the husband felt pity to his

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<sup>87</sup> Anik, *Interview*, (Malang, 28 November 2016)

wife and with agreement from his wife. But the effort to the health minister it is still does not be given permission or not. According to the personal Euthanasia is suicide, whereas the sick is could be Allah gave the pain because it is possible for Allah SWT remove his sins, and who do Euthanasia process is give up level, we do not know despite the prolonged illness even though Allah wills and in the future we can heal we do not know too, and after death we also do not know what will It happens well we do not know, we explain that we try to make it if it is directed towards ending life that has not time, it is already violating the shari'ah.

The information above, it has been known that people who is done the Euthanasia process is desperate from the will of Allah SWT in the treatment process. It never knows the best results after Euthanasia process for patients who suffered very badly. Person whose end life in not time, it is included in the violation of shari'ah. Likewise the process of Euthanasia according to dr. Enny<sup>88</sup> that:

I have not heard, it cannot be allowed officially. Therefore, in order not occur Euthanasia proces that is not providing an effort that will not work anyway. For example, a person's lungs are damaged and have no hope of healed, it's a lot of it, it's been damaged all, continue to want to install a pentilator to help him breathe, when the pentilator was released if the lungs healed, and when will be released? So, it does not do the vain action actually. Usually let me do not have to use the sophisticated medical advices.

According to information above, it can be known that process of Euthanasia in Indonesia has not occurred, the incident has not occurred in Indonesia country because it is not officially permitted in the code of medical ethics of Indonesia. The doctors did not carry out something that would result in a failure in the treatment process. If a doctor is unable to

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<sup>88</sup> Enny, *Interview*, (Malang, 2<sup>nd</sup> Januari 2017)



handle the treatment process, it does not mean that the treatment ends, but the patient's condition has no wish for cure.

Indonesian is submitting passive Euthanasia on on request patients is relating with the patient rights of patients, as follows<sup>89</sup>:

- 1) The right on information
- 2) The right to give consent
- 3) The right to choose a doctor
- 4) The right to choose the hospital
- 5) The right on medical confidentiality
- 6) The right to refuse treatment
- 7) The right to refuse a certain medical treatment
- 8) The right to discontinue treatment

When the patient has asked the doctor to occur passive Euthanasia, then the patient has done the right, it is 'the right to discontinue treatment'. Thus, doctors are no longer competent to treat patients. Doctors are free from lawsuits, because there is no strafbaarfeit on him although the patient immediately dies after passive Euthanasia, if the doctor continues to

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<sup>89</sup> Sutarno, *Hukum Kesehatan Euthanasia, Keadilan Dan Hukum Positif Di Indonesia*, 79.

provide treatment (without the patient's consent), then the doctor was persecution to the patient. So that is threatened with Article 359 of the Criminal Code 'Whoever with his mistake (negligence) causes another person to die, threatened with a maximum imprisonment of five years or a maximum of one year's imprisonment'.

In Indonesian passive Euthanasia is generally occurred that have been applicable with the provisions. dr. Lia<sup>90</sup> existence of passive Euthanasia process in generally has been officially:

Euthanasia has not been done in Indonesia, because the Euthanasia practice must go to the courts, so it is not easy to do active Euthanasia in Indonesia. As for passive Euthanasia was already common, for example the family cannot afford any more for the treatment costs, and the treatment is skip then brought home, this includes passive euthanasia, and you have been known that without medical help in treating he will gradually die.

From information above, it can be known that common presence of Euthanasia in Indonesia is passive Euthanasia, such as the patient's right to discontinue treatment, it is because do the certain factors. So doctor can not continue the treatment.

Euthanasia practice in Indonesia according to doctors is never happened, but in the filing to court or health ministry it has happened several times. While passive Euthanasia is generally more occurred in Indonesia with certain conditions. There is one doctor who considers that the Euthanasia process either active or passive is a reasonable course of

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<sup>90</sup> Lia, *Interview*, (Malang, 23 November 2016)

action, since the process is included in the offer process in treatment. The doctor is pro with Euthanasia applicable to countries that have legalized the process such as the Netherlands, the United States, Australia, and others. While in Indonesia does not legalize the process, because there is a medical code of ethics that prohibits the process of Euthanasia.

#### **d. Benefit in Euthanasia**

Medically, the benefit of Euthanasia process is considered reasonable based on medical science, but still controversy in Islamic religion. So that can not be called by the benefit, legal, or social in the country of Indonesia. In every treatment there is benefit between both of the patient and the doctor, the benefit is meant in the process of Euthanasia is to ease the burden of suffering experienced by patients, so according to dr. Lia<sup>91</sup> that:

We as a Muslim cannot be allowed to end life by active Euthanasia process; it is not the best way. However, in the passive Euthanasia process tends to be returned again to Allah swt.

According to information above, it can be known that active Euthanasia is not considering into the best way in the treatment process, and in passive Euthanasia process as the best way the results are returned to Allah SWT. Likewise according to dr. Anik<sup>92</sup> about there is no benefit in the process of Euthanasia that:

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<sup>91</sup> Lia, *Interview*, (Malang, 23 November 2016)

<sup>92</sup> Anik, *Interview*, (Malang, 28 November 2016)

No, because Euthanasia is suicide, because it is done by medical so that's name becomes Euthanasia. Whatever the reason for the name of suicide is that has violated the shari'a although it is not the patient who did but someone else, it could be agreement from the patient, and it same as with killing.

According to information above, it can be known that Euthanasia does not contain benefit at all, because the process Euthanasia is the same as murder, only changed name in medically to be Euthanasia, Euthanasia or murder / suicide.

Thus, Euthanasia doesn't have benefit in the process obviously. Because the doctor as the authorized part in the process has the right in maintaining the life of a human/patient suffering from his illness, then various attempts to defend a person's life as not to arrive at the death process easily. The patient has the right to request the Euthanasia process, but the doctor has the authority to refuse at the request of Euthanasia. Doctors are bound by medical codes of ethics, so they cannot do Euthanasia process, and that is clearly contrary to the medical code of ethics in Indonesia.

## **2. Euthanasia According to Commission Fatwa of the Council of Indonesian Ulama of Malang City**

### **a. Definition Of Euthanasia**

Euthanasia does not consider the purpose of Islamic religion in treatment process for avoiding the illness, because life cannot be bet in the

treatment a patient process. In Islam people commands to survive life with their abilities, because god's destiny will show the best way for their life.

The council of Indonesian Ulama response on active and passive Euthanasia process using the basis of religion, therefore the strengthening of argument is very convincing. Although the fatwa in Indonesia as non-binding law for the society of Indonesia. It has been said by KH. Hamzawi<sup>93</sup> as chairman of the commission fatwa of Malang city, as follows:

Injecting dead (with a direct medical devices) is forbidden, if passive Euthanasia, it just like people who have a sick person and left or sometimes taken home from hospital because they do not have a fee. If according to the law is forbidden and not allowed, because the death of Allah Almighty, so it is just like suicide, in verses of the Qur'an:

وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ

And do not follow yourself into destruction.<sup>94</sup>

So, active Euthanasia is forbidden to do.

From explained above, it can be known that the prohibition dead injection or Euthanasia in Islam and strengthened based argument by the Qur'an verse which is about Euthanasia is same as with the destruction of murder. However passive Euthanasia is not allowed, because it is the same as with suicide. The passive Euthanasia according to the ulama is equally not allowed, passive Euthanasia for certain a reason is permitted, but in principle and essentially Euthanasia both of active and passive is not

<sup>93</sup> Chamzawi, *Interview*, (Malang, 1 Februari 2017)

<sup>94</sup> QS.Al-Baqoroh (2):195.

allowed. The opinion of Nurhakim<sup>95</sup> as a member of the commission fatwa of Malang city, as follows:

Fatwa in principle and essentially, passive and active Euthanasia is not allowed. However, there is certain passive Euthanasia of types because of the emergency. Examples, there is no medical devices in continuity because the medical devices must be used by people who need more. Other example of oxygen that pay after the cultivated by itself is not possible to pay, because everything has been sold for paying treatment cost, then by the hospital was told to go home, there is now bpjs but the hospital has its rules. That such an emergency, that condition is passive euthanasia.

الضرورات تبيح المحظورات

Emergency condition may to do forbid something.

The description above, it was explained about passive Euthanasia is minimally permissible, since the reality and principles of the Euthanasia's legal fatwa whether active or passive are forbidden by Islam. Like as the opinion of Athoilah<sup>96</sup> about active and passive Euthanasia are equally not allowed, as his opinion as follows:

Between active and passive Euthanasia is equally forbidden as in NU's congress, because people have to endeavor to the death, people do not end life in any way, even though the burden is very heavy, it is consider suicide. As a result we must effort in another treatment.

The Indonesian ulama's response came from Bahtsul Masail Nahdhatul Ulama at the NU of National Conference in NTB 1998, "The law of Euthanasia is forbidden", the based on text in the book of Mughni al-Muhtaj. Because there is an element of deliberation that makes die or

<sup>95</sup> Nurhakim, *Interview*, (Malang, 6 April 2017)

<sup>96</sup> Athoilah, *Interview*, (Malang, 17 April 2017)

destroy. The fatwa on Euthanasia issued by the the Council of Indonesian Ulama at province of DKI Jakarta in 2001, according to Islamic law Euthanasia is forbidden, because the right to life and death humans only in the hands of Allah SWT.<sup>97</sup>

وَاللَّهُ يُخَيِّبُ وَيُمَيِّتُ وَاللَّهُ بِمَا تَعْمَلُونَ بَصِيرٌ

God turns on and off. And God sees what you do.<sup>98</sup>

In contrast with the opinion of Murtadho<sup>99</sup> as a member of the fatwa commission of Malang city is difference between active and passive Euthanasia, as follows:

Active euthanasia is not permitted, because it is the same as killing deliberately and with the action of the doctor by injecting certain drugs in order to quickly died. Passive Euthanasia is usually not the same as murder because there is no action; basically it does not do action, but stopping the treatment. Active Euthanasia is an element of deliberate death. But if you stop the treatment, because the treatment healers while heal this does not heal. The second is left untreated with the impossible to heal, because the family's feel pity, and the doctor's experience will not heal. So, it is inseparable from the view of religion and medicine, because those who have the knowledge well.

According to informant above, it can be known that active and passive Euthanasia are different, the opinion on active Euthanasia is the same as with previous ulama, but in passive Euthanasia's view does not consider passive Euthanasia as murder/suicide, because according to him passive Euthanasia can occur with other offer or alternatives treatment.

<sup>97</sup> <http://www.muidkijakarta.or.id/tag/fatwa-euthanasia/>, accessed on 20 April 2017, pukul 06.40 wib.

<sup>98</sup> QS. Ali Imran (3):156.

<sup>99</sup> Murtadho, *Interview*, (Malang, 5 April 2017)

Then, he assumes the same view as the doctors that between active and passive Euthanasia is different from the medical devices used actively or unused and there are elements of deliberate order to accelerate death in active Euthanasia process.

In the perspective of Islamic law, all forms of Euthanasia (active or passive) law is forbidden. Because it is the element of purpose to die. In the Islamic Shari'ah, life must be preserved, which is including the part of the realization of keeping the soul (hifzh al-Nafs), the law is obligatory. If conditions do not allow to do medical treatment then do alternative treatment. For families who order Euthanasia process is part that helps to kill themselves and bear the sins of their actions.

According to Islamic law, the theory used in the law of Euthanasia derives from the Qur'an in the response of the Indonesian ulama from Bahtsul Masail Nahdhatul Ulama at the Nahdahatul Ulama National Conference in West Nusa Tenggara 1998, "The law of Euthanasia is forbidden." Taking the basis of the text Single in the book of Mughni al-Muhtaj. Because there is an element of deliberation that makes die or destroy. The fatwa on Euthanasia was issued by the Council of Indonesian Ulama of Jakarta Province 2001, according to Islamic law Euthanasia is forbidden, because the right to revive and kill people only in the hands of ALLAH SWT.

وَاللَّهُ يُحْيِي وَيُمِيتُ وَاللَّهُ بِمَا تَعْمَلُونَ بَصِيرٌ



God turns on and off. And God sees what you do.<sup>100</sup> Likewise the legal basis in the Qur'an about the prohibition of committing suicide:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ

And do not kill the soul that Allah forbade (to kill) but with something (true).<sup>101</sup>

#### **b. The Authority in Euthanasia process**

The views of doctor is different from ulama's view on the authority in Euthanasia process. According to KH. Chamzawi<sup>102</sup> that, as follows:

No, my opinion on the authority in Euthanasia process is the patient, the doctor is cure the suffering patient, and it should not be burdened.

The explanation above, it can be known that the part whose authority in Euthanasia process is patient. Because the doctor as treat patient's illness, it is not command to occur Euthanasia passive. So, patient and family's patient whose influence part in Euthanasia process.

Patient has authority in stopping treatment although it is known that the effect in stopping treatment to end patient life quickly. Murtado<sup>103</sup> in opinion, as follows:

Indicates impatience in accepting the ordeal, the original law of the treatment according to the imam ghazali is not mandatory but sunnat, people can recover also without treatment can heal. Medication is syar'i the

<sup>100</sup> QS. Ali-Imron (3): 156.

<sup>101</sup> QS.al-An'am (6):151.

<sup>102</sup> Chamzawi, *Interview*, (Malang, 1 Februari 2017)

<sup>103</sup> Murtadho, *Interview*, (Malang, 5 April 2017)

essence of alloh who heal, alloh who heal can with a certain cause, it can with certain bearing, and with scientifically scientific treatment with medicine. Doctors are usually no halal haram, this is active and passive Euthanasia based on the expression of ulama is justice on halal haram, but haram view of ulama should also consider the opinion of a doctor who knows the context of the treatment or context of physical ability.

To determine the law of passive Euthanasia from the perspective of Islamic law is related to the law of treatment. Ulama say that the law of treatment is determined based on situation and condition, law can be might, obligatory, or forbidden. Therefore, if patients are given various methods of treatment in accordance with modern medical theory, but the disease is not better in a relatively long time, then continue such treatment is not obligation. The termination of medical treatment is judged as might and justified, the doctor is allowed to do relieve the patient and his family and turn to alternative treatment, such as by prayer, patience, tawakal, rida, or with non-medical treatment during its implementation does not against with Islamic rule.

Imam Al-Ghazali denied who's argued that no treatment was more important under any circumstances. The more popular fuqaha's opinion on the problem of treatment or not for the sick is most of them argue mubah/might, some consider it is circumcision, and a few (fewer) few argue is obligatory.<sup>104</sup>

The ulama might to remove all medical devices and breathing apparatus although the heart is still pulsating because of the device. In fact,

<sup>104</sup> <http://dokumen.tips/download/link/agama-euthanasia>, accessed on 20 April 2017, pukul 08.00 wib.

some ulama are obligate to stop in using of medical devices, because it is against Islamic sharia. According to KH. Chamzawi<sup>105</sup> about the treatment in the process of Euthanasia as follows:

It is not occurred, if treatment the illness caused there is the medicine, but if treatment the illness by killing is might not.

According to informant above, it can be known that treated patients by the process of Euthanasia is not allowed, because it is treating the purpose of healing the pain, but it is not by killing. Likewise his opinion about medical capabilities and his experience in dismissal treatment is not included in Euthanasia but tends to return the results to Allah SWT, as follows:

It is not Euthanasia, just trust to Allah; life belongs to Allah swt, which obviously treatment is obligatory. In the hadith, From Usamah bin Syarik said, there is a badu arab saying to the Prophet sallallaahu 'alaihi wa sallam:

يا رسول الله ألا نتداوى؟ قال: (تداووا، فإن الله لم يضع داء إلا وضع له شفاء إلا داء واحد) قالوا: يا رسول الله وما هو؟ قال: الهرام.

'O Prophet said, do we get treatment ?, The Prophet said 'Repent, because Allah does not reduce the disease, unless definitely reduce the medicine, except one disease (which no medicine),' 'they asked,' 'what is it?' 'The Prophet said, " old sickness. "<sup>106</sup>

From fatwas previously, the problems in differences of views are the discontinuation of treatment or stop the medical devices. Unless the action is interpreted as a medication effort, then returned to the law treatment, and chooses with alternative medicine. Termination of the

<sup>105</sup> Chamzawi, *Interview*, (Malang, 1 Februari 2017)

<sup>106</sup> HR.Tirmidzi 2038, dan disahihkan oleh al-Albani dalam *Sunan Ibnu Majah* 3436.

treatment process is the patient's objective condition; if it is still treatable then it should be treated. In other side it is medically certain cannot be cured then better be stopped. Thus the law of Euthanasia depends on the situation and condition of the patient. However, the majority of ulama opinions between active and passive Euthanasia are murder/suicide, then there is no such process can be done. Because they are determined not to stop trying in treatment and the result is trust to Allah SWT who has the will to die and the life of his creature.

According to the views of ulama that the authorities in the process of Euthanasia are the patient or the patient's family, because they have the authority to dismiss or continue the treatment process. So the doctors as an intermediary of the Euthanasia process either active or passive. The various causes of certain factors that cause passive Euthanasia occur, Euthanasia according to the ulamas is not allowed, because it includes by eliminating the human life although the purpose is lighten the burden. But death is not good way in treatment process, thus it is recommended for alternative medicine in any way.

### **c. Euthanasia practice in Indonesia**

The researcher has asked to the doctors, indeed Euthanasia in Indonesia has not happened. But with the progress and development of this

ever-increasing state, it is possible that Euthanasia is done secretly, likewise according to KH. Chamzawi<sup>107</sup>, as follows:

In Indonesia Euthanasia practice is forbidden, different from punishment in the court is death penalty, it is not Euthanasia, such as the death penalty there is wearing stun, injection, etc. it's already punishment, and may not be up to the punishment before, the judge earlier.

According to the information above, it can be known that Euthanasia is not allowed to occur in Indonesia, contritely with the death penalty that deliberately kills people. Because the criminalization process since the era of proclamation of independence is continues until now and will not stop. Criminal law can be called by filtering out the misconduct, and morality act is becaused harm society that is criminalized.

Although Euthanasia is not a juridical term, it has legal implications, both of criminal law and civil law. However, in relation to Euthanasia law has not been contained in the Criminal Code specifically, thus the criminal act in Euthanasia case is related to the rule of law in general that is murder crime. Likewise with the views of Nurhakim<sup>108</sup>, as follows:

The case was in jabar in Bogor, his wife (Hasan). This case was not asked to the mui, but the case was brought to court, although it responded anticipatively because it had happened in some countries, the law should not be (haram). It is true that the law in our country uses fatwas only, in kuhp still using in general about the murder. Article kuhp 344, then there is the decision of the health minister 334 of 1983 article 10 about the prohibition of killing, so essentially euthanasia kills intentionally. Although the purpose is feel pity, but the right to turn and shut down in the view of Islam only on Allah, and this (Euthanasia) deliberately then

<sup>107</sup> Chamzawi, *Interview*, (Malang, 1 Februari 2017)

<sup>108</sup> Nurhakim, *Interview*, (Malang, 6 April 2017)

forbidden. The arguments of the killing prohibition who still life. Example in yunus verses 49 & 56, al-an'am 151, al-isro 33. Euthanasia both of passive or active is forbidden.

The case has mentioned above that the process of Euthanasia in Indonesia must go to the courts, because the process of Euthanasia is considered in criminal law. Deliberate killing in the 334 Criminal law of code although in humanity is helps human beings to end life and compassion. It can not be based on humanity in response to the law of Euthanasia.

The Euthanasia is based of argument as murder, and prohibition of the process of Euthanasia is contained in the Criminal Code of article 344 that 'Anyone who robs the life of another person at the request of the person himself is clearly stated with sincerity, threatened with a maximum of twelve years' imprisonment, In the verses of the Qur'an, as follows:

قُلْ لَا أَمْلِكُ لِنَفْسِي ضَرًّا وَلَا نَفْعًا إِلَّا مَا شَاءَ اللَّهُ لِكُلِّ أُمَّةٍ أَجَلٌ إِذَا جَاءَ أَجْلُهُمْ  
فَلَا يَسْتَأْجِرُونَ سَاعَةً وَلَا يَسْتَقْدِمُونَ

Say: "I have no will to harm, and not benefit to me, but what God wills." Every people have doom. When they have comes their end, they cannot withdraw the goods for a moment and do not (precede) it.<sup>109</sup>

هُوَ يُحْيِي وَيُمِيتُ وَإِلَيْهِ تُرْجَعُونَ

<sup>109</sup> QS. Yunus 10 : 49.

God is who has life and death and just follow him is you returned.<sup>110</sup>

The verse of Qur'an above that explains about the distancing from something harmless or not beneficial to him, because Allah SWT who determine the dying of his people. Something badness is the Euthanasia process, because it will harm the parties who do. While death only Allah SWT who willingness, as for human beings is not allowed to surpass the will of Allah SWT.

#### **d. Benefit in Euthanasia**

Treatment tends to be beneficial for the recovery of a patient, so that the process of Euthanasia is purpose to avoid prolonged suffering, whether it can be a benefit for a patient who is doing the process. As for the opinion of Murtadho<sup>111</sup>, as follows:

Benefit is avoidance of damage, Euthanasia process is benefit for people who payed the cost of treatment. Benefit in ending life is forbidden. Usually, Euthanasia has reached the degree of dependence on drugs that are not possible to recover in the sense of doctors, then the concept prophet Muhammad saw when praying in front of people who were sick. 'ya allah if life for them is benefit then give him healing, if life for them damage then accelerate his death'. In the fact back to Allah swt, treated and untreated death will come. There is a time for treatment, the problem healed back to Allah swt.

According to information above, it can be known that the Euthanasia process exists for families who pay for treatment of patients, but Euthanasia cannot be applied in risking the lifes of the human being.

<sup>110</sup> QS. Yunus 10 : 56.

<sup>111</sup> Murtadho, *Interview*, (Malang, 5 April 2017)

As the hadith of the Prophet SAW when praying people who were sick, as follows:

حديث حسن صحيح وقد روي عن أنس بن مالك عن النبي صلى الله عليه وسلم أنه قال لا  
يَتَمَنَّيَنَّ أَحَدُكُمْ الْمَوْتَ مِنْ ضَرِّ أَصَابَهُ ، فَإِنْ كَانَ لَا بَدَّ فَاعِلًا ، فليَقُلْ اللَّهُمَّ أَحْيِنِي مَا كَانَتْ  
الْحَيَاةُ خَيْرًا لِي ، وتوفِّيْني إِذَا كَانَتْ الْوَفَاةُ خَيْرًا لِي

"Do not you want to die because of dangers, indeed he really wants to do it, and then say: 'Oh God turn me on if life is better for me. And turn me off if it is good for me' <sup>112</sup>

While according to Athoilah <sup>113</sup> said that benefit between using medical that caused in Euthanasia case, as follows:

There are some conditions that all will die, so give the other interests, eventually will die all. In essence, everyone has the right to live, if the medical devices is minimal and only one that can be used instead we should see more useful interests, but all of have the same interests, whether it can be half-time, Which is important we have to effort. Once again when in a healthy condition that benefits a lot, yes he has a right too, which is still when in conditions have not been able to benefit much, still we give hope who after heal useful, people have all possibilities if I think like that.

In explanation above, it can be known that Euthanasia process is not benefit, because human being has right for life although the main purpose is helping person to avoid the suffering illness. Benefit is not a bet of person to end their life. Maintain of life is command in Islamic religion, because died cannot be a bet person's life in benefit of treatment by Euthanasia.

<sup>112</sup> Muhammad. Nasiruddin. Al-Bani, *Kitab Shohih Sunan At-Turmuzi*, (Riyadh: Maktabah Al-Ma'arif An-Nasr, 2002), 498.

<sup>113</sup> Athoilah, *Interview*, (Malang, 17 Februari 2017)



### 3. Comparison of Views between Doctor and Ulama

Based on the explanation and analysis above data, the researcher can confirm that Euthanasia according to the doctor's view and the council of Indonesian ulama both of active and passive Euthanasia is considering murder. As in the theories they take under the medical ethic of code in the Guidelines and the explanation in Article 7d that the State Ordinance, as well as the Medical Ethics, a doctor is not allowed: a). Abortion (*abortus provocatus*). b). Ends the life of a patient, who is according to knowledge will not heal again (Euthanasia). Euthanasia action is considered contrary to the above Medical Ethics is active Euthanasia. Doctors should not act as God. The doctor is the one who saves or preserves life, not the one who determines life.

As part of an important medical issue, in the fatwa products of the Council of Indonesian Ulama fatwa's and the Bahtsul Masail fatwa's on Euthanasia law is part of the fatwa on AIDS/HIV. But in the application can be separated. Bahtsul Masail and the Council Indonesian of Ulama agreed to forbid Euthanasia for people with HIV/AIDS. The logic meant by both of institutions, if people whose illness HIV/AIDS is clear when the death and pain of suffering that suffered is forbidden, let alone for other reasons. The Hisbah Council includes the absolute absolute.<sup>114</sup>

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<sup>114</sup> <http://wacanaislam.blogspot.co.id/2008/09/fatwa-ulama-indonesia-terhadap-isu-isu.html>, accessed on 20 April 2017, pukul 06.30 wib.

According to doctors, the process of Euthanasia is unprecedented in Indonesia, because the process must go to the courts. Indonesia as the biggest muslims society in the world does not legalize the process of Euthanasia although there is no specific juridical law regarding Euthanasia yet. According to one of the sources of the fatwas commission of the Council of Indonesian Ulama, Euthanasia's law in juridical law follows the general criminal law of murder. In the Criminal Code Article 344 of the Criminal Code explains that 'Anyone who robs the life of another person at the request for the person himself is clearly stated with sincerity, threatened with a maximum imprisonment of twelve years'. The occurrence of active Euthanasia, can not be separated from the following three reasons:

- 1) The patient who asks the doctor because can not stand the pain because the illness is already acute. With another consideration, the patient does not want to leave the economic burden on his family or the patient realizes that hope of recovering is gone.

- 2) The family/trustee feels pity for the suffering of the patient. Or because no longer able to pay the cost of medication while the patient's wish does not exist.

- 3) A certain family join with a doctor to hasten patient's death, because they want patient's legacy or other moral reasons.

From three reasons above, it can be conclude that the attitude which shown by the patient is a reflection of the weakness of faith. In

Islamic views is a test of patience, if they ending their life with Euthanasia that is an attitude of despair. For economic if illness reasons, it is better to going home from the hospital and looking for alternative treatment.<sup>115</sup>

Ulama's wish is not much different from the doctor's opinion of the doctors, we as Muslims should respect life since human soul blown in the womb until the death. Therefore, the process of Euthanasia can be called as murder/suicide because it has purpose intentionally to accelerate the process of death. While death belongs to Allah SWT, thus human have no right to die. Because Alloh has right to defend of human life.

Table 4.3

The Views of the Indonesian Medical Association and the Council of Indonesian Ulama in Malang on Euthanasia

Informant from the Indonesian Medical Association Malang city

No	Informant	Active Euthanasia		Passive Euthanasia	
		Pros	Cons	Pros	Cons
1.	dr. Enny Sekar Rengganingati, MM		√	√	
2.	Dr. dr. H. Herry Darsim Gaffar, M.Kes.	√		√	
3.	drg. Anik Listiyana, M.Biomed		√		√
4.	dr. Lia		√	√	

<sup>115</sup> <http://dokumen.tips/download/link/agama-euthanasia>, accessed on 20 April 2017, pukul 08.00 wib.

The views most of doctor on active euthanasia is cons, dr. Enny said that euthanasia process is contrary with Indonesian medical ethic of code in article 11 which state that 'doctor should remember their obligation to protect human life', while according to dr. Lia and dr. Anik active euthanasia is include the murder because it is using medical devices actively in the process and the murder is criminal action in Indonesian country. Different with dr. Heri view's on active euthanasia process, he agreed with the process because it is benefit and normal action, and he said that active euthanasia process is the first effort in treatment and the second is accelarate die process, he agreed with foreign country was legally active euthanasia process. Then most of the doctor's view is pros with passive euthanasia because it is one of treatment process, and doctor has been effort if the condition cannot be continue to treat using medical devices, and the last return to destiny's of god for the result. dr. Anik one of informant who is disaagree with passive euthanasia process because it is same as suicide.

Based on the analysis of the table illustrates that the doctor's view of Euthanasia either active or passive appear positive and negative speculation/opinion. Most of doctors have negative opinion the active Euthanasia process. They assume if the process of Euthanasia include a murder, they using the basic argument with the ethics of medical code chapter 7d. The one doctor's view of active Euthanasia is positive because in his view that the process of active Euthanasia is a natural thing done for

a legal state. Likewise with the passive Euthanasia is the doctor's pro in the presence of such processes, because it is considered in other alternative treatments by passive Euthanasia. And one of the doctors argues about passive Euthanasia is counter because included in despair in the treatment, so the patient can't be patient with Allah's test.

Tabel 4.4

Informant from the Council of Indonesian Ulama Malang city

No	Informant	Active Euthanasia		Passive Euthanasia	
		Pro	Contra	Pros	Cons
1.	Drs. KH. Chamzawi		√		√
2.	H. Muhammad Nurhakim		√	√	
3.	Drs. Murtadho Amin		√		√
4.	Drs. Athoilah Wijayanto		√		√

All of the views of the council of Indonesian ulama are cons on active euthanasia, the reason is based on verses of al-baqarah in article 195 which state that 'do not follow yourself into destruction', it's meant that active euthanasia is include to destruction for the ones who is doing that process. Other opinions from athoilah, he take the based of his argument from the verses of al-Qur'an ali-imron in article 156, that 'God turns on and off. And God sees what you do'. It's meant who has power for dying and life of human is god. Opinion from nurhakim and murtadho that active euthanasia is forbidden because it is include the murder which in statement the verses of qur'an al-an'am in article 151 'And do not kill the soul that

Allah forbade (to kill) but with something (true)'. It is meant that forbidden to kill human except with something (true). And most the ulama on passive euthanasia is cons because it can occur with other offer or alternative treatment. So, pasive euthanasia process is not peritted. Because god's willing in anyways for the human life. Their argument taken fro verses of ali-imron in article 156 same as argument of active euthanasia. There is one of ulama pros with pasive euthanasia because it is generally happened in this country, and it is same as treatment process. Based of his argument taken from rule of fiqhiyyah which state that 'Emergency condition is allowed to forbidden something'. It is meant that emergency something can beat forbid something.

From the table above, it can be known that the views of the scholars about Euthanasia either active or passive. Most of ulama's opinion diagree Euthanasia either active or passive because they are not allowed by religion. Ulama use al-Qur'an hadith, and qowaid fiqhiyyah as reason why Euthanasia same as murder or suicide. The active Euthanasia like a murder, because the active Euthanasia is prohibited in Islam, so the punishment else death. There are some ulama said if Euthanasia is prohibited in criminal code article 344, While passive Euthanasia is forbidden because the process include in despair over the will of Allah SWT. In other side, some other ulama argue if passive Euthanasia generally occurs in Indonesia, because the law of treatment is not obligation. So, if patient doing Passive Euthanasia is reasonable.

## CHAPTER V

### CONCLUSIONS AND SUGGESTIONS

#### A. Conclusions

Based on research and discussion about the opinion of the council of Indonesian ulama and the Indonesian medical association of Malang city on Euthanasia, the writer can conclude as follows:

1. Euthanasia according to the doctors at Indonesian Medical Association of Malang city into two division the first is active euthanasia considered murder, because there are deliberate elements of the interested parties (doctor or other medical team, patient and patient's family), and in the medical code of ethics prohibited to occur euthanasia process even though the patient's condition according to medical experience is incurable, and euthanasia is not the best treatment. So the doctors did not do because of violating the Indonesian medical code of ethics. Likewise the process of euthanasia has not been valid in Indonesia, and who is filed the euthanasia process must go to the courts. The second division passive Euthanasia is not considered murder, because in passive Euthanasia not using medical/vital devices actively in the process of accelerating death.

According to doctors passive euthanasia is often used in Indonesia because the certain factors.

2. Euthanasia according to the Council of Indonesian Ulama of Malang city for both active and passive Euthanasia is not allowed. Active euthanasia is not allowed because the process includes murder, while passive euthanasia is considered in despair in the treatment process of the patient although passive euthanasia in certain types because of emergency, and it is allowed. However euthanasia, both of active and passive is not allowed in Indonesia in principle and in the ultimate fatwa of the ulama, it is because of reasoning and certain casing that cannot be justified.

3. The differences between the council of Indonesian ulama and the doctors of the Indonesian medical association is their basic argument about euthanasia. The council of Indonesian ulama response about euthansia process by using the verses of the Qur'an, the hadith of the prophet, and the rules of fiqhiyah, while the views of the doctors is using the basic of the medical ethic of code, and Indonesian criminal law which is legally applicable in Indonesia. The similarities of argument between the council of Indonesian ulama and the medical Indonesian association is active euthanasia including the process of killing deliberately purpose with different argument, and the views of doctor and ulama about passive euthanasia is different. The majority of doctor's argument is pros on passive euthanasia process, because it is included in other treatment



process with no used medical devices/vital, so that the process occurs in Indonesia generally. However, passive euthanasia in the views of ulama is not permissible because it includes despair in treatment process, and certain passive euthanasia of certain factors is permissible in the view of ulama.

### **B. Suggestions**

From the descriptions above, the writer gives the suggestions to be considered, as follows:

1. For the next research, research on Euthanasia in view of doctors and the council of Indonesia ulama is not finished until here; this research can be continued by using different analysis with this research, so it can produce scientific complement each other.

2. To people who will do the Euthanasia process should have to understand about the right of humanity to maintain life as the essence of human dignity, so the process of right to ask to accelerate the death is not used as the best way in the treatment process. Likewise in order not give up easily in the treatment, because the god's will give a disease to his creatures have the wisdom and the willingness of god is not known by the creature.

3. The doctor as most authorized part in the Euthanasia process should give motivation to the patient or the patient's family, so they do not take a wrong step in the treatment process. Indeed the spirit of

life always appears in their mind, and the willingness to do Euthanasia process.



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**APPENDIX**





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Demikian, atas perhatian dan perkenan Bapak/Ibu, kami mengucapkan terima kasih.

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Demikian surat ini dibuat dengan sebenarnya untuk digunakan sebagaimana mestinya.

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No	Day/Date	Subject	Signature
1	22 <sup>nd</sup> March 2017	Proposal	
2	07 <sup>th</sup> April 2017	Chapter I, II, and III	
3	17 <sup>th</sup> April 2017	Review of Chapter I, II, and III	
4	27 <sup>th</sup> April 2017	Chapter IV, and V	
5	05 <sup>th</sup> May 2017	Review of Chapter IV, V, and Abstract	
6	15 <sup>th</sup> May 2017	Review of All Chapters	
7	26 <sup>th</sup> May 2017	ACC	

Malang, 26<sup>th</sup> May 2017  
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