

Medical Transformation on the Legality of Inheritance Rights of Passive Eutanasia Applicants ; Jasser Audah's Maqasidi Analysis

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Abstract: This research discusses ethical and legal dilemmas related to euthanasia in the perspective of Islamic law, especially regarding inheritance rights for passive euthanasia applicants. This research uses a normative juridical method with a conceptual approach to explore how Islamic law regulates inheritance rights in cases of passive euthanasia carried out on the basis of compassion. Euthanasia, both active and passive, remains a controversial issue. Legally in Indonesia, euthanasia is very close to Article 344 on murder as well as Article 304 of the Criminal Code and Article 173 of KHI on the causes of the loss of inheritance rights, but even so the implementation and interpretation are still debatable. From an Islamic perspective, murder can prevent inheritance rights, but there are differences of opinion among scholars regarding the type of murder in question. The results of this study show that the *illat* from the hadith and Islamic legal literature conclude that the act of passive euthanasia, if done with good intentions and not aimed at accelerating the acquisition of inheritance, does not hinder inheritance rights.

Keywords: Euthanasia, Inheritance Rights, Islamic Law

Abstrak: Penelitian ini membahas dilema etika dan hukum terkait euthanasia dalam perspektif hukum Islam, terutama mengenai hak waris bagi pemohon euthanasia pasif. Penelitian ini menggunakan metode normatif yuridis dengan pendekatan konseptual untuk mengeksplorasi bagaimana hukum Islam mengatur hak waris dalam kasus euthanasia pasif yang dilakukan atas dasar belas kasihan. Euthanasia, baik aktif maupun pasif, tetap menjadi isu kontroversial. Secara hukum di Indonesia, euthanasia sangat mendekati Pasal 344 tentang pembunuhan serta pasal 304 KUHP dan pasal 173 KHI tentang penyebab hilangnya hak kewarisan, namun meskipun begitu implementasi dan interpretasinya masih debatable. Dari perspektif Islam, pembunuhan dapat menghalangi hak waris, namun terdapat perbedaan pendapat di kalangan ulama mengenai jenis pembunuhan yang dimaksud. Hasil penelitian ini menunjukkan bahwa *illat* hukum



dari hadis dan literatur hukum Islam untuk menyimpulkan bahwa tindakan euthanasia pasif, jika dilakukan dengan niat baik dan tidak bertujuan mempercepat perolehan warisan, tidak menghalangi hak waris.

Kata Kunci: Euthanasia, Hak Waris, Hukum Islam

A. Introduction

As time goes by, the development of morality and ethics of society is increasing rapidly. This development has a major impact on their mentality as well as their choices, formal and moral development. One concrete example of problems faced in this post-modern era globally is the development of every field of science. Whether it is related to technology, human psychology and even medicine. Thus many problems arise that are closely related to Islamic law itself such as abortion, cloning, test tube babies, human deplod cells and euthanasia.¹

Although technology in the medical field has advanced, there may still be problems that cannot be solved by humans. Let's say in the medical field, there has not been found an effective drug or antidote to treat deadly diseases such as AIDS, cancer, and other malignant diseases.²

With the advanced of modern knowledge, doctors can predict whether a patient will recover completely from a disease, will take longer to recover, may not recover, or will no longer be able to get help. When a patient's disease is predicted to be incurable, then a thought arises: whatever efforts are made, it will be in vain and only

¹ Ira Zahra, Sendya Maharani, and Yurna Muthiya Azzahra, "Hukum Etik Kedokteran Dan Perspektif Agama Islam Terhadap Tindakan Medis Euthanasia," *Religion: Jurnal Agama, Sosial, Dan Budaya* 2, no. 5 (2023): 1139–49.

² Zahra, Maharani, and Azzahra.

a waste of money. By those thoughts lead to the desire to end life.³ Efforts or actions to hasten death in order to end suffering due to a disease are called euthanasia. A deadly disease is one of some reasons for someone to end their life instead of having to endure pain for a long time. To seek help from their family to end their life in medical terms is called euthanasia or in Arabic called *al-qatlu ar-rabim*. The implications of the development of this technology are that doctors and other health workers face a number of quite serious problems from an ethical and Islamic judicial perspective.⁴

Based on the problems above, euthanasia is a very difficult choice for medical personnel because it is related to a person's life and future generations. So far, this problem is still being debated in the medical field, medical regulations in various countries and whether it is in accordance with ethics and human rights. In addition, with the development of modern technology, doctors can predict whether a disease can be cured, takes a long time to cure, is difficult to cure or is no longer possible to be cured. Once it is concluded that the disease cannot be cured anymore, it means the the efforts made are considered a waste of money.

Then the case of euthanasia emerged, which is an attempt to hasten the death of a patient to end their suffering. Euthanasia can be classified into two types: active euthanasia, where a person intentionally ends his life through the administration of drugs; passive euthanasia, where a person intentionally ends his life without administering drugs or life-sustaining therapy.

³ Amira Luthfiani, "Hak Waris Pemohon Euthanasia Pasif Menurut Hukum Islam (Studi Tentang Maqāṣid Al-Syarī 'Ah)" (UIN Ar-Raniry Banda Aceh, 2018).

⁴ Nur Alamsyah and Ismail Ismail, "KAJIAN KOMPARATIF ATAS LARANGAN PRAKTEK EUTHANASIA: PERSPEKTIF ETIKA KEDOKTERAN DAN ETIKA ISLAM," *El-Waraqob: Jurnal Ushuluddin Dan Filsafat* 7, no. 2 (2023): 196–215.

Euthanasia has an “ambiguous” value and can be considered as a “grey area”. This is because, on the one hand, it can be considered as something immoral, but on the other hand, it can be considered as something noble because the goal is not to prolong the suffer but to end the suffering of the patient.⁵

This is complicated because in the Islamic inheritance law system, there are only three following elements (pillars): 1. *Al-muwarrits* (testator), 2. *Al-warits* (heir), and 3. *Al-haqqu al-mauruts* (inheritance). In addition, there are things that prevent heirs from receiving inheritance, which in Islamic literature are called *mawani' al-irsi*, which means that heirs do not have the right to receive the property left by the testator as inheritance. According to scholars, there are three things that can prevent heirs from receiving inheritance: murder (*al-qatl*), religious differences (*ikhtilaf al-din*), and slavery (*al-abd*).⁶

In terms of euthanasia, there are many different opinions. Some scholars argue that it is a premeditated murder and is against the will of God because it is God's prerogative to determine a person's life or death. In contrast, there are scholars who issue a *fatwa* that the practice of euthanasia is in line with the *maqasid* of *sharia* and is carried out with good intentions and purposes. This opinion argues that all living things do not deserve to be left to live in a state of torture as taught by our religion. Passive euthanasia that occurs at the request and consent of the heirs or family is reviewed to have implications for inheritance law. While in Islamic law for inheritance rights there are rules that must be obeyed. Different religions,

⁵ Abd Rouf, “Hak Waris Bagi Pemohon Euthanasia Perspektif Hukum Islam,” *Jurisdictie: Jurnal Hukum Dan Syariah*, 2012.

⁶ M Iqbal, “WARISAN ANAK KANDUNG NON MUSLIM DALAM KELUARGA MUSLIM (PERSPEKTIF KUHP DAN KHI),” *PENA Aceh: Jurnal Pengabdian Kepada Masyarakat* 2, no. 1 (2023): 15–26.

murder and slavery are three causes that eliminate someone from being an heir.

Thus, the researchers want to study how Islam views the inheritance rights of passive euthanasia applicants if the heirs do it out of compassion because the patient's illness is very severe and there is no guarantee of life for him. In addition, they also want to study what if passive euthanasia is carried out due to economic constraints that will deplete the inheritance after treatment is complete. Is something like this also considered murder in Islam and prevents the heir from inheriting? By considering those reasons, the researcher wants to conduct further investigation into the inheritance rights of euthanasia applicants from the perspective of Islamic law, especially the Criminal Code on Inheritance and the KHI on Inheritance.

B. Method

This literature research was conducted using a qualitative model. Data were collected from various relevant sources, such as journals and scientific articles, and then being described in a structured manner. The approach method used is the normative legal method with a conceptual approach. The legal materials used in this study come from textbooks or legal literature, Islamic law journals and other written sources. In addition, non-legal materials are obtained from sources such as the internet, dictionaries and other scientific works.

C. Medical Transformation on the Legality of Inheritance Rights of Passive Euthanasia Applicants (Analysis of Maqasidi Jasser Audah)

1. Euthanasia Problem

The term euthanasia comes from the Greek "eu-thanatos", where "eu" means good and "thanatos" means death. Overall, this

term can be interpreted as a good and natural death.⁷ According to the Big Indonesian Dictionary (KBBI), euthanasia is an act of intentionally ending the life of a living creature (both humans and pets) who is suffering from a serious illness or serious injury in a calm and easy way for humanitarian reasons.⁸ Thus, euthanasia can be concluded as the practice of ending human or animal life in a way that is considered to minimize or even eliminate pain. Yusuf al Qardhawi stated that euthanasia is an act of facilitating someone's death without pain because of compassion, with the aim of alleviating the patient's suffering.⁹ In Arabic, euthanasia is known as *taisurul al-maut* or *al-qatlu ar-rahim* (death based on compassion) or in medical terms it is called a good death or mercy killing.

Medical science and medicine classify the act of euthanasia into several points of view:

- a. Passive euthanasia, which hastens death by refusing medical treatment or stopping ongoing medical treatment, such as stopping antibiotics in a patient with severe pneumonia or by removing a ventilator.
- b. Active euthanasia, which hastens death by performing actions that cause death directly or indirectly, such as injecting a lethal substance into the patient's body. Like lethal injection, this action is explicitly intended to kill the patient.¹⁰

⁷ Rouf, "Hak Waris Bagi Pemohon Euthanasia Perspektif Hukum Islam."

⁸"Eutanasia-Hasil Pencarian - KBBI VI Daring," Badan Pengembangan dan Pembinaan Bahasa, accessed October 5, 2024, <https://kbbi.kemdikbud.go.id/entri/eutanasia>.

⁹ Yusuf al Qardawi, "Fatwa-Fatwa Kontemporer" (Jakarta: Gema Insani Pers, 1995).

¹⁰ Crisdiono M. Achadiat, *Dinamika Etika Dan Hukum Kedokteran Dalam Tantangan Zaman* (Jakarta: EGC, 2007).

Apart from that, euthanasia can also be viewed from the perspective of the process of action, which consists of two models:

- a. Direct active euthanasia is a medical action that is carried out in a targeted manner that is calculated to end the patient's life or shorten the patient's life. This type of euthanasia is known as mercy killing.
- b. Indirect active euthanasia is when a doctor or health worker performs a medical procedure to relieve a patient's suffering, but knows that there is a risk that this could shorten or end the patient's life.¹¹

In terms of the request for action, it is divided into two types, they are:

- a. Voluntary euthanasia (at the patient's request) is euthanasia that is carried out at the patient's conscious request and is performed repeatedly.
- b. Involuntary euthanasia (not at the patient's request) is euthanasia carried out on a patient who is (already) unconscious and usually the patient's family requests.¹²

The two types of euthanasia above can be combined, for example voluntary passive euthanasia, involuntary active euthanasia, and involuntary direct active euthanasia.

Considering some of the definitions above, it can be concluded that euthanasia is an act to end a person's life or hasten death with the main purpose of showing compassion to the person who is suffering. The main difference between euthanasia and suicide is that euthanasia is an attempt to hasten death with the help of others,

¹¹ Louisa Yesami Krisnalita, "Euthanasia Dalam Hukum Pidana Indonesia Dan Kode Etik Kedokteran," *Binamulia Hukum* 10, no. 2 (2021): 171–86.

¹² Zahra, Maharani, and Azzahra, "Hukum Etik Kedokteran Dan Perspektif Agama Islam Terhadap Tindakan Medis Euthanasia."

such as a doctor injecting a patient either of his own free will or with the permission of the family.

2. Euthanasia Legal Perspective in Indonesia

The regulation of euthanasia in criminal law, especially Article 344 of the Criminal Code, does not regulate the issue of euthanasia in detail, while in the Indonesian Code of Medical Ethics in Article 7, a doctor is obliged to maintain and preserve human life.¹³ In Article 344 of the Criminal Code, it is stated that "Anyone who takes the life of another person at his/her own request which is clearly stated with sincerity is threatened with a maximum prison sentence of twelve years".

Gleaned on the contents of the article, it is clear that Article 344 of the Criminal Code is very similar to the Active Euthanasia act where the patient or family asks for help from a doctor to end his own life. Not to mention that the judge must **consider** this very carefully. Even Berlin Silalahi, who was desperate because of his complicated illness, filed a euthanasia application to the District Court with Decision Number 83.Pdt.P/2017/PN.Bna. Although his application was rejected, there is still much debate about it.¹⁴

If we compare passive and active euthanasia, then passive euthanasia often gets recognition from various circles. While active euthanasia is generally always identified with immoral acts and suicide assistance. While passive euthanasia is also often encountered with various cases that appear on the surface.

Sample case: DS, a 38-year-old lecturer, was diagnosed with liver disease. According to the team of doctors treating him, DS had no hope of recovery. Therefore, his family made the decision to remove

¹³ Wina Nur Aeni, Elan Jaelani, and Utang Rosidin, "Tinjauan Hukum Mengenai Tindakan Euthanasia (Suntik Mati) Dalam Perspektif Hukum Pidana," *Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum* 3, no. 1 (2024): 17–22.

¹⁴ Krisnalita, "Euthanasia Dalam Hukum Pidana Indonesia Dan Kode Etik Kedokteran."

his ventilator. DS, on the other hand, agreed not to be treated and his ventilator was removed. After more than three hours, DS died. From the cases mentioned above, it can be concluded that patients refused medical treatment because of their right to receive it. According to Heleen M. Dupuis, "passive euthanasia performed by a doctor at the request of the patient or family will not be punished with criminal sanctions".¹⁵

There are many more examples of cases that appear before our eyes, sometimes the patient himself asks for it, and the other times without the patient's request or consent. In these cases, the patient's family asks the doctor to stop the aids being used after they learn from the doctor that the patient cannot survive longer without the aids and then the patient dies. In Indonesia, there are many cases of passive euthanasia that never come to the surface because society considers it normal and natural. In Indonesia, there have been no real cases of euthanasia since the Criminal Code was formed.

In the case of passive euthanasia, its value is ambiguous. Passive euthanasia is seen on the one hand as an immoral act, but on the other hand it is considered a noble act because it is done with the aim of eliminating the patient's suffering. Doctors are given two choices when performing euthanasia: helping the patient or fulfilling the mandate of the law. So far, Indonesia has not established clear and firm rules on passive euthanasia. Article 304 of the Criminal Code is the article most often associated with passive euthanasia. Minister of Health Regulation Number 37 of 2014 concerning the Determination of Death and the Utilization of Donor Organs, for

¹⁵ Andi Rama Irasandi Sofyant, Syahrudin Nawi, and Anzar Makkuasa, "Euthanasia Ditinjau Dari Hukum Pidana Dan Hak Asasi Manusia," *Journal of Lex Generalis (JLG)* 4, no. 2 (2023): 278–93.

example, regulates the termination or postponement of life support therapy.¹⁶

In addition, in chapter II KHI concerning heirs, article 173 letters a and b states that “a person is prevented from becoming an heir if, by a judge's decision which has permanent law, he is punished because:

- a. Accused of having killed or attempted to kill or seriously assaulted the testator;
- b. Accused of slanderously filing a complaint that the testator had carried out an activity that violated the law”.

In point a, it is regulated regarding the obstruction of a person to become an heir which is basically in the form of a crime against the heir, namely murder, attempted murder, and serious assault. Meanwhile, based on the Civil Code, the regulation regarding the obstruction for a person to become an heir is contained in Article 838 of the Civil Code which states: "A person who is considered unfit to become an heir, and thus cannot possibly receive an inheritance, is:

- a. He who has been sentenced for killing or attempting to kill the deceased;
- b. He who by a judge's decision has been accused of slandering the testator, that the testator has committed a crime that is punishable by a prison sentence of five years or a heavier sentence;
- c. He who has prevented the deceased by violence or real actions from making or withdrawing his testament;
- d. He who has embezzled, destroyed or falsified the testament of the deceased.

¹⁶ Dita Cahyani Sudirman, “Analisis Yuridis Terkait Penerapan Euthanasia Yang Dilakukan Di Indonesia Berdasarkan Perspektif Hukum Pidana,” *PUSKAPSI Law Review* 3, no. 1 (2023): 80–93.

From the explanation of the article above, it can be understood that the Civil Code regarding murder as an obstacle to receiving inheritance does not explain which murders are included in the category of obstacles. In short, Article 838 of the Civil Code states that a judge's decision stating that someone is guilty of killing or attempting to kill can be a reason why someone cannot receive an inheritance. Thus, anything related to murder, whether intentional or unintentional, can be considered a reason why someone is prohibited from receiving an inheritance based on a judge's decision.

Based on this basis, it can be seen that Indonesia is indeed a country that does not provide space for active euthanasia. However, the existence of passive euthanasia actually lives in society. And it is not considered an act of murder. So there are no cases of inheritance rights being obstructed by reason of murder in the form of passive euthanasia. Although if it is drawn into a criminal law review, for whatever reason and whoever has taken the life of another person without rights, except by other parties who are justified by law, must be considered a crime (Article 48, Article 49, Article 50, and Article 51 of the Criminal Code). Meanwhile, all parties who have a direct role, whether they do it, order it to be done, participate in it, and assist, must be considered as responsible parties (Article 55 and Article 56 of the Criminal Code).

3. Euthanasia Inheritance Rights in the Maqasidi Approach

The inheritance rights problem for passive euthanasia applicants actually revolves around *nazariyatul al-qatl* (the concept of murder) in Islam and the hadith which is the basis for *mawani' al-irst*. There are several factors that can eliminate a person's inheritance rights. One of them is if someone kills their heir or commits a murder that is not justified by law, they cannot inherit their property. The Prophet Muhammad SAW said that:

عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَيْسَ لِلْقَاتِلِ مِنَ الْمِيرَاثِ شَيْءٌ^{17*}.

It means:

"It was narrated from Amr bin Syu'aib, who narrated from his father, from his grandfather that said: Rasulullah SAW said: "he person who kills cannot inherit (get an inheritance) anything from the inheritance of the person he killed."

In this hadith, there is theorem that shows that murder is a barrier to inheritance. Based on the statement above: "There is no inheritance whatsoever for a murderer". Based on the hadith, it includes all murders, it is the same for someone who commits murder who has a right or murder with no right. After the scholars of the school of thought agreed that murder is one of the barriers to inheritance, they differed on the type of murder that truly prevents someone from inheriting. Imam Malik argued that intentional murder cannot receive inheritance, while unintentional murder can receive inheritance.¹⁸ Based on this, it can be concluded that this hadith is *ẓanniyah al-dilalah* which indicates that there must be an interpretation (*takehsis*) both in substance and in context by considering the *asbabul wurud* (reasons and background) of a hadith.

The *asbab al-wurud* of this hadith comes from an incident that occurred during the time of the Prophet. A man came to the Prophet and said that a young man had thrown a stone at his

¹⁷ Abū ‘Abdirrahḡmān bin Aḡmad bin Syua’ib Al-Nasāī, “Al-Sunan Al-Kubrā,” I (Beirut: Muassasah al-Risālah, 2001).

¹⁸ Bambang Ali Kusumo and Ellectrananda Anugerah Ash-shidiqqi, “Euthanasia Dalam Perspektif Hukum Islam Dan Hukum Yang Berlaku Di Indonesia,” *Al-Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 3 (2023): 1908–15.

mother, which resulted in her death. After being investigated, the young man wanted to immediately get his inheritance, so he had the heart to throw a stone at his mother. The Prophet came and forbade the young man from getting his share of the inheritance.¹⁹

Therefore, the hadith briefly gives the meaning that someone who has killed his testator is prohibited from receiving an inheritance. However, it is important to note that the hadith also does not explain what kind of murder can prevent the acceptance of an inheritance. In the theory of *usul fiqh*, the word *al-qatil* contained in the hadith is *al-'amm* (general, universal and multi-interpretable), because it is included in the *isim ma'rifah*. Thus, this hadith gives a very general meaning even though the words that are still *al-'amm* (general) must be detailed first in order to obtain a law that is truly just and relevant.

The actualization of Jaser Audah's methods regarding the texts is as follows:

a. (Al-Idrakiyah) The Meaning of Ta'aqquli

Jasser Audah argues that scholars from the old period (classical scholars) often use the *ta'abudi* approach in understanding Islamic teachings. This approach considers Islamic law as a dogma that cannot be studied or commented on, so that the causality of the *'illat* and its *hikmah tasyri'* is not revealed properly. He argues that this thinking must be changed by studying Islamic law through the *ta'aquli* method. Therefore, the *illat* and *hikmah tasyri'* can be accepted by the reasoning of Muslims.²⁰

¹⁹ Ibnu Hajar Al-Asqalani, *Bulug Al-Maram* (Semarang: Thaha Putra, n.d.).

²⁰ Ririn Fauziyah, "Pemikiran Hukum Islam Ibrahim Hosen," *Al Maqashidi: Jurnal Hukum Islam Nusantara* 2, no. 1 (2019): 85–97.

The paradigm that the perpetrator and applicant for passive euthanasia is an act of murder that has implications for the loss of the heir's inheritance rights is the result of textual *istinbat* without considering the *illat*. The background (*asbabul wurud*) of the hadith above actually reveals the *illat* of this hadith which originates from a young man who threw a stone at his mother. Then the mother died from being hit by the stone.

Based on the concept and steps of *idrak*, this must include three elements: *al-Fahm* (understanding), *al-Tasawwur masail* (conception), *al-Idrak* (cognition).²¹ Thus, the case of the applicant for passive euthanasia needs to be understood as an incident that demands an interpretation of the purpose of the *illat* testimony which is *ta'auquli* namely the truth and certainty of something that is witnessed.

The *illat* of the law in this hadith is mentioned by Wahbah Az-Zuhaili, saying that:

اتَّفَقَ الْفُقَهَاءُ عَلَى أَنَّ الْقَتْلَ مَانِعٌ مِنَ الْمِيرَاثِ، فَالْقَاتِلُ لَا يَرِثُ مِنْ قَتِيلِهِ، لِقَوْلِهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «لَيْسَ لِقَاتِلِ مِيرَاثٌ»؛ لِأَنَّهُ اسْتَعْجَلَ الْمِيرَاثَ قَبْلَ أَوَانِهِ بِفِعْلِ مَحْظُورٍ، فَعُوقِبَ بِحُرْمَانِهِ مِمَّا قُصِدَ، لِيَنْزَجَرَ عَمَّا فَعَلَ.²²

Meaning:

“Based on the words of the Prophet Muhammad SAW, all *mujtahids* agree that killing is one of the *mahjub* acts (making someone obstructed) from getting his inheritance rights. This is a form of punishment by not getting inheritance, because there is an intention or an element of

²¹ Jasser Auda, *Maqasid Al-Syari'ah Ka Falsafah Li Al-Tasyri' Al-Islami: Ru'yah Manzumiyyah* (London: al-Ma'had Ali li al-Fikr al-Islami, 2011).

²² Wahbah al-Zuhaili, “Al-Fiqh Al-Islami Wa Adillatuhu” (Damaskus: Darul Fikri, 1433).

impatience (*al-isti'jaal*) to carry out an intention and purpose, which is getting an inheritance. So that they are in a hurry and justify all means to get the inheritance from both parents. So the elimination of inheritance rights for perpetrators of crimes (committing acts that exceed the limits to get an inheritance) becomes a punishment to get *al-zawajir* (a deterrent effect).”

This is reinforced by the fact that murder which becomes an inheritance barrier is murder which contains the element of *al-qatlu al-amdu al-'udwaan*, which means the act of someone who kills his heir intentionally and without a justified reason intentionally and based on hostility or revenge so that he is not entitled to receive a share of the inheritance.

Based on the explanation and analysis, the *illat* of excessive murder to obtain inheritance becomes a punishment for him. This is in line with the practice of the heir's request to carry out passive euthanasia on both parents whose purpose is not inheritance but is actually born from the heir's love and concern for his testators not to accelerate the acquisition of inheritance, then the *illat* is not fulfilled. While the rule states that: "*al-Illatu taduru ma'al bukmi wujudan wa 'adaman*". With the absence of legal justification for excessive murder to obtain inheritance in the case of passive euthanasia. So this action is not classified as a type of murder and does not violate the inheritance rights of someone who does it.

This process becomes an argument that is not only built by individual arguments and theorem but also by using a thematic methodology (*mandhul*) to produce a complete understanding of this matter.²³

b. Prioritize Concrete Welfare

Granting inheritance rights to applicants for passive euthanasia must take into consideration the lighter benefits or lighter harms based on the rules:

²³ Auda, *Maqāṣid Al-Syari'ah Ka Falsafah Li Al-Tasyri' Al-Islami: Ru'yah Manzumiyyah*.

إِذَا تَعَارَضَ مَفْسَدَتَانِ رُوعِيَّيَ أَعْظَمُهَا ضَرَرًا بِإِزْتِكَابِ أَحْفِهِمَا

Meaning:

“If there are two harms that are opposite to each other, then the one with the heavier harm must be maintained by taking the lighter harm between them.”

According to the above fiqh rule, when there are two actions that both cause harm, then it is better to be forced to do the lesser harm and leave the harm that has a greater effect. Euthanasia has these two points: the first is to let the patient not suffer anymore after his death, and the second is that if the patient remains alive, he will suffer for an indefinite period of time and it is very dangerous if his disease is transmitted to others. Therefore, euthanasia is considered a lesser harm than letting the patient live and experience prolonged suffering. Therefore, this rule actually supports euthanasia.

c. (*Al-Maqasidiyyah*) The Purposeful

The granting inheritance to the applicant for passive euthanasia is reviewed from the aspect of *maqasid sharia*. After the researcher tried to elaborate on this topic, this discussion is very close to the purpose of *hifz al-nafs* as the guardian of the right to human life. Islamic figures also disagree with certain euthanasia in Indonesia. One of the scholars who opposes Hasan Basri is those who argue that there is no right for humans to live or die and that that right belongs only to Allah. Ibrahim Hosen is one of the Islamic figures who supports active and passive euthanasia. He believes that both active and passive euthanasia should be permitted, especially for patients who cannot be cured or who suffer from infectious diseases. He views that *hifz an-nafs* is not always about protecting and preserving human life but how to realize the form of Islamic

compassion in the state of illness experienced by humans as an implementation of the principle of *al-dhararu yuzaaalu*.²⁴

In addition, if associated with the level of *Daruriyyat Maqasid* (hierarchy of needs/*Maqasid addaruriyah*), it will strengthen each Maqasid. So, the act of killing in euthanasia itself is not actually contrary to human rights where passive euthanasia can be carried out by patients. And this is in line with the right to life of every individual. Because basically the right to life is a fundamental norm status owned by every human being and the state also has an obligation to protect this right as stated in Article 281 paragraph (4) of the 1945 NRI Constitution.²⁵

Therefore, these basic principles facilitate the implementation of euthanasia in Indonesia. Hence, those who support euthanasia argue that the right to life is the prerogative of every person. In Indonesia, the legalization of euthanasia is considered a mandate of Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which emphasizes the concept of freedom of choice, where a person can choose to do what is a basic human right.²⁶

Based on these aspects, murder becomes one of the obstacles to inheritance as explained in the hadith of the Prophet Muhammad SAW. Scholars agree that murder hinders inheritance rights but have different opinions regarding the type of murder in question. There is a view that intentional murder hinders inheritance but not for unintentional ones.

In the context of passive euthanasia, this act is not considered as excessive killing to obtain inheritance because the goal is

²⁴ Fauziyah, "Pemikiran Hukum Islam Ibrahim Hosen."

²⁵ Sofyant, Nawi, and Makkuasa, "Euthanasia Ditinjau Dari Hukum Pidana Dan Hak Asasi Manusia."

²⁶ Nur Hayati, "Euthanasia Dalam Perspektif Hak Asasi Manusia Dan Kaitannya Dengan Hukum Pidana," *Lex Jurnalica* 1, no. 2 (2004): 17956.

compassion and care, not to accelerate the acquisition of inheritance. Therefore, the perpetrator of passive euthanasia is not prevented from inheritance rights based on unfulfilled *illat*.

The interpretation of this hadith requires an approach that takes into account the purpose and context (*ta'auquli*) rather than dogmatic acceptance (*ta'abudi*). In the case of passive euthanasia, concrete *maslahat* (benefit) must be considered, where ending the patient's suffering can be considered a lesser harm than letting him live with prolonged suffering.

D. Conclusion

The development of morals and ethics in society has a major influence on the perspectives and decisions taken in various fields, including medicine. One of them is the decision to request euthanasia, which is an action to accelerate the death of a patient in order to end suffering. There are two types of euthanasia: active (with direct action) and passive (by stopping treatment). Euthanasia raises an ethical dilemma, whether this action is murder or an act of mercy.

Islamic law explains that murder is a barrier for someone to receive an inheritance. Active euthanasia is considered a murder that can hinder inheritance rights. However, passive euthanasia is not always seen as murder, depending on the intention and context. Law in Indonesia: Article 344 of the Criminal Code is the closest article to regulating murder at one's own request, which can be associated with active euthanasia. Meanwhile, passive euthanasia is more accepted and considered reasonable by society, although it remains in an ambiguous legal area. Implications for inheritance rights: In the case of passive euthanasia, if it is carried out on the basis of mercy or economic limitations then it does not include murder that hinders inheritance rights. The interpretation of the Prophet's hadith regarding obstacles to inheritance (*mawani' al-irth*) and the concept of murder in Islam is a consideration for continuing to

grant inheritance rights based on the context and illat (legal reason) which are not found.

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