

Legal Discrepancy in the Enforcement of the Right to Life: The Prohibition of Euthanasia and the Legalization of the Death Penalty in Indonesia

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Abstract: The implementation of the right to life within the Indonesian legal system exhibits normative inconsistencies. This is evident in the prohibition of euthanasia and the application of the death penalty. The purpose of this study is to analyze the legal discrepancies regarding the protection of the right to life in Indonesia, including those found in Law No. 1 of 2023 on the Criminal Code. This study employs a normative legal method using a legislative and conceptual approach. The findings indicate that the new Criminal Code (Law No. 1 of 2023) does not resolve these inconsistencies. The state has made the imposition of the death penalty conditional, while the absolute prohibition on euthanasia remains in place. This situation highlights the inconsistency in the legal reasoning regarding the protection of human rights within the national legal framework.

Keywords: Right to Life, Euthanasia, Death Penalty, Human Rights, Legal Discrepancy

Abstrak: Penerapan hak untuk hidup dalam sistem hukum Indonesia memiliki ketidakkonsistenan normatif. Hal ini terlihat pada pelarangan euthanasia dan penerapan pidana mati. Tujuan penulisan adalah menganalisis diskrepansi hukum perlindungan hak untuk hidup di Indonesia termasuk dalam Undang-Undang Nomor 1 Tahun 2023 tentang KUHP. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan peraturan perundang-undangan dan konseptual.

Hasil kajian menunjukkan Kitab Undang-Undang Hukum Pidana yang baru (Undang-Undang Nomor 1 Tahun 2023) tidak menyelesaikan ketidaksesuaian ini. Negara membuat eksekusi menjadi bersyarat. Sedangkan larangan mutlak terhadap euthanasia tetap dipertahankan. Kondisi ini menunjukkan inkonsistensi penalaran hukum perlindungan hak asasi manusia dalam kerangka hukum nasional.

Keywords: Hak untuk Hidup, Euthanasia, Pidana Mati, Hak Asasi Manusia, Diskrepansi Hukum

A. Introduction

The right to life constitutes the most fundamental human right (HAM) which cannot be revoked by anyone, including the state. As a fundamental right, the right to life serves as a prerequisite for the implementation and fulfillment of other human rights. The protected right to life, as stated by Douwe Korff, plays a role in ensuring that the protection of other human rights becomes possible. Without the recognition and protection of the right to life, the entire structure of other human rights protection becomes vulnerable and meaningless.¹

In the context of human rights, particularly regarding the right to life, the International Covenant on Civil and Political Rights (ICCPR) adopted by the United Nations in 1966 regulates this right in Article 6. That article asserts that every individual has the inherent right to life and to obtain legal protection, and no one shall be arbitrarily deprived of his life. Furthermore, Article 6 paragraph (2) stipulates that in countries which have not abolished the death penalty, the sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and

¹ N. F. Kartika et al., "Tinjauan Yuridis Pelanggaran Hak Untuk Hidup Dalam Extrajudicial Killing Berdasarkan Hukum Internasional," *S.L.R.* 3, no. 2 (2019): 197–209, <https://doi.org/10.1016/j.slr.2019.09.004>.

Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.²

Regarding the right to life, the points of contention in the enforcement of said right are the prohibition of euthanasia and the legalization of the death penalty. Both matters trigger tension between humanitarian values and individual rights against state policies regulating the protection of life.

Euthanasia, generally defined as the act of ending a person's life to relieve unbearable suffering, is viewed in Indonesia as a violation of the right to life. Nevertheless, several countries have regulated the legalization of euthanasia with various conditions and restrictions, due to granting rights to individual autonomy and reducing the suffering of incurable patients. Indonesia explicitly regulates in Article 344 of the Indonesian Criminal Code (KUHP) that euthanasia, even if performed upon voluntary request and with the intention to end the patient's suffering, is still considered a criminal act within the Indonesian legal system. That regulation emphasizes that although there is a desire from the party concerned to end their life, the law prohibits such action because it is considered an unjustified deprivation of another person's life. On the other hand, morals and religious norms play a significant role in the rationalization of said prohibition of euthanasia.³

Conversely, the death penalty, although generally considered a violation of the right to life, is still enforced in a number of countries as a form of punishment for serious crimes. In Indonesia, there are two methods of execution for the death penalty, namely by hanging

² B. Sipayung et al., "Penerapan Hukuman Mati Menurut Hukum Positif Di Indonesia Ditinjau Dari Perspektif Hak Asasi Manusia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 134–42, <https://doi.org/10.24090/jphp.v7i1.262>.

³ F. D. P. Maharani and A. N. Hidayah, "Studi Komparatif Legalitas Tindakan Euthanasia Bagi Pasien Dengan Penyakit Kronis Di Indonesia Dan Norwegia," *Collegium Studiosum Journal* 7, no. 2 (2024): 414–22.

as regulated in the Criminal Code (KUHP) and by shooting as regulated in Law Number 5 of 1969 concerning the Implementation of the Death Penalty. Said death penalty is imposed by courts in both the General and Military Court environments. With the existence of specific provisions regulating the implementation of the death penalty by shooting, to date, the execution of the death penalty in Indonesia is carried out by shooting by a special firing squad. That matter is in line with the legal principle of *lex specialis derogat legi generali*, which states that more specific provisions will override more general provisions.⁴

Countries that maintain the death penalty argue that within the realm of maintaining security and societal stability, said punishment is necessary. On the other hand, that punishment also aims to provide a deterrent effect on perpetrators of crimes. However, the death penalty also receives sharp criticism from human rights groups stating that said punishment is inhumane, ineffective in reducing crime, and has the potential to be misused by an unfair legal system.⁵

The matter that subsequently becomes a point of debate occurs because there will be a dilemma related to the existence of both phenomena. On one hand, Indonesia recognizes the right to life as a basic right that cannot be interfered with, yet on the other hand, there is the practice of the death penalty imposed on narcotics and terrorism offenders. Meanwhile, euthanasia remains strictly prohibited in the Indonesian legal system, on legal, moral, and religious grounds. Even so, several parties desire further debate

⁴ H. Widyaningrum, "Perbandingan Pengaturan Hukuman Mati Di Indonesia Dan Amerika Serikat," *Volkgeist* 3, no. 1 (2020): 99–115, <https://doi.org/10.24090/volkgeist.v3i1.3777>.

⁵ R. Adelina and Zulkarnain, "Eksternalisasi Penerapan Hukuman Mati Terorisme Dalam Perspektif Pidana Islam: Studi Komparasi Indonesia Dan Mesir," *Jurisprudensi: Jurnal Ilmu Syari'ah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (2024): 288–306, <https://doi.org/10.32505/jurisprudensi.v16i2.8854>.

regarding the feasibility of regulating euthanasia in certain cases, such as sufferers of chronic or terminal illnesses who request to end their lives with full free will.

The novelty of this research can be seen through the literature review, namely the results of previous relevant studies. Among the studies relevant to legal discrepancy in the enforcement of the right to life: the prohibition of Euthanasia and the legalization of the death penalty in Indonesia. Dzulkifli Al-Amin highlight medical transformation on the legality of inheritance rights of passive Eutanasia applicants ; Jasser Audah's Maqasidi analysis.⁶ Ifsya Azisa et al. focuses on highlighting Euthanasia within the concept of Maqasid al-Sharia: medical ethical dilemmas and legal considerations.⁷ Meanwhile, Adinda Nadia Kusuma and Wulan Abidatul Khoiroh focus on highlighting Euthanasia from a Criminal Law perspective: the old and new Criminal Codes (Law no. 1 of 2023).⁸ On the other hand, Nurul Azizah et al. highlight the Euthanasia controversy: Islamic perspectives, Indonesian law, and medical ethics.⁹ Ayu Rahmawati et al. discuss Euthanasia from an Islamic and healthcare ethics perspective: a philosophical and

⁶ Dzulkifli Al-Amin, "Medical Transformation on the Legality of Inheritance Rights of Passive Eutanasia Applicants ; Jasser Audah's Maqasidi Analysis," *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 18, no. 2 (2024): 219–40.

⁷ Ifsya Azisa et al., "Eutanasia Dalam Konsep Maqasid Al-Syariah: Dilema Etika Medis Dan Legalitas Hukum," *INOMATEC: Jurnal Inovasi Dan Kajian Multidisipliner Kontemporer* 1, no. 02 (2025): 145–61.

⁸ Adinda Nadia Kusuma and Wulan Abidatul Khoiroh, "Euthanasia Dalam Tinjauan Hukum Pidana Perspektif Kuhp Lama Dan Kuhp Baru (Undang-Undang Nomor 1 Tahun 2023)," *Tarunalaw: Journal of Law and Syariah* 3, no. 01 (2025): 19–29.

⁹ Nurul Azizah, Putri Aprilyana Idi Amin, and Kurniati, "Kontroversi Euthanasia: Perspektif Islam, Hukum Indonesia, Dan Kajian Etika Kedokteran," *Aksioreligia* 3, no. 1 (2025): 1–13.

practical study.¹⁰ Nadya Aulia and Nadia Rosandi discuss a legal review of the criminalisation of Euthanasia as a denial of an individual's right to choose their own lifestyle in the context of forensic medicine.¹¹ Siti nurhalijah et al. discuss a legal analysis of Euthanasia (ending a person's life) from a criminal law perspective.¹² Ni Kadek Cindi Hayani and I Nyoman Prabu Buana Rumiarta discuss Euthanasia from the perspective of the right to life and the right to die.¹³ Rahadian Faisal and Saeful Rohman discuss the practice of Euthanasia in medicine in review of Maqashid asy-Syari'ah, medical code of ethics, and criminal law in indonesia.¹⁴ I Gusti Lanang Arthawidjaja et al. discuss Euthanasia from the perspective of criminal law and human rights.¹⁵ Dina Anggraini

¹⁰ Ayu Rahmawati et al., "EUTHANASIA DALAM PERSPEKTIF ISLAM DAN ETIKA KESEHATAN: KAJIAN FILOSOFIS DAN PRAKTIS," *YUDHISTIRA: Journal of Philosophy* 1, no. 1 (2025): 19–31.

¹¹ Nadya Aulia and Nadia Rosandi, "TINJAUAN YURIDIS KRIMINALISASI EUTHANASIA SEBAGAI PENYANGKALAN HAK ATAS PILIHAN HIDUP SESEORANG DIKAITKAN DENGAN ILMU KEDOKTERAN KEHAKIMAN," *Jurnal Hukum Dan Keadilan*, 2025, 1–18.

¹² Siti Nurhalijah, Hasbuddin Khalid, and Aswad Rachmat Hambali, "Analisis Yuridis Terhadap Tindakan Euthanasia (Mengakhiri Hidup Seseorang) Dalam Perspektif Hukum Pidana," *LEGAL DIALOGICA* 1, no. 1 (2025).

¹³ Ni Kadek Cindi Hayani and I Nyoman Prabu Buana Rumiarta, "EUTHANASIA PERSPEKTIF HAK UNTUK HIDUP DAN HAK UNTUK MATI," *Kertha Semaya: Journal Ilmu Hukum* 13, no. 10 (2025): 2185–99.

¹⁴ Rahadian Faisal and Saeful Rohman, "The Practice of Euthanasia in Medicine in Review of Maqashid Asy-Syari'ah, Medical Code of Ethics, and Criminal Law in Indonesia," *Ad-Dawl: Jurnal Islamic Studies* 1, no. 2 (2025): 72–83.

¹⁵ I Gusti Lanang Arthawidjaja, Moh Muhibbin, and Budi Parmono, "Euthanasia From the Perspective of Criminal Law and Human Rights," *Jurnal Locus Penelitian Dan Pengabdian* 4, no. 10 (2025): 9235–44.

discuss Legal Analysis of Euthanasia in Indonesian Medical Practice.¹⁶ Madeleine Archer et al. discuss amendments to the Belgian law on Euthanasia: implications for practitioners and euthanasia practice.¹⁷ Odei Moses Adeiza et al. discuss criminalization of Euthanasia in Nigeria and its ethical implications for healthcare practice.¹⁸ Chibuzo Mercy Onwuzuruoha discuss the legal, ethical and moral relevance of euthanasia in Nigeria.¹⁹ Meanwhile, Madeleine Archer et al. discuss Health professionals' perspectives on the first Belgian euthanasia criminal trial through A qualitative study.²⁰

The fundamental difference from the previous studies is that this study specifically focuses on highlighting legal discrepancy in the enforcement of the right to life: the prohibition of Euthanasia and the legalization of the death penalty in Indonesia. Therefore, based on this novel approach, the results of this study can contribute to legal frameworks in the enforcement of the right to life: the ban on euthanasia and the legalisation of the death penalty in Indonesia.

¹⁶ Dina Anggraini, "Legal Analysis of Euthanasia in Indonesian Medical Practice," *Social, Science, Mathematical, and Technical Education Review* 1, no. 1 (2026).

¹⁷ Madeleine Archer, Tom Goffin, and Ben P White, "Amendments to the Belgian Law on Euthanasia: Implications for Practitioners and Euthanasia Practice," *European Journal of Health Law* 1, no. aop (2025): 1–24.

¹⁸ Odei Moses Adeiza et al., "CRIMINALIZATION OF EUTHANASIA IN NIGERIA AND ITS ETHICAL IMPLICATIONS FOR HEALTHCARE PRACTICE," *Impact International Journals and Publications* 2, no. 2 (2026): 377–85.

¹⁹ Chibuzo Mercy Onwuzuruoha, "EUTHANASIA IN NIGERIA: A LEGAL, ETHICAL OR MORAL RELEVANCE?," *African Journal of Legal Research* 3, no. 1 (2025).

²⁰ Madeleine Archer et al., "Health Professionals' Perspectives on the First Belgian Euthanasia Criminal Trial: A Qualitative Study," *Medical Law International* 25, no. 2 (2025): 110–35.

B. Method

The study employs a normative juridical method that focuses on the analysis of secondary data, encompassing primary, secondary, and tertiary legal materials. A statutory approach and a conceptual approach are applied simultaneously to examine positive law provisions relating to the right to life, capital punishment, and euthanasia. Data are collected through an in-depth literature review of various national and international legal instruments as well as relevant scholarly works. Qualitative analysis is then employed to interpret the data, thereby enabling a comprehensive explanation of the discrepancies between the prohibition of euthanasia and the application of capital punishment within the Indonesian legal system.

C. Discussion

1. Analysis Regarding the Right to Life, Prohibition of Euthanasia, and Legalization of the Death Penalty in Indonesia

a. Juridical Basis Regarding the Right to Life

The right to life is the most fundamental human right for every individual and serves as the basis for all other rights. That right is a *non-derogable right*, which means it cannot be reduced or revoked under any circumstances, including in conditions of national emergency. In modern civilization, the right to life becomes the main pillar in the human rights protection system. Without the guarantee of that right, all other human rights principles lose their meaning because other rights can only be exercised if the right to life has been guaranteed first. In the final analysis, the existence of other rights in human rights will have no relevance if the right to life is not recognized and protected by the state or the international community.²¹

²¹ E. A. Zulfa, "Menelaah Arti Hak Untuk Hidup Sebagai Hak Asasi Manusia," *Lex Jurnalica* 3, no. 1 (2005): 13.

Recognition of the right to life has been regulated in various international legal instruments, one of which is in Article 3 of the Universal Declaration of Human Rights (UDHR) formulated by the United Nations (UN). That article expressly states that everyone has the right to life, liberty, and security of person. That declaration not only serves as a guideline for countries in the world in ensuring the protection of citizens' basic rights but also functions as a universally binding moral standard. The existence of that article confirms that the right to life is a right that must be prioritized by every country in policy formulation and law enforcement.

Provisions regarding the right to life have received very clear recognition in various international legal instruments, which confirm that said right may not be deprived arbitrarily and must be guaranteed by law. One instrument that provides a firm formulation regarding the right to life is the International Covenant on Civil and Political Rights (ICCPR). In Article 6 paragraph (1) of the ICCPR, it is affirmed that every human being has the inherent right to life, and that right shall be protected by law. That provision strengthens the principle that no one shall be arbitrarily deprived of his life or due to actions contrary to law and humanitarian norms. That recognition reflects a global commitment to the protection of the right to life as the most fundamental human right.

Besides the ICCPR, the protection of the right to life is also affirmed in the Convention on the Rights of the Child. Article 6 of the Convention on the Rights of the Child states that States Parties recognize that every child has the inherent right to life. With that provision, every child in the world has the right to live and develop optimally as a human being. Recognition of that child's right to life is very important, considering that children are the group most vulnerable to various forms of rights violations, including exploitation, violence, and inhumane treatment. Therefore, the state has an obligation to provide special protection to ensure that every child not only merely survives but also obtains the opportunity to grow in a healthy and supportive environment for their development.

In the Indonesian legal system, the right to life receives strong protection as guaranteed in various statutory provisions. Article 28A of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) explicitly asserts that "Every person shall have the right to live and to defend his/her life and existence." That provision confirms that the right to life is a fundamental right that cannot be interfered with and is the responsibility of the state to protect. That protection of the right to life is not only normative but also legally binding, so any policy or action contrary to that principle must be considered a serious violation of human rights.

Aside from the constitution, Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights also elaborates further on the right to life. As explained by the author previously, said law affirms the right to life as a *non-derogable right*, along with the right not to be tortured, the right to personal freedom, and the right to freedom of thought and conscience.²² That principle subsequently shows that the state has an absolute obligation not only to protect the right to life from actions that directly deprive life but also to ensure that individuals can live in decent and dignified conditions. In the sense that the right to life includes not only freedom from the threat of murder or execution but also the right to obtain a healthy living environment, access to adequate health services, and social and economic conditions that allow individuals to develop optimally.

The right to life is recognized since before a person's birth. That principle is based on the theory of legal fiction, which states that an individual already possesses rights while in the womb, so that from the beginning of human life, legal protection has been obtained.²³

²² J. Junaidi and others, *Hukum Dan Hak Asasi Manusia: Sebuah Konsep Dan Teori Fitrah Kemanusiaan Dalam Bingkai Konstitusi Bernegara* (PT Sonpedia Publishing Indonesia, 2023).

²³ M. H. Muhtar and others, *Teori Dan Hukum Konstitusi: Dasar Pengetahuan Dan Pemahaman Serta Wawasan Pemberlakuan Hukum Konstitusi Di Indonesia* (PT Sonpedia Publishing Indonesia, 2023).

That matter is then related to various policies regulating the protection of the fetus and pregnant women, including regulations regarding maternal and child health services, prohibition of abortion not in accordance with legal provisions, and government efforts to reduce maternal and infant mortality rates. Thus, the state is not only responsible for guaranteeing the life of individuals who have been born but is also obliged to protect life that is still in the early stages of development.

b. Regulation on the Prohibition of Euthanasia in National Law

Criminal law has regulations in providing sanctions for violations of legal norms related to public interest, both involving bodies and statutory regulations as well as individual legal interests. In the context of Indonesian law, one issue that raises debate is euthanasia, namely actions taken to end a person's life for reasons of mercy or to avoid prolonged suffering. Although in Indonesian legislation there is no specific regulation explicitly governing euthanasia, the basic principles of criminal law currently in force still make it a prohibited act, mainly because it concerns the security and safety of human life.²⁴

Referring to the Criminal Code (KUHP), several articles that are subsequently relevant in regulating euthanasia actions are Articles 304, 338, 344, 345, and 359 of the KUHP. Article 344 of the KUHP specifically discusses euthanasia performed at the patient's own request. That article states that "Any person who takes the life of another person at the explicit and earnest request of that person, shall be punished by imprisonment of not more than twelve years." That provision shows that even though said action is carried out based on the request of the individual concerned, it is still considered a criminal act. Therefore, in the Indonesian criminal law

²⁴ S. Warjiyati, "Implementasi Euthanasia Dalam Perspektif Ulama Dan Hak Asasi Manusia," *Al-Jinayah: Jurnal Hukum Pidana Islam* 6, no. 1 (2020).

system, neither active nor passive euthanasia is permitted, because it is considered a form of deprivation of a person's life contrary to legal norms and the principle of protection of the right to life.

The main element in Article 344 of the KUHP is the existence of an explicit request from the individual who wishes to end their life, which must be stated clearly and earnestly. If that element is not met, then the perpetrator can be charged under the ordinary murder article according to Article 338 of the KUHP, which regulates murder without the element of the victim's request. In legal application, that element of request becomes crucial to determine whether the action is categorized as mercy killing or falls into the category of general homicide. Therefore, to prevent misuse or errors in interpreting individual will, proof of this element of request must be carried out carefully, for example through witnesses or valid evidence.²⁵

Besides Article 344 of the KUHP, a provision that in this case can provide an assessment regarding euthanasia is Article 359 of the KUHP, wherein that article states that a person can be convicted if their negligence causes the death of another person. In the context of passive euthanasia which is usually carried out by stopping the provision of life support or medication that action falls into the category of negligence resulting in fatality to the patient's life, so it can be charged under this article. That matter shows that in Indonesian criminal law, every form of action that leads to a person's death, whether intentional or due to negligence, remains considered a violation of the law.²⁶

²⁵ I. B. P. Atmadja and S. P. M. E. Purwani, "Perlindungan Hukum Pasien Euthanasia Ditinjau Dari Perspektif Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Jurnal Aktual Justice* 3, no. 1 (2018): 50–58.

²⁶ Atmadja and Purwani, "Perlindungan Hukum Pasien Euthanasia Ditinjau Dari Perspektif Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen."

c. Legal Basis for the Death Penalty in Indonesia

The death penalty in Indonesian positive law remains recognized as one form of punishment and is applied in various legal provisions, both in the Criminal Code (KUHP) and in other statutory regulations.

In Article 10 of the KUHP, the death penalty is placed as one of the principal types of punishment. Not only that, several statutory regulations outside the KUHP also still apply the threat of the death penalty, especially for extraordinary crimes, such as corruption and narcotics crimes. For example, Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption establishes the death penalty as a form of punishment for certain corruption cases committed under certain circumstances, such as when the state is in a state of emergency or when the state losses incurred are very large. The death penalty is also regulated in Law Number 35 of 2009 concerning Narcotics, which selectively threatens capital punishment for perpetrators of large-scale narcotics crimes, such as producers and dealers of class I narcotics illegally, which includes dangerous substances such as heroin and marijuana.²⁷

Another regulation governing the death penalty in Indonesia is Law Number 31 of 1964 concerning Basic Provisions on Atomic Energy. In Article 22 of that law, the threat of the death penalty is given for individuals who reveal atomic energy secrets without permission. Meanwhile, Article 23 asserts that actions concerning state interests in the field of atomic energy and capable of threatening national security are threatened with severe punishment, including the death penalty.²⁸

The death penalty in this case also has a regulatory mechanism in Law Number 15 of 2003 concerning Criminal Acts of Terrorism. Crimes of terrorism are categorized as extraordinary crimes as well as crimes against humanity. The death penalty for perpetrators of

²⁷ S. O. Manullang, *Sosiologi Hukum* (Bidik-Phronesis Publishing, 2019).

²⁸ Manullang, *Sosiologi Hukum*.

criminal acts of terrorism aims to provide a deterrent effect in society, while also showing that the state does not tolerate any form of terror action that threatens the lives of many people and national stability. In practice, the application of the death penalty for terrorism perpetrators in Indonesia has been carried out in several cases, such as the execution of the 2002 Bali bombing perpetrators.

Law Number 21 (Prp) of 1959 concerning Economic Crimes, wherein Article 1 regulates that violations causing widespread economic chaos can be subject to the death penalty. That provision shows that economic stability has a vital function in community life, and systemic economic crimes can have destructive impacts as large as other criminal acts. Consequently, in certain cases, the threat of the death penalty can be imposed on perpetrators who intentionally create economic chaos with certain goals, for example through extreme market manipulation or actions resulting in the collapse of the national economic system. However, in the application of that article, public prosecutors and judges have the responsibility to prove the existence of aggravating circumstances and the impact caused on the stability of the national economy.

2. Legal Discrepancy of the Right to Life: Between Euthanasia and the Death Penalty

In linguistic and academic contexts, discrepancy is often associated with errors or inconsistencies in data, reports, or information being compared. For example, in the field of scientific research, discrepancy can refer to the difference in experimental results with initial hypotheses or previous research results. Meanwhile, in the fields of law and administration, discrepancy can occur in official documents when there is an inconsistency between written records and actual facts. Thus, discrepancy is not merely an ordinary difference but refers more to an inconsistency that has a

significant impact on understanding, interpretation, or decisions taken based on the information concerned.²⁹

The legal discrepancy between euthanasia and the death penalty in the Indonesian legal system lies in the inconsistency in the protection of the right to life. On one hand, the state asserts that the right to life is a fundamental right that cannot be revoked under any circumstances, as affirmed in various national and international legal instruments, such as enshrined in Article 28A of the 1945 Constitution and Article 6 paragraph (1) of the ICCPR where the right to life is a right that must be protected by law. On the other hand, the death penalty is still recognized as a legitimate form of punishment in Indonesian positive law and applied in certain cases such as terrorism, narcotics, and corruption in emergency situations. That matter creates a contradiction because even though the right to life is declared as an absolute right that cannot be revoked, the state still has the authority to revoke it in certain criminal contexts, thereby questioning the extent to which the right to life is truly recognized as a right that cannot be reduced or revoked.

Meanwhile, euthanasia, performed based on individual requests to end suffering due to incurable terminal illness, is strictly prohibited in the Indonesian legal system. Article 344 of the KUHP strictly criminalizes euthanasia acts even if performed with the patient's consent, on the pretext that any form of deprivation of life is an action contrary to the principle of protection of the right to life. In this case, the state seems to take an absolute stance that the right to life must be maintained under any conditions, even if such matters actually cause individuals to experience prolonged suffering without any choice to end their lives in a more humane way. That inconsistency sparks the philosophical question that becomes the basis of the author's research: if the state rejects euthanasia on the grounds of protecting the right to life, how can the same state justify the deprivation of the right to life through the death penalty?

²⁹ Henry Campbell Black, *Black's Law Dictionary* (West Publishing, 1968).

The new Criminal Code alters the position of the death penalty. In the old code, the legal system treats the death penalty as a primary punishment. Article 65 of Law Number 1 of 2023 lists the primary punishments. The list includes imprisonment, cover punishment, supervision, fine, and social work. The death penalty is missing from this primary list. Article 98 of the new code states the death penalty is a special punishment. The state applies this punishment as an alternative. The state uses it as a last option to protect society. This classification shows a change in the legal reasoning. The state tries to minimize the use of executions.³⁰

The new code introduces a probation mechanism for the death penalty. Article 100 regulates this mechanism. A judge can impose the death penalty with a probation period of ten years. The judge must consider several factors before granting this probation. The judge evaluates the remorse of the defendant. The judge assesses the potential for the defendant to improve. The judge evaluates the role of the defendant in the crime. If the convict shows good behavior during the ten years, the situation changes. The President can alter the sentence. The sentence becomes life imprisonment. The sentence can become twenty years in prison. Article 101 states this change needs a Presidential Decree. The Supreme Court provides input for this decree.³¹

The state gives an opportunity for the convict to avoid execution. The state holds the power to end life. The state decides to delay the execution. The ten years act as an observation phase. The right to life gets a place here. The execution is conditional. The state balances human rights principles with public protection. The threat

³⁰ Lintang Sely Puspita Agrarini, “Dinamika Pidana Mati Dalam Kuhp Baru: Pembaruan Hukum Pidana Dan Tantangan Implementasi,” *Jurnal Ilmiah Advokasi* 13, no. 2 (2025): 509–27; Agrarini, “Dinamika Pidana Mati Dalam Kuhp Baru: Pembaruan Hukum Pidana Dan Tantangan Implementasi.”

³¹ Deri Ardiansyah and others, “Eksistensi Hukuman Pidana Mati Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP,” *Rampai Jurnal Hukum (RJH)* 3, no. 1 (2024): 1–18.

of death remains in the text of the law. The actual deprivation of life becomes harder to execute.³²

The situation with euthanasia presents a different legal reality. The new Criminal Code maintains the strict prohibition on euthanasia. Article 461 of Law Number 1 of 2023 regulates this specific act. The article states anyone who takes the life of another person at the explicit and earnest request of that person faces a prison sentence. The maximum prison time for this act is nine years. The old code set a maximum of twelve years. The new code gives a lower penalty. The prohibition remains absolute in the legal system. The state does not provide any medical exception.³³

Article 462 regulates the act of assisting suicide. The article states anyone who encourages another person to commit suicide faces a prison sentence. Anyone who helps or gives the means for the suicide also faces a prison sentence. The maximum penalty is four years if the suicide actually happens. The state treats these actions as crimes against human life. The request from the individual does not erase the criminal nature of the action. The consent of the individual has no legal value here. The state protects the biological existence of the person.³⁴

The length of the prison term for euthanasia is different from the old code. The underlying principle is the exact same. The state denies individual autonomy to end life. The state sees life as a protected legal interest under all circumstances. Medical conditions do not alter this strict rule. Terminal illness does not provide a legal

³² Ardiansyah and others, “Eksistensi Hukuman Pidana Mati Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP.”

³³ Daffa Rizky Dewanto and Rahtami Susanti, “Hukuman Mati Menurut Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana Dalam Perspektif Hak Asasi Manusia,” *Wijayakusuma Law Review* 5, no. 1 (2023): 64–70.

³⁴ Muhammad Ridwan Lubis and Muhammad Yusrizal Adi Syaputra, “Kedudukan Hukuman Mati Dalam KUHP Baru Perspektif Hak Asasi Manusia,” *Jurnal Ilmiah Penegakan Hukum* 10, no. 2 (2023): 113–20.

excuse. The state forces the individual to feel the pain. The legal text has no room for mercy killing. Doctors face criminal charges if they help a patient to die. The state prioritizes the preservation of life over the end of suffering.

From the perspective of legal philosophy, said contradiction can be reflected through the debate between legal positivism and natural law. Legal positivism, as proposed by Hans Kelsen, explains that law is a norm established by the state and must be obeyed regardless of its moral aspects.³⁵ Reflecting on that philosophical argument, Indonesia follows the positivism approach by maintaining the death penalty because it is written in the law and considered part of the criminal justice system. However, if applied consistently, that approach should also open the possibility for euthanasia as part of individual rights over their own lives. Nevertheless, the natural law perspective in this case provides a rebuttal, where the prioritization of legal application is based on moral and humanitarian values.

That collision of perspectives gives birth to an inconsistency which subsequently shows a double standard in the protection of the right to life. If the right to life is truly considered a sacred right that cannot be revoked, then both the death penalty and euthanasia should be prohibited. However, if there are exceptions in death penalty cases, then logically there should be room for individuals to determine their own life's fate through euthanasia under certain conditions.

If one then looks at how criminal law regulates the death penalty in certain cases such as terrorism, narcotics, and corruption in emergency situations, then regarding that contradiction, it will become increasingly visible. The state assumes that the death penalty can be applied for extraordinary crimes that have a broad impact on society. However, if this principle is used to justify the deprivation of the right to life, euthanasia should also be given legal space considering the condition of individuals experiencing

³⁵ M. Amalia and others, *Pengantar Ilmu Hukum* (PT Sonpedia Publishing Indonesia, 2024).

unbearable suffering. In the context of human rights, allowing someone to experience prolonged suffering without an option to end their life can actually be considered a form of torture, which is contrary to humanitarian principles.

That matter is linear with the principle of utilitarianism, developed by Jeremy Bentham and John Stuart Mill, where legal actions should be judged based on the impact produced on the happiness and welfare of society.³⁶ In the case of the death penalty, although the state claims that this punishment provides a deterrent effect and protects society from extraordinary crimes, further attention is needed because various studies have shown the ineffectiveness of the death penalty as a tool for crime prevention and instead causes more problems in the legal system and human rights enforcement in society.

In a study conducted by Musa Darwin Pane (2024), it was found that the death penalty imposed in Indonesia, especially in narcotics cases, did not have a significant impact on reducing crime rates. Conversely, the number of narcotics crime cases continues to increase, both in terms of quality and quantity. This indicates that the threat of the death penalty does not have the expected deterrent effect in preventing certain crimes.

Not only that, although the death penalty is often considered an effective solution in combating narcotics crimes, in reality, drug trafficking continues to increase in Indonesia. Said study emphasizes that the effectiveness of the death penalty depends heavily on a supportive legal and social system, while in Indonesia, weaknesses in law enforcement and corruption within the judicial system

³⁶ X. Zhai, "Jeremy Bentham, J.S. Mill and the Utilitarian Constitution," in *Research Handbook on Law and Utilitarianism* (Edward Elgar Publishing, 2024).

actually make the death penalty a less effective instrument in crime prevention.³⁷

Perspectives from a study conducted by Rr Maharani Adiannarista Wardhani in *Deviance: Jurnal Kriminologi* (2019) found how effective the death penalty is in terrorism cases. Said research shows that although the death penalty has been applied to terrorism perpetrators in Indonesia, the number of terrorism cases continues to increase every year. This implies that the death penalty does not have the expected *deterrence* effect. That study also compares other approaches such as rehabilitation and deradicalization, which are assessed as more effective in handling ideology-based crimes compared to punishments that are final such as the death penalty.³⁸

Looking at executions in corruption cases, research conducted by Rosa Pijar Cahya Devi and Yanhizbar Rotanza (2023) found that the threat of the death penalty for corruption perpetrators in Indonesia showed no effectiveness in suppressing corruption figures. Based on the data reviewed, countries that apply the death penalty for corruption cases do not show a clear correlation between the threat of the death penalty and a decrease in corruption cases. Conversely, approaches that focus more on judicial system reform and transparent law enforcement contribute more to suppressing corruption figures compared to the death penalty.³⁹

Generally, those various studies negate the state's pretext, where the death penalty is not an effective solution in preventing various forms of crime. The absence of a correlation between the threat of

³⁷ Y. M. Sihombing and Ismaidar, "Politik Hukum Dalam Penegakan Hukuman Mati Terhadap Pelaku Peredaran Narkotika Di Indonesia," *Innovative: Journal of Social Science Research* 3, no. 6 (2023): 9810–20.

³⁸ Maharani and Hidayah, "Studi Komparatif Legalitas Tindakan Euthanasia Bagi Pasien Dengan Penyakit Kronis Di Indonesia Dan Norwegia."

³⁹ R. P. C. Devi and Y. Rotanza, "Efektivitas Ancaman Pidana Mati Bagi Pelaku Tindak Pidana Korupsi Di Indonesia Ditinjau Dari Perspektif Hukum, HAM, Dan Psikologi," *Kertha Wicaksana* 17, no. 2 (2023): 147–55.

the death penalty and the decrease in crime rates illustrates that the main factors in crime are far more complex, encompassing social, economic factors, and weaknesses in the legal system.

Meanwhile, in euthanasia cases, individuals suffering from terminal illnesses have no other choice but to wait for natural death in painful conditions, which morally can be considered a form of torture. If measured from a utilitarian point of view, allowing someone to experience suffering without the option of euthanasia can be said to be contrary to the principle of greatest happiness for the individual concerned.

From a human rights law perspective, said contradiction is also visible in how the state interprets the right to life. In the context of the death penalty, the state takes the position that the right to life can be revoked as part of the criminal justice system, while in the case of euthanasia, the right to life is considered an absolute right that cannot be revoked even by the individual who owns it. Consequently, the state actually acts as an entity that has absolute power in determining whether someone may live or not, instead of upholding individual rights over their own body and life. It can then be implied that the state holds control over the right to life in an inconsistent manner, rejecting individual rights to determine the end of their own life but at the same time granting authority to the judicial system to take a person's life in death penalty cases.

3. The Perspective of the New Criminal Code Law Number 1 of 2023 on the Right to Life

We must analyze the discrepancy between these two issues in the new legal framework. The contradiction exists in the new code. The state relaxes the rules for the death penalty. The state creates a legal pathway to avoid execution through the probation period. This shows a formal respect for the right to life. On the opposite side, the state denies the practice of euthanasia. The state forbids an individual from choosing death. The individual has zero control over their own suffering. The state applies two different standards to judge the value of life.

The state maintains a monopoly on the decision to end life. In the context of the death penalty, the state claims the authority to revoke life for certain crimes. The state decides when to apply the ten years of probation. The state decides if the convict passes the probation period. In the context of euthanasia, the state denies the individual the authority to revoke their own life. The state claims the right to life is a mandatory obligation. The individual cannot waive this right. The state acts as the sole owner of the right to life.

We can examine this from a legal philosophy perspective. The state uses paternalism in the regulation of euthanasia. The state uses utilitarian concepts in the regulation of the death penalty.

The new code treats the right to life as a duty to live. A right allows a person to choose. The person can use the right. The person can choose to leave the right. The prohibition of euthanasia forces the individual to live against their will. The individual has no legal avenue to seek medical assistance to die peacefully. The state penalizes the doctor who provides the assistance. The state penalizes the family members who help. This rigid approach contrasts with the flexible approach to capital punishment. The death penalty has conditions and evaluation periods. Euthanasia has zero conditions and zero evaluations. The law offers no compromise for the dying patient.

The state logic relies on moral and religious norms to justify the ban on euthanasia. The state argues that only God can take a life. The state uses this argument to criminalize the termination of suffering. The state abandons this argument when applying the death penalty. The state takes the role of taking a life in the name of justice. This change in logic highlights the core discrepancy. The state uses religious morals to block euthanasia. The state uses legal authority to execute criminals. The reasoning is situational.

The new Criminal Code (Law No. 1 of 2023) does not resolve this inconsistency. The state has made the death penalty conditional, while the absolute ban on euthanasia remains in place. Legal reasoning reveals two distinct approaches. The state prioritizes the interests of the state over individual autonomy. Protection of the

right to life in Indonesia remains selective under Law No. 1 of 2023. The enforcement of human rights faces challenges due to this inconsistency.

D. Conclusion

The Indonesian legal system exhibits inconsistencies in the application of the right to life. These inconsistencies are evident in the regulations regarding euthanasia and the death penalty. The state continues to allow for autonomy in the imposition of the death penalty, whereas in the case of euthanasia, the state completely precludes any autonomy in its implementation.

The new Criminal Code (Law No. 1 of 2023) does not resolve this inconsistency. The state makes executions conditional. Meanwhile, the absolute ban on euthanasia remains in place.

There are two solutions available to address this legal inconsistency. The first is the abolition of the death penalty from the Indonesian legal system. The abolition of the death penalty aligns with the 1945 Constitution, the UDHR, and the ICCPR. This step prevents wrongful executions within the judicial system. The second is to establish regulations regarding euthanasia under specific conditions. The state must apply strict ethical and legal standards. Even if the state maintains the death penalty due to its autonomy, it should still recognize the individual's right to determine their own fate through euthanasia in cases of terminal illness accompanied by prolonged suffering. The law can regulate euthanasia to prevent abuse. Such regulations may include medical requirements, psychological evaluations, as well as consent from a medical team and family members.

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