



MEDICAL ASSISTANCE IN DYING (MAiD): HUMAN AND HUMANITY IN THE STUDY OF *FIQH MAQAŞID*

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Abstract: This study aimed to formulate the construction of *fiqh maqaşid* as a standardization of the concept of humanity in Medical Assistance in Dying (MAiD). This study contributes to actualizing *fiqh maqaşid* as a standardization of values in solving humanitarian problems. This is based on the phenomenon of MAiD, which is considered controversial in the eyes of social religion and state law as in the concept of Islamic law (*fiqh*), which sees that the protection and realization of human existence and humanity are essential values in the study of Islamic law (*fiqh*). This argumentation must be elaborated in depth regarding interests and benefit elements in the MAiD phenomenon. The stages of the realization of benefits in the context of the approach to Islamic law (*fiqh*) are one of the representations and forms of elasticity in the study of the objectives of Islamic law (*maqaşid al-sharia*). The relevance of maqaşid shari'ah studies as a form of *maqaşid fiqh* approach is considered to carry urgency in determining aspects of benefit in the MAiD phenomenon and representing *maqaşid fiqh* in realizing human protection and humanity. This study uses literature research with data from various phenomena and regulations on MAiD, which are presented descriptively and then critically analyzed through the *fiqh maqaşid* approach. This study found that the realization of the MAiD program through euthanasia has implications for the non-realization of the essential values of maqaşid shari'ah in *fiqh maqaşid*. This study confirms that *fiqh maqaşid* has an orientation towards solving human problems based on humanity.

Keywords: *Fiqh maqaşid*; MAiD; Humanity

Abstrak: Kajian ini bertujuan untuk merumuskan konstruksi *fiqh maqaşid* sebagai standarisasi konsep kemanusiaan dalam fenomena Medical Assistance in Dying (MAiD). Secara praktis, kajian ini memiliki kontribusi untuk mengetahui aktualisasi *fiqh maqaşid* sebagai standarisasi nilai dalam penyelesaian problematika kemanusiaan. Hal ini dilandaskan pada fenomena MAiD yang dianggap

kontroversial dalam kacamata sosial agama, dan hukum negara. Sebagaimana dalam konsep hukum Islam (*fiqh*) yang melihat bahwa perlindungan dan perwujudan eksistensi manusia dan kemanusiaan menjadi nilai esensial dalam pengkajian hukum Islam (*fiqh*). Argumentasi ini tentunya perlu dielaborasi secara mendalam dalam konteks kepentingan dan unsur kemaslahatan dalam fenomena MAiD. Tahapan atas perwujudan kemaslahatan dalam konteks pendekatan hukum Islam (*fiqh*) menjadi salah satu representasi dan bentuk elastisitas dalam pengkajian tentang tujuan hukum Islam (*maqasid al-syari'ah*). Relevansi kajian *maqasid al-syari'ah* sebagai bentuk pendekatan *fiqh maqasid* dipandang memiliki urgensi dalam menentukan aspek kemaslahatan dalam fenomena MAiD dan merepresentasikan *fiqh maqasid* dalam mewujudkan perlindungan manusia dan kemanusiaan. Kajian ini menggunakan penelitian kepustakaan dengan data dari berbagai fenomena dan aturan tentang MAiD yang dipaparkan secara deskriptif yang kemudian dianalisis secara kritis melalui pendekatan *fiqh maqasid*. Kajian ini menemukan bahwa realisasi program MAiD melalui euthanasia berimplikasi pada ketidakterwujudan nilai esensial *maqasid al-syari'ah* dalam *fiqh maqasid*. Melalui hasil kajian ini, menegaskan bahwa *fiqh maqasid* memiliki orientasi pada penyelesaian problematika manusia berbasis kemanusiaan.

Kata Kunci: *Fiqh maqasid*; MAiD; Kemanusiaan



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INTRODUCTION

In the concept of religion and state, protecting and fulfilling the rights to live are strategic steps to indicate the existence of religion and the state in defense of humans and humanity. Efforts to preserve human existence must be accounted for as proof that humans are the only creatures able to conceptualize everything they encounter. Humans are also considered to have the most crucial role in the motion of worldly reality. That said, various contemporary world challenges have influenced and challenged the protection of human existence.¹

Human existence in the contemporary era is influenced by many dynamics in people's lives that have given rise to humanity's social problems.² This condition leads to all kinds of deviant behavior in the social order. Crises and humanitarian

¹ Jack Donnelly, "Human Rights, Humanitarian Crisis, and Humanitarian Intervention," *International Journal: Canada's Journal of Global Policy Analysis* 48, no. 4 (2016).

² See Venni V. Krishna, "Changing Social Relations between Science and Society: Contemporary Challenges," *Science, Technology and Society* 19, no. 2 (2014).

conflicts arise amidst eroding moral values and societal norms.³ The most glaring problem resulting from the changing human behavior in the contemporary era is behavior that violates the norms that apply in the context of religion and state.⁴ One of the most controversial human practices is euthanasia, part of the MAiD program.⁵ Euthanasia is one of the measures taken to hasten one's death, whose goal is to relieve the suffering and illness of a person.⁶ Euthanasia, from many points of view, including ethics, religion, and state law, is controversial. This is because many view it as violating God's will and plan.⁷

One of the controversies around the euthanasia phenomenon arises when it is studied from the perspective of religious law (Islamic law). To date, Islamic law (*fiqh*) is understood as God's law that represents the obligation to defend God's commandments. Therefore, any action and behavior that violates God's rules and commandments become *fiqh's* domain to prohibit and forbid. However, in its development, the context of the approach and discourse of Islamic law (*fiqh*) gives birth to the concept of the objective of Islamic law (*maqasid al-sharia*) in the contemporary era, which currently represents an approach through human values. The relevance of the study of the objective of Islamic law (*maqasid al-sharia*) seems to present a solution to introduce Islamic law that can provide legal products that are elastic and adaptive in the context of contemporary problems.⁸ Through this approach, *fiqh maqasid* no longer sees singular benefits but compares several benefits and then picks one most suitable for realizing humanity's protection,⁹ including euthanasia.

In state provisions, several countries legalize euthanasia, including Switzerland, the Netherlands, Belgium, Canada, Australia, the United States, and France.¹⁰ The legality of euthanasia in the abovementioned countries is manifested by giving freedom to the people to determine how to end their life. However, such freedom is only given to those suffering from chronic diseases with a slim chance of survival. The legality of euthanasia in the several countries above is undoubtedly one of the proofs of an in-depth study and debate in parliament to determine policy

³ Gema Budiarto, "Indonesia Dalam Pusaran Globalisasi Dan Pengaruhnya Terhadap Krisis Moral Dan Karakter," *Jurnal Pemator* 13, no. 1 (2020): 50.

⁴ See Iffatin Nur & Susanto, "Social Conflict in Indonesia: Safeguarding a Nation as a New Approach for Resolving National Disintegration," *Journal of Social Studies Education Research* 11, no. 2 (2020).

⁵ Tamara Raquel Velasco Sanz, Ana María Cabrejas Casero, & María Isabel Guerra Llamas, "Opinions of Nurses Regarding Euthanasia and Medically Assisted Suicide," *Nursing Ethics* 29, no. 7-8 (2022).

⁶ Jagadish Rao Padubidri, Matthew Antony Manoj, & Tanya Singh, "Euthanasia: A Good Death or an Act of Mercy Killing: A Global Scenario," *Clinical Ethics* 17, no. 2 (2021).

⁷ Miles S. Marsala, "Approval of Euthanasia: Differences Between Cohorts and Religion," *SAGE Open*, 2019, <https://doi.org/10.1177/21582440198359>.

⁸ Muhammad Ngizzul Muttaqin & Iffatin Nur, "Menelusuri Jejak Maqasid Syari'ah Dalam Istimbath Hukum Imam Hambali," *Ahkam: Jurnal Hukum Islam* 7, no. 1 (2019).

⁹ Fauzi, *Hak Asasi Manusia Dalam Fikih Kontemporer* (Depok: Prenadamedia Group, 2018).

¹⁰ Tim Editor, "Apa Itu Euthanasia Dan Negara Mana Saja Yang Melegalkan?," *Kompas.Com*, accessed November 2, 2020, <https://www.kompas.com/tren/read/>

directions deemed to benefit society, even though they are considered controversial.¹¹

Several studies on euthanasia include the study of Gale and Barak, stating that euthanasia is a social disease that must be resolved in an international agreement. Although euthanasia relies on someone's willingness, there is still a hegemony of exploitation over the community's decision to undergo euthanasia.¹² Karumathil and Tripath state that the social culture of society shapes euthanasia. It means that every culture in society influences the decision to undergo euthanasia. Thus, in this context, cultural education is needed to educate people on the importance of perceiving life as a gift from God.

Meanwhile, Brown et al. state that the legality of MAiD was decided in 2016 in Canada. Although the legality of MAiD in Canada is supported by related regulations, from the perspective of the patient's family, approval or refusal is still required to provide fair and respectful procedure.¹³ In the argument context, Self argues that MAiD must be considered to realize the benefits.¹⁴ Meanwhile, Lees and Andrew argue that placing MAiD in the context of care requires careful consideration of discrepancies in the treatment process. It means that MAiD should not be used to inflict discrimination or special treatment of patients but, more than that, to provide more appropriate considerations for the patient.¹⁵

Based on the description above, it seems that euthanasia as a medical measure of MAiD is a social phenomenon that cannot be immediately accepted in the context of religion, country, and socio-culture. Relationships in the context of religion, country, and socio-culture must always be used as a reference to formulate the legality of euthanasia. In the context of societal rules and views, it must be based on the construction of benefits, which is the implication of every action. The construction of benefits follows the objective of Islamic law (*maqasid al-sharia*), which sees and assesses every action based on the resulting impact, either benefits or *mafsadat*. Similarly, the euthanasia phenomenon also has both benefits and *mafsadat*. The objective of Islamic law as a *fiqh maqasid* methodology is oriented to provide a methodological view in the context of *fiqh*. Apart from looking at euthanasia from the perspective of *fiqh maqasid*, this study also elaborates on the workings of *fiqh maqasid*. Considering the urgency of *fiqh maqasid* in solving and providing views on

¹¹ V. Strinic, "Arguments in Support and Against Euthanasia," *British Journal of Medicine and Medical Research*, 2015, <https://doi.org/10.9734/BJMMR/2015/19151>.

¹² Chris Gale & Yoram Barak, "Euthanasia, Medically Assisted Dying or Assisted Suicide: Time for Psychiatrists to Say No," *Australasian Psychiatry* 28, no. 2 (2019).

¹³ Janine Brown, Donna Goodridge, Averi Harrison, Jordan Kemp, Lilian Thorpe, Robert Weiler, "Medical Assistance in Dying: Patients', Families', and Health Care Providers' Perspectives on Access and Care Delivery," *National Library of Medicine* 23, no. 11 (2020).

¹⁴ Gordon Self, "Lessons Learned about MAiD from a Catholic Healthcare Perspective," *Healthcare Management Forum* 36, no. 3 (2022).

¹⁵ Caitlin Lees & Melissa K. Andrew, "MAiD for Geriatric Syndromes: Special Considerations," *Healthcare Management Forum* 36, no. 3 (2023).

the phenomenon of euthanasia, this literature review¹⁶ presents data descriptively on the phenomenon of euthanasia in countries around the world, which is analyzed critically through the concept of *fiqh maqāṣid*. The results of this study are hoped to contribute ideas to the community about the phenomenon of euthanasia through the *fiqh maqāṣid* discourse.

MEDICAL ASSISTANCE IN DYING AND HUMANITARIAN PROBLEMS

Medical Assistance in Dying (MAiD) in society and the state has a tumultuous and controversial social and legal history. One example is the Canadian government's official website data, where the number of deaths through MAiD continues to increase yearly. From 2016 (the first year MAiD was legalized) to 2021, 31,664 deaths through MAiD were recorded.¹⁷ In 2021, MAiD accounted for approximately 3.3% of all deaths in Canada. These data imply an increase in people seeking MAiD services because the MAiD program is becoming more widely known.¹⁸ Recently, Canada has postponed talks that would have allowed someone with a mental disorder to access MAiD services. However, the Canadian government's plan to legalize MAiD for people with chronic mental disorders is still being criticized. David Lametti, the minister of justice, states that the Canadian government will try to postpone this policy due to pressure and criticism from domestic psychiatrists and doctors.¹⁹

One realization of the MAiD program is euthanasia for humans, defined as an easy or painless death. This death is deliberately induced on a person suffering from an incurable or painful disease at their request.²⁰ Euthanasia is a way of ending life with the help of medical actions or procedures at the voluntary request of those concerned because they are suffering from severe illness with no hope of recovering.²¹ Meanwhile, euthanasia in Indonesia is explicitly regulated in the Criminal Code, namely in articles 304 and 344. These articles indicate that euthanasia

¹⁶ Robert Bogdan & Steven J Taylor, *Introduction to Qualitative Research Methods: A Phenomenological Approach to the Social Sciences* (New York: John Wiley & Sons, 2000).

¹⁷ Admin, "Third Annual Report on Medical Assistance in Dying in Canada 2021," *Canada.ca*, 2023, <https://www.canada.ca/en/health-canada/services/medical-assistance-dying/annual-report-2021.html>.

¹⁸ A. Frolic, A. & Oliphant, "Introducing Medical Assistance in Dying in Canada: Lessons on Pragmatic Ethics and the Implementation of a Morally Contested Practice," *HEC Forum*, no. 34 (2022), <https://doi.org/10.1007/s10730-022-09495-7>.

¹⁹ Leyland Cecco, "Canada Delays Right to Physician-Assisted Death for Mentally Ill People," *Amp.Theguardian.Com*, 2022, <https://amp.theguardian.com/world/2022/dec/18/canada-medically-assisted-death-delay>.

²⁰ Arifin Rada, "Euthanasia Dalam Perspektif Hukum Islam," *Perspektif* 18, no. 2 (2013).

²¹ Fuadi Isnawan, "Kajian Filosofis Pro Dan Kontra Dilarangnya Euthanasia," *Disertasion* (Yogyakarta: Universitas Islam Indonesia, 2015), <https://dspace.uui.ac.id/handle/123456789/9002>.

is a criminal act that fulfills the elements of premeditated murder. It is not legalized in Indonesia because it is not following the culture of the Indonesian nation itself.²²

In many countries, euthanasia has been legalized, although various groups consider it controversial.²³ It is expressed by human rights defenders who say state regulations legalizing MAiD degrade the lives of disabled people and encourage doctors and health workers to recommend the procedure to those who may not be able to consider it properly.²⁴ The legalization of MAiD gives an option for end-of-life care.²⁵ A person can use medical assistance to end their life legally. The government of Canada arranges what criteria are required to be able to apply for MAiD. Not only that, but the government also regulates and guarantees protection for doctors and nurses who will carry out procedures in MAiD. The requirements and criteria that must be met for a person to apply for MAiD services based on applicable law in Canada include: being at least 18 years old, having a disability or incurable severe medical condition (chronic illness), and making requests voluntarily without coercion from any party.²⁶ Parties who can provide MAiD services are doctors and nurses (depending on the policy in each province). Other parties who can assist in implementing MAiD are pharmacists, family members, and health service providers who assist doctors or nurses in carrying out MAiD procedures. The above people can assist in the MAiD process without being prosecuted by criminal law. However, all of the parties mentioned must follow the provisions in the criminal law and health-related policies that apply in each province.²⁷

Although several countries legalize euthanasia, MAiD reaps pros and cons in the context of society. In various state policies, many countries still refuse the euthanasia practice through MAiD. Some countries, or states within a country, have outlawed the practice. In terms of countries legalizing it, The Netherlands is the first country to legalize euthanasia. The law governing this matter was launched on 10 April 2001 and was only declared in effect as of 1 April 2002.

Furthermore, the Belgian Parliament has legalized euthanasia since 28 May 2002 and was officially effective at the end of September 2002. Furthermore, in 2014,

²² AAI Damar Permata Hati, Ni Putu Rai Yuliantini, & Dewa Gede Sudika Mangku, "Tinjauan Yuridis Terkait Permohonan Suntik Mati (Euthanasia) Ditinjau Dari Kitab Undang-Undang Hukum Pidana," *Jurnal Komunitas Yustisia* 2, no. 2 (2020): 134-144.

²³ Ardison Asri, "Tinjauan Yuridis Tindakan Euthanasia Berdasarkan Hukum Pidana Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 12, no. 2 (2022).

²⁴ Maria Cheng, "'Disturbing': Experts Troubled by Canada's Euthanasia Laws," *Apnews.Com*, 2022, <https://apnews.com/article/covid-science-health-toronto-7c631558a457188d2bd2b5cfd360a867>.

²⁵ Tharshika Thangarasa MD, et al, "A Race to the End: Family Caregivers' Experience of Medical Assistance in Dying (MAiD) – a Qualitative Study," *Journal of General Internal Medicine* 37 (2022): 809-815.

²⁶ Admin, "Get The Facts: Canada's Medical Assistance in Dying (MAiD) Law," *Dyingwithdignity.Ca*, 2021, <https://www.dyingwithdignity.ca/end-of-life-support/get-the-facts-on-maid/>.

²⁷ Admin, "Medical Assistance in Dying," *Canada.Ca*, 2023, <https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html>.

the Belgian parliament legalized euthanasia again, this time for children, with the legal notes and procedures that apply. Next is Switzerland, which tends to be flexible in responding to euthanasia. The law in Switzerland states that as long as the practice is carried out without the motive of personal gain, it is permissible. In the United States, Oregon, in 1997, legalized it through the Oregon Death with Dignity Act.

Nonetheless, several other significant countries flatly refused. The UK is one of them. It considers any euthanasia practice illegal and against the law. The official policy of the British Medical Association (BMA) is strictly against euthanasia. Like the UK, India also considers the practice of euthanasia to be against the law. The rules regarding this prohibition are expressly stated in the first chapter of Article 300 of the Indian Penal Code (IPC) of 1860; the same applies in China.²⁸

The pro sides generally believe that having the freedom to choose the method of death is a right for every human being. As for those who are cons, they think that providing efforts to help other humans stay alive is much better than hastening their death. Death is generally seen as a scary stage in the life cycle; however, that is not the case for desperate or helpless people who would rather die, either by natural death or euthanasia, than continue living. A person's suffering can discourage them from surviving and even encourage them to attempt to end their life, even though what they need is the end to their suffering and not their life.²⁹

The advancement of medical technology and the development of various policies present an option for those who want to die through euthanasia. To some, such an option is an exciting opportunity. In practice, developments in medical science are not always accompanied by developments in law and ethics. While from the human rights point of view, euthanasia is the same as an attempt to eliminate the right to human life because euthanasia itself eliminates human life.³⁰ This phenomenon requires constant study so that developments in medical science and the role of government can produce beneficial policies. Studies from various perspectives are needed to respond to phenomena like this to provide an understanding to the broader community.

FIQH MAQAŞID AND HUMAN RIGHTS

Islamic law (*fiqh*) is very strategic in the Islamic discourse. The position of Islamic law in the context of the reality of society results in the exertion of control and

²⁸ Admin, "Euthanasia Dan Perdebatan Tentang Hak Untuk Mati," *Tirto.Id*, May 16, 2018, <https://tirto.id/euthanasia-dan-perdebatan-tentang-hak-untuk-mati-cKw3>.

²⁹ Anggraeni Endah Kusumaningrum, "Pergulatan Hukum Dan Etik Terhadap Euthanasia Di Rumah Sakit," *Jurnal Spektrum Hukum* 16, no. 1 (2019): 37-59.

³⁰ Sri Warjiyati, "Implementasi Euthanasia Dalam Perspektif Ulama Dan Hak Asasi Manusia," *Al-Jinayah: Jurnal Hukum Pidana Islam* 6, no. 1 (2020): 257-284.

education for every action and human activity.³¹ Apart from permissibility and prohibition aspects, Islamic law also has dimensions regarding safeguarding the interests of humanity represented through the objective of Islamic law (*maqasid al-sharia*).³² Through the *maqasid al-sharia* approach, Islamic law (*fiqh*) attempts to present new perspectives to adapt *fiqh* products that are relevant in contemporary society.³³ The paradigms and constructions of *fiqh* that are adaptive to the challenges and problems of today's contemporary society are expected to be able to solve various problems faced by society.³⁴

Fiqh is formulated essentially as a response to the reality of society. Therefore, *fiqh* adopts several influences and roles in responding to social reality to represent the contribution of *fiqh* in solving societal problems. The form of *fiqh* responsiveness to social reality is achieved through several steps.³⁵ First, *tahqiq al-manat*. This concept is not only understood as reaching 'illat origin on *furu'* in the *qiyas* method but also to understand the objects of law in depth in the reality of society to formulate relevant *fiqh* products as solutions to the problems of social reality. The purpose of this *tahqiq al-manat* is to make a selection of the reality of society to understand in general. *Tahqiq al-manat* is oriented towards the substance of *al-manat* in viewing the human aspect as a form of understanding *taklifi* proposition. *Second* is *i'tibar al-ma'al*, which aims to consider the impact of existing realities. The concept of *i'tibar al-ma'al* through *sad dzariah* and *fath dzariah* is to determine the law for every action considering cause and effect in the future.³⁶ *Third*, *mura'at al-taghayyurat* aims to make considerations for changes. This step is to respond to friction over the circumstances, *ihwal*, and conditions of the place in the contemporary era. Legal reform in the contemporary era is undoubtedly needed when shifts have occurred in various aspects and dynamics of people's lives.³⁷

In the context of humans, *fiqh* views humans as the best creation of God, who has a central role in managing all things in the world. Human ability in the worldly context becomes an epistemological basis for the rationality of human reason as a basis and approach in the discourse on the study of Islamic law (*fiqh*). In terms of implementation, the values and objectives contained in the texts of the Qur'an and Hadith are used as a basis for the study of Islamic law (*fiqh*). This step is expected to

³¹ Iffatin Nur, Syahrul Adam, M. Ngizzul Muttaqien, "Maqasid Al-Shari'at: The Main Reference and Ethical Spiritual Foundation for the Dynamization Process of Islamic Law," *Ahkam: Jurnal Ilmu Syariah* 20, no. 2 (2020).

³² Ahmad Muhtadi Anshor, "Fiqh and Progressive Law: Study of Inequality and Racial Issues in America," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 11, no. 1 (2021): 8-10.

³³ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: the International Institut of Islamic Thought, 2007), 74.

³⁴ Zaprul Khan, "Maqasid Al-Shariah in the Contemporary Islamic Legal Discourse: Perspective of Jasser Auda," *Walisono: Jurnal Penelitian Sosial Keagamaan* 26, no. 2 (2018).

³⁵ Muhammad Ibn Muhammad Al-Ghozali, *Al-Mustasyfa Min Ilmil Ushul* (Beirut: Dar al-Fikr, 1999), 68.

³⁶ Wahbah al-Zuhaili, *Al-Wajiz Fi Ushul Fiqh* (Beirut: Dar al-Fikr, 2003), 143.

³⁷ Muhammad Ma'ruf Al-Dawalibi, *Al-Madhal Il Ilm Ushul Al-Fiqh* (Beirut: Dar al-Arabi, 2000), 74.

embody human interests and provides the best Islamic legal product for humans, which can be realized through an *ijtihad fiqh maqashid* model.³⁸

In the humanitarian aspect, Islamic law through the *maqashid fiqh* approach represents the *ijtihad* methodology which upholds human values and protects human interests. Through the protection of religion (*hifdz al-din*), life (*hifdz al-nafs*), property (*hifdz al-mal*), intellect (*hifdz al-'aql*), lineage (*hifdz al-nasl*), and dignity (*hifdz al-'irdz*), *fiqh maqashid* aims to actualize the objective of Islamic law (*maqashid al-sharia*) through humanitarian and human rights aspects. In elaborating the concept of *maqashid al-sharia* with *mashlahah* in humanitarian and human rights issues, it can be expressed that human rights are positioned as *jalb al-manfa'ah wa daf' al-madharah* (benefit and refuse harm). This concept is an element of *mashlahah* to determine the direction of Islamic legal products (*fiqh*) in formulating *maqashid al-sharia* framed in *al-dharuriyyat al-khamsah*.³⁹

The effort to uphold the protection of humans and humanity through *fiqh maqashid* places it as worship, a form of self-submission that leads to devotion to Allah.⁴⁰ This framework signifies that Islam is a religion that supports human rights principles.⁴¹ *Fiqh maqashid* is a benefit that can be enjoyed sustainably, personally, and socially. This structure of *fiqh maqashid* is to reiterate that the presence of the concept of humanity is a shared responsibility to be understood, realized, and practiced through *fiqh maqashid*.⁴²

The conceptualization of human rights in *fiqh maqashid* intends to produce levels of *maqashid shari'ah* relevant to social realities. This refers to the concept that the priority of *hifdz al-din* and *hifdz al-nafs* still invites differences of opinion among scholars.⁴³ If both are faced with conditions where one must give in, then there must be a choice that refers to *tartib tanazul* (priority or hierarchical scale), as revealed by Al-Ghazali. Several clerics argue that *hifdz al-din* is more important, setting aside *hifdz al-nafs* to strengthen the pillars of religion. In another view, life is essentially a service form, while *al-nafs* is a tool or instrument for serving *al-din*. This view states that *hifdz al-nafs* is prioritized because *al-nafs* is *manat al-taklif* (extra burden). It means that without *al-nafs*, religion would not be able to survive. Therefore, preserving life

³⁸ Ahmad Muhtadi Anshor & Muhammad Ngizzul Muttaqin, "Implementasi Pemikiran Fiqih Prioritas Yusuf al Qardhawi Sebagai Upaya Membangun Kebijakan Berbasis Kemanusiaan," *Al-Maslahah: Jurnal Ilmu Syariah* 16, no. 1 (2020).

³⁹ Iffatin Nur & Muhammad Ngizzul Muttaqin, "Reformulating The Concept of *Maşlahah*: From A Textual Confinement Towards A Logic Determination," *Justicia Islamica Jurnal Kajian Hukum dan Sosial* 17, no. 1 (2020).

⁴⁰ Ahmad al-Raisuni, *Maqashid Al-Maqashid: Al-Ghayat Al-'Ilmiyah Wa Al-'Amaliah Li Maqashid Syari'ah* (Lebanon: Al-Syabakah al-'Arabiyah Li Abhast Wa al-Nasyir, 2013), 93.

⁴¹ Abu Ishaq Al-Shatibi, *Al-Muwafaqot Fi Ushul Al-Syari'ah* (Beirut: Dar al-Kutub al-Ilmiyah, 2004).

⁴² Abdurrahman Kasdi, "Maqashid Syari'ah dan Hak Asasi Manusia: Implementasi HAM Dalam Pemikiran Islam," *Jurnal Penelitian* 8, no. 2 (2014): 260.

⁴³ Muhammad Ibn Muhammad Al-Ghazali., *Al-Mustasfa Min Ilm Ushul* (Mesir: Maktabah al-Jumdiyah, 2010), 174.

is essential to maintain religion. In this perspective, *hifdz al-nafs* becomes the priority to defend, spread and practice religion.⁴⁴ Protecting religion (*hifdz al-din*) emphasizes the embodiment and implementation of fundamental religious values, not aspects of belief and faith.

A shift in the meaning of human rights is possible as long as it stays on track and adheres to rules to avoid bias. This concept is a *fiqh* issue that should not be understood rigidly but flexibly.⁴⁵ The flexibility of *fiqh* in the context of changes continues to occur in the leaps of time and places that continue to develop.⁴⁶ The formality of religious practices in understanding human rights must occur in contemporary and modern life without denying religion's sacred and universal substance.⁴⁷ Inclusivity in understanding contemporary issues through the *fiqh maqasid* approach is needed considering that today's Muslims face the ever-changing dynamics of life. Thus interpretation through communicative *fiqh* is needed. With that in mind, *fiqh* responds to current issues wisely and considerately without neglecting its foundations.⁴⁸

MEDICAL ASSISTANCE IN DYING IN FIQH MAQAŞID STUDIES

Medical Assistance in Dying through euthanasia presents problems for patients in critically ill conditions and represents one of the measures that can be taken in medicine. In such conditions, various efforts were made by a patient and their family and the medical team. It is common for patients suffering from chronic and painful illnesses to feel they have no power to continue life, and hastening death is the best step. Euthanasia is legal in several countries, such as the United States, which implements euthanasia based on a court decision that has implications for releasing the perpetrator from legal consequences. Meanwhile, in the Netherlands, some laws legalize euthanasia in specific contexts.⁴⁹

Societally, the tendency to commit suicide is often linked with mental disorders such as depression. Therefore, suicide, as in the euthanasia phenomenon, is classified as a form of mental disorder in psychiatric medicine. In addition, the phenomenon of euthanasia is understood as the most appropriate form of

⁴⁴ Fauzi, *Hak Asasi Manusia Dalam Fikih Kontemporer*, 148.

⁴⁵ Saim Kayadibi, "The State As An Essential Value (Daruriyyat) Of The Maqasid Al-Shari'ah," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019).

⁴⁶ Mukti Tabrani, "Maqasid Revitalization in Global Era: Istidlal Study from Text to Context," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 13, no. 2 (2018).

⁴⁷ Mohammad Rasekh, "Traditional Secularism v. Modern Secularism A Word on the Nature of Fiqh and the Related Constitutional System," *Critical Research on Religion*, 2022, <https://doi.org/10.1177/20503032221148469>.

⁴⁸ Asman Asman & Tamrin Muchsin, "Maqasid Al-Shari'ah in Islamic Law Renewal: The Impact of New Normal Rules on Islamic Law Practices during the Covid-19 Pandemic," *Mazahib: Jurnal Pemikiran Hukum Islam* 20, no. 1 (2021).

⁴⁹ Indrie Prihastuti, "Euthanasia Dalam Pandangan Etika Secara Agama Islam, Medis Dan Aspek Yuridis Di Indonesia," *Jurnal Filsafat Indonesia* 1, no. 2 (2018): 85.

alternative for those who suffer from incurable or near-incurable diseases. Although several countries have legalized euthanasia, it has caused various controversies and misunderstandings, as indicated by many older people in Belgium who choose euthanasia because they are no longer productive and not due to chronic illness. The case above is an example of misunderstanding for those who want euthanasia. In addition, the permissibility of euthanasia is also often used as an excuse for the state and families to get out of their responsibility to care for their parents.⁵⁰

Misunderstandings and exemption of oneself from responsibilities, as mentioned above, present a problem in the act and phenomenon of euthanasia. In addition, the legality of euthanasia is often misused, as happened in the Netherlands, where 500 euthanasia cases were not reported to the state. Meanwhile, in Belgium, one in five euthanasia cases has given explicit consent to euthanasia—other than that, they were not accompanied by consent and were carried out by force.⁵¹

The lack of independence in the medical world through strict rules and regulations regarding euthanasia still leaves a lack of supervision over the practice of euthanasia in the medical world, which is difficult to control. Furthermore, euthanasia is not regulated strictly through state regulations and policies, making it highly probable to be misused by a person or a group. This aligns with religious values, concepts, and norms that view life as a gift from God that must be accepted with all the consequences. Meanwhile, the family and the state must facilitate everything to maintain human existence until death picks them up.

On the other hand, the positive side of euthanasia is that it can be a solution to unsafe suicide. In addition, in the social aspect of medicine, it can also be used to support organ transplant programs for patients who wish to undergo euthanasia and donate their organs by adjusting the time to when and where they are needed. For the pro-euthanasia groups, there is an emphasis that euthanasia supports self-autonomy as one of the human rights, including the autonomy to determine life and death.⁵²

It cannot be denied that euthanasia has the potential to influence society in several ways. For example, some believe euthanasia can decrease expenses for palliative care and suicidal ideation. In addition, euthanasia can also impact how one thinks about death and dying and how one approaches end-of-life care. In practice, euthanasia is only available to adults aged 18 and over with a chronic illness and determined to have unbearable physical or psychological pain. Nonetheless, there is growing debate about extending euthanasia to include people

⁵⁰ Admin, "Euthanasia Dan Perdebatan Tentang Hak Untuk Mati."

⁵¹ Mutia Isni Rahayu, "Euthanasia, Ketika Mati Dianggap Lebih Baik Dari Hidup," *Doktersehat.Com*, Nov 7, 2019, <https://doktersehat.com/informasi/kesehatan-umum/apa-itu-euthanasia/>.

⁵² Muhammad Athallah Arsyaf, "Euthanasia: Solusi Atau Masalah? (Esai Isu Kedokteran PSAF FK UI 2019)," *Kompasiana.Com*, August 19, 2019, <https://www.kompasiana.com/athallaharsyaf/>

who are not terminally ill but suffer from irreversible physical or psychological conditions.⁵³

In this case, there are some arguments in favor of and opposing the expansion of euthanasia. To those in favor of such expansion, euthanasia should be accessible to anyone with an irreversible physical or psychological condition. This opinion is reinforced by the view that everyone should have the right to choose when and how they die, and euthanasia can provide them with a dignified and humane death. Meanwhile, to those opposing such expansion, euthanasia should only be available to those who are terminally ill. This argument is based on the concern that expanding euthanasia will open the door for people who are not terminally ill and wish to end their lives, which can lead to abuse and forced euthanasia. They also argue that expanding the scope of euthanasia would give rise to a two-tier system, where only those who can afford expensive end-of-life care can access it, which has implications for existing inequalities in the health care system.⁵⁴

In the world of health and medicine, Medical Assistance in Dying is a form of progress. Although in its development, the use of MAiD, which causes death intentionally, is a form of dichotomy to the moral image of humanity.⁵⁵ Furthermore, moral values in medicine are based on the principle of autonomy, which is the right to respect patients. In addition, there are also the principles of beneficence, non-maleficence, and justice which regulate the best course of action and prevention of bad things relative to patients.

The theorizing of *fiqh maqāṣid* is understood through the theory of divinity as a form of practical values as an effort to understand that Islam is a factual religion that understands the paradigm of Islam and divinity as a whole. At a practical level, contractive values in Islam uphold human values oriented towards fulfilling human interests through state policies and aspects of the actual values of religious goals. As a faith, the religion has values that align with efforts to protect human interests on a policy basis that can fully manifest in protecting all things concerning human needs.⁵⁶

Furthermore, *fiqh maqāṣid* is based on intangible values as universal values of human principles and social ethics. Through *fiqh maqāṣid*, the standard of human dignity is born and cannot be contested by any party, including state and religious authorities. In addition to the aspects related to the realization and protection of human dignity, *fiqh maqāṣid* also recognize standards of fairness, love, and

⁵³ Jagadish Rao Padubidri, Matthew Antony Manoj, "Euthanasia: A Good Death or an Act of Mercy Killing: A Global Scenario."

⁵⁴ Maria Cheng, "'Disturbing': Experts Troubled by Canada's Euthanasia Laws."

⁵⁵ Anneliese Mills, Kristin Bright, & Debbie Selby, "Medical Assistance in Dying and the Meaning of Care: Perspectives of Nurses, Pharmacists, and Social Workers," *Health: An Interdisciplinary Journal for the Social Study of Health, Illness and Medicine* 27, no. 1 (2021).

⁵⁶ Muhammad Thahir Ibn 'Asyur, *Maqasid Al-Syari'ah Al-Islamiyyah* (Tunisia: Dar Sukhun Li al Nashr wa al Tawzi', 2007), 158.

practicality.⁵⁷ The methodology of *fiqh maqasid* embodies the principle of *maqasid al-sharia*, which emphasizes the normative and essential objectives of the texts of the Qur'an and Hadith. The main objective of realizing *maqasid al-sharia* in the Islamic law discourse is to educate (*tahdzib al-fard*) every individual in realizing fairness or justice on earth.⁵⁸ Moreover, in the context of the protection of life, the Qur'an or Hadith provides the foundation of protection for realizing human existence.⁵⁹

In the contemporary world, Islamic law (*fiqh*) is a form of understanding of the *fuqaha'* that has been adapted to the relevant contexts.⁶⁰ This is to realize Islamic law that is adaptive to the conditions of contemporary society. This pattern then gives birth to methodologies with various approaches, including the benefit approach.⁶¹ The development of this Islamic law methodology was pursued to provide an understanding and reconsider the structure of classical Islamic law, which was understood through the context of the current societal situation, which, when used in a contemporary context, does not have proper relevance. Therefore, a methodological approach with an adjusted understanding is a form of progress and is necessary to prove that Islamic law can be elastic, adaptive, and effective.⁶²

In the context of *fiqh maqasid*, euthanasia is an action that overrides common sense as a balance in human life. The overriding of the human mind is a form of negation and non-existence of the *maqasid al-sharia* aspect as a protector of human common sense (*hifdz al-'aql*). In addition to embodying common sense, euthanasia is also a form and proof of the non-fulfillment of religious belief (*hifdz al-din*). Euthanasia as a social symptom and international issue through *fiqh maqasid* studies is a relationship between the state of law and Islamic law (*fiqh*).⁶³ In the context of *fiqh*, euthanasia has implications for eliminating the protection of human common sense, eliminating human dignity, and eliminating human souls.⁶⁴ The absence of these three interests proves the non-fulfillment of *maqasid al-sharia* aspects. While in

⁵⁷ Ahmad Muhtadi Anshor & Muhammad Ngizzul Muttaqin, "The Implementation of Gender-Responsive Fiqh: A Study of Model Application of Women-Friendly and Child Care Village in Post-Covid-19 Pandemic," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 19, no. 1 (2022).

⁵⁸ Zakaria Syafei, "Tracing Maqasid al-Shari'ah In The Fatwas Of Indonesian Council Of Ulama (MUI)," *Journal of Indonesian Islam* 11, no. 1 (2017).

⁵⁹ See Fauzi, *Hak Asasi Manusia Dalam Fikih Kontemporer*.

⁶⁰ Kutbuddin Aibak, *Kajian Fiqh Kontemporer* (Yogyakarta: Kalimedia, 2017).

⁶¹ Abdurrohman Kasdi, "Actualizations Of Maqasid Al-Shariah In Modern Life: Maqasid Al-Shariah Theory As A Method Of The Development Of Islamic Laws And Shariah Economics," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 16, no. 2 (2019).

⁶² Baudouin Dupret, "What Is Islamic Law?: A Praxiological Answer and an Egyptian Case Study," *Theory, Culture & Society* 24, no. 2 (2016).

⁶³ See Emilia Justyna Powell, "Islamic Law States and the International Court of Justice," *Journal of Peace Research* 50, no. 2 (2013), <https://doi.org/10.1177/002234331247027>.

⁶⁴ Ahmad Muhtadi Anshor & Muhammad Ngizzul Muttaqin, "Kebijakan Pemerintah Indonesia Dalam Pencegahan Penyebaran Corona Virus Disease 2019 (Covid-19) Perspektif Maqasid Syari'ah," *Al-Istimbath: Jurnal Hukum Islam* 5, no. 2 (2020).

the aspect of health, chronic disease is necessary in the context of belief in God and seeking responses from the medical world.

In the context of moral philosophy, euthanasia is an act and phenomenon that contradicts society's moral and ethical attitudes. Moreover, conducting euthanasia involves the intervention of other parties, which has implications for voluntary or forced actions. Therefore, based on moral and ethical values and the presence of interventions that might be devoid of a sense of responsibility, euthanasia is feared to endanger the dignity and integrity of humanity. It cannot be understood as the most effective solution in dealing with an illness but as an effort that indirectly undermines moral and ethical values in society.⁶⁵

In the theory of human dignity,⁶⁶ human dignity refers to the value of human beings through personal goals and the social environment.⁶⁷ In the context of patients suffering from a terminal illness or specific conditions, a patient's self-esteem can be realized through efforts to re-show human existence in a way that follows human values. Considering dignity as one of the focal points in implementing euthanasia, a patient who was healthy before the onset of illness and efforts to cure him are fundamental values of human dignity. Patients might feel that their ordinary life dignity is wholly lost and want death as a boon. However, from an ethical perspective, the individual's right to preserve dignity in life is an effort to manifest human dignity most genuinely, even at the risk of death.⁶⁸

Meanwhile, in the context of the state constitution and essential values in religion, it can be understood that realizing human life is a shared obligation between the state and religious institutions.⁶⁹ These state and religious goals are then applied to formulate various state regulations and fatwas in religion, all of which have the essence and purpose of creating stability in human life. On the contrary, if some issues are deemed to threaten human existence, then the state and religion will stand at the forefront to oppose them. Through this argument, it can be understood that state and religious institutions were established to protect humans and humanity.⁷⁰

The structure of realizing benefits through the *maqāṣid al-sharia* approach signals that the most crucial aspect that must be protected is the safety of life, which

⁶⁵ See Amin Abdullah, *Filsafat Etika Islam* (Bandung: Mizan, 2002).

⁶⁶ M.A Âfzali, "Human Dignity and Euthanasia in Islamic Ethics," *Journal of Mazandaran University of Medical Sciences* 20, no. 78 (2010).

⁶⁷ Ehsan Shamsi Gooshki, "Human Dignity And The Right To Die," *Hamad Bin Khalifa University Press Journals* 9 (2014), <https://doi.org/10.5339/qproc.2014.islamicbioethics.9>.

⁶⁸ See Andreas Fontalis, Efthymia Prousalis, & Kunal Kulkarni, "Euthanasia and Assisted Dying: What Is the Current Position and What Are the Key Arguments Informing the Debate?," *Journal of the Royal Society of Medicine* 111, no. 11 (2018).

⁶⁹ Aharon Barak, *Human Dignity: The Constitutional Value and the Constitutional Right* (Inggris: Cambridge University Press, 2015).

⁷⁰ See Akshat Meharia, "Constitutional Standing of Euthanasia and Normative Elements Supporting Euthanasia," *SSRN*, 2020, <https://doi.org/10.2139/ssrn.3724494>.

has implications for the safety of religion. This concept can be applied in formulating the standard to prohibit euthanasia as a crime against a person that eliminates human life, religion and overrides human reason. In such conditions, euthanasia in Medical Assistance in Dying is an act that ignores and goes against the value of *maqasid al-sharia* through the most ethereal structure. Disregarding the protection of life and belief in religion and common sense is one epistemological basis in the *fiqh maqasid* discourse on Medical Assistance in Dying.

Regarding human autonomy, *fiqh maqasid* presents a construction that humans have freedom of life that must be protected. In the context of MAiD, human autonomy refers to the goal of sharia to safeguard human life. It means that the essence of human autonomy is preserving life at all costs. Humans are entirely the object of sharia goals, where all efforts to protect them are a means of realizing *maqasid al-sharia*. Therefore, human autonomy in the context of MAiD means protecting humans against any *mafsadat* towards them.

CONCLUSION

Medical Assistance in Dying (MAiD) through euthanasia is a medical action and procedure to end someone's life. This practice indeed requires stringent legal rules since it concerns human life. From a *fiqh maqasid* perspective, MAiD through the euthanasia procedure has two implications. On the negative side, this has implications for the loss of life, religion, and human dignity. On the positive side, this is a form of anticipation of insecure depressive and suicidal behavior. In *tartib tanazul* (priority or hierarchical scale), protecting *al-nafs* (life) and *al-din* (religion) are the two most critical fundamental interests to be realized. Thus, prohibiting euthanasia and unsafe suicide becomes a domain in protecting lives and strengthening religious beliefs. In addition, safeguarding human dignity is also vital in supporting the protection of life and religion.

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