(2022) 4 CLI 97 – 121

Euthanasia and Advanced Medical Directives in the Perspective of Ethical, Moral, Religious and Legal Issues in Malaysia and under Common Law

MARINA SYAZANA BINTI KAMALRUZAMAN
NURUL IZZAH BT JAFRI
DAVID BAKIT ANAK NUING

ABSTRACT

Whereas the medical industry has advanced significantly in recent years, there is still much debates around the subject on the legalization of euthanasia and advanced medical directives ('AMD'). The uncertainty circulates around four different aspects which are ethical, moral, religious and legal. Especially in Malaysia which the nation consists of multicultural and multiracial with diverse beliefs and religions thus, every of those aspects need to be considered thoroughly. This study aims to depict the historical background of euthanasia and AMD which subsequently, in this study will critically analyses the ethical and moral issue arising from euthanasia and AMD based on philosophical thoughts from different school of thoughts. To understand further, this study also aims to study the religious issues based on different religions that arising from euthanasia and AMD. In another aspect, this study will examine the legal issues arising from euthanasia and AMD and suggest the appropriate legal mechanism through critical analysis. This study is conducted by using doctrinal legal research and comparative methods between jurists' opinions, various religions and comparison between Malaysia and Common Law countries. As a result from this study, it is found that euthanasia and AMD are still not widely accepted in the society and still debatable as a whole. Different opinions between various perspectives such as cultures, beliefs, political and society does influence the acceptance of euthanasia and AMD in the society. While in some Common Law countries, euthanasia is legalized as it is needed to end the person's suffering however in Malaysia, euthanasia is not acceptable as it is related to mercy killing and murder. Therefore, the government need to work alongside with doctors or medical experts by taking account the various aspects in creating a legal framework that is justifiable and fair to the nation in order to legalize euthanasia and AMD in the country.

Keywords: euthanasia, advanced medical directives, AMD, legalization, Malaysia, Common Law.

INTRODUCTION TO EUTHANASIA AND ADVANCED MEDICAL DIRECTIVES

"No person shall be deprived of his life or personal liberty save in accordance with law." – **Article 5(1) of the Federal Constitution of Malaysia.**

The topic of the sanctity of life is one of the most important topics for humans. The issue of sanctity of life is enshrined in the Federal Constitution of Malaysia whereby no individual shall be deprived of their life unless it is being sanctioned by the law. This issue was also being explained in the field of jurisprudence, in particular the field of natural law. The fundamental notion derived from the belief that life is created by God, God is the sole authority over life.[1] Thus, denying a person their life may be deemed as defying God's authority over its creation and killing is only allowed under limited circumstances which are mainly made under the purview of the government's sanction.

In every society worldwide, death has always been sensitive and sometimes a taboo to be discussed among members of society publicly. Death is usually considered taboo as life is usually deemed as sacred particularly among those who strictly adhere to their religious guidance. Euthanasia has always seemed like the opposite of life since the purpose of euthanasia is to end life itself. The word euthanasia can be understood as an act or practice of killing or permitting the death of a hopelessly sick or injured individual in a way that is relatively painless. The word itself is derived from the Greek's whereby "eu " means "well" or "good" and "thanatos"' which means, death. In the literal sense, the word itself can be directly translated as "good death".[2] It is crucial to

differentiate in between the concept of euthanasia and assisted suicide which are mainly a very different concept although the outcome is the same which is death. Euthanasia is mainly a form of "final deed" being undertaken by someone other than the patient itself for ending the patient's life. However, for assisted suicide, it is usually done at the patient's own request and the doctor on the behalf of the patient will administer lethal dose of drugs to terminate the patient's life.

However, despite a rather seeming harmless sounding of its root word, there exist a sinister history behind the use of Euthanasia in its earlier introduction. Throughout the early introduction of euthanasia, there have been a rather evil use of euthanasia towards mankind itself. The practice of euthanizing the common population was very prevalent during World War Two. This is particularly a quite serious affair in Germany at that time whereby the ruling regime was National Socialist Party or famously known as Nazi party. At the time of Nazi's regime, the concept of racial supremacy was very prevalent concept particularly among the ruling class. Such a concept was being actively promoted by the government by its machinery, in particular the Ministry of Propaganda. The question to ponder upon is the relation in between euthanasia and the Nazi's regime concepts of racial supremacy. In general, during the regime's brutal, euthanasia was being used as method to eradicate their own citizen the government deemed as unwanted and weak. This happened particularly to those having mental problems whom the government deemed as not productive to society. One of the major reasons over the act of euthanizing was seemingly accepted during Nazi regime was due to the positivistic nature of law which was very prevalent during that point of time.

One of the main supporters of euthanasia at that time is Binding and Hoche. Binding and Hoche co-authored the book called "Life Unworthy of Life" or in the German native language commonly known as "Lebensunwertes Leben".[3] In the book, the use of euthanasia as an end to someone who was deemed unworthy was being justified. A person who is unworthy of life here mainly refers to those with mental illness, who were born with mental illness and acquired the illness in the later part of their life. Their mental condition became the justification for the authors to euthanize individuals inhibiting those problems as they were mainly deemed a burden to society in general.[4] With regards to the permission to euthanize the individual, it was not given any legal justification as there were being laid down the procedures needed to be undertaken. Even though the author seemingly approves euthanasia to end life, it was no means serve as legitimate justification for the Nazi regime to euthanize certain quartersof the populace for example the extermination of the Jewish people. In fact, the Nazi'seuthanisation programs are severely lacking in terms of consent.

Moving on to the current situation on regards to the euthanasia, there had been growing trend in accepting the use of it to ease the suffering endured by patients with an incurable illness. There were also attempts made in the United Kingdom, whereby a bill lobbied by the Euthanasia Society of the United Kingdom was being presented in their parliament but was being rejected. In some extreme circumstances, some countries even legalised the use of active euthanasia. The proponent of the legalization of the euthanasia is particularly eminent in the western part of the globe in the Europe mainly in Belgium, The Netherlands and Switzerland. Under such legalization, the use of euthanasia is allowed. Any medical personnel conducting such procedures will not be liable under any provision of the country criminal law, however their steps and procedure need to be undertaken beforehand and considering the type of euthanasia conducted.

Currently there exist few types of euthanasia which are mainly active euthanasia, passive euthanasia, voluntary euthanasia, non-voluntary euthanasia, and involuntary euthanasia (Diaconescu 2012). It is important to observe the difference between the five types of the euthanasia with the methods the euthanasia was being administered. Active euthanasia is mainly an act where the death of the patient is actively induced by the doctors by giving a lethal dose opioid meanwhile in comparison passive euthanasia do not involve any use of medication to induce the death but instead it is being done by deliberately withholding the patient from treatment which is motivated for the best interest of the person who dies.[5]

On the topics of voluntary, non-voluntary euthanasia and involuntary euthanasia, the main difference here is the consent given by the patient itself.[6] As the word the appears to be presenting, voluntary euthanasia requires the patient's consent while non-voluntary the consent was being given person other than the patient itself . Consent given in non-voluntary euthanasia were usually given off by the guardian or parents of a child who is unable to give consent as provided by law. While involuntary euthanasia is a more extreme from since the consent was being withhold entirely as the doctor has the final says over the patient life or death decision.[7]

In the practice of euthanasia, the notion of patient freedom of choice or in other words patient autonomy is also one of its major considerations. The concept of autonomy is being manifested in the introduction of Advance Medical Directives (AMD). AMD can be understood as the written or oral statements made with the intention to govern the healthcare decision-making of the patient regardless of whether the decision is positive or negative (Goffin 2012). AMD can be seen as a living will which allows a mentally competent adult to control their course of medical treatment and it usually contains instructions for the physician to discontinue or refrain from certain medical procedures as provided in the form (Peters 1987). The legal document will allow the people to choose what procedure they prefer in the event of their incapacity (Dow 2010. In general there are two forms of AMD being practiced which are living wills and lasting (or durable) power of attorney for health care or in other words a health care proxy (Andorno 2007).

Throughout this article, there will be few issues relating euthanasia and the application of AMD as complementary in the practice of euthanasia will be highlighted. The issue mainly will be touching on the legality of the ethical, jurisprudential, moral, religion and legal matter where it will be analyzing legal provisions in other jurisdictions. This important to have deeper understanding for the issue of euthanasia and the use AMD complementing the practice of euthanasia which is by providing and detailed analysis over the matter of euthanasia and at the end of the article will have a conclusion on the matter.

ETHICAL AND MORAL PERSPECTIVE

2.1 Issue in the aspect of ethical and moral perspective

Ethics and moral dilemmas of euthanasia is not foreign issue to the world. Questions such as is it right to take away a patient's life due to empathy to the suffering of the patient? Under what condition is it justifiable? And how does one differentiate the moral value between taking away a patient's life or allowing them to die? These arguments center around the difference of perspective that people apply towards their life in the context of the meaning people have about the definition and virtue of human existence. An issue also was raised that euthanasia might be exploit for ill intention like homicide.

The term "mercy killing" always has been used to define euthanasia, because

of empathy is the only reason that drives the decision from seeing a patient who is hopeless and agonized by the endless pain (Nargus Ebrahimi 2007). Euthanasia includes multiple ways to end someone's life either by injecting lethal substance into the patient's body or by letting the patient die without any help to prolong the life expectancy. This excludes the situation where a patient dies due to refusal of extraordinarily burdensome treatment and providing drugs to the patient for pain relief, even though the substance in the drug highly risks the patient's life. This is simply because it diverted from the sole intention of killing due to mercy from seeing the patient's suffering.

2.2 Jurist opinions in regard to Euthanasia and Morality

Death is not an unfamiliar thing to philosophers. Pythagorean philosophers believed in the soul's transmigration and were opposed to a voluntary end to life since all life is sacred, according to a mixture of intellectual and theological ideas about life (JD Papadimitrou). Surgical procedures were also prohibited for the same reason.

Plato, one of the great figures in philosophy in antiquity, perceived in certain cases that there were no successful treatments, and the patient could be diagnosed as dying, the physician could refuse to handle the treatment, since it would not be beneficial to the person or to society (JD Papadimitrou). Plato, who believed in the harmony of life, as opposed to what is now known as active euthanasia. In his opinion, he recommends that doctors should be punished by death if they contribute to the termination of life by providing any type of medicine. Furthermore, he opposes a man who commits suicide because it is against the gods' will and hence forbidden.

Despite the fact that Plato believes that suicide victims should be buried in unmarked, isolated graves in isolated regions, he is sympathetic to individuals who are in excruciating suffering. He acknowledges the desperate individual's right to commit suicide when confronted with inescapable hardship as a result of a life that has been less than ideal. Plato takes into account such people's insurmountable misery. In *Laws IV*, Plato declares that these individuals should be given some relief. Suicide is the outcome of 'a spirit of slothful and abject cowardice"' under all other conditions. Plato writes in the *Republic*, patients who are unable to live a normal life owing to their suffering should not be treated for the sake of extending their lives. Plato is clearly opposed to active euthanasia, but he allows passive euthanasia. In *Republic*, Plato quotes Asclepius, suggesting that prolonging the pain of a man who is neither beneficial to himself nor to society is unreasonable (JD Papadimitrou).

2.3 Comparison between Naturalism and Utilitarianism in regards to Euthanasia

The underlying issue here is to compare between schools of thoughts to find a solid virtue or justification to the bigger question which is death or pain. A few of the famous school of thoughts that would later be elaborate are Utilitarianism, besides Naturalist that has already been explained earlier from Plato point of view who was a Naturalist. Euthanasia should be ethically outlawed according to Naturalists, since it is a type of homicide and a type of foul play in society. the absurdity of believing that a person may gain from their own death, the notion that a human life's worth is not reliant on its quality, and the substantial ethical gap between willfully causing death and allowing death to happen.

Utilitarianism, on the other hand, gives more liberty to the issue. Utilitarianism is a moral philosophy that adopts Utility or the Principle of the Greatest Happiness. From a utilitarian standpoint, an act or task must be done for the greater benefit. Utilitarianism states that

anything is good or excellent if it provides the greatest amount of utility to the greatest number of people.[8] Jeremy Bentham introduces the concept of Utility which carries the meaning that the property of something whereby it tends to produce benefit, advantage, pleasure, good, or happiness to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered. The happiness or dissatisfaction that emerges from a specific action is measured by utility (Jamesa 2016).

When this is applied or taken from the perspective of an ill patient, the question raises on whether the patient should be allowed relief from their suffering for their own pleasure or should continue to endure for the happiness of their loved ones. Based on Utilitarianist, euthanasia will at the same time boost happiness and decrease pain. In active euthanasia, the doctor performs a procedure which not only the end result is painless, but the action itself as well. For the patient, active euthanasia is faster and less painful than passive euthanasia thus, the patient who has been suffering with the terminal ill will be free from the pain. The end result of causing painless death to the patient promotes utility by eliminating the pain and gives happiness to the patient, their family and society (Jamesa 2016).

Natural law is concerned with issues that affect people's lives. As quoted from another Naturalist philosopher, John Finnis, stated that *"a first basic value, corresponding to the drive for self-preservation, is the value of life"*. In other words, Natural law against euthanasia as it involves taking away a person's life and it is the act the contravene to the nature thus, a person's life is the highest virtue based on Natural Law. However, Utilitarianism on the other hand, achieving happiness to all parties is what matters the most based on the Principle of the Greatest Happiness. This is because Utilitarianism believes that a terminally ill patient will impact their ability to go back to their daily lives and to work which the patient could no longer contribute to their family and society thus, affecting the overall happiness. Therefore, based on these two school of thoughts, it can be seen that euthanasia is still debatable issue based on moral perspective as it relates to the society belief on rights and wrongs.

2.4 Ethical Issue on Euthanasia and AMD

There have been several reasons made in favour of and against euthanasia. This we will have to look in a deeper point of view from the rights-based argument on the morality of the situation. The reasoning for legalization is based on autonomy and is linked to arguments about the quality of life as well as the rejection of life's sanctity. This is because autonomy and mercy are considered as the pre-conditions to allow euthanasia otherwise, involuntary euthanasia could be legal in some cases (SH Tan 2017). On the basis of autonomy and self-determination, proponents of euthanasia say that a patient has the right to choose when and how they should die (Nargus Ebrahimi 2012).

Autonomy refers to the idea that a patient has the right to make decisions about their own life as long as they do not damage others. Proponents of euthanasia believe that autonomy refers to an individual's right to manage their own body and that they should be able to choose how and when they die. Furthermore, it is argued that we have a right to make our own decisions as well as a right to a dignified death as part of our human rights which seems ethical and very significant to the morality of an individual (L Bartels 2010). It is argued that euthanasia will do good more than damage by alleviating a patient of their pain and suffering (Nargus Ebrahimi 2012). Euthanasia enthusiasts, James Rachels, argue that society's fundamental moral values of compassion and mercy demand no patient be allowed to suffer unnecessarily, and that mercy killing should be permitted (J Rachels 1975).

Regardless of the patient's agreement, society considers an activity that has the primary goal of murdering another person to be fundamentally immoral. Active voluntary euthanasia is described by Callahan as consenting adult killing (Callahen D 1992). While proponents of euthanasia use the word "autonomy" which also appears in anti-euthanasia arguments. The principle of autonomy, according to Kant and Mill, prevents the willful termination of the conditions essential for autonomy, which would occur by ending one's life. It has also been suggested that, because most terminally ill patients are not of sound or logical mind, patients' requests for euthanasia are seldom autonomous (Nargus Ebrahimi 2012).

Nonetheless, euthanasia could serve as an ethical and unethical purpose depending on the situation given (Abakare 2021). As such, if people use euthanasia to kill other people for selfish purpose, then that is unethical. However, if a patient is suffering with any terminal disease which will burden the patient’s family in terms of financial, they might be opting to die and euthanasia is best possible solution available. Nevertheless, the slippery slope argument in regard to euthanasia is circulating to the intention of the patient’s life and also the consent or request by the ill patient. This is because if euthanasia is legalized, there is a probability of abusing this action as good intention might be the cause of the bad intention in a similar case. Thus, this matter can be related to the issue of AMD whereby AMD has sought to achieve the goal of preserving the patient’s right to self-determination at any time he or she is unable or lacks the immediate capacity to state his or her wishes for medical treatment.

There are four interrelated ethical issues that arises from AMD which are (i) when a patient loses their ability to make decisions, patients should be able to express their wishes about treatment in documents that in the future might be binding on doctors and other medical care provider, (ii) when it comes to treatment decisions involving hypothetical circumstances that are not experienced by patients at the time these documents are signed, patients' wishes should be consistent throughout time and not modified when the issue is really addressed., (iii) Patients should be urged to carry out AMD since it is expected that responsible individuals should carry out AMD and lastly, (iv) if AMD had not been performed prior to admission to the hospital, patients should be urged to do so at that time (EH Loewy 1998). This is because it can be assumed that an adult patient has the right to express their wishes while they still have the capacity to make such decisions. However, a serious issue arises regarding Dementia patients. Dementia is one of the leading causes of disability and reliance among the elderly across the world. It creates significant individual and family distress, and it represents an enormous burden for dementia patients, their carers and families, as well as society as a whole (C Porteri 2018).

Scholars have questioned the significance of AMD in dementia, using the personal identity argument. According to the personal identity argument, when dementia patients become incompetent, they may become a different and new person, while the previous person, the person they were, is no longer alive. The AMD given by the previous person cannot be applied to the person they become in this scenario, for the simple reason that one person's AMD has no moral authority to decide treatment decisions for another. This has been documented by Firlik through case studies, such as Mrs. Margo, who, despite Alzheimer's illness, likes her life and appears to be a very happy lady. An assumption made by Dworkin, a philosopher, that Margo signed a legal statement while she was fully competent, dictating that if she had Alzheimer's disease, she would not be treated or even killed if she contracted any other severe

illness (C Porteri 2018). In this situation of competing interests, one could reasonably ask if the patient's real interests should take precedence over prior ones, and advance directives should be ignored.

However, according to Dworkin, all of a demented patient's current and prior interests are experienced rather than critical. Critical interests, in his opinion, are those that give our lives purpose and coherence; they are second-order interests that are far more essential for the person. As a result, AMD that protects people' vital interests should be respected, in this opinion (C Porteri 2018). The situation that a person who is diagnosed with Dementia is lacking in the capacity to make self-decision would enable them to revise their earlier decision but still, it needs to be treated as the same as other diseases and give them the rights to be heard and rights to be explained. Thus, it serves the purpose of carrying out an AMD which is to prevent interests other than those of the earlier competent person from taking precedence.

Therefore, euthanasia and AMD could be a different matter but there is a thin line which make them inter-related. As such, euthanasia is regarding to an action of taking someone's life or an ill-patient who has no chance to survive or to lessen the financial burden and the burden of their family and society as a whole. Meanwhile, AMD is a legal document to inform the doctor that the patient does not wish any extraordinary life-sustaining treatment to be used to prolong the patient's life in the situation where the patient becomes unconscious or severely ill. Thus, the ethical and moral issue of euthanasia and AMD in general is regarding to the value of one's life and the competency of one in deciding for their life when they are facing terminal ill situation.

RELIGIOUS PERSPECTIVE

3.1 Islamic Religion

Euthanasia or *'taisir al-maut'* or '*qatalur-rahmah'* in Arabic, is referred to 'mercy killing' (Mahmud Adesina Ayuba 2016). Essentially, to determine euthanasia from Islamic perspective, we must look upon the principle of Islamic jurisprudence or Shariah Law, which derived from two types of sources (Noor Akmal 2021). The first source are primary sources, which are Al-Qur'an and the Hadith of Prophet Muhammad SAW in which both sources provide the guiding principle as well as rules and regulation which cover all aspect of human way of life. Meanwhile, the second source is secondary sources which includes *Ijtihad* or opinion of the *ulamak*. Hence, every issue in Islam must be examined and determined on the basis founded upon these two sources, especially the primary sources.

Furthermore, Islam hold strongly on five fundamental objectives of Shariah; or in Arabic known as *Maqasid Shariah*, as this principle prescribe a guideline as well as parameter for the life of Muslim (Noor Akmal 2021). One of the objectives demanded is preservation of the sanctity of life. Islam deeply acknowledge and recognized the concept of Sovereignty of God, hence uphold the principle of sanctity of life as a dive trust (Noor Akmal 2021). The Muslim thoroughly believed that Allah (God) has an ultimate power to control over death of all His creatures as He is the absolute life giver. This is based on Surah Al-Mulk of the Qur'an, Verse 67:2 of the Holy Qur'an which stated as follows:

> *He Who created death and life, that He may try which of you is best in deed.*[9]

Through this verse, we can deduce two important points which are: (1) death has priority over life as it leads to eternal life, and (2) The meaning of purpose Allah

gives us life is to strive for good doings in preparation for life after death (Nazeem 1996). Hence, the follower of Islam or Muslims are compel to believe or hold strongly on the concept of awareness and acceptance of death as part of God's will. This is based on Surah Al-Hajj verse 66:22 and Surah Al-Baqarah verse 243:22, which stated as follows:

Surah Al Hajj, verse 66

"And He It is Who gives you life, and He will cause you to die, then bring you to life (again). Most surely humans are indeed ungrateful."[10]

Surah Al-Baqarah, verse 243

"Have you not seen those who went forth from their homes, for fear of death and they were thousands. Yet Allah said to them: "Die" (and they died); again He gave them life. Truly, Allah is full of Grace to mankind but most of them are not grateful."[11]

Islam prohibit the act of murder as it is considered as a crime. This can be seen through Surah Al-Maidah, verse 5:32 which stated as follows:

"He who killed a human being without the latter being guilty of killing another or of spreading disorder in the land should be looked upon as if he killed all of mankind."[12]

The verses on Holy Al-Quran clearly stated the importance of preservation of one's life. Simply, a life of each human is unconditional value, hence respect must be given to human's life notwithstanding any situations or circumstances, such as euthanasia. Euthanasia remain prohibited although the patient have conferred his full consent himself or the next of the kin (Sayed Sikandar Shah Haneef 1996). Eventually, the medical practioners who conduct an act of euthanasia over an ailing patients is considered as playing God, as the date as well as time of that patient's death has been decided earlier, rather than leaving the death of the patient on the hand of Allah. Indeed, Al-Quran through Surah Al-Nahl verse 16:61, Surah An-Nisa verse 4:29 and Surah Ali-Imran verse 3:145, as follows:

Surah Al-Nahl, Verse 16:61

"…and when their term has come, they will not remain behind an hour, nor will they precede it"[13]

Surah An-Nisa, Verse 4:29

"You shall not kill yourselves"[14]

Surah Ali Imran, Verse 3:145

"…and it is not possible for one to die except by the permission of Allah at a decree determined."[15]

Moreover, a few of Hadith of Prophet Muhammad (SAW) lay down the gravity of the consequences of conducting murder as well as an act of suicide (which both are considered as an important element in euthanasia). Firstly, Anas narrated that Prophet Muhammad SAW; as he observed and said: *"Associating anyone with Allah, disobedience to parents, killing person and false utterance," are considered as acts of major sins in Islam.* (Sahih Al-Bukhari, Volume 1, Number 159).[16]Secondly, Jundab narrated that Prophet Muhammad SAW once said: "*A man was inflicted with wounds and he committed suicide, and so Allah said: My slave has caused death on himself hurriedly, so I forbid Paradise for him."* (Sahih Al-Bukhari, Volume 2, Book 23, Number 445).[17]

Thus, through this implied interpretation of the verses in Al-Quran as well as the Hadith of Prophet Muhammad,

we can deduce that fact that the act of euthanasia particularly active euthanasia is prohibited in Islam. On the other hand, Islam allowed the practice of passive euthanasia subject to certain conditions and circumstances, on the basis that every patient are allowed to withhold, withdraw, discontinue or even refuse the medical treatment or medication that seemingly useless. Even the muslim scholars namely Al-Qardawi, Tantawi and Uthayin has conduct *ijtihad* in which they differentiate between active and passive euthanasia.

Yusuf Al-Qaradawi in his opinion views that active euthanasia or in Arabic known as qatalur-rahmah al-ijabi is clearly haram and prohibited, while passive euthanasia or in Arabic known as qatalur-rahmah al-salibi is permitted in some circumstances recommended for the sake of the comfort of patient as well as the relief of his entire family. Muhammad Salih Al-Munajjid in his opinion stated that patient is permitted to discontinuing a non-beneficial treatment that is likely indeed causing suffering, yet the patient must first and foremost put all his trust in Allah an seek refuge in Him as He is the Healer, and no other Healer besides Allah himself. Nevertheless, it must be point out that Islam did not have any justification to allow any types of murder for the purpose of relieving the pain and suffering, as Islam hold on the concept that all creatures are created by Allah to experience pain, difficulties, and hardship. Accordingly, the Holy Al-Quran stated as follows:

Surah Ali Imran, Verse 3:186

"(Believers!) You will certainly be put to test in respect of your properties and lives…"[18]

Al-Baqarah, Verse 2:155

"…and We will most certainly try (test) you with fear and hunger and loss of property and lives and fruits. And give glad tidings to the patient."[19]

In conclusion, active euthanasia is clearly prohibited in Islam while passive euthanasia is allowed subject to some conditions and circumstances.

3.2 Christianity

In Christianity, there are various religious communions namely Protestants, Roman Catholics, Greek Orthodox Christians, Lutherans as well as Anglicans (Engelhardt 2005). Each of these religious communions have different views with regards to end of life decision or euthanasia. Nonetheless, for the purpose of this discussion, the focus would only be on two largest denominations which are Protestantism and Catholicism. Both of these denominations were chosen as they adopted the traditional Christian's perspective; simply both of them were the longest communions that have ever existed in Christianity community.

Traditional Christianity holds the view that *"life is considered as a gift from God, in which it must be valued regardless of age, creed, sex or religion"*. Subsequently, one must not take any step to end the valuable life given to each one of them. This principle is applied generally any circumstances regardless of the situation where a patients explicitly requested the medical practitioners to end his or her life; such as in cases involved voluntary euthanasia and assisted suicide (Keown 2005). In light of the Christian dictum on the topic of Inviolability of life that is discussed by the House of Lord in the Committee of Medical Ethics, it was decided that *"the deliberate taking of one life is strictly forbidden except in self-defence or the legitimate defence of the others"*. Hence, an act of ending ones life or euthanasia is considered as a blatant flout of defying the fundamental principle of sanctity of life which the majority Christians holds strongly into.

Nevertheless, this does not mean that life must be preserved at all cost. For example, the Christianity faith still allowed the use of sedation and other palliative care in order to minimize or reduce the patient's pain and distress, even if that medicine or medical procedure incidentally sped up the dying process. Consequently, the more receptive or open-minded attitudes are found with regards to other types of euthanasia. As such, the Catholic group and most of Protestant groups started to allow the act of withholding and withdrawing of futile or pointless treatment (passive eutahanasia) if it was considered as a dangerous, burdensome, extraordinary or most likely will not in line with the expected outcome (disproportionate) (Bulow 2008). To add on, this position even applies in situations where a patient is incapable of interacting and performing his social or moral obligations (Markwell 2005).

Traditional Christianity also stresses on the spiritual goal of eternal salvation as well as experiencing death with repentance in order to achieve a good life. Catholicism expounded this core principle which resulted in the establishment of two basic elements of Catholic bioethics which are (1) dignity of humans and (2) interconnectedness of every human to promote just social order (Engalhardt 2005). As God has dignity beyond everything and anything, humans who fear the Almighty God have to choose wisely within a free and informed conscience. The relationship between a doctor and patient must exist in a form of mutual trust and respect in which the later trusts the former's intention was carried out in good faith. The doctor, on the other hand, tries to understand the patient's wishes. Simply, this implies that the doctor is obliged to provide or inform the patient as well as their family members the necessary advice and medical information. Ultimately, the patient is given the decision to choose a course of action or treatment that is best aligned with his belief and personal values. Hence, the Christianity thoughts also emphasized on the patient's right of self-determination.

Nonetheless, it must be reminded that this right of self-determination is not an absolute right. It is subjected to the restrictions namely the recognition of moral value which particularly the sanctity of life as well as non-beneficial or harmful demands of the patient (Markwell H 2005). Simply, the demand of euthanasia and assisted suicide is considered morally wrong. Meanwhile, Christianity permitted the patient refusal to receive treatment after considering various factors such as the cost, risk, benefit, burden of implementing the method as well as patient religious perspective with regards to that treatment (Kuhse 1981).

In conclusion, majority of Christianity and eventually a traditional Christianity totally opposed all types of euthanasia regardless whether it is an active or passive euthanasia. Meanwhile, some sect in Protestant group clearly condemned active euthanasia yet still accept or allowed passive euthanasia.

3.3 Buddhism

The traditional Buddhist thought holds strictly on two most core values namely compassion and respect for life (Bulow 2008). Accordingly, Kwoen in his book "End of Life: The Buddhist View" stated *"the buddhist faith believes that life begins at conception and ends at death: in the interval between these events, the individual is entitled to full moral respect, regardless of the stage of psychological development attained or the mental capacities enjoyed."*(Keown 2005). Simply, Buddhism believes that life is inviolate and derives from the spiritual purpose which is to attain enlightenment or nirvana where one is said to be in a perfect state of happiness.

Subsequently, the concept of nirvana is linked with the two main core principles in Buddhism are rebirth and

karma (Lesco 1986). The paragraph below clearly explain with regards to karma in Buddhist teaching:

> *"The cause of suffering is said to be negative karma and delusion. In this case, karma refers to the actions that leave an imprint of an according nature upon the mind-stream. A negative action is defined simply as any action that has suffering as its result, and conversely a positive action as any action having happiness as its result. Both positive and negative actions leave karmic instincts on the mind, instincts that lie dormant within us until one day the appropriate conditions manifest to activate them. If the ripened instinct is positive, one experiences happiness; if negative, one experiences suffering.*
>
> *Karma has four main characteristics. The first is its increasing effect: goodness heralds further goodness and evil heralds further evil. Secondly, karma is definite in the long run, goodness always produces joy and negativity always produces suffering. Thirdly, one never experiences a joy or sorrow that does not have an according karmic cause. And lastly, the karmic seeds that are placed on the mind at the time of an action will never lose their potency even in a hundred million lifetimes, but will lie dormant within the mind until one day when the conditions that activate them appear."*

While Christianity believes the concept of one lifetime in the existence of one person, Buddhism on the other hand holds to the concept of multiple lifetime where every person must go through a process of rebirth and reincarnation until they attain the state of enlightenment or nirvana. The rebirth and reincarnation in the next life depends upon the morality of their past action. For example, if they spent their current life by performing good deeds, this will ensure a good moral status at their rebirth in their next life. Meanwhile, if they spent their current life immorally, they will suffer undesirable outcomes of their reincarnation which is karma.

With regards to end-of-life decisions, Buddhist teaching totally prohibited it under any situation or circumstances. As such, the sources of reference for Buddhist ethics which is the third precept of Vinaya clearly express prohibition on the destruction of one's life (Nelson 2012). Simply, this strict rule is not even subjected to any exception including the patient autonomy. Nonetheless, this moral obligation in Buddhist teaching does not mean that life must be maintained and protected at all cost as the reality is human's life is not infinite and death is certain and inevitable. Meanwhile, with regards to refusal of medical treatment, the Buddhist teaching strictly measures on the basis of the aim or motive of the patient's conduct. If the patient makes the death as his aim, hence his or her conduct; refusal of medical treatment is considered as an offence. On the other hand, it is legitimate if the patient refuses to get medical treatment on the basis that he or she accepts that the recovery is grim and death is inevitable. Hence, Buddhist teaching strictly forbids intentional hastening of death but at the same time does not require for life to be prolonged.

Consequently, Buddhism believes that the dying process includes two main things: (1) the death with an unclouded mind as it will lead to a better rebirth and reincarnation in the next life; as well as (2) the repetition of experience of death that will occur many times. Both of these concepts have significance in terms of end of life decisions, namely the pain management, where the Buddhist concern is to maintain mental and sensory clarity at all times even during the experience of

death (Toner 2003). As such, an issue of the level of sedation during the procedure of euthanasia will be raised up, simply because the idea of being put into deep sleep is not accepted or acknowledge by the Buddhist patient (Keown 2005). Buddhist patient who holds strongly on the concept of better reincarnation will wish to maintained a clear mind and remain conscious during the procedure of euthanasia. Meanwhile, with regards to procedure of passive euthanasia involving artificial nutrition and hydration, the Buddhist on the view that life sustaining support cannot be stopped or discontinue even if the patient remain in vegetative state. To do so would be arbitrary and unjust for the patient.

3.4 Hinduism

Hindu faith are quite similar with Buddhism teaching in the sense that (1) both have no central doctrinal authority and (2) both believe in the concept of *karma* (Bulow 2008). The difference between the concept of karma in Buddhism and Hinduism is the spiritual goal in which the latter is with regards to a liberation from the cycle of rebirth by attaining moksha (Inbadas 2018). Simply moksha is attained when a person becomes one with their deity namely Brahman.

Generally, Hinduism prohibit active euthanasia as they believe that it will resulted to bad karma and threatening the state of reincarnation (atman). [21]Nonetheless this rule is subjected to an exception particularly in cases involving those suffering from terminal illness. Simply, in that circumstances, Hinduism permit prayopavesha in which patient is allowed to refuse water or food.

The concept of prayopavesha is to be differentiate with suicide that is committed due to selfish reasoning, in which the former is subjected to some conditions as followed:

a) Death appears imminent or the condition is so bad that none life's pleasures are left;
b) Inability to perform normal bodily purification;
c) The decision is publicly declared; and
d) The action must be done under community regulation.

3.5 Critical Analysis

Through our discussion, we can conclude that major of religion in Malaysia has the same view and perspective with regards to life; simply life is to be treated and cannot intend to be put an end; as such in the case of euthanasia. Nevertheless, neither religion discussed above imposed a moral obligation that life must be maintained and protected at all cost, as the reality is human's life is not infinite and death is certain and inevitable. Therefore, it is not only important for the medical practitioners to gather information as well as evaluate thoroughly a patient's spiritual and religious belief, but at the same time improve the communication between them (medical practitioners) with their patient. If adequate and effective communication can be achieved, hence any misunderstanding and conflict can be minimized.

LEGAL PERSPECTIVE

4.1 Euthanasia: Common Law countries

Issues regarding euthanasia currently gained more attention and debates globally. This is particularly in the western hemisphere in European countries and to some extent in the American continent. The debate about the matters is rather dull in the Eastern Hemisphere. Much of the progress was being led by European countries, in particular the Netherlands which already have dedicated legislatures to govern the matters. This disparity in the view regarding and acceptance of euthanasia is most likely due to the difference in social

and political context of these two societies. Therefore, in this part the analysis will be a slight biased against as most of countries that have legislative measure for euthanasia is in the western world.

Common law jurisdiction around the world which also include the United States of America, Canada and Australia all had attempted to introduce euthanasia bill into their legal system. In the United Kingdom or to be specific England and Wales which practiced the common law legal system which also served as the basis of the Malaysian legal system as well. Till date, there were effort to introduce legislation or bill to regulate euthanasia. Historically speaking, there had been an early effort to introduce bills touching on euthanasia and the effort was being made through the lobby effort made by the Euthanasia Society but it was struck down in the House of Lords (Williams 1965). The most recent effort was being made through the unsuccessful introduction of bills such as Patient (Assisted Dying) Bill in 2003, Assisted Dying for the Terminally Ill Bill in 2004-2005 and the Coroners and Justice Bill-Amendment Bill in 2009 (Downie J 2016). Based on numerous unsuccessful attempts to pass such a bill, the legislature in the UK seemed to be quite reluctant in reforming euthanasia related laws which might be probably due to the lack political will enacting such law and it is related to the public view during that point of time (Grubb 2001).

Despite the fact in the United Kingdom's legislature had not pushed for euthanasia based law, there seem to be progress made in the country's prosecution as there were efforts made to establish a guideline for the prosecution for cases relating to assisted suicide. This effort can be shown from the issuance of Deputy Public Prosecutor (DPP) of *"Policy for Prosecutorsin Respect of Cases of Encouraging or Assisting Suicide"*. This policy was to compliment the **Suicide Act 1961**. The establishment of the policy will be a form of gatekeeping made by the prosecution department in prosecuting person for cases relating to assisted suicide. This development of the policy within the DPP was mainly due to the decision laid down in the case of *R (on the application of Purdy) v Director of Public Prosecutions reported at [2009]* which laid down the requirement whereby DPP to clarify what his position is as to the factors that he regards as relevant for and against prosecution in cases of encouraging and assisting suicide. Nevertheless, despite the introduction of such policy it does not change the fact that United Kingdom is still lacked the will to introduce reforms in euthanasia related matters.

However, despite seemingly unsuccessful efforts made in the United Kingdom to introduce such a bill, the attitude was quite different in yet another common law jurisdiction across the Atlantic which is the United States. The attitude was different between the federal level legislature and state level. In the case of *Washington v Glucksberg*,[22] the Supreme Court held that assisted suicide is not a form of fundamental liberty protected by the due process clause of the Constitution of the United States of America. The introduction of the bill was unfortunately not being enacted at the federal level but was being introduced by state legislatures. The states were mainly Oregon, Washington and Montana with Oregon become the first state in the United State to legalized physician assisted suicide (PAS). The state of Oregon made such an effort via the introduction of **Death with Dignity Act 1997** which allows terminally ill citizens (Hoffman S 2013). The introduction of such bill can be seen as a positive development in euthanasia related law in the United States even though it was not being introduced in the federal level since navigating such legislation in a federal requires a stronger support and will politically.

4.2 Euthanasia in The Netherland's legal system

The development of euthanasia related law in the European continent particularly The Netherlands can be served as major point of reference for the development of a successful and effective law and policy regarding euthanasia. This is largely because The Netherlands had successfully enacted laws touching on euthanasia which had effectively legalised euthanasia in the country. The shift in the society acceptance and point of view on regards to the euthanasia can be seen in the electoral changes that happened. Furthermore, the shift was also complemented by the lobbying and support made by the Royal Dutch Medical Association. In fact, such effort made The Netherland as one of the first country that allowed euthanasia to be legalised.

The effort to legalize was a herculean task as it took decades for the law to be accepted and took form. Society acceptance over the matter was also crucial in making the law become acceptable, as based on society acceptance and their demands provided the basis for a political party to bring such an issue into the legislature. In other words, such societal attitudes gave the politicians political will to champion such issues. A critical point is needed to be examined and be acknowledged in the development of the Euthanasia in the country which is, the court in the Netherlands technically started the move to make euthanasia acceptable to the mainstream. This move started at first with the judiciary steps to allow practicing physicians to go unpunished provided the process followed a specific guideline laid down (Bradbury 2003).

The steps and efforts taken by the Netherlands judiciary branch can be seen in the decisions taken by the courts in some of the cases being decided. There were few legal decisions that had positively implications towards the development of euthanasia. In the year of 1973, Dutch court in Leeuwarden had ruled that active voluntary euthanasia is not a punishable offense if specific condition were being made (Julie 1992). In the case the court held that there fiveconditions needed to be satisfied prior administering the euthanasia which are: patient's illness must be incurable; the patient must consider the suffering is physically or spiritually intolerable; such request must be expressed in a written will; the physician in-charge must make medical determination that dying phase has set in; and most importantly decision must be made upon consultation with the physician or even a specialist.

Nevertheless, one critical point needed to be point out is the Netherland did not outrightly abolished provisions against euthanasia in their Penal Code. Euthanasia remained a crime in the Penal Code (Leenen 2001). The legislative move with the introduction of the **Termination of life on Request and Assisted Suicide (Review procedures) Act** provides a procedural and substantive measures on regards to euthanasia. With the introduction of the provision effectively made the euthanasia effectively legal in the country with such enactment of statutes. The move to legislate a specific procedure for the physician to conduct euthanasia towards its patient as it the law provided oversight for such procedures to occurs by having a special committee to review the procedure whilst the legislative measure gave the physician to escape criminal liability granted that they complied with the procedure.

4.3 Advance Medical Directives in Other Jurisdiction

The concept of patient's autonomy formed one of the key pillars in the ethical practice of euthanasia. Here, advance medical directives (AMD) served as the key mechanism for the process of conducting euthanasia as it served as a will for the patient giving their physician directives when conducting medical procedures.

Article 8 of the **European Convention of Human Rights (ECHR)** clearly stated that everyone shall has the right to respect private life of an individual and this extended to public authority except for in the interest of national security, public safety, economic well-being of the country, for the preservation of disorder or crime, for the protection of health or morals or for the protection of the rights and the freedoms of others. The particular provision of the convention can be seen as affirming the need
respecting the notion of self-determination and personal autonomy. Similarly, the concept of respecting the patient's autonomy can be seen in Europe's Convention of Human Rights and Biomedicine. Such a concept can be seen in **Article 5 of the Convention** whereby it states that:

> *An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.*
> *This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time.*

Under the convention the right of the patient to have autonomy was being acknowledged as the patient has the right to have informed consent and they may have the right to withdraw such consent. Therefore, in this kind of situation, AMD will be in good use as it mainly functions as the living wills which allow a person to express their preferences and it also has the mechanism to appoint a "health proxy" to make medical decisions on their behalf (Roberto Andorno 2007). Nevertheless, the protections were only applicable to those who can give out consent and shall not be applicable to minors and persons with mental disorders pursuant to Article **6** and **Article 7**. The application of this piece of legislation can be seen in the case of *Jehovah's Witnesses of Moscow and others v Russia* where the issue in this case was involving Jehovah Witnesses' blood card which is a form of advance directives stating that the holder of the card does not have blood transfusion. The European Court of Human Rights held that advance directives can and must be legally binding and it does not delegate the powers of a proxy to make healthcare decisions which are otherwise against the patient's wish or in other words making decisions based on the proxy's best interest (Tom Goffin 2012).

However, despite such advancement in the form of international convention (limited to the European context), it is important to point out that the convention is only being practiced in Europe and as such have not yet been introduced in a larger part of the world. The example can be seen in several European countries such as in England this was reflected in the enactment of the **Mental Capacity Act** in 2005 which allows adults to make advance decisions regarding medical treatment. This was enshrined in Section 5 of the act which touches on where a person is providing care or treatment for someone who lacks capacity, then the person may provide the care or treatment without incurring any legal liability. The key will be proper assessment of capacity and best interests. Likewise, legislation with similar purposes was also being enacted in other European countries such as Austria, Spain, Hungary and Germany (Denard Veshi 2005).

Nonetheless, it is still a major steppingstone in the protection of patient autonomy. In Asia, the development is relatively slow in term of its adoption which is most likely due to difference in cultural values, as not much Asian country incorporate such concept in their legislation which are mainly in Singapore and South Korea which has legislation to address such problems, where Singapore leading with its

introduction of Advance Medical Directive Act in the year of 1996.

Hence, it is important to take note that direct comparison between European and Asian takes on the AMD as two of the cultures practiced different values as Europeans are generally much more liberal and individualistic in their approach.

4.4 Euthanasia: Malaysian Legal Framework

Euthanasia relates with the concept of autonomy of a person (Noor Akmal 2012). It's an individual right as opposed to the right of the community as a whole. Simply, this individual right comes from universal human rights that were introduced by the Western countries (Rohaida Nordin 2019). As such, the UDHR, particularly ICCPR, which was established by the Western countries, gives greater priority to civil and political human rights rather than economic rights. The concept 'human rights' that were introduced by the Western Countries are quite distinguished from the Asian Countries where the latter focus more on stability and enforcing social cohesion.

Through observation, there is none of the term "human right" provided in Malaysia's Federal Constitution. Nevertheless, the term "fundamental liberty" is found in **Part II of Malaysia Federal's Constitution**. Simply, **Article 5 of the Federal Constitution** stated as follows: *"No person shall be deprived of his life or personal liberty save in accordance with law."* The absence of the term "human right" in Malaysia's Constitution indirectly shows that the universal human right features, which are part of Western culture value, is alien in Malaysia's regulatory framework. Instead, as a developing country with multi-racial as well as multi religious community, Malaysia adopted the Asian values with the injection or additional concept of religious belief.

Although Malaysia has yet to ratify the ICCPR, Malaysia's national laws were enacted in compliance with the values derived from fundamental liberties. In the context of euthanasia and assisted suicide, reference must be made to Penal Code as Malaysia's legal framework did not provide any specific legislation that deal with regards to the legality of euthanasia and assisted suicide (Noor Akmal 2012). In Malaysia, the practice of euthanasia is totally prohibited and considered as a crime. This is in light of **Penal Code**, where **Section 300(a)** stated that the deliberate act of a physician with the intention to cause death to his patient would amount to culpable homicide amounting to murder. Simply, Non-voluntary and Involuntary euthanasia situations would thus fall under the scope of the aforementioned **Section 300 of the Penal Code.**

Nonetheless, active voluntary euthanasia with the permission and full consent of the victim appears to fall within **Exception 5 of Section 300 of the Penal Code**, stated as follows:

> *Exception 5—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death with his own consent* (Fadhlina 2021).

Hence, the full consent given by a patient towards the physician or medical practitioner in order for the latter to terminate or to assist in the former's life termination process, would operate as a mitigating factor against the severity of the crime.

This full consent that was given by the patient did not entirely release the physician from his criminal liability. The physician that conducted euthanasia is may still found liable under the provision of **Section 299 of Penal Code**, which stated as follows:

> *"Whoever causes death by doing an act with the intention of causing death, or with the intention of*

causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offense of culpable homicide."

Furthermore, if the physician failed in an attempt to end his or her patient's life, that physician might be found liable under the provision prescribed in **Section 308 of Penal Code** and might be punished with fine as well as imprisonment. **Section 308** stated as follows:

"Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment for a term which may extend to three years or with fine or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both."

Moreover, in some circumstances where the assisted suicide does not achieve the intended purpose which is died, hence both assisting physician as well as patient might be found liable for criminal offences under the provision of **Section 306 of Penal Code** for abetment of suicide and **Section 309 of Penal Code** for attempted suicide.

Throughout our discussion, it is clear that the practice of active euthanasia in general is strictly prohibited and deemed as a criminal offence of murder of a lesser degree in Malaysia. On the other hand, the situations with regards to passive euthanasia is quite tricky and remain in dilemma, due to the advanced technology in relation to the ability to prolong life (Noor Akmal 2021). In order to understand the position of passive euthanasia in Malaysia legal framework, we have to refer to religious as well as medical aspect. This is on the basis that these two aspect have an influence in the decision-making which involve the conduct of passive euthanasia; withholding and withdrawing of life-saving treatment, as such, the life support machine.

With regards to Islamic approach in Malaysia, it was decided during the 97th Discourse of the National Fatwa Committee for Islamic Affairs Malaysia, back in 2011, that any form of life termination either by voluntary, non-voluntary or involuntary using any method and for any reason is considered as haram or forbidden. This is because an act of euthanasia is equated to murder and contravene with the Code of Medical Ethics in Malaysia. Simply, there is no denial that active euthanasia is prohibited. However, the stand was different with regards to passive euthanasia where the conduct of withholding and withdrawing of life-saving treatment (support machine) from a patient suffering brain death is considered as lawful, as long as it made after obtain a consent from next of kin as well as the confirmation from two expert medical practitioners who are not directly involved in the affair of organ donation. On the other hand, the conduct of withdrawing the usages of fluid removal devices for breathing assistance is not allowed.

With regards to the medical approach, a consensus on Withdrawal and Withholding of Life Support in The Critically Ill was drafted by the Malaysian College of Anaesthesiologists back in 2004. This draft stipulated a guideline to facilitate doctors in treating terminally ill adult patients at the intensive care unit (ICU) or Critical care unit (CCU). The content of the draft includes the basic principles of medical ethics which relates to the conduct of withholding and withdrawal of life support; the categories of patients to be considered for withholding and withdrawal of life support; decision-making aids and steps to withhold or withdraw life support; as well as plan for withdrawal of life support. Furthermore, in the absence or scarcity of case law and loopholes in legal provisions in Malaysia of which to direct

the relevant decision making, the Consensus's draft prescribes an explanation as well as guidance in contrast with the position in the United States and United Kingdom.

In conclusion, compare to other countries namely Australia and the United Kingdom. Malaysia has yet to enact any specific legal provision in respect of the prohibition of active euthanasia. Although certain law such as Penal Code did contain statutory provision in respect to prohibition on the conduct of active euthanasia, nonetheless, the legal positions of passive euthanasia remain silent and implicit. Due to this absence in Malaysia's legal framework, reference must be made to English cases and principles.

4.4 Advance Medical Directive (AMD): Malaysia Legal Framework

In Malaysia, AMD is not considered as a subject matter of law due to its position in the legal aspect that remains vague and unclear (Zamree Zahir 2019). Accordingly, studies show that at present, there is no specific guideline or law in relation to AMD. Shaikh Mohd Saiffuddeen (2015) in his paper entitled Islamic Bioethics on the Issue of Advance Medical Directive (AMD), during a discussion with academics and medical professionals with regards to the current position of AMD in Malaysia, organized by the Institute of Islamic Development Malaysia (IKIM), stated that there are no specific guidelines issued by the Ministry of Health Malaysia (MOH) Malaysia to implement AMD (Shaikh Mohd Saiffuddeen 2015). This issue will raise a problem in which it will leave patients with no clear direction if they want to have AMD. Moreover, the concept of AMD is still foreign and rarely used in Malaysia. As such, again, there is no law, local case or statutory provisions relating to AMD in Malaysia.

Notwithstanding no specific legislation dealing particularly with the context of AMD in Malaysia, nevertheless, the existing provisions that can be examined are in accordance with the Malaysian Medical Council Guideline: Consent for Treatment of Patients by Registered Medical Practitioners. These general guidelines were issued by the Malaysian Medical Council (MPM) under clause 5, **section II, of the Medical Code of Ethics (CME)** titled "The Dying Patient". In these guidelines, there are two provisions with regards to AMD, namely **Article 17 and Article 18**.

Article 17 of the guidelines stated that *"generally, every individual is entitled to refuse medical treatment. A legally competent person has a right to choose what occurs with respect to his or her own person.*[23] Patient's refusal of treatment may be made either in express or implied way; either in writing or verbally. A patient's refusal of treatment will be documented in full and in writing in the medical record or in the case notes of the medical practitioner, including the patient's signature and date if possible. Upon receiving clear written instructions by the patient that any treatment or procedure will not be available in the circumstances currently applying to the patient, hence, the medical practitioner has to hold back themselves from providing treatment or performing any procedure on that patient. However, it must be noted that this absolute right of patient is not absolute and subjected to exception; simply the patient's directive did not apply if it includes instructions for illegal activities such as euthanasia or the termination of pregnancy.

Article 18 of the guidelines also provides three main things that the medical practitioners need to be considered. Firstly, the medical practitioner should determine whether it is sufficiently clear and specific to apply to the clinical circumstances which have arisen. Secondly, the medical practitioner should consider the currency of the directive, whether it can be said to be made in contemplation of the current circumstances; as such: whether the directive was made before or after the

diagnosis of the current illness. Thirdly, whether there is any reason to doubt the patient's competence at the time that the directive was made, or whether there was any undue pressure on the patient to make the directive, are factors that should be considered. In situations involving emergency, the medical practitioner is allowed to treat the patient in accordance with his or her professional judgment of the patient's best interests, until legal advice can be obtained on the validity or ambit of any Advance Care Directive that may have been given by the patient.

These Guidelines issued by the MPM, however, do not address AMD-related aspects such as considerations in determining the patient's best abilities and interest (Zamree 2019). Moreover, in **clause 5, section II, Code of Medical Ethics (CME)**, the Malaysian Medical Association states that in the case of a critically ill patient, one should always take into account any AMD and the wishes of the patient's family. Here there is confusion as to whether the patient's wishes or the patient's family wishes should take precedence in making decisions regarding the patient's medical treatment.

Due to the absence of law and local cases relating to AMD in Malaysia, hence references must be made to English CommonLaw. Under English common law, the consent or refusal given by a patient to medical treatment is only said to be valid when he does so after being given sufficient information, done voluntarily and whether he is capable of making a decision at the time. In *Re T (Adult: Refusal of Medical Treatment),* The objective test prescribed by the House of Lords must meet "three conditions." Firstly, at the time the decision regarding the medical treatment is made, the patient must have the legal capacity and have the ability to express his consent or rejection of a treatment. Simply, this means that the patient must be an adult and not suffer from any disability that may affect his or her ability to make their own decisions.

Secondly, at the time the decision is made, the patient must be aware and intent that the scope and basis of his or her consent apply in the particular circumstances. In Bland's case, the court stressed the need for specific treatment in ensuring that past refusals can still be considered relevant in the current situation.

Thirdly, at the time the decision is made, the patient must know the nature, purpose and effects of the treatment he or she has agreed to.[24] This third condition can be seen through the case of *Re C (Adult: Refusal of Treatment)*, where this case stated that in order to determine whether the patient has adequate understanding, there are "three aspects" that need to be met: (a) it needs to be proven that the patient understands and is able to store the information provided in relation to medical treatment; (b) the patient believes in the information provided; (3) the patient is able to understand in depth and use the information to make his own judgments and balance it between the need to undergo the treatment with the risks that may occur.

Subsequently, if the patient does not meet all three conditions previously stated in the case of *Re T (Adult: Refusal of Medical Treatment),* Hence, the AMD of the patient becomes invalid. Therefore, any action or decision related to the medical treatment of a patient during the period of his incapacity shall be made in the best interest of the patient.

4.5 Critical Review on Legal Issues: Common Law v. Malaysian perspective

From the explanation above, it can be seen that there is distinction that could be made between the issues arising from Euthanasia and AMD based on legal perspective under Common Law and Malaysian Law. The first distinction can be seen based on the issue arising itself. Under Common Law, it can be seen that there are many attempts made by Common Law countries to introduce the bill to legalize euthanasia into their legal systems like United States of

America, Canada, Australia and United Kingdom. Many attempts to introduce the bill which also resulted in numerous failed attempts as certain countries are reluctant in legalizing euthanasia due to two main factors which are political and social aspect. In US and UK, the commitment of the legislature to establish a policy in regards to euthanasia can be seen where in UK, the Deputy of Public Prosecutor established "Policy for Prosecutors in respect of Cases of Encouraging or Assisting Suicide" meanwhile, in US the supreme in the case of *Washington v. Glucksberg* stated that assisted suicide or euthanasia is not a form of fundamental liberties thus, the bill is only succeed to be enacted at state level and yet to be enacted at federal level.

This can be distinguished to Malaysian Law whereby the supreme law of the country is the Federal Constitution. assisted suicide can impliedly be related to the fundamental liberties stated under Article 5 of the Federal Constitution in regards to Right of life. There is no specific legal framework in Malaysia relating to euthanasia and assisted suicide by with reference to Penal Code, euthanasia is considered as a crime but with exceptions. A comparison can be made on the reason why is because in Common Law countries, the legalization of Euthanasia is highly dependent on society's acceptance meanwhile, in Malaysia the religious view is need to be taken into account in legalizing euthanasia. For example, the Netherlands managed to passed the bill to legalized Euthanasia due to the society's acceptance demand which made the political parties to bring the matter to the legislature which later the legislative introduced an act which provides a procedural and substantive measures on regards to euthanasia without abolishing euthanasia from their Penal Code. The judiciary also played the role in giving the judicial review so long the physician adhered to the guidelines under the Act.

However, in Malaysia, it is still debatable as religious point of view played the massive role as the majority of Malaysian is Muslim and in Islam, euthanasia is forbidden as it is the act of life terminating which no matter what method, Islam forbids its people to cause death or killing to another person but with the exception of passive euthanasia to withdraw the lifesaving treatment from a patient who is suffering brain death. This is because the patient that is pronounced dead by the physician is permissible as the patient is no longer alive. Thus, common law approach is based on the society's acceptance that euthanasia is needed to end the person's suffering but in Malaysia, euthanasia is still not acceptable as it related to mercy killing and murder. In our opinion, the suitable legal framework that can be implemented in Malaysia is by referring to the Netherlands method where the legislature and the judiciary played the most crucial role by making a policy with the assistance of JAKIM that ensures euthanasia can be implemented with a substantive and procedural measures to the physicians in conducting euthanasia but also up to certain exceptions in line with Islamic rules. Furthermore, the Penal Code of Malaysia should be amended by including a clear provision on euthanasia to set the punishments for the failure to adhere to the policy.

Under International law, there are numerous treaties that governs the AMD such as European Convention of Human Rights (ECHR) and Convention of Human Rights and Biomedicine where AMD is served as a will for the patient giving consent to their doctor when conducting medical procedures as well as the need for the doctors to respect the notion of self determination and personal autonomy which is important in bioethics. However, there are no specific guidelines in regards to AMD in Malaysia except for the Malaysian Medical Council Guideline but in the guidelines, there is a lack of provision to determine the patient's best abilities and interests which affects the patient's consent. A concrete policy is highly

required in Malaysia in order to make AMD known and effective in medical as well as to promote the principle of the respect for persons and their autonomy in the medical field.

Thus, if euthanasia and AMD ever legalized in Malaysia, the legislature must take into account the aspect of autonomy and the right principle to be applied in the legal framework.

CONCLUSION

To conclude this study, euthanasia and AMD are very controversial issues that need to be taken into consideration at every aspects in order to legalize it. The sole reason is that the society as a whole has not fully accepted it yet and still has many debatable issues circulating it due to different beliefs, legal opinions, cultures, political, and societal. While in some Common Law countries, euthanasia is legalized as it is needed to end the person's suffering however in Malaysia, euthanasia is not acceptable as it is related to mercy killing and murder. In order to legalise euthanasia and AMD, the doctors or medical experts must maintain their ethical position while redoubling efforts to provide the best possible end-of-life care to everyone meanwhile, the government could create a legal framework by bearing in mind the various aspects arises in a nation in order to legalize euthanasia and AMD in their country. Hence, a principle can be respected if it could maintain the particular worth of human life and ethics cannot exist in the absence of morality which also applies the same to legal.

NOTES

[1] McConnell, P. S., The Unalienable Right to Life. *Journal of Christian Jurisprudence*, 1990, 8, p. 55.

[2] Ficarra, B. J., Newer Ethical Problems in Medicine and Surgery, *Newman,* 1951, p. 47.

[3] Noack, T. & Fangerau, H., Eugenics, Euthanasia, and Aftermath. *International Journal of Mental Health*, 2007, 36(1), p. 116.

[4] Brody, M. & Cooper, M. W., Binding and Hoche's "Life Unworthy of Life": A Historical and Ethical.

[5] n.a., Ethics - Euthanasia: Forms of euthanasia, *BBC*, n.d., http://www.bbc.co.uk/ethics/euthanasia/overview/forms.shtml [5 May 2021].

[6] Brazier, Y., Euthanasia And Assisted Suicide: What Are They And What Do They Mean?, *Medical News Today*, 2018, from https://www.medicalnewstoday.com/articles/182951#euthanasia-and-assisted-suicide- [5 May 2021].

[7] N.a., Euthanasia, *MU School of Medicine*, n.d, https://medicine.missouri.edu/centers-instituteslabs/health-ethics/faq/euthanasia [5 May 2021].

[8] Thomas, C., The Debate on Euthanasia: Utilitarianism, *UKEssays*, 2017, https://www.ukessays.com/essays/philosophy/debate-euthanasia-utilitarianism-3628.php [2 May 2021].

[9] Al-Quran.

[10] Noor Akmal Binti Mustafa Kamal & Prof. Madya Dr. Shahrul Mizan Ismail, 'Euthanasia: Right to Life as Opposed to Right to Personal Autonomy.'

[11] Sahih al-Bukhari, Book 1, Number 159.

[13] N.a, 'Euthanasia, assisted dying, and suicide,' BBC News, 25 August 2009. Retrieved from https://www.bbc.co.uk/religion/religions/hinduism/hinduethics/euthanasia.shtml

[14] US 702 (1997) USSC.

[15] Act 574.

[16] MMC Guideline: Consent for Treatment of Patients by Registered Medical Practitioners.

[17] *Re T (Adult: Refusal of Medical Treatment),* [1992] 4 All ER 649 (CA).

REFERENCES

Abakare, C.O. (2021). Legal, Social and Ethical Issues in Euthanasia *Jurnal Predestination: Jurnal of Society and Culture*, 1(2).

Airedale N.H.S. Trust v Bland [1993] A.C. 789.

Al-Quran.

Andorno, R. et.al. (2007). Advance Health Care Directives: Towards a

Coordinated European Policy?, *European Journal of Health Law.* 16.

Bartels, L. & Otlowski, M. (2010). Right To Die? Euthanasia and the Law in Australia. *Journal of Law and Medicine.* 17(4): 532-55.

Bradbury, L. W. (2003). Euthanasia in the Netherlands: Recognizing mature minors in euthanasia legislation. *New England Journal of International and Comparative Law*. 9(1).

Brassington, I. (2020). What Passive Euthanasia Is, *BMC Medical Ethics*. 21:41 https://doi.org/10.1186/s12910-020-00481-7 [5 May 2021].

Brazier, Y. (2018). Euthanasia And Assisted Suicide: What Are They And What Do They Mean? *Medical News Today*. https://www.medicalnewstoday.com/articles/182951#euthanasia-and-assisted-suicide-[5 May 2021].

Brody, M. & Cooper, M. W. (2014). Binding and Hoche's "Life Unworthy of Life": A Historical and Ethical Analysis. *Perspectives in Biology and Medicine*. 57(4).

Bulow, H. H. (2008). The World's Major Religions' Point of View on End of Life Decision in the Intensive Care Unit. *Intensive Care Medicine.* Vol. 34, No. 3.

Callahan, D. (1992). When Self-Determination Runs Amok, The Hastings. 22(2), https://doi.org/10.2307/3562566 [2 May 2021].

Costello, M.M. (2018). Natural Law and Its Implication for Medical Assistance-In-Dying. *The Journal of International Management Sttudies*. 13(1), http://www.jimsjournal.org/3%20Michael%20Costello.pdf [2 May 2021]

Damien Keown and John Keown. (1995). Killing, Karma and Caring: Euthanasia in Buddhism and Christianity. *Journal of Medical Ethics.* Vol. 21, No. 5. https://www.jstor.org/stable/27717629 [31 May 2021].

Denard Veshi, Gerald Neitzke. (2015). Advance Directives in Some Western European Countries: A Legal and Ethical Comparison between Spain. France, England, and Germany. *Eur J Health Law.* 22(4). 321-45.

Diaconescu, A.M. (2012). Euthanasia. *Contemporary Readings in Law and Social Justice.* 4(2).

Dow, L.A. et.al. (2010). Paradoxes in Advance Care Planning: The Complex Relationship of Oncology Patients, Their Physicians, and Advance Medical Directives. *Journal of Clinical Oncology.* 28(2).

Downie, J. (2016). Permitting voluntary euthanasia and assisted suicide: Law reform pathways for common law jurisdictions. QUT Law Review. 16(1).

Dr Fadhlina Alias & Prof Dr Puteri Nemie Jahn Kassim. (2021). Legal Aspects of End-of-Life' Care in Malaysia. Malaysian Law Journal, 2(xxxiii): 2. http://irep.iium.edu.my/89416/1/89416_Legal%20Aspects%20of%20End-of-Life%20Care%20in%20Malaysia%

20%5B2021%5D%202.pdf [27 February 2022]

Ebrahimi, N. (2012). The Ethics of Euthanasia. *Australian Medical Student Journal*. https://www.amsj.org/archives/2066 [2 May 2021].

Engelhardt, H.T. & Iltis, A.S. (2005). End of Life: The Traditional Christian View. *Lancet.* Vol. 366, No. 9490. https://doi.org/10.1016/S0140-6736(05)67383-7 [31 May 2021].

European Convention of Human Rights Fadhlina Alias, Minkail Muhammas & Puteri Nemie Jahn Kassim. (2015). The legality of euthanasia from the Malaysia and Islamic perspectives: An overview, Medicine and Law. *World Association for Medical Law.* Vol. 34, ISSN0723-1393.

Federal Constitution.

Ficarra, B. J. (1951). Newer Ethical Problems in Medicine and Surgery, *Newman*.

Goffin, T. (2012). Advance Directives as an Instrument in an Ageing Europe. *European Journal of Health Law*. 19.

Grubb. (2001). Euthanasia in England — A Law Lacking Compassion? *European Journal of Health Law*. 8(2).

Hoffman, S. (2013). Euthanasia and physician-assisted suicide: comparison of E.U. and U.S. law. *Syracuse Law Review*. 63(3)

Inbadas, H. (2018). Indian Philosophical Foundations of Spirituality at the End of Life. M*ortality*. Vol. 23, No. 4.

Jamesa. (2016). Utilitarianism View on Euthanasia. *Liberrimus*. https://sites.dwrl.utexas.edu/liberrimus/2016/10/04/utilitarianism-view-on-euthanasia/ [2 May 2021].

Jehovah's Witnesses of Moscow and Others V. Russia. [2010] ECHR 135.

Julie A. DiCamillo. (1992). A Comparative Analysis of the Right to Die in the Netherlands and the United States After Cruzan: Reassessing the Right of Self-Determination. 7(4).

Keown, D. (2005). End of Life: The Buddhist View. *Lancet.* Vol. 366, No. 9849.

Kuhse, H. (1981). Debate: Extraordinary Means and the Sanctity of Life. *Journal of Medical Ethics.* Vol. 7, No.2.

Lahveenya Panchalingam, Dr Saravanan Mathialagan & Jaganraj Ramachandran. (2019).

Assisted suicide and the right to die: An analysis of the legal position in UK, Canada and Malaysia. *Legal Network Series.* 1 LNS(A) cxxi.

Leenen, J. (2001). The Development of Euthanasia in the Netherlands. *European Journal of Health Law.*

Lesco, P. A. (1986). Euthanasia: A Buddhist Perspective. *Journal of Religion and Health.* Vol. 25, No. 1.

Loewy, E.H. (1998). Ethical Considerations in Executing and Implementing Advance Directives. *Archintern Med*. 158.

Mahmud Adesina Ayuba. (2016). Euthanasia: A Muslim's Perspective. *Scriptura*.

https://www.researchgate.net/publication/305310054_Euthanasia_A_Muslim's_perspective. [31 May 2021].

Markwell, H. (2005). End of Life: Jewish Perspective, *Lancet,* Vol. 366, No. 9491
.
McConnell, P. S. (1990). The Unalienable Right to Life. *Journal of Christian Jurisprudence*. 8.

Medical Code of Ethics (CME).

MMC Guideline: Consent for Treatment of Patients by Registered Medical Practitioners.

Mohd Zamre Mohd Zahir, et.al. (2019). Patient's Right to Implement an advance Medical Directive: An Overview. *Sains Malaysiana.* Vol. 42, (2). *http://dx.doi.org/10.17576/jsm-2019-4802-12*. [8 June 2021]).

n.a. (2011). Hukum Euthanasia atau mercy killing. *E-fatwa JAKIM.* http://esmaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/10289. (8 June 2021).

N.a. (2009). Euthanasia, assisted dying, and suicide. *BBC News*. https://www.bbc.co.uk/religion/religions/hinduism/hinduethics/euthanasia.shtml [3 May 2021].

N.a. (N.d). Ethics - Euthanasia: Forms of euthanasia. *BBC*. http://www.bbc.co.uk/ethics/euthanasia/overview/forms.shtml [5 May 2021].

N.a. (N.d). Euthanasia. *MU School of Medicine*. https://medicine.missouri.edu/centersinstitutes-labs/health-ethics/faq/euthanasia [5 May 2021].

Nazeem M. I. Goolam. (1996). Euthanasia: Reconciling culture and human rights. *Medicine and Law.* Vol. 15, No. 13.

Nelson, G. (2012). Protective Functions of Religious Traditions for Suicide Risk. *Suicidology Online*. Vol. 3.

Noack, T. & Fangerau, H. (2007). Eugenics, Euthanasia, and Aftermath. *International Journal of Mental Health.* 36(1).

Noor Akmal Binti Mustafa Kamal & Prof. Madya Dr. Shahrul Mizan Ismail. (2021). Euthanasia: Right To Life as Opposed to Right to Personal Autonomy. *Current Law Journal.* 1 LNS(A) xl.

Papadimitrou, J.D. et.al. (2007). Euthanasia and suicide in antiquity: viewpoint of the dramatists and philosophers. *Journal of the Royal Society of Medicine*.100, 25-28.

Penal Code (Act 574).

Peters, D. A. (1987). Advance Medical Directives: The case for the durable power for health care. *The Journal of Legal Medicine*. 8(3).

Porteri, C. (2018). Advance Directives as A Tool To Respect Patients' Values and Preferences: Discussion on the Case of Alzheimer's Disease. *BMC Medical Ethics*. 19(9).

R (on the application of) v Director of Public Prosecutions [2009] UKHL 45.

Rachels, J. (1975). Active and Passive Euthanasia. *The New England Journal of Medicine*. 292 https://sites.ualberta.ca/~bleier/Rachels_Euthanasia.pdf [2 May 2021].

Re C (Adult: Refusal of Treatment) [1994] 1 All ER 819 (QBD).

Re T (Adult: Refusal of Medical Treatment) [1992] 4 All ER 649 (CA).

Roberto Andorno, Nikola Biller-Andorno and Susanne Brauer (2007), Advance Health Care Directives: Towards a Coordinated European Policy? *European Journal of Health Law*. 16.

Rohaida Nordin. (2019). Human Right Ideology and Sovereignty-The Malaysian Perspective: Human Right Ideology. *Protection of Indigeneous People Rights In Malaysia: State's Perspective, Obligation and Capacity.* Penerbit Universiti Kebangsaan Malaysia.

Sahih al-Bukhari, Book 1, Number 159.

Sahih al-Bukhari, Vol. 2, Book 23, Number 445.

Sayed Sikandar Shah Haneef. (1996). Mercy Killing in Islam: Ethical and Legal Issues. *Current Law Journal.* 3. xcii.

Shaikh Mohd Saifuddeen Shaikh Mohd Salleh. (2015). Persoalan berkaitan Advance Medical Directive (AMD) dalam kerangka bioetika islami. Kertas kerja dibentangkan pada *Muzakarah Pakar: Bioetika Islami mengenai Isu Advance Medical Directive (AMD).* Kuala Lumpur: Dewan Besar IKIM.

Shao-Yi Cheng, et.al. (2020). Advance care planning in Asian culture. *Japanese Journal of Clinical Oncology*.

Tan, S. H. (2017). The Case Against Physician-Assisted Suicide and Voluntary Active Euthanasia: A Jurisprudential Consideration. *Singapore Academy of Law Journal*. 29.

Thomas, C. (2017). The Debate on Euthanasia: Utilitarianism. *UKEssays*. https://www.ukessays.com/essays/philosophy/debate-euthanasia-utilitarianism-3628.php [2 May 2021].

Tom Goffin. (2012). Advance Directives as an Instrument in an Ageing Europe. *European Journal of Health Law*. 19.

Toner, M. S. (2003). How Buddhism Influences Pain Control Choices. *Nursing*. Firth, S. 2005.

End of Life: A Hindu view. *Lancet.* Vol. 366, No. 9486.

Washington v Glucksberg US 702 (1997) USSC

Williams, G. (1965). Euthanasia and abortion. *University of Colorado Law Review*. 38(2).

Marina Syazana binti Kamalruzaman
Faculty of Law
Universiti Kebangsaan Malaysia (UKM).
Email: marina.syazana@gmail.com

Nurul Izzah bt Jafri
Faculty of Law
Universiti Kebangsaan Malaysia (UKM).
Email: izzahjafri99@gmail.com

David Bakit Anak Nuing
Faculty of Law
Universiti Kebangsaan Malaysia (UKM).
Email: davidbakit@outlook.com