

THE ETHICAL AND LEGAL CONSEQUENCES OF ORGAN DONATION

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ABSTRACT

Background: The transfer of all or part of a donor's body organ tissue to a recipient in the hopes of improving the recipient's quality of life is known as transplantation. Meanwhile, organs are important parts of the human body that are made up of a range of tissues that can maintain structure, vascularity, and the ability to conduct physiological functions.

Aim: Based on the title, this research aimed to review the ethical and legal consequences of organ donation in Indonesia.

Method: This research is a multidisciplinary research, which elaborates on the health sector with the main focus of discussion in the field of law. The type of research that was used in this journal research is normative legal research.

Findings: By assuring security, safety, volunteering, benefit, and fairness in organ transplant services for both donors and recipients, the Republic of Indonesia's Government Regulation No. 53 of 2021, governing the Transplantation of Organs and Body Tissues, was developed.

KEYWORDS

Ethics, Health Law, Organ Donation, Organ Transplantation

INTRODUCTION

For thousands of years, the concept of replacing diseased or injured bodily parts has existed. Complex transplants, such as the "successful" whole-leg transplant performed by the mythical third-century physicians Cosmos and Damien, are shown in a number of classic artworks. The use of "free" grafts from the patient's own or other donor tissue is an apparent extension of this procedure. However, it was not until the twentieth century that the possibility of graft failure was raised. Not Carrel accomplished the first technically successful kidney transplant, but Emerich Ullmann, who performed an automated dog transplant and a dog-to-goat xenograft in 1902. Jaboulay performed the first two human kidney transplants in 1906, using donor pigs for one and donor goats for the other. Ernst Unger completed his third and fourth human kidney transplants in 1909, utilizing a monkey donor. None of these ancient human kidney xenografts survived beyond a few days, and all patients perished shortly afterwards.

Carrel departed France in 1904 after failing to qualify for a faculty position there after failing several examinations. He traveled to Chicago after a brief spell in Montreal, where he teamed with physiologist Charles Guthrie. They collaborated for over a year, during which time they successfully transplanted kidneys, thyroid, ovaries, heart, lungs, and small intestines. They published an average of one article on this work every 14 days. Carrel's success with organ transplants was due to her use of small needles and suture materials, her exceptional technical abilities, and her fixation with stringent asepsis. Carrel invented tissue culture, another technique that would later play a critical part in transplantation (Davies et al., 2019).

Kidney transplantation was the pioneer of solid organ transplantation in the 1950s, until the early 1980s, during a period of conventional immunosuppression caused by the use of azathioprine and steroids, the rate of rejection and failure of big early grafts, and organ transplant programs. Without supported replacement therapy, nonrenal solids have a poor result. Cyclosporine's introduction 30 years later enhanced transplant outcomes and expanded the solid organ transplantation program throughout the developed world. According to data collected by the Global Observatory on Donation and Transplantation (GODT), an analysis of 2010 transplant activity in 95 countries representing nearly 90% of the world's population reveals that 106,879 solid organ transplants were attempted worldwide: 73,179 kidney transplants (46% from living donors), 21,602 liver transplants (15%), 5582 heart transplants, 3927 lung transplants, and 2,362 pancreas transplants. This activity increased by 2.12 percent in 2009, but is still anticipated to be insufficient to meet world demand.

Transplantation is a series of procedures that involves the transfer of all or part of a donor's body organ tissue to a recipient in the hope of improving the recipient's quality of life. Meanwhile, organs are critical components of the human body that are produced by a variety of distinct tissues capable of sustaining structure, vascularity, and the potential to perform physiological activities. In other words, the objective of organ transplantation is to replace failing organs with new ones that are expected to perform their physiological tasks.

Human organ transplantation is progressing; not just human heart, kidney, and liver organs, but also various additional organs and bodily tissues such as muscle and nerve tissue, can now be transplanted. When the success rate of organ transplantation increases, the need for human organs and tissues to be used as donors increases as well. Initially, the source of donors was limited to family members, but this may begin to expand day by day (van Zanden et al., 2019).

Medical ethics is a branch of ethics that deals with moral dilemmas that emerge in the practice of medicine. Since at least the time of Hippocrates, a Greek physician who is regarded as a pioneer of medical ethics in the fifth century BC, ethics has been an important aspect of medical practice. Medical ethics is generally recognized as a critical foundational component of the knowledge and abilities required for clinical practice. The Medical Ethics Honorary Council regulates medical ethics in Indonesia through the Indonesian Medical Ethics Code. The Indonesian Medical Code of Ethics serves as a reference and ethical guideline for doctors in their day-to-day practice. To obtain quality treatments, medical services based on ethics are required.

METHOD

This research is a multidisciplinary research, which elaborates on the health sector with the main focus of discussion in the field of law. The type of research that will be used in this journal research is normative legal research. Normative legal research examines law from an internal perspective with the object of research being legal norms. The approach method used is descriptive-analytical-explanatory which uses a type of juridical-normative legal research with a Statute Approach which is aimed at studying the suitability and consistency between one law and another, or between laws. with the basic law, or between regulations and laws and regulations.

Then, the Case Approach, which is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal

force. The data used in this study is secondary data with legal materials used in this study consisting of primary legal materials covering all regulations and regulations in Indonesia, secondary legal materials in the form of books and journals, and tertiary legal materials in the form of dictionaries and encyclopedias. The technique of collecting data from all literature is in the form of library research, carried out by reviewing library materials in the form of statutory books and other written sources, which are related or related to this research. Overall data obtained from this study, secondary data processed and analyzed qualitatively for further description in order to provide understanding by describing, describing and explaining the results of this study. The method of thinking used in analyzing the collected data is to use the deductive method, which is a way of thinking that starts from general things and then draws specific conclusions (Soekanto & Mamudji, 2006).

RESULTS AND DISCUSSION

Ethics and Health Law

The autonomy principle

It is a moral principle to respect the patient's rights, particularly the patient's right to autonomy, which has the right to choose the best for himself, with full understanding and without compulsion from any party. This moral premise gave rise to the agreement known as informed consent. The principle of autonomy is founded on the belief that each human can think logically so that they can make, choose, and make decisions for themselves that are consistent with their thoughts. The autonomy principle is also a type of respect for someone, allowing that individual to behave sensibly and without pressure. Some examples of the autonomy principle include (Kater et al., 2003): 1) Telling the truth or providing accurate information; 2) Be considerate of others' privacy; 3) Keep confidential information secure; 4) Obtain permission to act on patients; and 5) Assist others in making crucial decisions.

The principle of beneficence

It is a moral principle that emphasizes the patient's good in terms of behavior, treatment considerations, and all acts given to a patient. There is not only an act for the good in beneficence, but also a principle to consider that an activity has more benefits than drawbacks. Not only is there a desire to accomplish something good, but there is also a need to prevent wrongdoing or crime. In the context of health care, there is frequently a tension between this value and autonomy. For example, protect and defend the rights of others, avoid causing harm to others, remove circumstances that may endanger others, assisting people with diverse disabilities, and assist those who are in danger.

The concept of non-maleficence

A moral principle that specifically prohibits all activities or actions that can worsen the patient's state than the previous scenario, also means that purposeful or inadvertent damage to the patient's head must be avoided. This guideline is known as "*Primum non nocere*," or "above all, do no harm," which suggests that whatever we do, we must avoid causing any physical or psychological injury to the patient's head. For example, if a doctor has an opinion about delivering health care that is disagreeable to the patient and his family, and if forced to do so, the patient will suffer a financial loss.

The principle of justice

A moral principle that guarantees there is a balance or justice in the distribution of existing resources so that they can be received fairly and in proportion to their share by all. By respecting moral standards, the principle of justice is required to attain equality and justice with the people around him as well as humanity. For example, there is an equal share, need, effort, contribution, merit, and free-market exchange.

Definition of Organ Transplant

Transplantation is the procedure of transferring all or part of a donor's body organ tissue to a recipient in the hope of enhancing the recipient's quality of life. Meanwhile, organs are critical components of the human body that are produced by a variety of distinct tissues capable of sustaining structure, vascularity, and the potential to perform physiological activities. There are numerous organs and tissues that can be transplanted, including the liver; the pancreas; the heart; the lungs; the intestines; the cornea; the middle ear; the skin; the bones; the bone marrow; the heart valves; and the connecting network.

Organ transplantation has long been recognized as a healing procedure in the medical community. Voronoy conducted the first organ transplant in 1933. While in Indonesia, the first transplant was performed by Prof. Dr. Iwan Santoso, a surgeon at Cipto Mangunkusumo Hospital in 1977. Transplantation technology has advanced to the point where it can now be conducted on previously untransplantable organs (FATIMAH, 2018).

In the medical world, there are various conditions for becoming a transplant donor, including matching the donor's blood type, DNA, and antigen type to the recipient's, as well as being immune to antigen and antibody rejection by the recipient or organ receptors. These studies are significant and beneficial because they address the issue of clinical death as a result of organ or tissue necrosis. As a result, all of these actions require verbal and written agreement, which must include an explanation of the act and its associated dangers. Additionally, after the lawsuit is approved, legal witnesses will be necessary.

Human trafficking for the purpose of organ harvesting is defined as the recruitment, transportation, transfer, harboring, or receipt of persons through the threat or use of force or other forms of coercion, abduction, fraud, abuse of power or a position of vulnerability, or the giving or receiving of payments. At the very least, exploitation must entail organ harvesting. The kidney is a critical organ for transplantation (Gulyaev et al., 2018).

In Indonesia, there is no national-scale information system or data collection mechanism for the implementation of human body tissue or organ transplantation. Existing statistics are only sectoral in nature and are collected on an individual basis by certain hospitals or organ donation foundations. As a result, there is no transparency in Indonesia on the amount of accessible organs and donors. Additionally, transplants are costly, and the demand for organs is extremely high. The acute need for transplantable organs also contributes to the trade of human organs.

The National Law as a Legal Basis for Human Organ Transplantation

In practice, the Health Law that applies to the State of Indonesia follows two legal systems, namely the Continental European and Anglo Saxon, the allocation of which is based on

religious, social, and national philosophy. Additionally, the following criminal law restrictions governing organ transplantation will be discussed.

Human Rights UU No. 39 of 1999 (Indonesia, 1999)

UU no. 39 of 1999 on Human Rights, particularly article 3, which states that every individual is born free and with the same and equal dignity and values, as well as the individual's right to unrestricted protection of human rights and fundamental human freedoms.

Additionally, there are various clauses in Law No. 39 of 1999 that expressly ban human trafficking or slavery, including the following:

- a) Origin 4: The right to life, the right against torture, the right to personal freedom, and the right against enslavement are all inalienable human rights that cannot be restricted under any circumstances or by anyone.
- b) Article 20: No one shall be subjected to slavery or servitude, women trafficking, slave trade, or any other conduct with a similar objective.
- c) Article 65 Every child has the right to be protected from exploitation, kidnapping, child trafficking, and other forms of narcotic, psychotropic, and other substance misuse.

Health Law No. 36 of 2009 (Indonesia, 2009)

- a) Article 64, in its entirety, provides that "paragraph 1 permits the implantation of drugs or medical devices, the transplantation of organs or only a portion of organ tissue, the performing of surgery on body parts, and the reconstruction of body parts, as long as these procedures are carried out in the public interest." The second and third clauses describe how long as the act is carried out, as long as it is not traded, it is legal."
- b) Article 65, which includes "paragraph 1 requiring the person performing the transplant and the location providing the service to adhere to established standards, paragraph 2 requiring the donor's health and approval of the donor's action, and paragraph 3 requiring the transplantation requirements and procedures to be governed by government regulations."
- c) Article 66 "prior to transplantation, there must be evidence of safety and efficacy"
- d) Article 67, in essence, states that "individuals who remove or provide body tissues, as well as health care institutions, must adhere to criteria." The second paragraph, as well as the associated conditions and processes, are governed by applicable laws and regulations."
- e) Article 192 states that "anyone who willfully exchanges organs would face a ten-year prison sentence and a fine of Rp. 1,000,000,000.00."

UU No. 21 of 2007 on the Eradication of the Crime of Human Trafficking (Bensuil, 2015)

The 2007 Law Number 21 governs the prohibition of human organ trafficking, which is explicitly defined in Article 1, Number 7, and Article 2, 3, 4, 5, 6, and Article 7, and contains the crime of human organ trafficking.

Article 13 of Law Number 21 of 2007 also specifies that the criminal act of trafficking in persons may be committed not only by individuals but also by businesses, and article 15 specifies that the sanctions imposed on businesses are fines if the objection is three times the fine specified in Article 15. Articles 2, 3, 4, 5, and 6 have a minimum value of Rp. 120,000,000

(One hundred and twenty million Rupiahs) and a maximum value of Rp. 600,000,000 (Six hundred million Rupiahs).

Regulation No. 38 of 2016 of the Minister of Health of the Republic of Indonesia on Organ Transplantation (Rachmawati, 2019)

- a) Article 13 paragraph 1 stipulates that it is permissible for parties to donate organs without receiving compensation. According to paragraph 2, the donor may live or die. According to paragraph 3, the donor and recipient of the donor may or may not have a family link.
- b) According to Article 14, paragraph 1, individuals who donate their organs while still alive are referred to as living donors. According to the second verse, those who donate their organs while still living can donate only one kidney, a portion of the pancreas, lungs, or liver.
- c) Article 15 paragraph 1 defines brain stem dead donors as those who give their organs after being pronounced brain stem dead. Paragraph 2 stipulates that the donor must be registered with the national transplant committee while still alive. The third paragraph, which proclaims brain stem death, must be written by a separate team of physicians from the team that performs the transplant.
- d) Article 16 paragraph 1 specifies that a donor who is blood related to a donor recipient may donate his or her organs to that donor recipient. The second verse adds that blood donors include the parent, mother, children, and siblings.
- e) Article 17 provides that the national transplant committee has the authority to choose the recipient of a donor who is not a blood relative.
- f) According to Article 18, administrative and medical requirements are prerequisites for donor registration.
- g) Article 19 Paragraph 1 defines the term as a.) a health certificate, b.) an identification card, c.) a written statement regarding free organ donation, d.) has a reason to donate organs for free, e.) obtaining consent from the donor's biological family, f.) a written letter stating that the donor understands the procedure prior to, during, and following surgery, including all risks that may arise, g.) a written letter Paragraph 2, the donor's relationship to the recipient donor must be established with a letter from the relevant local government."

Regulation No. 62 of 2013 of the Minister of Health of the Republic of Indonesia

Apart from organ donors, it is necessary to have network and cell banks in Indonesia to advance medical science and improve the quality of health services, necessitating the adoption of regulations such as those contained in the Regulation of the Minister of Health of the Republic of Indonesia number 62 of 2013, which regulates the implementation of network and/or cell bank. It supervises the network and cell banks that are tasked with the responsibility of filtering, retrieving, processing, storing, and distributing biological tissue and/or cells for health care purposes.

Indonesian Government Regulation No. 53 of 2021 (Kute et al., 2020)

The Republic of Indonesia's Government Regulation No. 53 of 2021 on Transplantation of Organs and Body Tissues states that transplantation is the act of transferring organs and tissues from a donor to a recipient in order to improve health status through disease healing and also recovery from the recipient's own health. Therefore, we require a regulation that regulates so that its implementation can be carried out properly and in accordance with field needs, through close collaboration with the Central Government, specifically the President of the Republic of Indonesia, with the Minister responsible for the health sector, and with the Indonesian Government. Regions that have the authority and duty for governing and administering their autonomous regions. This Government Regulation is created to ensure the security, safety, volunteerism, benefit, and fairness of organ transplantation services for both donors and recipients.

Organ transplantation is only permitted at hospitals designated by the minister of health. To fulfill this commitment, the hospital must meet numerous criteria, including accreditation, a transplant team, and the equipment and infrastructure necessary for organ transplantation. The central government has delegated entire execution of organ transplantation to the minister of health, who is believed to have superior knowledge and varied implementation capabilities regarding the organ donor himself.

Indonesian Transplant Committee

The Indonesian government has constituted a committee to ensure the smooth operation of organ transplantation in Indonesia, after the minister of health's decision. The newly constituted committee has been tasked with the responsibility of making judgments about transplantation in Indonesia. Based on the Minister of Health of the Republic of Indonesia's Decree HK.01.07/MENKES/139/2021, the National Transplant Committee is controlled. As a result, the National Transplant Committee has a variety of powers and responsibilities in developing various policies, standards, and guidelines for organ transplantation in collaboration with relevant professional organizations. These policies, standards, and guidelines are then determined by the Minister of Health. In carrying out his prescribed duties, the transplant committee builds an organ transplant information system, socialization, and promotion of organ donation among the general public. As a result, it is required to coordinate registration and monitor data on prospective donors and recipients in order to ascertain the eligibility of donated organs.

According to the Ministerial Decree, the transplant committee established is directly accountable to the Minister of Health, and as such, the transplant committee has a variety of authorities in regulating hospitals authorized to perform organ and/or tissue transplants. Due to the growing need for donors, but the fact that those in the queue frequently do not receive the appropriate donor on time, the transplant committee has the authority to establish a priority order and a recipient waiting list order; this is also accomplished through collaboration with international transplant committees (Damayanti, 2018).

The Insightfulness of Human Organ Transplantation

1968 - Uniform Anatomical Gift Act

Prior to 1968, there were no federal laws controlling organ and tissue donation. Organ and tissue donation are managed exclusively on a state level. Regrettably, these state regulations vary significantly from state to state, creating considerable uncertainty. The uniform "Uniform Anatomical Gift Act" was enacted in 1968 to solve this issue by establishing a uniform legal framework for organ and tissue transplantation in the United States. Additionally, it aims to increase the number of available organs by making it easier for individuals to make organ donation pledges.

Under the Uniform Anatomical Gift Act of 1972, the "Uniform Organ Donor Card" was required to be recognized as a legal document in all 50 states. It enables anyone over the age of 18 to legally pledge to donate their organs upon death.

1984 – National Organ Transplant Act (NOTA)

The NOTA sets a nationwide framework for Organ Procurement and Transplantation (OPTN). The Transplant recipient scientific registry is a government unit within the Public Health Service's (Transplantation Division) that is responsible for contracting with OPTN. The NOTE makes it illegal to purchase or sell organs. However, section 301 clearly permits the payment of "travel, housing, and lost (living) donor-inflicted wages" (Patel & Abt, 2019).

1987 - Uniform Anatomical Gift Act (Amandement)

This revised version of the UAGA incorporates various revisions to the 1968 original law aimed at encouraging organ donation by creating a beneficial and uniform legal environment throughout the country.

1999 - Final Rules for Organ and Tissue Transplant Procurement

Final Rules for Organ and Tissue Transplant Procurement. This document updates the 1998 final regulations guiding the operation of the Organ Procurement and Transplantation Network (OPTN). The final rules are intended to assist in achieving the most fair and medically effective utilization of human organs given for transplantation (Sakti, 2019).

2000 - Act Concerning the Health of Children

This Act alters the Public Health Services Act and utilizes the Procurement of Organ and Tissue Transplants to address the unique health care needs of children under the age of 18 by developing criteria, rules, and procedures that address those needs, including transplantation. The law compels OPTN to conduct research and implement projects to improve the procurement and allocation of organs for children with special needs, minority groups, and those with restricted access to transportation. Additionally, the law requires research to evaluate the cost of immunosuppressive medications for children and the extent to which those expenses are covered by health insurance programs.

2004 - The Organ Donation and Transplantation Act

The Act provides funding to states to support organ donation awareness programs, public education and outreach programs aimed at increasing the number of organ donors (including

live donors), and the development and dissemination of educational materials to educate health care professionals and other related professionals about organ, tissue, and eye problems.

It also enables qualified organ procurement organizations and hospitals to develop programs to increase organ donation rates, assists living donors with travel, daily necessities, and other incidental non-medical expenses, and establishes mechanisms for evaluating the long-term effects of live organ donation (WHO, 2009).

CONCLUSION

The literature review above concludes that the principle of legal certainty can safeguard the courts from arbitrary kinds of activity, including organ donation, by ensuring security, safety, volunteerism, benefit, and justice in organ transplant services for both donors and recipients, then the Republic of Indonesia's Government Regulation No. 53 of 2021 was formed, regulating the Transplantation of Organs and Body Tissues.

Transplantation arrangements in developed countries such as the United States have resulted in regulations that have saved numerous lives by increasing awareness of organ donation, expanding access to transplant services and facilities, providing financial assistance to living donors, and enhancing long-term evaluation of life donors.

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