

Organs and Tissue Transplantation in Human Rights and Biomedicine Perspective

Liantha Adam Nasution¹, Dhiauddin Tanjung²

^{1,2,3} STAIN Mandailing Natal

lianthaadam@stain-madina.ac.id, dhiauddintanjung@uinsu.ac.id

Abstract

Organ and Tissue Transplantation Is a practice that shows successful developments in the medical world, Organ Transplantation activities are closely related to the fulfillment of human rights for living and dead donors, understanding the concept of human rights protection needs to be carried out with a biomedical approach in order to create legal protection for donors and donor recipients. This research is a normative juridical research method with library research (Library Research) in practice by examining legal concepts and legal sources that will be a reference in analyzing human rights and biomedicine. The results that can be found that the rule of law in Indonesia lacks the rights of donors and recipients of donors, reviewing the human rights of donors and accepting transplant donors in the medical aspect, so you can see the concept of Human Rights and Biomedicine.

Keywords

your human right biomedicine;
transplant; organ; tissue



I. Introduction

Technological advances in medical science, especially regarding transplantation, have been through a research process that has been carried out for years. Modern medicine developed in the 18th century as the beginning of the development of transplantation. Experts and researchers began to experiment with animal and human objects. A number of transplant trials sometimes do not yield satisfactory results. Continuing in the 20th century experiments on transplantation techniques continued to be carried out, so that in 1954 the world's first organ transplant surgery was carried out in America. The doctor who succeeded in performing the first transplant, namely Dr. Joseph Murray who transplanted a kidney through surgery that took place in Boston, Massachusetts. Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

The development of transplantation techniques is increasingly developing with research on the transfer of other organs that are transplanted, so that, in the mid-1960s, for the first time in the history of transplant surgery on the liver and pancreas, the organ was successful. After the success of kidney, liver and pancreas transplantation, researchers conducted experiments and research to be able to find the organs of the body that were transplanted, then for the first time in December 1967 Dr. Cristian Barnard, a surgeon from South Africa, has successfully transplanted a heart from a human to a human.

According to data compiled by the Global Observatory on Donation and Transplantation (GODT), based on a global database that includes 194 Member States located in six regions, the World Health Organization (WHO) and the Spanish Transplant Organization (ONT) show that transplant activities in 2020 have been carried out. 129,681 organ transplants are performed every year worldwide namely: 80,926 Kidney Transplant, 32,586 Liver Transplant, 8,101 Heart Transplant, 5,940 Lung Transplant, 1,970 Pancreatic Transplant, 158 Colon transplant, 36,125 organ donors from deceased persons, The analysis based on the data above shows that the number of transplant activities in the world shows that the needs of organs and tissues are urgently needed in the medical world today to help maintain human survival.

Based on the number of organ transplant activities carried out in the medical world, this activity is a legal act carried out by legal subjects because organ and tissue transplant activities create rights, obligations and responsibilities attached to donors and recipients of donors (recipients) as well as rights of legal subjects attached to them. those who are still alive and according to the law are dead.

Organ and Tissue Transplant activities intersect with Human Rights, the fulfillment of human rights needs to be done so that there is no discrimination and criminal acts that can harm donors and donor recipients, if you look at the State of Indonesia, there are many regulations that regulate organ and tissue transplant activities, which are contained in the Act. as well as special regulations regarding health, for example Law Number 36 Year 2009 concerning Health and Government Regulation Number 18 Year 1981 concerning Anatomical Corpse Surgery and Transplantation of human organs or tissues.

From the explanation above, it was found that the need for organ donors as well as organ and tissue transplantation activities are needed by Global and the legality in the practice of organ and tissue transplantation in the aspect of Human Rights Law is still far from what is expected by human rights in general, therefore this study aims to understand the rules -Law regulations relating to organ and tissue transplantation and the rights of donors and recipients of donors from the point of view of human rights and biomedicine.

II. Review of Literature

2.1 Definition of Organ and Tissue Transplant

Transplantation comes from the English transplantation, the noun form of the verb to transplant, which means grafting (heart skin). Meanwhile, in The Advanced Learner's Dictionary of Current English, AS Homby and Gatenby EV, interpret transplantation as "to move from one place to another". In terms of medical science, transplantation is the transfer of tissue or organs from the same body or another body.

The term Transplantation according to the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (ETS No. 186) is to include the process of the complete transfer of an organ or tissue from one person and the implantation of an organ or tissue into another person, including all procedures. for preparation, preservation and storage.

According to Masjfuk Zuhdi in his book Masail Fiqhiyyah, transplantation is the transfer of an organ that has a healthy life force to replace an organ that is unhealthy and does not function properly, which, if carried out with normal medical procedures, will not have the patient's hope of survival. again. According to Soekidjo Notoatmodjo, transplantation is a medical procedure to transfer organs and or tissues of the human body to another human body or its own body.

Based on the description above, it can be concluded that organ transplantation is the transfer of non-functioning organs or tissues in the context of treatment and efforts to save the lives of donor recipients.

Organ transplants are currently the object of buying and selling that are very much needed for recipients (recipients of organs). The number of requests and the few people who want to donate their organs, then human organs become something very valuable, the purchasing power of organ recipients to obtain organs and tissues to sustain their lives, encourage recipients or their families to try by all means to find willing donors, among others by making personal requests on television or radio, registering or registering options related to transplantation and even send a letter to his friends or anyone through Electronic Media. The sale of organs and tissues has become a big business, it encourages the occurrence of illegal organ and tissue donors, resulting in cases of buying and selling human organs. The sale of human organs occurs in economically weak societies. The supply of high organ prices led to increased interest in selling their organs.

III. Result and Discussion

3.1 Law of Organ Transplant according to Islamic Law and Positive Law in Indonesia

Studies that discuss the practice of tissue and organ transplantation in the intellectual and scientific treasures of classical Islamic jurisprudence are relatively rare and almost never discussed by fuqaha in detail and clearly which may be due to the novelty of this problem and the complex dimensions associated with transplant cases. So contemporary scholars in particular conduct *ijtihad* to provide the view that there are cases of transplantation.

There are several views on the law of human organ transplantation from various circles, both classical scholars and contemporary scholars. Here are some opinions regarding the law of organ transplantation:

1. Classical *fiqh* scholars agree that transplanting human organs with other human organs is permissible as long as they do not get other organs and cause harm.
2. Al-Nawawi is of the opinion that if a person joins his bones with unclean items because there are no sacred items, then his law is permissible. However, if there is a sacred item then it is connected with an unclean item, then the law must be opened if it does not cause danger.
3. Zakariya al-Ansari also agrees with the opinion of al-Nawawi in his book *Fathu al-Wahhab Syarh Manhaj al-Thullab* that someone who performs bone grafting on the basis of an urgent need with an unclean bone due to the absence of other suitable bones, then it is permissible and valid for his prayer. Unless there is no urgent need or there are other holy bones, it is obligatory to open it even though it is covered by meat. With a note, the retrieval process is safe and does not cause danger and death.
4. Mufti Muhammad Sayfi'i from Pakistan and Dr. 'Abd al-Salam al-Syukri from Egypt is of the opinion that organ transplantation is not permitted based on the following principles and considerations: the sanctity of life (the human body), the human body as a trust, treating the human body as a material object, preserving the dignity of human life, avoiding doubt.
5. Yusuf Qardhawi stated that the practice of transplanting was permissible. Although it is permissible, its nature is not absolute but *muqayyad* (conditional). Therefore, a person is not allowed to donate part of his body organs which will actually leave blood, poverty, and misery for himself or the person who has permanent rights over him. It is also not

allowed to donate organs that are the only ones in the body, such as liver and heart. It is impossible to live without the organ; and it is not permissible to remove dharar from others by inflicting dharar on him.

The majority of scholars who allow transplantation base their opinion on the following arguments:

1. Underlying transplants for repair.

Humans are creatures who have a will over what is related to their body. Although humans are not the true owners of their organs, Allah has given humans the right to use and utilize them as long as they do not cause damage, destruction and death. This is as Allah says in Surah an-Nisaa' verse 29 and Surah al-Baqarah verse 95. So, if a person donates an organ or tissue that is not vital and does not harm himself, then he has saved the lives of others to repair the recipient's organs. (receiver). This is a very commendable act.

2. Emergency based transplant

That the transplant is done on the basis of emergency (force) can be categorized as an act that is permissible (permissible). This is as the word of Allah in the letter al-An'am verse 119;

اَلَكُمْ لَا لَوْ ا ا سَمِ اللّٰهِ لِيَه فَصَلَّ لَكُمْ ا لِيَكُمْ لَا الضُّرُّرْتُمْ لِيَه ا لِيُضِلُّونَ اِيَهُمْ لَمْ اِنَّ رَبَّكَ هُوَ

Meaning: Why do you not want to eat (halal animals) which is called the name of Allah when slaughtering them, even though Allah has explained to you what He has forbidden you, except what you are forced to eat. And indeed most (of mankind) really want to mislead (others) with their lusts without knowledge. Verily, your Lord, He knows best those who transgress.

3. Transplants based on need

A person who donates his organs to save the life of a recipient who is in dire need is an act of mutual help in terms of goodness and is highly recommended by Islam. As the word of Allah in Surah al-Ma'idah verse 2:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحْلُوا شَعَائِرَ اللَّهِ وَلَا الشَّهْرَ الْحَرَامَ وَلَا الْهَدْيَ وَلَا الْقَلَائِدَ وَلَا آمِينَ الْبَيْتِ الْحَرَامِ يَبْتَغُونَ فَضْلًا مِنْ رَبِّهِمْ وَرِضْوَانًا وَإِذَا حَلَلْتُمْ فَاصْطَادُوا وَلَا يَجْرِمَنَّكُمْ شَنَا نُ قَوْمٍ أَنْ صَدُّوكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ أَنْ تَعْتَدُوا وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ الْعُدْوَانِ اتَّقُوا اللَّهَ إِنَّ اللَّهَ الْعَقَابِ

Meaning: O you who believe, do not violate the symbols of Allah, and do not violate the honor of the forbidden months, do not (disturb) the had-ya animals, and the qalaa-id animals, and do not (also) disturb the people who visit the temple while they are seeking grace and pleasure from their Lord and when you have completed the pilgrimage, then it is permissible to hunt. And do not ever hate (you) for a people because they prevent you from the Masjidil Haram, encourage you to do wrong (to them). And help you in (doing) righteousness and piety, and do not help in committing sins and transgressions. And fear Allah, verily Allah is very severe in punishment.

Some scholars who refuse transplantation of human organs from healthy or dead bodies are based on the Hadith of the Prophet SAW:

Abud David (2792)

اَلْقَعْنَبِيُّ اَلْعَزِيْزُ اِبْنُ بِنْتِ الرَّحْمَنِ اَيْشَةَ لَ اللّٰهُ لَى اللّٰهُ لَيْه لَمْ اَلْ اَلْمَيْتِ كَكَسْرِهِ حَيًّا

Has told us Al Qa'nabi has told us Abdul Aziz bin Muhammad from Sa'd bin Sa'id? from 'Amrah bint Abdurrahman from Aisha that the Messenger of Allah -peace and prayer of Allah be upon him- said: "Breaking the bones of a dead person is like breaking them when he was alive."

Organ transplant medical activities in Indonesia have been regulated by the government of the Republic of Indonesia in special regulations, the following is a summary of regulations relating to organ and tissue transplantation:

Table 1

No	Regulation	Article that regulates
1	Law No. 36 of 2009 concerning health	<ul style="list-style-type: none"> ➤ Article 64 Paragraph 1 ➤ Article 65 Paragraph 1 ➤ Article 66 ➤ Article 67 Paragraph 1 ➤ Article 192
2	Law Number 23 of 2002 concerning Child Protection	<ul style="list-style-type: none"> ➤ Article 47 Paragraph 1 and Paragraph 2 ➤ Article 84 ➤ Article 85
3	Law Number 21 of 2007 concerning the Crime of Trafficking in Persons (TPPO)	<ul style="list-style-type: none"> ➤ Article 1 Number 7 ➤ Article 2 Paragraph 2
4	Government Regulation No. 18/1981 concerning Clinical Corpse Surgery and Anatomical Corpse Surgery and Transplantation of Instruments or Human Tissues.	<ul style="list-style-type: none"> ➤ Article 10 Paragraph 1 ➤ Article 11 letters a and b, paragraph 2 ➤ Article 11 paragraph 1 ➤ Article 12 ➤ Article 13 ➤ Article 14 ➤ Article 15 Paragraph 1 ➤ Article 16 ➤ Article 17 ➤ Article 18 ➤ Article 19 ➤ Article 20 Paragraph 1
5	Regulation of the Minister of Health of the Republic of Indonesia Number 38 of 2016 concerning Organ Transplantation.	<ul style="list-style-type: none"> ➤ Article 13 ➤ Article 14 Paragraphs 1 and 2 ➤ Article 15 Paragraphs 1, 2, and 3 ➤ Article 16 Paragraphs 1 and 2 ➤ Article 17 ➤ Article 18 ➤ Article 19 Paragraph 1

Based on the results of the search for Indonesian regulations relating to organ transplantation, that the regulation discusses the technical legal rules for the implementation of transplantation and sanctions for violators of these rules, the discussion on the rights of donors or victims has not yet been fully discussed in Indonesian regulations, because the legal focus is on the legal approach. protection for victims by providing sanctions for perpetrators of selling organs.

3.2 Transplantation of Human Organs and Tissues in the Perspective of Human Rights and Biomedicine

An understanding of a person's rights over his body cannot be separated from the underlying values. Soedarto explained "Value can be interpreted as a measure that is realized or not realized by the community or group to determine what is right, what is good, and so on". It can be concluded that the essence of values is the cornerstone or basis that underlies the existence of the norm. The concept of humanity must have a source of value that underlies the validity of the value itself.

Based on the concept of humanity, the right to the body must be seen as an integral part of a single and responsible existence. Therefore, here there is an absolute limit to a person's right to his body, namely the value of humanity. The essence of human values is obtained from the second principle of Pancasila "Just and civilized humanity" in the first point affirms "Recognizing and treating humans according to their dignity as creatures of God Almighty". Human values must be understood as an appreciation of human dignity as creatures of God Almighty. As creatures of God Almighty, humans have a different dignity from other creatures because only humans have the Creator given a higher and nobler value as their identity.

Meanwhile, in understanding human dignity, human values must be interpreted as a form of human responsibility not to do despicable things. These things such as behaving cruelly and inhumanely or doing what they want without respecting the rights of others are also included here valuing the body or body parts (organs) as assets that can be valued with money. The concept of thinking that considers the body and its parts as goods that can be valued with money is an act that degrades human dignity. This is understandable considering that someone with such a view basically sees himself and his body (organs) as separate from one another. So that indirectly he does not respect his existence through his body and demeans his human dignity. This is where this human value must be understood as a limitation of the right to his body.

Several countries regarding transplantation are regulated by the Transplantation of Human Organs Act (THOA) 1994. These rules are enacted to provide systems for the transfer, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial transactions in human organs. This is necessary to protect patients, people and health workers. Organ donation must also be done voluntarily without the lure of money so that irregularities and illegal practices of buying and selling human organs can be minimized. Under the THOA Rules, organ sources:

1. Donor close relatives (mother, father, son, daughter, brother, sister, spouse)
2. Other than close relative donors: Such donors can donate only out of affection and attachment or for other special reasons and that too with the approval of the authorization committee.
3. A deceased donor, especially after brain stem death e.g. victims of traffic accidents etc where the brain stem dies and the person cannot breathe on their own but can be maintained through ventilators, oxygen, fluids etc to keep the heart and other organs

working and functioning. Another type of deceased donor can become a donor after cardiac death.

The application of the rules on organ transplantation in Indonesia is stated in Article 64 paragraph (2) of Law no. 36 of 2009 concerning Health actually explicitly regulates humanitarian goals in carrying out organ transplants. Thus, a person who is going to donate his body or organs must be assessed whether he has a good understanding of the dignity of both himself and others (prospective donor recipients) as creatures of God Almighty. In practice, bodily rights must be subject to restrictions set by law with a view to guaranteeing recognition.

Based on Law No. 36 of 2009 concerning Health determines that:

Article 64 paragraph (2): Transplantation of organs and/or body tissues is carried out only for humanitarian purposes and is prohibited from being commercialized.

Article 64 paragraph (3): Organs and/or body tissues are prohibited from being traded under any pretext.

Violation of this article is punishable by a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah), but there is no clear explanation of what is meant by "humanitarian goals" and the definition of "commercialization". "So that most law enforcement officers find it difficult to carry out legal investigations on cases of selling organs. Related to this, the rules regarding organ transplantation in Indonesia are still lagging behind other countries, such as in Iran, transplants are coordinated by other countries. The government campaigned that the transplant could be done for humanitarian reasons. This has been going on since the controlled LURD (Living Unrelated Donor) in 1988, from only 791 kidney transplant patients in 1988 increasing to 8. 399 patients in 2000. The government also provided funds for compensation costs. This campaign proved successful. Within a year, kidney donors reached more than 10,000 patients. But this program only applies to Iranian citizens, foreigners are not allowed to join this program.

Based on Government Regulation No. 18/1981, articles 17 and 18 concerning Clinical Corpse Surgery and Anatomical Corpse Surgery determine that:

- a. Article 17: It is prohibited to trade in tools and or human body tissues.
- b. Article 18: It is forbidden to send and receive tools and or human body tissues in all forms to and from abroad.

This is punishable by a maximum imprisonment of 3 (three) months or a maximum fine of Rp. 7,500,00 (seven thousand five hundred rupiah). As a country that adheres to a permit-based system where patient consent is required in medical efforts to transplant organs, the consent given by a corpse donor is when he is still alive either with or without the knowledge of his immediate family or there is approval from his closest family if during his life the donor has never make an agreement. It becomes an important matter because even though the body is dead, in this case we still have to respect the integrity right of the deceased donor to the body left behind.

Buying and selling of organs and or body tissues in the context of organ transplants because of the importance of human rights in the life of the nation, state and society. The Constitution of the Republic of Indonesia also guarantees these human rights as stated in Article 28A stipulating that "Everyone has the right to live and has the right to defend his life and life", and Article 28I paragraph (4) stipulates that "Protection, promotion, enforcement of, and the fulfillment of human rights is the responsibility of the state, especially the government". Based on the regulations in Law Number 39 of 1999 concerning Human Rights, it is determined that:

- a. Article 20 paragraph (2): Slavery or servitude, slave trade, trafficking in women, and all acts of any kind with similar purposes are prohibited.
- b. Article 33 paragraph (1): Everyone has the right to be free from torture, punishment or cruel, inhuman, degrading treatment and human dignity” and in Article 33 paragraph (2) “Everyone has the right to be free from enforced disappearances and disappearances of life.

The protection of human rights regarding organ transplantation in international law is contained in the Convention on the Protection of Human Rights and Human Dignity with regard to the application of Biology and Medicine: Human Rights and Biomedical Convention (ETS No. 164) which was signed on April 4, 1997 in Oviedo (Spain).

This Convention is the only legally binding international instrument on the protection of human rights in the biomedical field. It refers to the principles established by the European Convention on Human Rights, in the field of Biology and Medicine. This Convention has a framework of protecting the dignity and identity of all human beings and guaranteeing everyone, without discrimination, respect for the integration of trademarks and other rights and fundamental freedoms with regard to the application of biology and medicine. These basic principles apply to everyday medical practice and are considered as in the European treaty on patient rights. These also relate specifically to biomedical research, genetics and organ and tissue transplantation.

The protocols in this convention apply to organ and tissue transplants of human origin performed for therapeutic purposes. This protocol provides limitations that cannot be performed for organ transplants, namely:

1. Reproductive organs and tissues
2. Embryonic or fetal organs and tissues
3. Blood and blood derivatives

Fulfillment of Human Rights on the transfer of organs and tissues from living people must comply with the following rules:

1. The transfer of organs and tissues from a living person may be carried out solely for the therapeutic benefit of the recipient and where no suitable organ or tissue is available from a deceased person and there is no other alternative method of therapy with comparable effectiveness.
2. Organ harvesting from living donors may be carried out for the benefit of recipients who have a close personal relationship with the donor as provided for by law, or, in the absence of such a relationship, only under conditions prescribed by law and with consent. from an appropriate independent body.
3. Prior to organ or tissue harvesting, appropriate medical investigations and interventions should be undertaken to evaluate and reduce the physical and psychological risks to the donor's health. (Article 11)
4. Donors must be provided with appropriate information in advance regarding the purpose and nature of the transfer and the consequences and risks, Donors should also be informed of the rights and safeguards prescribed by law to protect donors. (Article 12)
5. organs or tissues can be taken from a living donor only after the person concerned has given free, informed and specific consent for it either in writing or before an official body (Article 13)
6. Organ or tissue harvesting shall not be performed on a person who does not have the capacity to give consent under article 13.(Article 14)

Human rights do not only apply to living human organs that are the giver or recipient of organs or tissues, but the rights to harvest organs and tissues from dead people have rules that must be met, namely:

1. Organs or tissues may not be removed from the body of a deceased person unless that person has been declared dead by law. The physician who certifies a person's death must not be the same doctor who participates directly in the removal of organs or tissue from the deceased person, or the subsequent transplant procedures, or has responsibility for the care of the prospective organ or tissue recipient. (Article 16)
2. Organs or tissues may not be removed from the body of a deceased person unless the consent or permission required by law has been obtained. Transfers may not be made if the deceased person objected prior to his or her death. (Article 17)
3. During transfer, the body should be treated with respect and all reasonable measures should be taken to restore the corpse's appearance. (Article 18)

In practice there are restrictions on organ and tissue transplants:

1. Prohibition of taking Financial Advantage
 - a. The human body and its parts must not/thus/produce financial or comparable benefits. (Article 21)
 - b. Advertising the need, availability of organs or tissues, with the intent to offer, seek financial gain or a comparable advantage is prohibited.
2. Trade in organs and tissues should be prohibited. (Article 22)

The implementation of organ and tissue transplants must fulfill human rights as donors and recipients of donors, the many rules that regulate both Indonesian positive law and international law emphasize more on preventing illegal organ trading and forced harvesting of organs or tissues that cause rights. his independence as a human being disturbed. The guarantee of the protection of human rights in the Constitution as the highest law means that the state has the main task of protecting human rights.

IV. Conclusion

An understanding of a person's rights over his body cannot be separated from the underlying values. the essence of values is the cornerstone or basis on which the norms exist. The concept of humanity must have a source of value that underlies the validity of the value itself.

Based on the concept of humanity, the right to the body must be seen as an integral part of a single and responsible existence. Therefore, here applies an absolute limit to a person's right to his body, namely the value of humanity. Human values must be understood as an appreciation of human dignity as a creature of God Almighty. As creatures of God Almighty, humans have a different dignity from other creatures because only humans have a higher and nobler value as their identity.

Meanwhile, in understanding human dignity, human values must be interpreted as a form of human responsibility not to do despicable things. These things such as behaving cruelly and inhumanely or doing what they want without respecting the rights of others are also included here valuing the body or body parts as assets that can be valued with money. Human Rights and Biomedical is a concept of thinking that considers the body and its parts as goods that cannot be valued because they are related to human dignity.

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