

# Legal Analysis of Organ Donation from the Study of Health Law, Health Law, and Religion

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## Abstract

In both Eastern and Western medicine, it is generally believed that every disease has a cure. There are diseases that can be treated with simple medication, but there are also those that require relatively complicated treatment, such as organ transplantation. A person suffering from terminal kidney failure, for example, only has 3 treatment alternatives: undergoing regular *hemodialysis*, undergoing a kidney transplant or dying. For these patients, kidney transplantation is a better treatment option than undergoing continuous hemodialysis. Currently, the number of kidney failure patients requiring kidney transplantation in Indonesia has reached 40,000 people. Those who undergo medical treatment are very few because of the expensive and long-term treatment costs. In Indonesia, the first kidney transplant was performed at RSCM in 1977. Until now, only 500 patients have undergone kidney transplantation in Indonesia, of which 200 were performed at RS PGI Cikini. This study aims to analyze the legal framework governing organ donation in Indonesia, especially in the health law; to examine the implementation of health laws related to organ donation and the challenges faced; to provide recommendations for strengthening the regulation and practice of organ donation in Indonesia. This study was conducted using a normative legal approach method. This study concluded that transplantation is a series of medical actions to move organs and/or human body tissues originating from another person's body or one's own body in the context of treatment to replace tissues and/or organs that are not functioning properly or are damaged; Transplantation can be classified into several factors, such as from the perspective of the recipient or organ recipient and the organ donor itself. When viewed from the recipient of the organ, it includes *autotransplantation*, *homotransplantation*, *heterotransplantation*, *autograft*, *allograft*, *isograft*, *xenograft* and *xenotransplantation*, *split transplantation* and *domino transplantation*. While from the perspective of the donor, it includes transplantation with living donors and dead donors (corpses). There are many factors that cause someone to undergo an organ transplant. Among others, for healing from a disease (eg blindness, heart and kidney damage), Restoring the function of an organ, tissue or cell that has been damaged or abnormal, but there is no biological pain at all; Organ transplantation is allowed in Islam and is even categorized as worship if done sincerely on condition that it does not result in death and infertility for the donor. For example, donating the heart, spleen, lungs, and testicles. This will result in death and infertility for the donor. Whereas humans are not allowed to kill themselves, or allow others to kill themselves, even with their willingness. And a deceased person's organs may be used for treatment on the condition that before dying the person permits it. The authors suggest: improving education and socialization programs regarding organ donation for the wider community. This can be done through seminars, workshops, and information campaigns that explain the importance of organ donation, applicable legal procedures, and related ethical and religious aspects; Encouraging policy makers to develop clear and comprehensive regulations regarding organ donation. This includes affirming legal procedures, protection for donors and recipients, and strict monitoring mechanisms to prevent abuse;

Conducting interdisciplinary studies involving legal experts, medical practitioners, and theologians to produce guidelines that integrate legal, health, and religious aspects. This will help in creating ethical organ donation practices that are in accordance with community values; Strengthening medical infrastructure that supports the implementation of organ donation, including adequate health facilities and training for medical personnel. This is important to ensure that the organ donation process is carried out safely and according to standards.

**Keyword:**

Legal Analysis, Organ Donation, Health Law, Religion

## 1. INTRODUCTION

In both Eastern and Western medicine, it is generally believed that every disease has a cure. There are diseases that can be treated with just simple medication, but there are also those that require relatively complicated treatment, such as organ transplantation. A person suffering from terminal kidney failure, for example, only has 3 treatment alternatives: undergoing regular *hemodialysis*, undergoing a kidney transplant or dying. For these patients, kidney transplantation is a better treatment option than undergoing continuous hemodialysis. Currently, the number of kidney failure patients requiring kidney transplantation in Indonesia has reached 40,000 people. Those who undergo medical treatment are very few because the cost of treatment is expensive and long-term. In Indonesia, the first kidney transplant was performed at RSCM in 1977. Until now, only 500 patients have undergone kidney transplantation in Indonesia, of which 200 were performed at PGI Cikini Hospital. Kidney donors in Indonesia are all living donors and the number is very small compared to the need. Most other patients actually undergo kidney transplantation in China, because the number of donors is large and the cost is relatively cheap. By performing a kidney transplant, according to data from the World Transplant Center Directory in 1992, the life expectancy of patients who undergo kidney transplants can reach 29.9 years. As a medical procedure, organ transplantation has the potential to be misused and cause disputes, so that its implementation is felt to require regulation not only in terms of ethics, but also law. This paper will discuss transplantation, its ethical and medicolegal aspects. Organ transplantation is a medical procedure in which living tissue in the human body is removed from the body and transferred to another part of the body, one example is *the skin. graft*. Where the transfer from one person to another, the donor is called the donor and the recipient is called *the recipient*. The aim of transplantation is to replace a tissue that is not functioning efficiently because of disease or injury, with one that has better function. In the UK and in some developing countries, the number of organs available for organ transplantation is limited and the situation is getting worse.

In a British Medical Journal article about 1000 patients are listed as dying each year. The death rate is getting worse every year but the number of organs available for transplantation remains the same. In a British Medical Journal article published in June 2000 although 70% of British people said they would be willing to donate an organ if they were eligible, only 20% actually did so. Kidneys, livers, hearts, lungs, pancreas and bone marrow are the types of organs and tissues that can be transplanted, but this is not guaranteed to be successful. Heart transplantation can be indicated for people with heart defects. The success of transplantation over the past two decades is far from what is expected today, the short life of organs can be a major problem. Organ transplantation can also be xenotransplantation, that is, the donor can be a living donor or a deceased donor. Organ transplantation raises fundamental questions in medical law and ethics: the issue of consent. Without involving a person, for example, an operation without the consent of the donor is not legal. Thus, the removal of organs without the consent of the donor is a violation of the law. This can be found in criminal law or civil law, although if there is permission from the donor, other views arise, such as in public policy, namely, paternalism where there is a time when someone needs to be protected. Organ donation is a form of medical action that provides hope for life to patients suffering from chronic diseases or organ failure. The practice of organ donation involves medical, legal, and ethical aspects. In health law, organ donation requires strict regulations to protect the rights of donors and recipients. Meanwhile, from a religious perspective, organ donation is often debated, especially regarding the issue of halalness, respect for the body, and the concept of universal good. In Indonesia, the practice of organ donation is regulated in various laws, such as the Health Law and its derivative regulations, but its implementation often faces technical and social obstacles.

### *Formulation of The Problem*

1. What is the in-depth understanding of the legal aspects of organ donation in the context of health law in Indonesia?
2. How can an integrative study of legal, health, and religious perspectives guide ethical and legal organ donation practices?
3. What are the references for policy makers, medical practitioners and the general public to understand organ donor governance?

### *Research Purposes*

1. To analyze the legal framework governing organ donation in Indonesia, particularly in the Health Law.
2. To examine the application of health laws related to organ donation and the challenges faced.
3. To provide recommendations for strengthening organ donation regulations and practices in Indonesia.

### *Benefits of Research*

1. Academic Benefits  
Academic benefits are a requirement in completing educational assignments at the Islamic University of Bandung and the results of this study can add to the literature so that they can become comparative material in working on the dissertations of Doctoral Law Study Program Students, Faculty of Law, Islamic University of Bandung.
2. Theoretical Benefits  
The theoretical benefit is to provide a contribution of thought or as a basis and reference for subsequent research and improving the quality of knowledge.
3. Practical Benefits  
It is hoped that practical benefits can be taken by policy makers, law enforcers, Civil Servant Investigators and society as a whole, which means that the research can be utilized by society in everyday life.

## **2. RESEARCH METHODOLOGY**

1. Writing Nature.  
This writing uses descriptive research. Descriptive writing aims to accurately describe the characteristics of an individual, condition, symptom or certain group or to determine the spread of a symptom or to determine whether or not there is a relationship between one symptom and another in society.
2. Writing Type.  
This type of writing uses a normative legal approach or this library is a writing that examines document studies, namely using various secondary data such as laws and regulations, court decisions, legal theories, and can be in the form of opinions of scholars.
3. Method of collecting data.  
The data collection technique in this writing is by using the Library Writing method . *Research* ) Library technique is "Bibliography writing carried out by reading, reviewing and recording various literature or reading materials that are in accordance with the topic, then filtered and poured into a theoretical framework of thought".
4. Data Types.  
The author in this study uses Secondary Data , namely "data obtained or collected by people conducting research from existing sources". Secondary data is in the form of books, journals, encyclopedias, magazines, papers, articles and others that are relevant to the problem regarding the author's research title.
5. Data analysis.  
In the process of analyzing data in this study, qualitative analysis was used , which is a method of analyzing data sourced from legal materials based on concepts, theories, laws and regulations, and expert opinions and the research's own views.

### 3. RESULT AND DISCUSSION

Along with the progress and development of the times, the world also experiences developments in various fields. One of them is progress in the field of health, namely organ transplantation techniques. Organ transplantation is a medical technology for replacing a patient's non-functioning organs with organs from other individuals. Until now, research on organ transplantation is still ongoing. Since the first successful transplant of a kidney from a donor to a patient with kidney failure in 1954, developments in the field of transplantation have advanced rapidly. The demand for organ transplants continues to increase beyond the availability of donors. For example, in China, in 1999 there were only 24 liver transplants, but in 2000 the number reached 78. While in 2003 the number increased to 356. The number increased further in 2004, namely 507 transplants. Not only the liver, the number of overall organ transplants in China has indeed increased drastically. At least it has occurred 3 times more than the United States. The imbalance between the number of organ donors and organ recipients occurs almost throughout the world. In Indonesia, there is no donor bank or a legal organization that oversees donors and recipients. However, there are many organizations that are freely circulating on social media by facilitating donors who ask for compensation for donating their organs without volunteering.

#### *Definition of Organ Transplant*

Organ transplantation is the transfer of human organs that are still alive and healthy to replace unhealthy organs that do not function properly when treated with conventional techniques and methods, even the life expectancy of the sufferer is almost no more. While the recipient is a person who will receive tissue or organs from another person or from another part of his own body. The organs that are usually transplanted are vital organs such as the kidneys, heart, and eyes. However, in its development, other organs can also be transplanted to help people who really need them. According to Article 1 paragraph 5 of the Health Law, organ transplantation is a series of medical actions to move organs and/or human body tissues originating from another person's body or one's own body in the context of treatment to replace organs and/or body tissues. Another definition of organ transplantation is based on Law No. 23 of 1992 concerning health, transplantation is a medical action to move organs and/or human body tissues originating from another person's body or one's own body in the context of treatment to replace tissues and/or body organs that are not functioning properly. If we look at its function and benefits, organ transplantation can be categorized as 'life'. 'Saving'. *Live saving* means that by carrying out a transplant it is hoped that it can extend the period of time a person can survive the disease they are suffering from.

#### *Organ Transplant Classification*

Transplants, viewed from the recipient's perspective, can be divided into:

a) *Autotransplantation*

The transfer of a tissue or organ to another place in the person's own body.

b) *Homotransplantation*

The transfer of a tissue or organ from one person's body to another person's body.

c) *Heterotransplantation*

Transfer of organs or tissue from one species to another.

d) *Autograft*

Tissue transplantation to the same person. Sometimes this is done with surplus tissue, or tissue that can renew itself, or tissue that is urgently needed elsewhere (examples include skin *grafts*, vein extraction for CABG, etc.) Sometimes autografts are done to remove tissue and then treat it or the person, before returning it (examples include stem cell autografts and preoperative blood banking).

e) *Allograft*

An *allograft* is a transplantation of an organ or tissue between two genetically non-identical members of the same species. Most human tissue and organ transplants are allografts. Because of the genetic differences between the organ and the recipient, the recipient's immune system will identify the organ as foreign and attempt to destroy it, causing transplant rejection.

f) *Isograft*

A *subset* of *allografts* in which organs or tissues are transplanted from a donor to a genetically identical recipient (such as an identical twin). *Isografts* are distinguished from other types of

transplants because while they are anatomically identical to allografts, they do not trigger an immune response.

g) *Xenograft and Xenotransplantation*

of organs or tissues from one species to another. An example is the transplantation of pig heart valves, which is quite common and successful. Another example is the attempted-primate (non-human primate fish)- piscine transplantation of islet (i.e. pancreatic islet tissue or) tissue.

h) *Split Transplant*

Sometimes a deceased-donor organ, usually a liver, can be shared between two recipients, typically an adult and a child. This is not usually a desirable option because whole-organ transplants are more successful.

i) *Domino Transplant*

This operation is usually performed on patients with *fibrosis. cystic* because both lungs need to be replaced and it is a technically easier operation to replace the heart and lungs at the same time. As the recipient's native heart is usually healthy, it can be transferred to another person who needs a heart transplant (parsudi, 2007).

When viewed from the perspective of the donor or donor of organs and/or body tissue, transplantation can be divided into:

a. Transplantation with a living donor.

Transplantation with a living donor is the transfer of tissue or organs from one person to another person or to another part of one's own body without threatening health. This living donor is carried out on regenerative tissues or organs, such as skin, blood and bone marrow, as well as paired organs such as kidneys.

b. Transplantation with dead donors or corpses

A transplant with a dead donor or corpse is the transfer of organs or tissues from the body of a deceased person to the body of another living person. The types of organs that are usually donated are organs that do not have the ability to regenerate, such as the heart, cornea, kidneys and pancreas.

### *Legal Perspectives on Body Ownership*

The law distinguishes between organ donation from a living person and cadaveric transplantation involving organs from a cadaver or a deceased person. Commercial transactions are prohibited for organ transplantation from a living person or from a cadaver. Is there a rule that a person must give their body and body parts? What is the right of ownership, if there is tissue? Does a person have rights if they are a corpse? The law in the UK is not strict about this (Dr. Handyside's case (1749)) has not provided the possibility of punishment for the theft of samples urine Rv Welsh (1974) or blood sample : Rv Rothery (1976). Post hospital The human body parts are regulated by the Human Tissue Act 1961. The right to retain human body parts is legally permitted for ' therapeutic purposes or for medical education purposes or for research', provided the person, under the legal protection of the ownership of the body parts is not clear after an investigation has been carried out and no one has owned the body part or the family. The Anatomy Act 1984 permits the retention of body parts for teaching, studying or research in the study of morphology under the same conditions as above. An investigator may take post mortem ( under s.9: Investigators Regulation 1984) and proceed to take direct possession of items which he believes support the disclosure of the cause of death for a time as an investigator must appear fit. For the sake of upholding the law, furthermore the family does not have the right of personal ownership of the body of the deceased ( Dobson V Nort Tyneside (1996) Court of Appeal ); means only three parts, medical personnel, or legal murder or administratively unclear ownership and only related to burial. Parts of the corpse are good property if they are obtained different equipment on the basis of application capabilities, such as post-mortem, or preservation techniques, for display or teaching purposes (see R v Kelly (1998)). In this case, a person who removes body parts without permission and for his own purposes will be made guilty and considered theft. The original owner will obtain ownership rights.

### *Ethical and Social Perspectives*

Jonsen in ' Ethical Issues in Organ Transplantation ' in Medical Ethics (ed. Veitch ) (1989) mentions a summary of some ethical and moral issues arising from organ transplantation, namely (i) serious questions about the moral value of transplantation (ii) the survival of cadaveric organs in the corpse (iii) the rights of



those who donate their organs (iv) the selection of recipients who receive rare organs, and the acquisition and allocation of organs according to their livelihoods. Of all these, organ acquisition has been a continuing problem since the release and implementation of informed consent; when does death occur legally and medically? The criteria for death are now based on brain stem death but heart and lung criteria are also used. These criteria affect the availability of organs. The conflict that may occur in two types of philosophical theories is between: deontology theory and consequentialist theory. In deontology, a person's behavior greatly influences decision-making that is based on moral interests themselves. The principle of respecting people means that humans should not be used carelessly. In consequentialist theory, utilitarianism becomes a motto, namely how to maximize happiness and minimize suffering and the results of the plan to achieve goodness from a large number. A question about ethics for living donors: To what extent is it permissible to sacrifice one person with the worst possibility of benefiting others?

### *Islamic Law Perspective*

Islam commands that every disease be treated. Allowing disease to nest in the body can have fatal consequences, namely death. Allowing oneself to fall into death is a forbidden act. In QS. An-Nisa 4: verse 29 it is explained which means: "... and do not kill yourselves! Indeed, Allah is Most Merciful to you." What is meant is, if you are sick, seek optimal treatment according to your ability because every disease has been determined its cure. In a narration, it is told that a Bedouin Arab came to the Prophet Muhammad. and asked, Do we have to seek treatment? The Prophet replied, "O servant of Allah, seek treatment, indeed Allah does not send down a disease but also (determines) its cure, except for one disease." The companions asked, "What disease is that, O Messenger of Allah?" He replied, "An old disease ." (Narrated by Abu Daud, Tirmidhi, Ibn Majah, and Ahmad). So after we know the history, we know that transplantation is also a type of treatment. In the rules of the method of taking law, Al-Ashlu is mentioned. *fil mu'amalat al-ibaahah ill ma dalla daliilun 'ala nahyi*. (In principle, muamalah (worldly) affairs are permitted unless there is evidence that prohibits them). This means that worldly affairs may be carried out as long as there is no evidence in the Quran or hadith that prohibits them. Transplantation can be categorized as a muamal (worldly) affair. If we observe, there is no evidence either from the Qur'an or the hadith that prohibits it. So transplantation is a permissible worldly matter. The problem is, what is the law regarding donating organs for transplantation. Islam commands to help each other in goodness and forbids it in sins and transgressions. This is explained in QS. Al-Maidah 5: verse 2 which means: "And please help you in doing good deeds and piety, and do not help you in committing sins and transgressions." Helping others is a noble deed. However, one must still pay attention to one's personal condition. This means that it is not permissible to help others which results in destroying oneself, as His word states, Explained in QS. Al-Baqarah 2: verse 195 which means: "...and do not throw yourselves into destruction". So, if according to medical calculations donating organs does not harm the donor or recipient, it is permissible, even categorized as worship if done sincerely. However, if it harms them, it is forbidden. Then, what about the use of human organs that have died? There are two opinions on this issue.

- a) The first opinion says that it is forbidden to use the organs of a deceased human body, because the figure of a human corpse must be respected as it was respected during its life. The basis is the words of the Prophet Muhammad, "*Cutting the bones of a corpse is the same as cutting the bones of a human being when he was still alive.*" (HR. Abu Daud)
- b) The second opinion states that using human organs as a treatment is allowed in an emergency. The reason is, the hadith narrated by Abu Daud which prohibits cutting the bones of a corpse applies if it is done arbitrarily without benefit. If it is done for treatment, the use of corpse organs is not prohibited because the hadith that orders someone to treat their illness is more numerous and more convincing than the hadith of Abu Daud.

However, its use must be permitted by the person (before he dies) or by his heirs (after he dies). Without reducing respect to the first opinion, in my opinion, the second opinion is more logical to accept. Therefore, it is natural that most scholars of the Hanafi, Syafi'i, Maliki, Hanbali, and Zaidiyyah schools of thought allow it. In conclusion, transplantation is a method of treatment that is permitted by Islam. Being a donor is permissible (permissible) and even has the value of worship if done sincerely as long as it does not destroy the donor and it becomes forbidden if it destroys him. A deceased person's organs may be used for treatment as long as the person permits it before dying. In Islamic law there are 2 types of laws regarding organ transplantation and organ donation in terms of the donor's condition. The two laws are: a. Organ

Transplantation from Deceased Donors. As for transplantation after the end of life, the law is different from donation when (the donor) is still alive. Assuming that here it is necessary to explain the law of ownership of the human body after he dies. It is something that is beyond doubt that after his death, a person has left his ownership and power over all things; both his property, body, and wife. Thus, he no longer has any rights over his body. So when he gives a will to donate part of his body, it means that he has arranged something that is not his right. So he is no longer allowed to donate his body. Naturally, his will in that case is also invalid. It is indeed permissible to give part of his wealth, even though the wealth will leave his ownership when his life ends. But that is because the sharia gives permission to humans regarding this matter. And that is a special permission for wealth, of course it cannot be applied to others.

Thus, humans are not allowed to make a will by donating part of their body parts after they die. As for the heirs; indeed, the Shari'a bequeaths to them the property inherited (by the deceased). However, the Shari'a does not bequeath their bodies to them, so they have no right to donate anything from the deceased. If it is like that for the heirs, let alone doctors or rulers, they have no right at all to transplant the organs of a person after death to someone else who needs them. Moreover, there is an obligation to maintain the honor of the deceased and there is a prohibition to hurt him as is the prohibition for the living. The Messenger of Allah (peace and blessings of Allah be upon him) said: "*Breaking the bones of a dead person is the same as cutting his bones when he was alive.*" Thus, the Messenger of Allah (peace and blessings of Allah be upon him) forbade robbing and hurting (the dead). It is true that going beyond the limits of a dead person by hurting or cutting or even breaking (bones) does not provide any guarantee (diyat) as when he was alive. However, it is clear that going beyond the limits of a dead person's body or hurting him by taking his body parts is forbidden; and its prohibition is definite (qath'i). Regarding the emergency situation that has been used as an excuse by state officials, public relations officers and muftis who allow transplants; this requires a study of emergency situations and their application to the problem of organ transplants. Indeed, Allah SWT has allowed people in an emergency situation until they run out of supplies and their lives are threatened with death to eat anything they find. Although the food is forbidden by Allah, it is (allowed in an emergency) to be eaten simply to restore one's strength and to stay alive. So the justification for eating forbidden food is to maintain (the existence of) human life. By examining the body parts to be transplanted, as well as the purpose of the transplant, sometimes saving human life depends on transplantation (of course based on strong suspicion) such as the heart, liver or both kidneys.

Our sometimes transplantation of body parts that are not directly related to saving life. For example, cornea transplantation, or pupil or whole eye from a dead person. As for the body parts that are strongly suspected of being able to save human life, their illat in this case is not perfect. Because sometimes it works, sometimes it doesn't. This is different from the illat of eating a corpse; which is definitely able to save human life. Moreover, some of the branch illats ('*illat al-far'u*') in this case transplantation is free from stronger contradictions (evidence), which require the opposite of the matter that has been determined by '*illat qiyas*'. '*Illat* The analogy in organ transplantation is to preserve human life as in the case of eating corpses. Whereas the illat This is still in the form of 'strong suspicion'. This contradicts the stronger (argument) namely the honor of the corpse and the prohibition of hurting or damaging it. Based on this, it is not permissible (read: haram) to carry out organ transplantation; on which the life of a person depends. Whereas organ transplantation, on which saving a person's life does not depend; or in other words, the failure of the transplant does not result in death, then the illat which is in the main ('*illah al-ashl*') maintenance of human life does not exist. Thus, emergency law does not apply here. Thus, it is not permissible to carry out organ transplantation from someone who has died; while his blood is preserved, whether Muslim, *infidel dhimmi*, *mu'ahid* or *musta'min*, to another person whose life depends on (the success of) the organ transplant.

### Organ Transplant From Living Donors

What is meant here is a body part donor for anyone who needs it while the donor is still alive. This kind of donor is permissible. Because Allah SWT allows forgiveness for qisash and diyat. Allah SWT says in QS. Al-Baqarah 2: verse 178 which means: "*So whoever receives forgiveness from his brother, let him (the forgiver) follow it in a good way, and let him (the forgiven) pay (diat) to the forgiver in a good way. That is a concession from your Lord and a mercy. Whoever exceeds the limit after that, for him is a painful punishment*". However, this kind of donor is permissible with conditions. Namely, the donor does not result in the death of the donor. For example, he donates his heart, spleen or lungs. This will result in the death of the donor. In fact, humans should not kill themselves, or allow other people to kill themselves, even if they

are willing. Allah SWT says in QS. An-Nisa 4: verse 29 which means: *"And do not kill yourself."* Furthermore, Allah SWT said: *"And do not approach abominable deeds, whether visible or hidden, and do not kill a soul which Allah has forbidden (killing) except with something (cause) that is right."* (QS al-An'am [6]: 151). Just as humans are not allowed to donate body parts, which can result in mixing up lineages or ancestry. For example, testicle donors for men or ovary donors for women. Indeed, Islam forbids assigning oneself to anyone other than one's father or mother. Allah SWT says: Their mothers are nothing but the women who gave birth to them. (TQS al-Mujadilah [58]: 2). Furthermore, the Messenger of Allah said: "Whoever entrusts himself to someone other than his father, or takes care of something that is not his business, then upon that person is the curse of Allah, the Angels and all mankind." As the Prophet said : " *Whoever is called by (a name) other than his father, heaven is forbidden for him.*" Likewise, he stated: " *Any woman who has committed her lineage to a people even though she is not part of that people, she is cut off from Allah, she will not enter heaven; and any man who rejects his child even though he knows (that the child is his son) then Allah will veil Himself from that man, and Allah will strip him (of his disgrace) in front of those who were before and after him. Then"* . As for donating both testicles and both ovaries, this will result in infertility; Of course this is contrary to the Islamic command to preserve offspring.

### Legal Perspective

The law on organ donation from a living person is a combination of criminal law and statute. Both laws agree that donation would be illegal if the organ was removed from a deceased person. If a surgeon did that, he would be considered murder or manslaughter. Professor Gerld Dworkin in " *The Law Relating to Organ Transplantation in England* " (1970) 33 Mod LR 353) supported four circumstances for the surgeon in the transfer of donor organs, to be legal:

- a. Patients must be given full freedom and clear explanation: In some cases, the psychological pressure from close family relationships becomes so strong that consent is not easily given.
- b. The operation must be performed for therapeutic purposes quickly for the benefit of the donor; it is difficult to define, but what is meant by therapy? In the case of donating a kidney, there is a possible danger of damage to the other kidney.
- c. There is something that needs to be justified according to law
- d. There are operations that must be performed by someone with the appropriate medical skills.

In Indonesia, the legal regulations for organ transplantation are in Law Number 17 of 2023 concerning Health and Government Regulation Number 28 of 2024 concerning Implementing Regulations of the Health Law, which states the following:

- a. Healing of diseases and restoration of health can be done through organ and/or body tissue transplantation, drug and/or medical device implants , plastic and reconstructive surgery, and the use of stem cells;
- b. Organ and/or body tissue transplantation as referred to in paragraph (1) is carried out only for humanitarian purposes and is prohibited for commercialized ;
- c. Organs and/or body tissues are prohibited from being traded under any pretext

In Indonesia, transplantation may only be performed by authorized health workers, who do so based on the consent of the donor or his heirs (Law Number 17 of 2023 concerning Health). Because organ transplantation is a medical procedure, the person authorized to do it is a doctor. This law does not explain at all what qualifications of doctors are authorized. Thus, the determination of who is authorized seems to be left to the medical profession itself to determine. Logically, organ transplantation in its implementation will involve many doctors from various medical fields such as surgery, anesthesia, internal medicine, etc. according to the type of organ transplant to be performed. The doctor who performs the transplant is a doctor who works at a Hospital appointed by the Minister of Health. To avoid any conflict of interest, the doctor who performs the transplant must not be the doctor who treats the patient.

### Organ Transplantation From the Perspective of Societal Norms

Some parties involved in the transplantation effort are living donors, corpses and dead donors, families and heirs, recipients, doctors and other practitioners, and the community. The relationship of these parties to ethical and moral issues in transplantation is:



1. Living Donor.

Living Donor is a person who gives his/her tissue or organ to another person ( *recipient* ). Before deciding to become a donor, a person must know and understand the risks faced, both in the medical field, differentiation and the risk for further surgery as a deficiency of tissue or organ that has been transferred. In addition , to become a donor, a person must not experience psychological stress. The psychic and emotional relationship must have been thought about by the living donor to prevent problems from arising.

2. Corpses and Dead Donors.

Corpses and dead donors are people who during their lifetime have given permission or have serious intentions to donate their body tissues or organs to those in need when they die. When can a donor be said to have died of natural causes, and if the donor was sick before dying, how far has the help from the doctor treating him been. All of this is to prevent accusations from the donor's family or other parties that the transplant team has made efforts to hasten someone's death just to chase organs to be transplanted

3. Donor family and heirs.

The agreement between the donor and recipient families is very necessary to create mutual understanding and avoid conflict as much as possible or psychological and emotional pressure in the future. From the recipient family, it is actually only demanded a sincere appreciation for the donor and his family. It would be better if a provision was made to prevent dissatisfaction from both parties.

4. Recipient.

A recipient is a person who receives another person's tissue or organ. Basically, a patient has the right to receive treatment that can prolong life or relieve the patient. A recipient must fully understand everything explained by the transplant team. Through the transplant, it is expected to provide great value to the recipient's life. However, he must realize that the results of the transplant are limited and there is a possibility of failure. It also needs to be based on the fact that if he accepts a transplant, it means he is in a very useful experiment for the benefit of many people in the future.

5. Public

Inadvertently, the community also determines the development of transplantation. Cooperation between the implementation team and scholars, community leaders, or religious leaders is needed to educate the community to better understand the noble intentions and goals of the transplantation effort. With this understanding, the possibility of providing organs that are immediately needed, for noble goals will be fulfilled.

#### 4. CONCLUSION

Based on the description of the material, I can conclude that transplantation is a series of medical actions to move organs and/or human body tissues originating from another person's body or one's own body for the purpose of treatment to replace tissues and/or body organs that are not functioning properly or have been damaged; Transplantation can be classified into several factors, such as from the perspective of the recipient or organ recipient and the organ donor itself. When viewed from the recipient of the organ includes *autotransplantation, homotransplantation, heterotransplantation, autograft, allograft, isograft, xenograft and xenotransplantation, split transplantation and domino transplantation*. While viewed from the donor's perspective includes transplantation with living donors and dead donors (corpses). There are many factors that cause someone to undergo an organ transplant. Among others, for healing from a disease (eg blindness, heart and kidney damage), Restoring the function of an organ, tissue or cell that has been damaged or abnormal, but there is no biological pain at all; Organ transplantation is allowed in Islam and is even categorized as worship if done sincerely on condition that it does not result in death and infertility for the donor. For example, donating the heart, spleen , lungs, and testicles. This will result in death and infertility for the donor . Whereas humans are not allowed to kill themselves, or allow others to kill themselves, even with their willingness and a deceased person's organs may be used for treatment on the condition that before dying the person permits it.

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