

LAW ENFORCEMENT AND COMPREHENSIVE REGULATION: PROTECTING ORGAN TRANSPLANTATION IN INDONESIA

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Abstract - Organ transplantation is a complex medical procedure that replaces damaged organs with healthy organs from a donor. Although advances in health technology have increased the success of organ transplants, the high demand for organs has led to the rise of the illegal organ trade. In Indonesia, the buying and selling of organs is prohibited and donation is only allowed on a voluntary basis. The transplant process involves a great deal of responsibility on the part of doctors and hospitals, who must comply with regulations such as the Indonesian Minister of Health Regulation No. 290/MENKES/PER/III/2008. However, the legal vacuum regarding patient-patient relationships, including donor compensation, potentially opens a loophole for unethical organ trafficking. This study examines the law enforcement and regulation of organ transplantation in Indonesia through a doctrinal approach, with the aim of creating more comprehensive regulations to protect the rights of donors and recipients. With firm and clear regulations, it is hoped that organ transplants in Indonesia can be carried out ethically and responsibly, protecting all parties involved from exploitation and illegal practices.

Keywords: organ transplantation, organ donor, medical ethics, organ trafficking, law enforcement, comprehensive regulation.

INTRODUCTION

Organ transplantation is a complex medical procedure in which damaged or non-functioning organs in the recipient are replaced with healthy organs from a donor. Organ donors can be either living or deceased. Technological advancements in healthcare have opened up opportunities for more successful organ transplants. This has increased the demand for organs and tissues for transplantation. Efforts to improve public health welfare have also been helped by technological advances (Darmawan et al., 2022). However, on the other hand, organ transplantation also raises ethical dilemmas, especially in relation to organ trafficking. In Indonesia, buying and selling organs is prohibited for any reason. Organs may only be donated voluntarily on humanitarian grounds.

The development of information technology should support patient data collection (Kholis et al., 2023; Lethy et al., 2023). In addition, it also makes it easier for patients who need organ transplants to find information. This also opens up opportunities for others to donate their organs for quick and easy financial compensation, driven by economic pressures.

The process of organ transplantation involves a great deal of responsibility on the part of doctors and hospitals. The handling of donor and recipient patients must be carried out carefully and planned, based on patient consent and applicable regulations. The Regulation of the Minister of Health of the Republic of Indonesia Number 290/MENKES/PER/III/2008 concerning Approval of Medical Actions is the main foundation in this regard. The search for potential donors by the recipient is not the responsibility of the hospital. Hospitals should not be involved in the donor search process, and the focus should be on providing optimal care for patients who need a transplant. Although according to Herianto et al. (2024), the health system in Indonesia still faces challenges and there should be efforts to improve the accessibility and quality of organ transplantation in Indonesia.

Risk in the medical world is a natural thing, as long as it is within predictable limits. The principle of voluntariness in donating organs must always be upheld, and there must be no indication of buying and selling organs or commercialization. Current legal arrangements only regulate the legal relationship between doctors and patients in therapeutic agreements. However, there is a legal vacuum regarding the relationship between patients involving personal agreements between donors and recipients in organ transplantation, including the provision of compensation money as a form of gratitude for organ donation. This lack of clarity in regulation has the potential to create legal loopholes and open up opportunities for unethical organ transactions. Therefore, a more comprehensive regulation is needed to regulate the legal relationship between patients in organ transplantation, including the mechanism of consent, compensation, and prevention of donor exploitation.

Clear and firm regulations will help ensure that organ transplants in Indonesia are conducted with quality, ethically and responsibly, and protect the rights of all parties involved. Thus the issue of how to strengthen law enforcement against organ trafficking and ensure protection for transplant donors and recipients is at the core of efforts to solve the problem of organ transplantation in Indonesia.

With these questions in mind, solutions will be sought to respond to this ethical dilemma that requires multi-stakeholder collaboration, including the government, medical personnel, civil society organizations, and the wider community and it is important to establish clear and comprehensive regulations related to organ transplantation, which consider the needs of patients, protect donor rights, and prevent organ trafficking. There are efforts to ensure that organ transplants in Indonesia are carried out in a quality, ethical and responsible manner so that they can benefit patients in need without violating human values.

RESEARCH METHODS

This study uses a doctrinal approach to examine law enforcement and comprehensive regulations related to organ transplantation in Indonesia. This approach, known as "black letter law", allows researchers to systematically study and describe the legal rules governing organ transplantation. More than just understanding the rules, this study aims to analyze the relationship between rules, explain areas that remain unclear, and even predict the future development of organ transplant law. The researcher will construct and combine various legal sources, including legislation, other legal regulations, relevant legal theories, legal principles, principles, and doctrines. The aim is to achieve a comprehensive understanding of the law of organ transplantation and find legal solutions to the problems faced. This doctrinal approach was chosen because it is believed to be able to provide a strong legal foundation for the analysis and conclusions of the study. By understanding and appropriately applying the applicable legal rules, researchers can offer appropriate and legally grounded solutions to protect organ transplants in Indonesia.

This study is expected to help resolve complex legal issues related to organ transplantation and make a positive contribution to the development of legal science in Indonesia. Through a comprehensive understanding of organ transplantation law, this study is expected to increase the effectiveness of law enforcement and encourage the creation of comprehensive regulations to protect organ transplants in Indonesia. This study is also expected to provide valuable input for relevant stakeholders, such as the government, hospitals, health workers, and the general public, in an effort to improve the quality and accessibility of organ transplants in Indonesia.

RESULTS AND DISCUSSIONS

Organ transplants have become one of the most meaningful solutions in modern medicine. Many human lives have been saved thanks to advances in transplant technology and procedures. The survival rate of recipient patients is now so high that the demand for organ transplants continues to increase worldwide, including in Indonesia.

The term transplantation comes from the English word "transplantation", which means "grafting". In the context of medicine, transplantation is defined as the transfer of tissue or organs from one body to another, either fellow humans or animals.

The main purpose of transplantation is to move healthy organs to replace organs that are not functioning properly. This is done when conventional medical treatment no longer provides life expectancy for the patient (Adib, 2016). According to Notoatmodjo (2010), transplantation is a medical action to transfer organs and/or tissues of the human body to another human body or its own body. More clearly, organ transplantation is the transfer of organs or tissues of the human or animal body that are still functioning to replace organs that are not functioning in the context of treatment and efforts to save the lives of donor recipients. The organ in question is a collection of tissues that have different functions, so that it is a unit that has a certain function, such as the heart, liver, and others.

Meanwhile, the purpose of tissue or organ transplantation is as a last resort treatment for the person concerned, after various other treatment efforts have failed. This is done to maintain human existence, such as heart, liver, kidney and so on (Jamali, 2019). In the implementation of organ transplantation, there are three parties involved:

1. Donor: A person who donates his/her healthy organs to be fitted to another person whose organs are diseased or have abnormalities.
2. Recipient: A person who receives an organ from a donor because his/her organ needs to be replaced.
3. Expert team: The doctors who handle the transplant surgery from the donor to the recipient.

Organ transplants can be categorized based on the type of donor:

1. Transplantation with a living donor:
 - a. The donor donates his/her organs or tissues to another person or to another part of his/her own body.
 - b. Usually done for kidney, liver, lung, pancreas and intestine transplants.
 - c. Living donors can also donate degenerative tissues or cells, such as skin, blood, and bone marrow.
2. Transplantation with a dead donor or cadaver:
 - a. The organs or tissues of another living person are transplanted into the recipient.
 - b. A dead donor is a person who has recently died, usually due to an accident, heart attack, or ruptured cerebral blood vessel.

- c. Organ donation is considered after rescue efforts have failed and the patient is pronounced dead in the emergency room or brain stem dead.
- d. Organs that are usually donated are those that do not have the ability to regenerate, such as the heart, corneas, kidneys, pancreas, liver, and heart.

Organ transplants can also be categorized based on the genetic relationship between the donor and recipient:

1. Autotransplantation:
 - a. Donor and recipient are the same individual.
 - b. Example: Plastic surgery to restore cheek shape, where tissue is taken from another part of the patient's body.
2. Homotransplantation:
 - a. Donor and recipient are humans of the same species.
 - b. Can be performed between living donors and recipients, or between deceased donors (cadaver donors) and living recipients.
3. Heterotransplantation:
 - a. The donor and recipient are humans of different species.
 - b. Example: Animal-to-human organ transplants (xenografts) are still in the research stage and are not yet commonly practiced.

Organ transplants offer new hope to those suffering from incurable diseases. The process consists of patient preparation and evaluation, finding a suitable donor, transplant surgery, and post-operative recovery. In Indonesia, the voluntary system used to procure organ donors is divided into two:

1. Opt-in (Informed Consent): A person voluntarily registers to become a donor. This system is noble, but the shortage of organ supply is a challenge. Many countries (including Indonesia) are considering a transition to opt-out.
2. Opt-out (Presumed Consent): Everyone is presumed to be a donor unless they opt-out. Singapore was the first country to implement this system.

While an opt-out system is believed to increase organ availability, it triggers ethical and individual rights debates. However, it is important to consider the system that best suits Indonesian values and culture.

Organ transplantation is a complex medical procedure that involves many parties. Understanding the definition, purpose and parties involved in organ transplantation is the first step to understanding the complexity and various aspects associated with this procedure.

Organ transplantation as a result of advances in science and technology, presents a glimmer of hope for those who are sentenced to organ failure. This procedure opens up opportunities for recovery for patients who previously had no other options. However, behind its extraordinary benefits, organ transplantation also raises new problems. This is natural, considering that organs are vital to human life.

One of the negative impacts that is feared is the emergence of the practice of selling human organs. Organ transplant programs, which open up opportunities for those who need organs to obtain them, can be used by irresponsible parties to conduct organ trafficking. Economic hardship is often the reason why people are willing to sell their organs. On the other hand, the high demand for organs opens the door for commercialization and exploitation of human organs. This problem is made even more complex by the unclear regulations regarding organ transplantation in Indonesia. The WHO mandate stating the need for positive laws regarding organ transplantation in each member country has not been fully implemented. This regulatory vacuum has the potential to open space for illegal and unethical practices in organ transplantation, such as organ trafficking and donor exploitation. Therefore, it is important to immediately formulate comprehensive regulations that are in line with the WHO mandate regarding organ transplantation. These regulations must be able to protect the rights of donors and recipients, and prevent unethical practices that violate human values.

In Indonesia itself, organ transplantation is regulated in Health Law Number 36 of 2009 concerning Health in Article 65 paragraph 1 which states that, "Healing of disease and restoration of health can be done through organ and / or tissue transplantation, drug implants, and / or medical devices, plastic and reconstructive surgery, and the use of stem cells". The article confirms that the practice of transplantation in Indonesia is justified to cure diseases and restore health. However, transplants can only be performed in health care facilities that have been designated by the Minister and meet the requirements of

Article 64 Paragraph 2 states that "Transplantation of organs and/or body tissues as referred to in paragraph (1) is carried out only for humanitarian purposes and is prohibited from being commercialized". Then Government Regulation Number 18 of 1981 concerning Clinical Cadaver Surgery and Anatomical Cadaver Surgery as well as Transplantation of Human Body Organs or Tissues Article 16 reiterates that "The donor or family of the deceased donor is not entitled to any material compensation in exchange for the transplant."

Minister of Health Regulation No. 38/2016 on the Implementation of Human Organ and Tissue Transplantation further regulates the implementation of organ transplantation in Indonesia. This regulation covers donor and recipient requirements, transplant procedures, and governance of organ transplantation. Other specific regulations related to organ transplantation with explanations are as follows:

1. Government Regulation No. 18/1981 on Clinical Cadaveric Surgery and Anatomical Cadaveric Surgery as well as Transplantation of Human Body Organs and/or Tissues regulates several important matters related to organ transplantation:
 - a. Definition of transplantation: The transfer of human organs or tissues to replace organs or tissues that are not functioning properly.
 - b. Source and recipient of organs: Organs or tissues can come from living donors or deceased donors. Recipients are patients who need a transplant for recovery or treatment of disease.
 - c. Consent: The transplant must be performed with the written consent of the patient or next of kin.
 - d. Information for living donors: Prior to giving consent, the potential living donor must be provided with information and consultation regarding the transplant process, including the risks and possibilities that may occur.
 - e. Prohibition of compensation: The donor or the donor's family is not entitled to any material compensation in exchange for the transplant.
 - f. These provisions aim to: (a) Protect the rights of donors and recipients; (b) Prevent organ transplant abuse; (c) Ensure organ transplants are performed in an ethical and responsible manner; and (d) Understanding these regulations is important for all parties involved in organ transplantation, including patients, donors, donor families, and medical teams.
2. Minister of Health Regulation No. 38/2016 on Organ Transplantation is the latest regulation governing organ transplantation in Indonesia. Minister of Health Regulation No. 38/2016 is an important step to ensure that organ transplantation in Indonesia is carried out properly and responsibly. Some important points in this regulation:
 - a. Definition of organ transplantation: The transfer of an organ from a donor to a recipient for the healing and restoration of the recipient's health.
 - b. Donor and recipient requirements: Must be registered with the National Transplant Committee and meet the specified requirements.
 - c. Prohibition of transplantation: Transplantation in exchange for or for commercial purposes is prohibited.
 - d. Purpose of transplantation: Performed for humanitarian purposes and the cure of disease.
 - e. The main objectives of this regulation are: (a) To provide protection and legal certainty for donors, recipients, organizing hospitals, and health workers; (b) To ensure that organ transplants are carried out in a safe, quality, and ethical manner; (c) To prevent the commercialization of organ transplants.

Organ transplantation in Indonesia is governed by various regulations, including Minister of Health Regulation No. 38/2016 on the Implementation of Organ Transplantation. This regulation aims to ensure that organ transplants are performed in a safe, quality, ethical and non-commercial manner. The parties involved in organ transplantation have different rights and obligations.

1. Donor Rights:
 - a. Receive complete information about the transplant process.
 - b. Being exempted from maintenance fees during the transplant process.
 - c. Revoke his/her consent to donate organs.
2. Donor Obligations:
 - a. Undergoing a medical examination process.
 - b. Not entering into a special agreement with the recipient.
 - c. Provide organs to the recipient.
3. Recipient Rights:
 - a. Obtaining organs from a donor.
 - b. Knowing the identity of the donor and medical information related to transplantation.
4. Recipient Obligations:
 - a. Pay the entire cost of the transplant.
 - b. Maintain liaison with the National Transplant Committee.
5. The hospital's right is to receive the transplant fee.
6. Hospital Obligations:
 - a. Perform transplants in accordance with applicable standards.
 - b. Protect the privacy of donors and recipients.

The legal relationship between donor and recipient is not categorized as a treaty, but a natural obligation. This means that the relationship is voluntary and cannot be prosecuted in court. Organ transplantation in Indonesia should not be done commercially. Donors may not ask for payment from recipients, and recipients may not purchase organs from donors. Understanding the rights, obligations and legal relationships of the parties in organ transplantation is essential to ensure that the organ transplantation process in Indonesia runs properly and responsibly.

Although regulations have been established, the reality is that organ transplantation in Indonesia still faces various challenges. The availability of organ donors is still very limited, and many patients have to wait a long time to get a suitable organ.

In addition, the high cost of organ transplants is an obstacle for many patients. The cost of surgery and post-transplant medications can reach hundreds of millions of rupiah. By understanding the legal rights of recipients in accessing health services, as discussed by Subiakso et al. (2023), we can ensure that organ transplants are available fairly and equitably to all those in need, including people with disabilities.

More vigorous efforts are needed to raise public awareness about the importance of organ donation. In addition, the government needs to provide financial support to help patients who need organ transplants. With adequate regulations and sustained efforts, organ transplantation in Indonesia is expected to become a more accessible solution for patients who need it.

The solution to this ethical dilemma requires multi-stakeholder collaboration. The government can create and strengthen regulations, increase public education and awareness, and allocate adequate resources. Medical professionals must apply high standards of ethics and professionalism, and work with the authorities to prevent and crack down on organ trafficking. For the general public, there should be efforts to increase understanding of organ transplantation and related ethics, and to reject all forms of organ trafficking. In addition, with joint efforts from all parties, organ transplantation can be a useful solution for patients in need, without violating humanitarian and ethical values.

CONCLUSIONS

Organ transplantation is an important medical solution that has saved many lives, but it also raises various ethical dilemmas, especially regarding the illegal organ trade. In Indonesia, although organ transplantation has been regulated by various regulations such as Health Law Number 36 of 2009 and Minister of Health Regulation Number 38 of 2016, there are still legal loopholes that allow illegal practices to occur. Regulatory gaps related to patient-patient relationships, especially regarding compensation to donors, require special attention. The doctrinal approach in this study highlights the need for clearer and firmer regulations to govern the legal relationship between patients in organ transplantation.

Organ donation in Indonesia should be voluntary without material compensation, in accordance with humanitarian principles. Current regulations only regulate the legal relationship between doctors and patients, but do not cover relationships between patients that involve private agreements. This opens up opportunities for unethical organ transactions. Therefore, a more comprehensive regulation is needed that includes mechanisms for consent, compensation, and prevention of donor exploitation.

Clear regulations will help ensure that organ transplants are performed to high ethical and quality standards, protecting the rights of both donors and recipients. It is also important to raise public awareness about the importance of voluntary organ donation and the risks of illegal organ trafficking. Cooperation between the government, medical personnel, community organizations, and the wider public is needed to strengthen law enforcement and ensure organ transplants are carried out responsibly. With the right regulations, it is hoped that organ transplants in Indonesia can provide maximum benefits to patients in need without violating human values.

Suggestions are that strict law enforcement, multi-stakeholder collaboration, and comprehensive regulations are key to achieving this goal. There is also a need to educate and raise public awareness about organ transplantation. This aims to provide a correct understanding of organ transplantation and encourage community participation in its ethical and responsible implementation. With clear and comprehensive regulations, as well as adequate public understanding, organ transplantation can be a beneficial solution for patients in need, without ignoring humanitarian and ethical values.

REFERENCES

- Adib, M. (2016). Transplantasi Menurut Hukum Islam Dan Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan Ditinjau Dari Segi Pidana Dan Perdata. *Justicia Journal*, 5(1), 1–9.
- Darmawan, D., F. Issalillah, R.K. Khayru, A.R.A. Herdiyana, A.R. Putra, R. Mardikaningsih & E.A. Sinambela. (2022). BPJS Patients Satisfaction Analysis Towards Service Quality of Public Health Center in Surabaya. *Media Kesehatan Masyarakat Indonesia*, 18(4), 124-131.
- Herianto, A. V., Y. Vitrianiingsih, F. Issalillah, R. Mardikaningsih. (2024). Challenges and Changes Concerning National Health Development in Indonesia: Legal Perspectives, Service Access, and Infectious Disease Management, *International Journal of Service Science, Management, Engineering, and Technology*, 5(2), 22–26.
- Issalillah, F. & R. K. Khayru. (2023). Legal Perspective on Patient Rights in Complementary and Alternative Medicine (CAM), *Legalis et Socialis Studiis*, 1(2), 1-13.
- Jamali, L.L. (2019). Transplantasi Organ Tubuh Manusia Perspektif Al-Qur'an, *Diya al-Afkar Journal*, 7(1), 113-128.
- Jonsen, A. R., Siegler, M., & Winslade, W. J. (2015). *Clinical ethics: A practical approach to ethical decisions in clinical medicine* (8th ed.). New York, NY: McGraw-Hill Education.
- Juliarto, T. S., A. Riyanto, D. Darmawan, N. H. Pakpahan, K. N. Kholis. (2023). Legal Basis for Doctor Protection in Emergency Situations Without a License to Practice, *Studi Ilmu Sosial Indonesia*, 3(2), 35-54.
- Kholis, K.N., N. Chamim, J. A. Susanto, D. Darmawan, & M. Mubarak. (2023). Analyzing Electronic Medical Records: A Comprehensive Exploration of Legal Dimensions within the Framework of Health Law, *International Journal of Service Science, Management, Engineering, and Technology*, 4(1), 36–42.
- Lethy, Y.N., F. Issalillah, Y. Vitrianiingsih, D. Darmawan, R. K. Khayru. (2023). Legal Protection for Patients Against Negligence of Medical Personnel, *International Journal of Service Science, Management, Engineering, and Technology*, 4(2), 39–43.
- Notoatmodjo, S. (2010). *Etika dan Hukum Kesehatan*. Rineka Cipta, Jakarta.

- Peraturan Pemerintah Nomor 18 Tahun 1981 tentang Bedah Mayat Klinis dan Bedah Mayat Anatomis serta Transplantasi Alat dan/atau Jaringan Tubuh Manusia
- Peraturan Menteri Kesehatan RI Nomor 290/MENKES/PER/III/2008 tentang Persetujuan Tindakan Kedokteran
- Peraturan Menteri Kesehatan Nomor 38 Tahun 2016 tentang Penyelenggaraan Transplantasi Organ dan Jaringan Tubuh Manusia
- Pozgar, G. D. (2019). *Legal aspects of health care administration* (13th ed.). Burlington, MA: Jones & Bartlett Learning.
- Subiakso, A., T. S. Juliarto, D. Darmawan, S. Sisminarnohadi, R. A. Romli. (2023). Legal Rights in Access to Health Services for Persons with Disabilities, *Bulletin of Science, Technology and Society*, 2(3), 15-20.
- Tamaka, R. S., A. I. Wuryani, Y. N. Lethy, F. Issalillah, & R. Hardyansah. (2023). Legal Review of Patients' Rights in the Health Insurance System, *Studi Ilmu Sosial Indonesia*, 3(2), 69-84.
- Tampil, V.C., A. Mubasyiroh, R. K. Khayru, D. Darmawan, & B. A. Prasetyo. (2023). Legal Protection for Patients in Health Services at Community Health Centers, *Studi Ilmu Sosial Indonesia*, 3(2), 85-100.
- Undang-Undang Kesehatan Nomor 36 Tahun 2009.