



Agreement for kidney transplant between an international donor and an Indonesian recipient in compliance with Indonesian health legislation

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ABSTRACT

This study aims to analyze health regulations in Indonesia regarding kidney transplant agreements between international donors and recipients from Indonesia. The research undertaken is of a normative-judicial nature. The results of this research show that there are still unclear regulations regarding living donors. Article 64 of the health law prohibits all forms of commercialization, including buying and selling body organs. Government Regulation Number 18 of 1981, paragraph 16, is specifically aimed at donors and the families of donors who have died, with the provision that they are not allowed to ask for compensation for body organs. As a result, the desired outcomes of legislation seeking voluntary organ donation have not been fully realized. This could lead to patients who need organs being less appreciative of these rules and potentially ignoring them.



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INTRODUCTION

Health encompasses physical, mental, spiritual, and social well-being, facilitating enhanced societal productivity and economic activity. The famous adage 'In a healthy body, there is a strong soul' underscores the paramount importance of health in people's daily lives. It's worth noting that health extends beyond mere physical well-being, encompassing a holistic view of a person's health, including their spiritual and mental aspects (Diana Delvin Lontoh in Sushanty, 2023). Thus, health assumes utmost significance.

Health services fundamentally aim to prevent and treat diseases, including medical care based on the personal doctor-patient relationship (Harbishettar et al., 2019). Doctors, possessing medical expertise, diagnose and treat patients who entrust their well-being to these medical professionals. Consequently, doctors have a duty to provide the best possible healthcare and advance treatment methods.

Organ transplantation, a remarkable advancement in medicine, presents intricate legal challenges. This medical procedure involves transferring organs or tissues from one individual to another to address malfunctioning body parts. As the success of organ transplants grows, so does the demand for donors. Initially restricted to family donors, this practice now extends to a wider circle, compelling recipients to seek willing donors beyond their immediate family (Putra, 2013).

In recent times, the online buying and selling of organs and tissues, once shrouded in secrecy, have become increasingly prevalent, mirroring the trade of electronic goods (Epafras in Jaya et al., 2021). This phenomenon underscores the ethical complexity surrounding organ transplantation. With the demand for human tissue escalating and limited supply from deceased or living donors, some seek to profit from organ transactions, often without the consent of donors' families (Alexandra in Abduh, 2021). Economic pressures and a lack of clear legislation pertaining to organ trafficking contribute to these issues, leading to misconceptions about the legal framework.

In light of the provided information, the author aims to address the following inquiries: 1) The author seeks to ascertain the legality of agreements between foreign donors and Indonesian recipients under Indonesian law. Additionally, the author wishes to explore the resulting legal implications of such agreements. 2) Furthermore, the author aims to evaluate the adequacy of legal protection provided to both donors and recipients within the framework of Indonesian Law Number 36 of 2009, particularly within the provisions of Article 64, which governs transplantation.

RESEARCH METHODS

The research undertaken is of the Normative Juridical nature, focusing on the examination of the application of legal rules or norms within the framework of positive law (Johnny Ibrahim in Nurhayati, 2020). This research falls into the category of juridical-normative, as it involves an analysis of legal statutes, regulations relevant to efforts for health restoration through organ transplants, and the existing treaty law in Indonesia. The employed approaches encompass the following: Firstly, the statutory approach method; secondly, the conceptual approach method; thirdly, the case approach method. These methods serve to systematically and comprehensively address and resolve the problem statement, ultimately allowing for an explanation, description, and analysis of agreements made by organ donors and recipients (Weimer & Vining, 2017).

RESULTS AND DISCUSSION

Living donor organ transplantation is a complex surgical procedure associated with significant risks and is subject to legal regulations. This complexity arises from the involvement of multiple parties in the transplantation process, along with the uncertainty of the outcomes. The key participants in living donor transplantation include the living donors themselves, their families and heirs, the recipients, as well as the medical professionals and healthcare workers responsible for the procedure. The relationships formed among these parties can be characterized as therapeutic relationships.

The doctor-recipient relationship in organ transplantation is often formalized through a therapeutic transaction, also known as a therapeutic agreement or contract. This therapeutic transaction constitutes a legally recognized relationship between the doctor, recipient, and donor, establishing rights and responsibilities for all parties involved (Bander Johan Nasution in Busro, 2018). According to Hermie Hadiati Koeswadji in Aristantie, (2014), the term "therapeutic transaction" refers to an agreement aimed at determining the most suitable therapy for the recipient in collaboration with the doctor. In such transactions, specific conditions must be met, and once the transaction is complete, both parties are bound by the rights and obligations they have agreed upon (Salim, 2021).

While therapeutic transactions fall under the category of service agreements, they are fundamentally rooted in trust-based service relationships driven by the principle of providing assistance. These relationships are often referred to as medical assistance relationships. Under the principle of providing assistance, doctors are ethically obligated to offer medical aid in line with the recipient's needs, aiming to restore the patient's ability to manage their health as effectively as possible. Consequently, healthcare services provided to the recipient must be oriented toward the recipient's best interests (Veronica Komalawati, 2018).

In the context of the therapeutic agreement, the doctor contributes medical services based on their knowledge, competence, skills, and experience, with the goal of improving the recipient's health and facilitating their recovery. In return, recipients and donors are expected to provide honesty regarding their medical history, follow the doctor's recommendations, support the recipient's health or recovery, and ensure the donor's comfort (Dyah Silviaty in Novika et al., 2015).

Within the framework of the therapeutic agreement, each party involved in organ transplantation has distinct rights and obligations. The doctor-patient relationship typically follows a Guidance-Cooperation pattern, with the doctor's responsibility being the provision of treatment services, and the recipient's obligation being adherence to the doctor's recommendations for their recovery. In contrast, between the recipient and the donor, there exists an imbalance in rights and obligations. The donor is obligated to provide their organ without the right to receive compensation from the recipient, as this practice is grounded in humanitarian principles and binds the donor primarily to the doctor overseeing the treatment.

Moreover, the rights and obligations of all parties must adhere to principles of fairness, morality, and legality. Every individual possesses the right to act, express opinions, give and receive from others or institutions. Hence, a comprehensive understanding of rights and responsibilities is crucial for enhancing the quality of life and fostering mutual respect among individuals, creating a harmonious and peaceful society.

In Indonesia, regulations governing surgical procedures like transplantation aim to ensure that the interests of all parties involved are synchronized and safeguarded. These laws and regulations help prevent harm to any party during the transplantation process. Indonesia's legal framework encompasses various aspects related to living donor transplantation and the parties involved.

1. Law Number 36 Year 2009 On Health

The regulation of disease treatment through transplantation involving donors and recipients is stipulated in Law Number 36 of 2009 on Health, specifically in Article 64, paragraphs 1, 2, and 3. This particular provision in Health Law Article 64, paragraphs 1, 2, and 3 underscores the primary objective of transplantation, which is the treatment of diseases. The term "humanitarian purposes" mentioned in paragraph 2 indicates that transplantation should exclusively serve the well-being of the recipient, establish equality in rights and responsibilities between the recipient and the organ donor, foster mutual understanding between them, demonstrate the donor's willingness to offer their organ to the recipient, and emphasize the absence of personal gain motives in their engagement. While the Health Law does not offer a detailed and concrete definition of humanitarian value in transplantation within its explanatory section.

The commercialization of organ transplant activities starkly contradicts the humanitarian value that constitutes the central objective of organ transplants, particularly those involving living donors. Commercialization involves the treatment of organs as commodities for trade, often at high values, and can sometimes overshadow other values, including humanitarian principles. Commerce is primarily associated with business and trade, inherently driven by profit. Therefore, assuming that any individual who becomes a donor with a personal gain orientation after providing their organs to needy patients is, in essence, commercial. This orientation meets the criteria for sacrificing social values, particularly the value of voluntary donation.

Considering the circumstances where the donor received benefits in exchange for their kidney donation, it can be concluded that these benefits were granted as an acknowledgment of their efforts to provide a kidney to a needy recipient. While these benefits may not take the form of monetary rewards, they are expressions of gratitude from the recipient's family.

2. Government Regulation No. 18 Of 1981 Concerning Clinical Cadaver Surgery, Anatomical Cadaver Surgery, And Transplantation Of Human Body Organs And Or Tissues

Other provisions within the government regulation also address the interactions among recipients, donors, and living donor transplant physicians, specifically outlined in articles 15, 16, and 17. Government Regulation Number 18 of 1981 delves into the aspects of living donors, with a particular focus on articles 16 and 17.

Article 16 addresses a critical aspect related to donors who lose their lives during the organ harvesting process, encompassing the associated compensation and its distribution to the donor's family. This emphasis is underscored by the phrase "who dies" within the article's text. A noteworthy element of Article 16 is the phrasing, particularly in sentences like "Donors and donor families who die" and "are not entitled to any material compensation in lieu of transplantation." From the perspective of the author, Article 16 essentially stipulates that donors and their families, in cases where the donor loses their life during organ transplantation, are ineligible to request compensation for expenses such as hospital fees, medical bills, and funeral costs for the deceased donor. In this scenario, the donor and their family are responsible for covering all incurred expenses, unless the recipient's intervention played a role in the donor's demise.

Article 17, as explained in its elucidation, underlines the sanctity of the human body as a divine gift. Consequently, pursuing profit through the trade of human body parts and tissues is deemed contrary to human values and is therefore prohibited within the boundaries of Indonesian law. Notably, this prohibition extends beyond mere buying and selling, encompassing instances where rewards or

compensation are sought by leveraging the indebtedness of recipients in need of organ donors. This further reinforces that Indonesian health law, in its pursuit of curing illnesses and restoring health through organ transplantation, strictly prohibits any form of profit-seeking by trading in organs. It should be noted that the commercialization of organs in alternative forms has not yet been addressed by either legislation or government regulations.

3. Regulation Of The Minister Of Health Of The Republic Of Indonesia No. 38/2016 On The Organ Transplantation Programme

Article 13 stipulates the following: "In paragraph 1, individuals willing to donate their organs without receiving compensation are permitted to do so. In paragraph 2, donors can be either living or declared brain dead. Paragraph 3 specifies that the donor and recipient may or may not be blood relatives."

Article 14 explains that individuals donating organs while alive are referred to as living donors, with specific organs they can donate, including one kidney, part of the pancreas, lungs, or liver.

Continuing to Article 15, it outlines the key points: "Paragraph 1 defines individuals donating organs after being declared brain stem dead as brain stem dead donors. Paragraph 2 requires living donors to be registered with the National Transplant Committee. Paragraph 3 mandates that a separate team of doctors must declare brain stem death, distinct from the team performing the transplant."

Article 16 at its core states: "Paragraph 1 allows individuals with blood relations to donate organs to specific recipients. Paragraph 2 specifies that parents, children, and siblings qualify as blood donors."

Article 17 grants the National Transplant Committee the authority to determine the recipients for non-blood-related donations. Article 18 emphasizes that administrative and health requirements are prerequisites for donor registration.

Article 19 summarizes these conditions: "Paragraph 1 lists the necessary requirements, including a health certificate, identity card, a written declaration of willingness to donate organs without compensation, consent from the biological family, a letter confirming the donor's understanding of the procedure and associated risks, and a letter confirming that no transactions occurred between the donor and recipient. Paragraph 2 necessitates proof of the blood relationship through a letter from the local government."

Additionally, Article 24, paragraph (1) letter (d) of the Regulation of the Minister of Health of the Republic of Indonesia Number 38 of 2016, states that individuals must submit a statement indicating that they will not buy organs from prospective donors or engage in special agreements with prospective donors, which must be formalized in the form of a notarial deed or a notary-verified written statement.

4. Code Of Civil Law

The legal relationship between the physician and the recipient is fundamentally governed by legal regulations, while the relationship between the recipient and the donor is privately governed by the agreement between the involved parties, still relying on civil law as its legal foundation. In civil law, an agreement is considered valid if it meets the subjective and objective conditions outlined in Article 1320, encompassing consensus, capacity, definite subject matter, and lawful purpose. However, the actions taken by the parties contradict the lawful purpose intended by the law, as it goes against the fundamental values underlying transplantation, as stated in Article 64 of the Health Law. It's important to note that Government Regulations do not explicitly address this issue. Consequently, the agreement lacks legal validity under the law.

The legal consequence of an invalid *causa*, as seen in the actions of the Indonesian recipient and the foreign donor in this case, is that the agreement in question holds no legal weight. In simpler terms, an agreement lacking a valid purpose is considered null and void, as per Munir Fuady in Pamungkas (2018). Thus, there is no legal basis for seeking enforcement of the agreement in a court of law, as it can be argued that no valid agreement ever existed in the first place. Additionally, this implies that the parties have no legal right to demand the fulfillment of any obligations or benefits should any undesirable events occur in their relationship.

Legal protection can be defined as the set of rules and regulations established by the government to oversee and safeguard the rights and interests of the community or its citizens when they engage in legal activities (Siregar & JS, 2017). It also represents a guarantee granted by the state to all parties,

enabling them to exercise their legal rights and interests as legal entities. This ensures that citizens and the community, residing within the state, can realize their respective rights and fulfill their obligations, contributing to the establishment of public order within the social relationships that shape community life (Ridwan & Sudrajat, 2020).

Likewise, health laws and related regulations are designed to offer legal protection to the stakeholders involved in efforts to treat and recover from illnesses through organ transplantation. Hence, the existing legal regulations should adhere to the fundamental principles and components of legal protection. However, in practice, the elements of legal protection within health law often remain unfulfilled because of the ambiguity surrounding the legal framework for organ transplantation. As discussed earlier, the law does not explicitly address the "commercial" aspect as intended, and it lacks provisions regarding recipients expressing gratitude to donors through financial means. This is due to the fact that current legal statutes and government regulations primarily focus on commercial activities related to the buying and selling of organs, leaving other aspects outside the scope of regulation.

This situation also impacts the realization of protective principles outlined in health laws and government regulations concerning transplantation. Therefore, there is a pressing need to enhance the contributing factors to preempt potential issues stemming from legal uncertainties embedded in transplantation-related legislation. Furthermore, exploring alternative treatments such as stem cell transplantation should be a priority to mitigate the demand for organ transplantation.

CONCLUSION

The verbal agreement between the donor and recipient is considered void because it contains elements of commercial transactions, as stipulated in Article 64 of Law Number 36 of 2006 concerning Health. Furthermore, it lacks the necessary elements for a valid agreement as outlined in Article 1320 of the Civil Code. Essentially, donors are prohibited from receiving compensation since the purpose of organ transplantation is rooted in humanitarian values. Any form of compensation to the donor, even in the form of gratitude, goes against these principles. Consequently, the legal consequences of such an agreement are null and cannot be upheld in a court of law.

Government Regulation Number 18 of 1981, which deals with Clinical Surgery of Corpses, Surgery of Anatomical Corpses, and Transplantation of Human Organs and Tissues, primarily focuses on the prohibition of providing compensation to donors in cases where the donor does not survive the transplantation process.

Referring to Article 24, paragraph (1), letter (d) of the Regulation of the Minister of Health of the Republic of Indonesia Number 38 of 2016 concerning the Implementation of Organ Transplantation, it is mandated that human organ transplantation must be documented through an authentic deed, which is a legally prescribed form, and must be executed by or before an authorized public official, such as a Notary. Notarial deeds are considered indisputable and legally binding evidence. In essence, the contents of a notarial deed are presumed true and can only be challenged by clear and convincing evidence to the contrary. The primary role of a deed in the legal context is to serve as evidence.

However, Law Number 36 of 2006 concerning Health, in conjunction with Government Regulation Number 18 of 1981, fails to provide sufficient legal protection for both donors and recipients. This inadequacy stems from the lack of clarity in the regulations pertaining to living donors. While Article 64 of the health law prohibits any form of commercialization, including buying and selling organs, Government Regulation Number 18 of 1981, paragraph 16, exclusively addresses donors and the families of deceased donors, stipulating that they are not allowed to request compensation from organ recipient patients. Consequently, the desired outcome of regulations that seek voluntary organ donation has not been fully realized. This may lead patients in need of organs to view this rule with less appreciation, potentially disregarding it. Moreover, recipients and donors may not fully comprehend or acknowledge the existence of regulations concerning living donors, resulting in inadequate legal awareness among them.

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