



## The Policy of Human Organ Transplantation in Indonesia from the Perspective of Positive Law and Hindu Law

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### Abstract

Organ transplantation has been medically performed in the present day; however, the underlying thoughts regarding organ transplantation need to be examined by looking at studies sourced from ancient civilizations and teachings, as well as the positive laws that apply, particularly in Indonesia. The method used in this writing is based on normative research with a comparative, conceptual approach, as well as an approach to legislation. The results of this writing indicate that the regulation of organ transplantation in Indonesian positive law refers to the provisions of the WHO and the constitution in force in Indonesia, which legalizes its implementation with the obligation of obtaining consent from both the organ donor and the organ recipient, as well as a thorough examination of the conditions of both parties. In the study of Hindu law within the Bhagavad Gita, Upanishads, and other sources of Hindu law, there is no explicit regulation regarding organ transplantation. However, the epic Ithiasa indicates that organ transplantation was practiced in ancient times. Furthermore, based on the principles of Hindu teachings about ahimsa, dharma, and karma, the act of saving a life is considered a good deed that aligns with Hindu spiritual values.

### Abstrak

Transplantasi Organ secara medis telah dilakukan di masa sekarang, namun dasar pemikiran terkait dengan transplantasi organ perlu kita kaji dengan melihat kajian yang bersumber dari peradaban dan ajaran masa lampau serta hukum positif yang berlaku khususnya di Indonesia. Metode yang digunakan dalam penulisan ini bersumber dari penelitian normatif dengan pendekatan yang dilakukan secara komparatif, konseptual serta pendekatan terhadap peraturan perundang-undangan. Hasil penulisan ini menunjukkan bahwa pengaturan transplantasi organ dalam hukum positif Indonesia merujuk dari ketentuan WHO serta konstitusi yang berlaku di Indonesia yang melegalkan pelaksanaannya dengan kewajiban adanya persetujuan dari pendonor organ dan penerima organ serta pemeriksaan yang teliti terhadap kondisi keduabelahpihak. Dalam kajian hukum hindu didalam kitab Bhagawad Gita, Upanisad dan sumber Hukum Hindu lainnya secara eksplisit memang tidak mengatur khusus terkait transplantasi organ, namun dari epos ithiasa menunjukkan bahwa transplantasi organ pernah dilakukan pada masa dahulu, serta berdasarkan prinsip ajaran Hindu tentang ahimsa, dharma, dan karma tindakan menyelamatkan nyawa dianggap sebagai perbuatan baik yang sejalan dengan nilai-nilai spiritual Hindu.

## 1. Introduction

Humans always seek healing in various ways, whether through modern medical methods, traditional medicine, or spiritual approaches. The hope for recovery from illness or physical and mental conditions is one of the most fundamental drives in life. The struggle of humans to live a normal and perfect life is carried out through various efforts, so when they experience health disturbances, whether physical or mental, maximum efforts for treatment or healing of the suffered illness will be undertaken. A person's efforts to maintain their health condition are currently supported by various technological advancements and knowledge, with modern and cutting-edge medical methods used to fulfill humanity's desire for perfection. Some health cases such as accidents or disabilities experienced cause several human organs to malfunction or even become damaged, so one step taken by some people to restore the condition of their damaged or non-functioning organs is through organ transplantation policies<sup>1</sup>.

Organ transplantation is medically defined as a medical procedure in which an organ suffering from damage or dysfunction is replaced with a healthy organ from a donor<sup>2</sup>. The purpose of organ transplantation is to extend or improve the quality of life for patients whose vital organs have suffered permanent damage and cannot be repaired or cured by other medical methods<sup>3</sup>. The policy of conducting organ transplants began to develop in the early 20th century. Early research was conducted on animals, including kidney and liver transplantation experiments on dogs<sup>4</sup>. The first successful organ transplant in humans was a kidney transplant between identical twins in Boston, United States. Doctor Joseph Murray led the operation, which opened the door for further developments in organ transplantation<sup>5</sup>. At this stage, there were no official policies regulating organ transplantation. Early cases of transplantation are still limited and viewed as medical experiments. One of the main challenges in performing organ transplants is the rejection of the donor organ by the recipient's body. In the 1960s, the development of immunosuppressive drugs was introduced and became a major breakthrough in overcoming organ rejection by the recipient, allowing transplants to be successfully performed in several countries. Initial policies regarding organ transplantation began to be formulated in various developed countries, in line with the increasing number of procedures being performed. At this point, ethical issues such as donor consent and tissue matching began to be addressed to ensure the safety of both the donor recipient and the donor.

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<sup>1</sup> Abdullah S Daar and Robert A Sells, "Living Nonrelated Donor Renal Transplantation—a Reappraisal," *Transplantation Reviews* 4, no. 2 (1990): 128–40.

<sup>2</sup> Asif Hameed, *Ethics and Organ Transplantation: Religious, Social, and Medical Perspectives* (Oxford: Oxford University Press, 2010).

<sup>3</sup> Lucy Frith, "Contacting Gamete Donors to Facilitate Diagnostic Genetic Testing for the Donor-Conceived Child: What Are the Rights and Obligations of Gamete Donors in These Cases? A Response to Horton et Al," *Journal of Medical Ethics* 46, no. 3 (2020): 220–22.

<sup>4</sup> Burcin Ekser and David K C Cooper, "Overcoming the Barriers to Xenotransplantation: Prospects for the Future," *Expert Review of Clinical Immunology* 6, no. 2 (2010): 219–30.

<sup>5</sup> Joseph E Murray, "Surgery of the Soul: Reflections on a Curious Career," (*No Title*), 2001.

In the world of medicine, organ transplantation with various research conducted may be a significant breakthrough to maintain the health condition of a person's organ. However, ethical and moral factors cannot be ignored, so both the donor and the recipient must be in a state of willingness and agree to every action taken. This certainly requires clear regulations and legal procedures, so that irresponsible individuals do not exploit this breakthrough in the health sector for misuse and wild commercialization that could harm others. The implementation of organ transplantation in humans certainly feels foreign and impossible if there were no views or thoughts derived from theories or teachings possessed by humans that depict a process that once existed and occurred<sup>6</sup>. Human organ transplantation, besides being determined by the knowledge and expertise of a medical professional, cannot be separated from the greatness of the Creator, because, after all, some religious teachings believe that a person's life and death depend on the Almighty. If we look back at the history of human civilization related to the practice of human organ transplantation, it is actually felt that transplantation has existed since ancient times. One example can be seen in the epic tales of Hindu society, one of the oldest religions, which are supported by scriptures and literary relics that can be referred to as evidence of events from that era<sup>7</sup>. The epic story that can be associated with the occurrence of organ transplantation is from the Mahabharata, where Guru Drona discovered a hunter named Ekalawya who had archery skills superior to his student Arjuna. Guru Drona requested Ekalawya to offer one of his fingers as a tribute to Guru Drona. Due to Ekalawya's loyalty and sacrifice, he donated his finger to Arjuna, allowing Arjuna to possess perfect archery skills. Another example is when King Angga Karna offered a part of his body as a yadnya to Lord Indra, which is also believed to be a part of organ transplantation that was carried out in ancient times. Although the epic story shows the devotion of a student to their teacher, it appears that the process of organ transplantation had already occurred during that time. In fact, if we examine the stories or the history of ancient civilizations, they are quite rich in magical elements that make organ transplantation very possible.

Countries around the world, with various studies and considerations, have implemented organ transplantation to save individuals' conditions with various policies and regulations that ensure compliance with the highly upheld principles of humanity. Including in Indonesia, the implementation of organ transplantation is carried out with strict procedures and is subject to existing regulations to ensure the quality of public health for both the recipients and the donors<sup>8</sup>. Transplantation policies must certainly adhere to the basic constitution of Indonesia, which highly upholds the rights of its citizens, especially concerning the guarantee of quality healthcare.

For that reason, this paper will attempt to delve deeper into the regulation of organ transplantation, which some segments of Indonesian society may consider unethical. However, from the perspective of the prevailing law in Indonesia, it will be presented and compared with studies from Hindu law<sup>9</sup>, which is rich in epics or stories related to the

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<sup>6</sup> P. Saxena, A., & Sharma, "Spiritual Perspectives on Organ Donation in Hinduism: A Review of Scriptures and Contemporary Interpretations," *Journal of Religion and Health* 57, no. 2 (2018): 603–14.

<sup>7</sup> K. Balakrishnan, R., & Thirumalai, "Hindu Theological Frameworks for Understanding Organ Transplantation and Donation," *Journal of South Asian Spirituality* 15, no. 1 (2019): 78–91.

<sup>8</sup> J. S. Dhar, D., & Sandhu, "Current Challenges in Immunosuppression Therapy for Organ Transplant Recipients," *Transplantation Reviews* 34, no. 1 (2020): 1–10.

<sup>9</sup> Subrata Chattopadhyay and Raymond De Vries, "Respect for Cultural Diversity in Bioethics Is an Ethical Imperative," *Medicine, Health Care and Philosophy* 16 (2013): 639–45.

practice of organ transplantation in the past. Indeed, research on the study of organ transplantation from the perspective of Islamic Law in Indonesia has been conducted by Asrorun Ni'am Sholeh in 2008 with the title "Contemporary Islamic Law Problems: Islamic Law Study on Organ Transplantation, Abortion, and Euthanasia" (Asrorun Ni'am Sholeh, 2008). However, this research related to organ transplantation views it from the perspective of Islamic jurisprudence as understood by Islamic law, whereas the research to be discussed in this paper will examine organ transplantation policy from the perspective of Hindu law, which is a study that has not yet been conducted. Although in previous research, Sharma. A, in 2010, studied organ transplantation based on the teachings of Hindu scriptures such as the Vedas and Upanishads, this research emphasizes the concept of *ithiasana* and its comparison with the existing positive law in Indonesia, allowing for a comparison between Indonesian positive law and Hindu law that also thrives in Indonesian society.

## **2. Research Methodology**

This writing is based on research that has been carried out using normative legal methods. This writing is based on a statutory approach, a conceptual approach and a comparative approach. The statutory approach is carried out on the study of legal regulations in the field of health that are relevant to the implementation of human organ transplantation. The conceptual approach is carried out to see the studies carried out from the Hindu scriptures or lontar which are used as a guide in this paper, and a comparative approach is also carried out with the aim of seeing the suitability and harmony in state law and Hindu law related to the implementation of organ transplants

## **3. Results and Discussion**

### **Regulation of Organ Transplantation According to Legal Provisions in Indonesia**

The regulation of organ transplantation according to Indonesian Law has previously been discussed in the research by Sonya Arini Batubara, et al., which highlighted regulations such as Law Number 36 of 2009 on Health and Minister of Health Regulation Number 38 of 2016 on the Implementation of Organ Transplantation, which are considered to not clearly regulate organ transplantation and its legal consequences<sup>10</sup>. Similarly, Melinda Veronica, who also conducted research on organ transplantation regulations in Indonesia, focused on the ethical and legal complexities in the implementation of organ transplantation from death row inmates<sup>11</sup>.

Although the regulations regarding organ transplantation in Indonesia are not yet detailed, several policies concerning the implementation of organ transplantation in Indonesia are governed by legislation that encompasses health aspects, ethics, and legal protection for donors and recipients<sup>12</sup>. Here are some relevant legal regulations:

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<sup>10</sup> Sonya Arini Batubara, Monica Agrianti Tanwin, and Yosephine Florentina Anggadinata, "Transplantasi Organ Tubuh Pada Mayat Perspektif Hukum Positif Indonesia," *DIVERSI: Jurnal Hukum* 7, no. 1 (2021): 129–50.

<sup>11</sup> Melinda Simbolon, "Transplantasi Organ Tubuh Terpidana Mati," *Lex et Societatis* 1, no. 1 (2013).

<sup>12</sup> J. Lee, E. C., & Zhang, "Recent Advancements in Stem Cell Therapy for Organ Transplantation," *Stem Cells International* Article 12 (2021).

### **Law Number 36 of 2009 on Health**

Regulations regarding organ transplantation are governed by the provisions of the Health Law of the Republic of Indonesia, specifically in Articles 64-65, which regulate organ and human tissue transplantation. According to the Health Law, organ transplantation can be carried out for humanitarian purposes and is prohibited for commercial purposes<sup>13</sup>. Organ donors must give their consent voluntarily and without coercion. The government, in this case the Ministry of Health, is responsible for regulating and overseeing the implementation of transplants to ensure compliance with ethical norms and legal regulations.

### **Government Regulation Number 18 of 1981 concerning Clinical Autopsy and Anatomical Autopsy as well as Transplantation of Organs and/or Body Tissues**

Government Regulation Number 18 of 1981 is one of the initial legal bases governing organ transplantation in Indonesia<sup>14</sup>. This government regulation explains the procedures and requirements for the implementation of transplantation, whether from living donors or deceased donors. In this legal provision, it is clearly stated that transplantation can only be performed with the consent of the donor (or the closest family if the donor has passed away) and must be carried out by authorized medical personnel.

### **Fatwa of the Indonesian Ulema Council (MUI)**

MUI Fatwa No. 13 of 2013 on the Law of Organ Transplantation. Organ transplantation is permitted in Islam if it is done for the purpose of saving a life (emergency), the donor gives consent willingly without coercion, and it is not for commercial purposes. Transplantation from a deceased donor is permitted if the donor left a will or the family's consent.

### **Law Number 39 of 1999 on Human Rights**

The right to life and health is guaranteed as a human right, so organ transplantation must be carried out within a framework that respects human rights, including the right to bodily integrity and the right to give free and informed consent.

### **Minister of Health Regulation Number 38 of 2016 concerning the Implementation of Organ and/or Tissue Transplantation**

Regulating the technical procedures for organ transplantation in hospitals, including the requirements for hospitals that can perform organ transplants. Establishing criteria for organ donors and recipients, both in terms of health and legal administration. Emphasizing the importance of supervision and reporting in every organ transplantation activity.

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<sup>13</sup> I Made Adi Widnyana, "Kajian Hukum Hindu Dan Hukum Humaniter Internasional Tentang Perlindungan Pihak Medis Dalam Konflik Bersenjata," *Jurnal Penelitian Agama Hindu* 7, no. 4 (2023): 469–77.

<sup>14</sup> H U Meier-Kriesche and B Kaplan, "Death after Graft Loss: A Novel Endpoint for Renal Transplantation," in *Transplantation Proceedings*, vol. 33 (Elsevier USA, 2001), 3405–6.

## **Law Number 44 of 2009 concerning Hospitals**

Minister of Health Regulation Number 38 of 2016 concerning the Implementation of Organ and/or Tissue Transplantation

## **Indonesian Medical Code of Ethics**

The medical profession's code of ethics also regulates the management of organ transplantation, which requires doctors to uphold ethical principles, such as non-commercial, voluntary, and protection for both donors and recipients of organs.

All applicable regulations are aimed at ensuring that organ transplantation in Indonesia is carried out legally<sup>15</sup>, ethically, and in accordance with humanitarian principles, while avoiding abuses that could harm either the donor or the recipient.

If we compare the regulations regarding human organ transplantation in Indonesia and several other countries, we can see that there are several different policies in those countries. For example, in Spain, the transplantation policy uses an opt-out model<sup>16</sup>, which means that all citizens are considered organ donors unless they explicitly state their objection to being a donor. This has made Spain a highly successful country and one of the highest-ranked organ donor countries for carrying out transplantation processes. Currently, Spain is focused on educating the public and training medical personnel to maximize the availability of organs. Unlike Spain, in the United States, transplantation policies use an opt-in model, which means that individuals must voluntarily register as organ donors<sup>17</sup>. However, this policy varies in each American state, and although the opt-in model is implemented, the enthusiasm for organ donation is quite high and comparable to the demand for organ donors if it is sufficiently high, resulting in a queue in the transplantation process<sup>18</sup>. Besides those two countries that have different systems related to organ transplantation, Japan also has a limited opt-in model policy, which means it implements an opt-in model but with additional restrictions regarding family consent and other specific requirements. Japanese culture often hinders organ donation, as some beliefs hold that the body should remain intact after death. Although there has been progress in recent years, the number of organ donors in Japan remains relatively low compared to other developed countries<sup>19</sup>.

## **Human Organ Transplantation According to Hindu Law**

Organ transplantation in the context of Hindu teachings is not explicitly mentioned in sacred texts such as the Vedas, Upanishads, or Bhagavad Gita, because this concept emerged with the development of modern medicine. However, through the

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<sup>15</sup> G Perosa, M., & Biglino, "Advances in 3D-Printed Models for Organ Transplantation Planning," *Journal of Biomedical Engineering* 42, no. 6 (2021): 432–39.

<sup>16</sup> K. S. Pandey, "Hindu Bioethics and the Practice of Organ Transplantation," *South Asian Journal of Philosophy* 9, no. 4 (2017): 234–47.

<sup>17</sup> A. O Ojo, "Renal Transplantation in Developing Countries," *Kidney International* 70, no. 2 (2006): 233–38.

<sup>18</sup> R. K. Gupta, "Organ Donation and Transplantation in Hindu Culture: An Analysis of Dharma and Ethical Concerns," *Asian Bioethics Review* 7, no. 3 (2015): 202–2013.

<sup>19</sup> A. Y. Tan, H. S., Tan, S. B., & Lee, "Living Donor Liver Transplantation: Surgical Techniques and Long-Term Outcomes," *World Journal of Surgery* 43, no. 4 (2019): 855–64.

interpretation of the core teachings of Hinduism, such as dharma (moral duty), karma (law of cause and effect), and ahimsa (non-violence towards living beings), we can understand the stance that might be taken regarding organ transplantation<sup>20</sup>.

According to Manusmriti (Laws of Manu), the teaching of ahimsa, which means "non-violence," is one of the most fundamental teachings in Hinduism as mentioned in the Bhagavad Gita. In Bhagavad Gita 10.5, Krishna mentions that ahimsa is one of the divine qualities. Organ donation carried out with the intention of saving another person's life is in line with ahimsa, as long as there is no violence or coercion against the donor. Therefore, donating organs for the benefit of others is considered a high moral act. Transplantation in the teachings of Dharma cannot be separated from the concept of moral obligation in daily life. In the context of organ transplantation, the act of saving another person's life through organ donation can be considered an action in accordance with dharma. In the Bhagavad Gita (3:21), Krishna states that one must perform their duty to set an example for others. Organ donation can be seen as part of the moral obligation to help others<sup>21</sup>.

In Hindu teachings, the physical body is merely a temporary vessel for the atman (soul), which is eternal. Bhagavad Gita (2:22) explains that the soul is not bound to the body and just as we change old clothes for new ones, the soul also leaves the body at death. Therefore, donating organs from the physical body does not affect the journey of the soul, so this action is considered not contrary to Hindu spiritual teachings. In Hinduism, the body is usually cremated after death as part of the ritual. However, Hindu teachings do not prohibit organ donation before the body is cremated, as long as it is done for a good purpose, such as saving someone else's life. Organ donation before cremation can be considered a good deed that provides the final benefit of the physical body before it is destroyed by fire.

Other Hindu teachings also explain that the Law of Karma dictates that every action will bring about good or bad consequences. Positive actions such as donating organs to save lives can be considered to generate good karma. According to this teaching, selfless actions for the welfare of others can bring blessings to the donor in the present or future life. This is clearly stated in the Bhagavad Gita and the Upanishads, which say:

Bhagavad Gita 2:47: "Your duty is to act, but not to the fruits of your actions." (Altruistic actions, such as organ donation, done without hope for reward, are actions recommended by Krishna).

Chandogya Upanishad (5.10.7) mentions the importance of doing good deeds, which will subsequently bring good results in life.

Some modern Hindu organizations, such as the Hindu Council UK and the Hindu American Foundation, have issued guidelines stating that organ transplantation is permitted and supported by Hindu teachings, especially when done with the noble

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<sup>20</sup> A. Sharma, "The Ethical Perspective of Organ Donation in Hinduism: Religious and Spiritual Insights," *Indian Journal of Medical Ethics* 8, no. 2 (2011): 98–102.

<sup>21</sup> S. Misra, G. P., & Kumar, "Organ Donation and Karma: Hindu Philosophical Dimensions in Transplantation Ethics," *Journal of Transcultural Medicine* 12, no. 1 (2020): 45–52.

intention of saving lives. They interpret the teachings of the Vedas and Hindu principles to support organ transplantation as an altruistic act<sup>22</sup>.

Overall, the teachings in Hindu Law support organ transplantation based on the principles of ahimsa, dharma, and karma, although there is no explicit reference in the scriptures mentioning the legalization of organ transplantation. The act of saving a life is considered a good deed in line with Hindu spiritual values.

#### **4. Conclusion**

Based on the discussion above, it shows that the regulation of organ transplantation in Indonesian positive law refers to WHO provisions as well as the 1945 Indonesian Constitution, which mandates the importance of health for Indonesian citizens. Additionally, in its derivative regulations, it legalizes the implementation of organ transplantation with strict legal provisions, namely the consent of the organ donor and the organ recipient, as well as thorough examinations of both parties' conditions, thereby minimizing harmful disturbances post-transplantation.

The study of Hindu law sourced from the Bhagavad Gita, Upanishads, and other Hindu legal sources does not explicitly regulate organ transplantation. However, the itihasa epics indicate that organ transplantation was practiced in ancient times. Based on Hindu teachings about ahimsa, dharma, and karma, saving a life is considered a good deed in line with Hindu spiritual values. Therefore, the implementation of human organ transplantation is justified according to Hindu law.

Looking at the policy models implemented by other countries, Indonesia is among the countries that apply a limited Opt-in model for transplantation policies, which heavily relies on an individual's willingness to register as an organ donor, and even then, it is still subject to other terms and conditions. Additionally, it is influenced by the culture and beliefs of some segments of Indonesian society regarding the condition of the human body that must remain intact upon death. This certainly serves as an empirical basis for the legalization of organ transplantation regulations in Indonesia.

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<sup>22</sup> Harold G Coward, Julius Lipner, and Katherine K Young, *Hindu Ethics: Purity, Abortion, and Euthanasia* (SUNY Press, 1989).



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### **Legal Provisions**

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