



BODILY ORGAN TRANSPLANT IN ISLAMIC JURISPRUDENCE (FIQH) PERSPECTIVE

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ABSTRACT

This paper aims to discuss how to transplant organs in the perspective of Islamic jurisprudence. Organ transplant is the transfer of part or all of the organ tissue from one individual to another individual with the same or different species. Currently what is commonly done in Indonesia is the transfer of an organ between humans, not between animals and humans. This transplantation is intended to replace damaged or non-functioning organs of the recipient with other organs still functioning from the donor. At the legal level, transplantation is seen as a noble effort to make people healthy, even though it is considered an act that is against criminal law, but by way of exceptions, it is no longer threatened by criminal sanctions and can be justified. Organ transplants experience ethical dilemma, one side can endanger the donor but on the other hand can save the patient in certain conditions. In some countries that have legislation on organ transplants there is retaliation in the implementation of transplants, for example there is a prohibition on embryo, testicular and ovarian transplants for both medical and experimental purposes. However, there are also countries that allow transplants of the organs mentioned above for research purposes only.

KEYWORDS: organ transplantation, Islamic jurisprudence

A. INTRODUCTION

Along with the growth of medical science, there were cases that had never existed before in the time of Prophet Muhammad, as well as in the time of Prophet Muhammad's companion. In fact, *fūqaha* had never been discussed before, like the transplantation of human organs. Where humans desperately need it now, following the emergence of many chronic diseases those are very deadly. For example, in the case of traffic accident, where the patient runs out of blood and needs several blood bags, or perhaps the patient needs a donor of the heart or kidney and other organs. Quite rapid developments in medical science can be seen from the success of many cases of organ transplants, which have yielded quite promising results. Nevertheless, success is not safe from legal issues, and so on. In the medicine world, east and west in general, it is assumed that any illness has a cure. There are diseases that can be treated by simply giving simple medicines, but there are also those that require relatively complicated treatments, such as organ transplantation.

For example, a patient with kidney failure has only three alternative treatments, undergoes routine hemodialysis, performs a body transplant, or dies. There are currently 40,000 patients in Indonesia with this situation. Those who are undergoing medical treatment are very few because the cost of treatment in cases of kidney failure is very expensive and long-term. The first kidney transplant was performed in Indonesia at Cipto Mangunkusumo Hospital in 1977. Until now, only five hundred

patients had transplanted their kidneys at the PGI Cikini Hospital. Organ transplantation in Indonesia is a living donor and the amount is very small compared to the needs.

Difficulties looking for kidney donors makes patients with cases of kidney failure have to find a kidney to China. In recent years many patients from Indonesia have gone to China for treatment for organ transplants. According to reportedly in China organs such as kidneys are openly sold, although not cheap.¹

As a medical treatment, organ transplantation has the potential to be misused and to cause disputes, so that it is felt that implementation requires regulation not only in terms of ethics, but also of applicable law.

In practice, organ transplantation is a noble act, as someone gives a part of their body to another to help patients with other diseases. Organ transplantation should, in principle, only be performed if the donor has informed consent, taking into account the risk of the donor, the effectiveness of the donor donation is likely to be successful with the recipient and there is no sale or marketing element in the donor.

In Islam, *fardhu kifayah* (collective obligation) was implemented and the existence of experts in the field of medicine was promoted and

¹Trini Handayani, *Fungsionalisasi hukum pidana terhadap perdagangan organ tubuh manusia* (Bandung: Mandar Maju, 2012), h. 72



medicine was seen as a very noble science. Imam Shafi'i said, "I don't know the science of Halal and Haram (*Sharia Fiqh*) which is nobler than medical science."

Organ transplantation has begun to be thought of by the world since 4000 years ago. According to the manuscript found in Egypt, which contains a description of the organ transplant experiment, it was first carried out in Egypt about 2000 years ago before the Prophet Isa was sent, following India a few years before the birth of the Prophet Isa. The Hindu surgeon was able to repair the prisoner's nose, which had been damaged by torture, by transplanting a portion of the skin and fat tissue from his arm. This experience inspired Gaspare Tagliacosi, an Italian surgeon, to try to correct a person's nose defect by using a friend's skin in 1597 AD.²

At the end of the 19th century AD surgeons were only able to transplant tissue, but since the discovery of John Murphy in 1897, which succeeded in connecting blood vessels to experimental animals, the experiment opened the door to the transplantation of organs from humans to other humans. Experiments that have been carried out on animals have finally been effective, although it has been a long time, half a century. In 1954, Dr. J.E Murray succeeded in transplanting a kidney into a child from his twin, which brought faster and more advanced advancement in the transplantation area.³

When Islam emerged in the 7th century AD, surgery was already known in various countries in the world, especially developed countries, such as Rome and Persia. But network transplantation has not yet experienced significant development, despite efforts to develop it. For thousands of years after going through many experiments then succeeded at the end of the 19th century, for tissue transplantation and in the mid-20th century began transplanting other human organs. At the time of the Prophet, the Islamic State paid attention to human health issues, and also sought to guarantee the safety and care of all its people free of charge. At the time of the Prophet, there were several surgeons who were well known, such as al Harth ibn Kilda, Abu Ramtah Rafa'ah, and Rafidah al-Aslamiyah, from their women.⁴

While organ transplants were unknown to the world at that time, plastic surgery that used artificial or fake organs was recognized at the time of the Prophet, as stated by Imam Abu Daud and Tirmidhi of Abdurrahman ibn Tharfah, that his grandfather 'Arjafah ibn As'ad had his nose cut off during the *Kulab* war, then he put on a fake nose of silver metal, but the nose began to rot, the Prophet

suggested to replace it with a fake nose made of gold metal. Imam Abu Sa'ad in his *Thabaqat* also narrated from Waqid ibn Abi Yasir that Usman ibn Affan had put on gold false teeth so that his teeth became strong and durable.

In the next Islamic era, thanks to the doctrine of the urgency of medicine, monumental works of medicine began to spread, which included numerous medical procedures, including transplantation, and at the same time gave rise to many great names of medical scientists, including Al Rozy (251-311 H) who discovered and distinguished veins and arteries besides many who discussed other medical problems, such bone surgery and casts in his book *Al Athibba*. More than that, studies in the field of science. Az Zahrawi Muslim medical expert who died in Andalusia after the 400s *Hijriyah* was successful and became the first person to separate surgery and make it a separate subject in the field of medical science. He has written a great monumental book in the field of medicine, especially surgery under the title "At Tashrif."⁵

In the medical dictionary, this is explained that the transplant originated from a transplant, which means planting tissue taken from the body of the individual to another individual. Transplant medicine is defined as the process of transferring or transplanting body tissue from an individual or another individual. In medicine, moving tissues or organs are called graft or transplantation, transplant administration is called a donor..

In practice, the success or failure of the tissue or organ transplanted from the donor to the recipient depends on whether or not the immune reaction occurs at the recipient. Rejection of tissue or organs by the recipient is caused by the occurrence of antigens that are owned by donor cells but this is a major obstacle. Medical experts in the field are still able to cope with a variety of ways that can minimize the possibility of a rejection reaction, such as damaging lymphocyte cells owned by the recipient or removing organs that produce lymphocyte cells, namely the spleen and thymus.

Transplants are innovative in the new field of medical surgery. Over the last few decades, organ transplantation seems to have become increasingly prevalent and a medical challenge, both in terms of efforts to develop applied applications and practical technology, and in terms of widespread polemics about the Code of Ethics and Law, especially Islamic Sharia law.

In this case, Shaykh Al Azhar Jadul Haq stated that the transplantation of living human organs may be done on a voluntary basis to other people or

²Mahmud Alhajj Qasim, *Atthib`indal`arab wal muslimin Mu`jam`ulama al`arab* (Beirut: Daar el Fikri, t.t), h. 105

³*Ibid*, h. 106

⁴*Ibid*, h. 109

⁵Al Kahrasyi, *Syarah al Kharsyi* (Bulaq: Maktabah Amiriyah, t.t), h. 621



those who are ill with certain conditions if the doctor confirms the need to do so.⁶

When the part of the body that is grafted causes the death of the volunteer, such as the heart, then the rule is utter haram, either through the consent of the volunteers or through disapproval. That if he allows it, he means committing suicide, and if he doesn't allow it, he means murder, and all of them are haram.

If a grafted part of the body does not cause death to mean that he can live without the organ, then the law must pay attention to issues such as if it causes his inability to perform the lawful or allows him to do the unlawful, the law becomes unlawful or haram, for example, both legs or arms where, without them, they can no longer work to meet their daily needs, or because of it they do things that are prohibited from *syara'*, then transplanting with or without their permission is unlawful.

If the transplant process does not bring harm to him such as transplantation of one kidney, eye, part of the teeth or blood and a transplant done without his permission, and then the law is haram and is considered to be persecution. It is obligatory for him to apply the *qishas* law on his terms or pay the sum as stated in the book of *fiqh*.

In this regard, Imam Nawawi said that there was a prohibition on connecting human hair with other human beings. It is forbidden to use human hair and all of his body because of his glory, even his hair, his nails and all his limbs must be buried.⁷ However, connecting the hair of other people to the debate of scholars prohibiting it if it is done for the purpose of deceiving or slandering and the obligation to bury it.⁸ In a hadith narrated by Mu'awiyah, Ibn Hajar said that it was permissible to remove hair and not to bury it. Sheik Al Azhar added that every human being has a free will related to him not to harm himself or to kill himself.

From some of the above information and opinions, it is clear what the scholars of jurisprudence have said about jihad with the soul that can cause him to be killed. What is required of the teachings of Islam is to save people who are drowning, burning and buried heaps of buildings on the basis of the arguments of the *syara'*. These are exceptions to the previous thing. Therefore, if a specialist guarantees that by transplanting a living organ in order to save another person with his or her permission, then, of course, it is legal if he or she can guarantee that it does not pose a danger to the donor, since the rules of *ushul fiqh* state that "a risk can be replaced with another risk"

⁶Jadul Haq, *Buhus Wa Fatawa Islamiyah* (Cairo: Amanah Al Ammah, 1994), h. 427

⁷Nawawi, *Al Majmu'*, jilid III (Beirut: Darul Fikri, 1994), h 277

⁸Ibnu Hajar, *Fathul Bari* (Damaskus, Maktabah al Ghazali, 1993), h. 10

It is also permissible with other terms, namely that an organ cannot be sold or brought under other condition, since the selling and purchase of an independent human being or parts of his body is null and void according to the *syara'*.

B. TYPES OF TRANSPLANTS

Until now murder cases have frequently occur with a variety of reasons, also commonly heard lately there is a kind of conspiracy that kills and mutilates the bodies, the many organs of the body, the most costly is the price of the kidneys and the heart. This kind of killing behavior that is done intentionally will get a curse and torture from Allah SWT and he will be thrown into hellfire. In the An Nisa verse 93 it is explained that "Whoever kills a believer intentionally then the reward is hell, he is eternal in it and Allah is angry with him and cursed him and provided him with immense torture"

Based on the essence of the removal of organs or tissues that are moved to another body, transplants are classified into three groups:

1. Auto graft is the removal of tissue organs or organs from one place to another in the patient's own body. For example, a cleft lip, this case is usually taken from his cheek.
2. Allograft is the removal of tissue or organs from another body of the same species, that is, from humans to humans. Common allograft transplants and high success rates include kidney and corneal transplants. Besides that, liver transplants have also occurred, although the success has not been high.
3. Xenograft is the transfer of tissue or organ from one body to another that is not the same species. For example between human species and animals that have occurred. For example a human liver transplant with a baboon's liver even though the success rate is very small.

Transplantation is an effort to cure chronic diseases, as Islam itself encourages people to treat all diseases and to try to recover. Since having a disease in your body will lead to death, while allowing yourself to fall to death is also prohibited. This provision is also the main reason for all people suffering from chronic diseases to continue to do everything in their power to get rid of diseases in the body.

C. CONCLUSION

Organ transplantation is a very noble act, someone gives a part of their body to another to help patients with other diseases. Transplants can, in practice, only be carried out if the donor has informed consent, taking into account the risk of the donor, the feasibility of the donor donation, the probability of success of the recipient and the absence of an aspect of sale or commercialization in the donor.



Body transplantation is revolutionary in the new field of surgical surgery. Over the last few decades, transplantation seems to have become more common and a medical challenge, both in terms of efforts to establish applied technologies and practice technology, and in terms of common polemics about the Code of Ethics and Law, particularly Islamic Sharia law.

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