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## Law on Urology Specialists in Providing Kidney Transplantation Service

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**Abstract:** Kidney transplantation is a crucial healthcare service in managing end-stage chronic kidney disease. Despite its significant benefits for patients' survival and quality of life, this medical procedure may raise legal issues, particularly regarding the illegal trade of human organs. This study aims to analyze the legal basis, authority, and legal protection for urologist specialists in delivering kidney transplant services in Indonesia. The method employed is normative legal research with statutory and conceptual approaches. The findings indicate that kidney transplantation is permitted as long as it is conducted for humanitarian purposes, free from commercialization, and in accordance with positive law, such as the Health Law No. 17 of 2023 and Government Regulation No. 53 of 2021. Furthermore, urologist specialists must meet professional competency standards and operate within their authorized scope of practice. Legal protection is essential to ensure legal certainty in medical practice. From both Islamic and Catholic religious perspectives, kidney transplantation is allowed if performed voluntarily and ethically to help others.

**Keywords:** Kidney Transplant, Health Law, Urology Doctor, Organ Trading, Legal Protection

### INTRODUCTION

In the citation of the 1945 NRI Law, Article 28H paragraph (1) it is stated that "Every individual has the right to enjoy physical and mental well-being, obtain a decent place to live, access medical services, and live in a healthy and decent environment." This statement is the legal basis that confirms that access to health is a basic right for all citizens, because health is one of the main aspects in fulfilling human needs.

The people's right to health is managed in Article 34 after its third amendment, especially in paragraphs (3) and (4), Article 34 paragraph (3) reads "The state is responsible for providing adequate health service facilities and public service facilities." Then, Article 34 paragraph (4) reads "Further provisions regarding the implementation of this article are regulated by law." Referring to Article 28H and Article 34 paragraphs (3) and (4) in the 1945 Constitution, the state has an obligation to guarantee the fulfillment of health rights for all Indonesian citizens. This includes the provision of adequate, equitable, and accessible health

facilities and medical services for the community. The state is responsible for creating a national health system that is able to meet the basic needs of citizens fairly and sustainably.

In order to provide services to improve and maintain public health conditions, the central government, regional governments, and the private sector are responsible for organizing various forms of support in the form of infrastructure, tools, and public services. Based on the Decree of the Minister of Health of the Republic of Indonesia No. 058/Menkes/SK/1/2009 concerning operational guidelines for Mobile Hospitals, it is explained that medical personnel are also categorized as an integral part of health facilities, considering their crucial role in implementing medical services to the community. One of the parts of the health service delivery is kidney transplant services.

A medical procedure that is carried out by replacing damaged and non-functioning body parts with healthy tissue or organs, either from oneself or from another donor, is known as a transplant. This action aims to restore body functions that are disrupted due to organ or tissue damage. The first recorded kidney transplant was carried out on March 13, 1902 by Erich Ullmann at the 'Wiener klinikche Wochenschrift'. He performed a kidney transplant on a dog by grafting one of the dog's kidneys into the jugular vein of another dog. The first human-to-human kidney transplant was successfully carried out in 1933 by Yuri Voronoy in Ukraine, using a cadaver kidney that had been dead for 6 hours to be re-implanted into the middle thigh of a 26-year-old woman with acute mercury poisoning, but the results failed due to hyperacute immune system rejection.

After that, the discovery of immunosuppressive medications and a better understanding of the cross-match between recipient and donor improved the success and survival of kidney transplantation in humans. It was not until December 23, 1954, that Dr. John Murray, who would eventually win the Nobel Prize in Medicine for his achievements, performed the first successful kidney transplant at Brigham and Women's Hospital in Boston on a 23-year-old patient with ESRD. The donor was his identical twin brother.

As it progressed, minimally invasive kidney transplant procedures were discovered, such as laparoscopic donor nephrectomy, laparoscopic kidney transplantation, and robotic kidney transplantation. The introduction of these techniques increased the number of transplant procedures performed worldwide.

Kidney transplantation is the best choice in kidney function replacement therapy because it can improve long-term survival and quality of life. Several studies have shown that kidney transplant recipients have a lower risk of death and cardiovascular disease than those undergoing regular dialysis, either hemodialysis or peritoneal dialysis.

In addition to the benefits above, kidney transplantation also has a cheaper long-term cost compared to hemodialysis or peritoneal dialysis. Fitra in 2021 conducted research at RSUP dr. Sardjito regarding the cost-effectiveness of kidney transplantation compared to hemodialysis or peritoneal dialysis. In the 5th year, the cost of treating CKD patients undergoing kidney transplantation will be much smaller compared to treating CKD patients undergoing hemodialysis or peritoneal dialysis.

Kidney transplantation is considered the main solution for the majority of chronic kidney disease (CKD) sufferers who have reached the final stage. The government recommends this kidney transplant as a more effective alternative compared to other therapy methods. In terms of financing, the expenses covered by the JKN program for kidney transplantation are considered lower when compared to the routine costs of hemodialysis or peritoneal dialysis.

Urology specialists in providing kidney transplant services need a legal umbrella to provide peace of mind in working and avoid lawsuits, both civil and criminal. Law No. 17 of 2023 concerning Health, hereinafter referred to as the Health Law, is now the main legal basis that regulates various aspects of health services in Indonesia, including the relationship between medical personnel and patients.

In addition to the Health Law, another legal framework that specifically regulates kidney transplant practices in Indonesia is contained in Government Regulation No. 53 of 2021 concerning Organ and Body Tissue Transplantation. This provision is an important foundation in carrying out transplant procedures legally and ethically. Then, urology specialists involved in transplantation are also required to uphold moral and professional responsibilities in accordance with the principles stipulated in the Indonesian Medical Code of Ethics (KODEKI), which is the main ethical guideline in carrying out medical practice in the country.

However, in its implementation, kidney transplant services in Indonesia have several times come into contact with legal issues. The most frequent legal cases are related to the status of donor kidneys due to suspicions of organ trading, in 2016 in Bandung, the Directorate of General Crimes of the National Police Headquarters conducted an investigation related to the trading of human organs, namely kidneys, which were carried out at one of the major hospitals in Central Jakarta., in 2023, the Criminal Investigation Unit of the Indonesian National Police uncovered the sale of kidneys by Indonesian citizens to hospitals in Cambodia.. Until now in Indonesia there has never been any hospital or urology specialist proven to be involved in the criminal act of buying and selling kidneys.

In another case, it was tried in the Central Jakarta District Court for the criminal act of human trafficking with number 587/Pid.Sus/2019/PN Jkt.Pst, where the judge found 4 suspects of the kidney trafficking syndicate guilty with a criminal sentence of 2 years and 6 months in prison each and a fine of Rp. 250,000,000.00 subsidiary imprisonment of 1 month.

At present, the prohibition on the trade in human organs, including kidneys, is not yet included in the applicable Criminal Code, but it has been regulated in the Draft Criminal Code which will come into effect in 2026. Discussion of criminal acts related to the sale of human organs is expressly regulated in Article 345 of the Draft Criminal Code 1/2023, which states that the sale and purchase of human organs, body tissues, and blood is a violation that can be subject to criminal sanctions, which reads:

"Any person who for any reason trades in: human organs or body tissues, shall be punished with a maximum imprisonment of 7 (seven) years or a maximum fine of category VI, namely IDR 2 billion, or human blood, shall be punished with a maximum imprisonment of 3 years or a maximum fine of category IV, namely IDR 200 million."

Then, Article 346 of Law 1/2023 states that:

"Any person who commercializes the implementation of human organ or tissue transplantation or human blood transfusion shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of category V, namely IDR 500 million. Human organ or tissue transplantation or human blood transfusion as referred to in paragraph (1) may only be carried out for humanitarian purposes."

In the implementation of kidney transplant procedures, buying and selling transactions between recipients and organ donors are not permitted. Article 3 of PP No. 53 of 2021 emphasizes that organ and body tissue transplantation is only permitted for humanitarian purposes, and strictly prohibits any form of commercialization related to this action. Then the sale of organs or body tissue is strictly prohibited for any reason, to maintain integrity and ethics in its implementation.

Article 26 of PP No. 53 of 2021 explains that organ donors in transplant procedures are entitled to receive awards, considering that they cannot carry out activities or work optimally during the recovery process after transplantation. The award is not a payment or sale and purchase transaction, but is given solely for humanitarian purposes and should not be viewed as a commercial activity.

The existing legal facts rationally require clarity regarding legal protection for urology specialists who perform kidney transplant procedures. This includes clarity regarding the competency standards that must be met, the clinical authority they have, and the legal status

of organ donors and recipients, including whether such actions can be categorized as criminal acts related to organ trafficking.

## METHOD

Based on the analysis of the title and formulation of the problem that has been explained, the type of research used in this study is normative or doctrinal legal research. The approach is the statute approach and conceptual approach. Legal research itself is a study carried out by analyzing the norms contained in the applicable laws and regulations.

Meanwhile, doctrinal research aims to explain in detail the applicable legal regulations, analyze the relationship between these regulations, identify existing legal problems, and project the direction of future legal developments.

The law approach is implemented to describe and analyze policies related to the legal issues faced, including regulations regarding practice permits and implementation of medical practice, the authority of urology specialists in carrying out kidney transplantation practices, regulations regarding kidney donors.

## Legal Materials

The legal materials used in this study are: primary, secondary, and tertiary legal materials. Primary legal materials are legal policies related to the problems in this study, namely:

1. The 1945 Constitution of the Republic of Indonesia
2. Law No. 29 of 2004 concerning Medical Practice
3. [Law No. 1 of 2023](#) related to the draft Criminal Code
4. Law No. 17 of 2023 concerning Health
5. PP No. 53 of 2021 concerning Organ and Body Tissue Transplantation
6. KI Council Decree No. 68/2020 concerning the standards of professional education for urology specialist doctors.

Secondary legal materials serve as supporting sources to enrich and strengthen the theories contained in primary legal materials. These materials include literature, publications, and print media that are relevant to the legal topic being studied. Based on its characteristics, this research can be included as a descriptive study, which aims to describe in detail and clearly the main problems that are the focus of this study.

Tertiary legal materials serve as a complement and support for primary and secondary legal materials. These types of legal materials include sources that provide further explanations or references related to legal terms and concepts. Among the commonly used tertiary legal materials are legal dictionaries, language dictionaries, encyclopedias, and various other references that provide supporting information to clarify understanding of the legal topic being discussed. Although not the main source in legal research, this material still has an important role in providing additional context and expanding the scope of legal knowledge needed for more in-depth analysis.

## Collection and Processing of Legal Materials

The purpose of collecting and processing legal materials in this study is to obtain relevant data. Some of the methods used include: (1) literature review, namely collecting information from legal sources such as statutory regulations or analysis of scientific works, including books, journals, print media, electronic media, newspapers, and other sources related to the topic being studied. (2) analysis of the law, namely a method of collecting data by comparing various statutory regulations that are relevant to the problems described in this study.

## Legal Material Analysis

The method of legal material analysis applied in this study is a qualitative legal approach. This approach is carried out by understanding and compiling legal materials that have been collected in a structured manner, then drawing conclusions based on the arrangement. After the primary, secondary, and tertiary legal materials are collected, the next step is to classify the materials according to their relevance to the formulation of the problem in this study, which includes the authority of urology specialists in providing kidney transplant services, as well as the legal protection received by urology specialists in carrying out kidney transplant services on patients.

If the policy of the law is unclear or ambiguous, then an interpretation or interpretation is needed that is carried out in a structured manner. In that, the legal materials that have been collected will be analyzed as a complete system. If a legal vacuum is found, the next step is to carry out legal construction to fill the vacuum.

## RESULTS AND DISCUSSION

### Understanding Kidney Transplant Procedures

Article 124 of the Health Law explains that transplantation refers to the process of transferring organs and tissues from donors to recipients, the purpose of which is to cure diseases and restore the recipient's health. Organ and/or tissue transplantation procedures are only permitted for humanitarian purposes and are expressly not permitted to be used as a commercial activity.

The kidneys are human organs that have a central position in filtering blood and producing urine. Kidney damage can occur, known as Chronic Kidney Disease (CKD). This health problem is still a challenge in both developed and developing countries, and places a major burden on the health insurance system. CKD is a condition of kidney damage that lasts up to three months, which causes the Glomerular Filtration Rate (GFR) to drop below 60 mL/min/1.73 m<sup>2</sup>. The main causes of CKD are diabetes mellitus and hypertension. The best treatment for CKD patients is to perform a kidney transplant, which provides benefits both in terms of the patient's quality of life and in reducing treatment costs.

In general, kidney transplantation involves three parties, namely the hospital, the donor, and the recipient. The donor is an individual who gives his/her organs and/or body tissues to the recipient with the mission of curing the disease and restoring the recipient's health. Meanwhile, the recipient is an individual who receives organs and/or body tissues from the donor for the same purpose, namely curing the disease and restoring health.

Kidney transplants can be divided into two categories based on the source of the kidney donor. First, Cadaveric-Donor, which is a donor who comes from a deceased person, especially those who have experienced brain death due to severe brain damage. The requirements are that the donor must be 10-60 years old, free from infectious diseases such as hepatitis or HIV, and their kidneys are still functioning well when approaching death. Second, Living-Donor, which is a kidney donor who comes from a living person. This type is divided into two, namely donors and recipients who have family relationships, and those who do not have family relationships.

Living kidney donors must meet several important requirements. First, the age of the prospective donor is between 18 and 65 years. Second, they must have a strong motivation to donate a kidney without coercion. The kidney to be donated must be normal and the prospective donor must be free from diseases that can damage the kidneys in the long term. The prospective donor must have a blood type, HLA, and cross-blood test results that match the recipient. The prospective donor must be mentally healthy, free from infectious diseases, and have good tolerance for surgery. A complete medical examination, including kidney function tests and infectious disease screening, is also carried out before the donor is approved..



According to Article 11 of PP No. 53 of 2021, there are several requirements for prospective kidney donors. First, prospective donors must be in good health, as reflected by a health certificate. Second, they must be at least 18 years old. Prospective donors must also state in writing their willingness to donate a kidney voluntarily without compensation. The consent of close family members is also required. Prospective donors must understand various things related to transplantation, such as procedures, risks, and post-surgery life guidance. Then, prospective donors must sign a statement that they will not be involved in organ trading or agreements that lead to compensation.

Article 128 of the Health Law emphasizes that kidney transplantation must be carried out with several important principles. First, the principle of justice that ensures all parties are treated equally. Second, the principle of medical utility, which maximizes medical benefits for the recipient. Third, the compatibility of the organ or body tissue with the recipient is crucial. Then the priority order is given based on medical needs and family relationships. The timing of the transplant must also be right to be effective, accompanied by consideration of the character of the organ or body tissue. Finally, the health of the living donor must be ensured so as not to endanger his health condition.

Article 129 of the Health Law regulates the kidney transplant procedure which involves several important stages. First, registration of prospective donors and recipients must be carried out to begin the transplant process. Second, examination of the suitability of prospective donors is carried out by considering medical, psychological, and socio-legal aspects to ensure readiness and suitability. Third, the compatibility of organs or body tissues between donors and recipients must be tested to avoid rejection. Finally, after the transplant operation is carried out, post-operative management becomes an important part of recovery, to ensure the success and long-term health of both parties involved.

The government prohibits the commercialization and sale of organs during kidney transplantation, as stated in Article 432 of the Health Law, which reads:

- (1) *"Any person who commercializes the implementation of organ or body tissue transplantation as referred to in Article 124 paragraph (3) shall be punished with a maximum prison sentence of 5 (five) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah)."*
- (2) *"Any person who sells organs or body tissue for any reason as referred to in Article 124 paragraph (3) shall be punished with a maximum prison sentence of 7 (seven) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah)."*

Article 133 states that awards can be given to organ transplant donors by the Central and Regional Governments, or recipients. This award can be received by the donor or his heirs, as a form of appreciation. The award is based on the fact that the donor cannot carry out his activities or work normally during the transplantation and health recovery stages, which require special time and attention.

### **The law on kidney transplantation by a urology specialist**

From the Indonesian legal perspective, the term authority is often associated with the concept of public law. In the Netherlands, this term is known as "bevoegdheid". In the realm of HTN, authority is understood as legal power (rechtsmacht), while in public law, authority is more related to the power that is possessed. Thus, authority reflects the capacity to exercise power in the field of public law..

Authority in public law has three main elements, namely: (1) influence, which shows that the purpose of using authority is to influence or regulate the behavior of legal subjects; (2) legal basis, which confirms that every use of authority must have a clear legal basis; and (3) legal conformity, which means the existence of benchmarks or standards that regulate

authority, both general standards for all forms of authority and specific ones that apply to certain types of authority..

Authority refers to (1) the right and power to carry out a certain action or decision, and (2) the power to make a decision, direct, and delegate responsibility to others. Some legal experts define authority as the capacity granted by legal rules to carry out certain actions aimed at producing legal consequences, in which there are rights and obligations. Rights are interpreted as the freedom to act (or not to act) or to demand that other parties do (or not to do) certain actions. This concept is very relevant in a democratic state of law that balances rights and obligations..

Ateng Syafrudin explained that there is a fundamental difference between authority and power. Authority is formal power granted by law, while authority is more specific to a certain part or aspect of the authority. In other words, authority is part of the authority that provides space to act in a narrower scope, in line with the duties and powers managed by law..

Authority can be obtained through two main methods, namely attribution and delegation. Attribution is a common method used to obtain government authority, which provides the right to formulate decisions that are sourced directly from the law in a material context. For example, in Article 25 of Law No. 23 of 1997, the governor is given the authority to apply government coercion to parties responsible for business or activities in his area..

The second way to obtain authority is through delegation, namely the transfer of authority by a government official to another party which then becomes the responsibility of that party. Delegation is definitive, meaning that the party granting the authority can no longer use the authority. For example, in article 15 paragraph 2 of the Environmental Management Law, it is explained that "the authority as referred to in paragraph 1, can be transferred to the regent/mayor through a level I regional regulation."

Urology specialists in working must meet the competency standards that have been The competency standards are set by the Minister of Health after being compiled by the collegium, as regulated in article 220 of the Health Law. In order to measure the achievement of professional ability standards, individuals who are studying at the specialist or subspecialist level either in the medical field or other health workers must undergo an evaluation in the form of an exam with a national quality reference. This test is an absolute requirement to ensure that competency is in accordance with the qualifications that have been determined for these prospective experts.

In Indonesia, the authority for doctors or dentists is regulated in Article 35 of Law No. 29 of 2004. After obtaining a STR, doctors or dentists have the right to practice in accordance with their education and competence. This authority includes several tasks, such as interviewing patients, examining physical and mental conditions, determining supporting examinations, determining diagnoses, planning treatment, and performing medical or dental procedures. Then doctors also have the right to prescribe drugs, issue medical certificates, and manage drugs in permitted quantities. For practices in remote areas, doctors can also mix and deliver drugs directly to patients. Further authority is regulated by the Regulations of the Indonesian Medical Council.

KI Council Regulation No. 68/2020 concerning the professional education standards for urology specialists states that kidney transplantation in pediatrics is included in the list of advanced clinical skills, and to obtain these advanced competencies, additional education or training is required. To manage and care for CKD patients undergoing kidney transplantation requires a team involving various multidisciplinary teams such as internal medicine specialists, anesthesiologists, urologists, nutritionists, hospital legal teams, etc.

According to Article 127 of the Health Law, a Hospital that Provides Organ Transplantation is a Hospital that is determined by the Minister of Health, the Hospital must meet the minimum requirements which include: a. obtaining accreditation in accordance with the provisions of laws and regulations;b. have a Transplantation group consisting of general

practitioners, specialist doctors, and other medical personnel who have expertise and authority in the field of Organ Transplantation; and c. equipped with facilities and infrastructure that support the implementation of Organ Transplant activities.

MUI Fatwa No. 12 of 2019 concerning "ORGAN AND/OR TISSUE TRANSPLANTATION FROM DECEASED DONORS TO OTHER RECIPIENTS" explains that the process of transplanting organs and body tissues from deceased donors to recipients is carried out with the aim of curing or restoring the recipient's health. This procedure can only be carried out if the donor has been declared medically dead, which is indicated by a brain death condition. Brain death itself is defined as the permanent cessation of all brain functions, including total loss of consciousness, loss of brainstem reflexes, loss of central respiratory function, and the absence of blood flow that can be restored. Thus, this organ and body tissue transplant can only be carried out after it is confirmed that the medical condition has been achieved, ensuring that the donor has indeed died legally and scientifically.

It is not permissible for a person to sell or donate his/her organs and/or body tissues to another person, because the organs are not private property (*haqul milki*). Therefore, the transfer and removal of organs or body tissues without a valid reason according to religious law (*syar'i*) is considered a prohibited and haram act.

Transplantation of organs and/or body tissues from a deceased person to a living person is permitted under the following conditions: a. There is an urgent need and it is justified by sharia law (*dlarurah syar'iah*); b. There is no other medical alternative other than transplantation for healing; c. This process is carried out with the intention of helping each other (*tabarru'*), without any commercial elements; d. There is an expert opinion that is based on a strong suspicion (*ghabatil zhonn*) about the success of the organ transplant in the recipient; e. The transplant procedure is carried out by competent and trusted medical personnel; f. Permission is obtained from the family and/or government; g. The transplant process is carried out by the state.

From a Catholic theological perspective, some theologians argue that the act of donating a kidney by a healthy person to someone in need is a form of true sacrifice to save the life of another. This act is seen as reflecting a profound brotherly love, in keeping with the example of the Lord who sacrificed himself on the cross, and his teaching at the Last Supper: "This is my commandment, that you love one another as I have loved you. Greater love has no one than this, that someone lay down his life for his friends" (Jn 15:12-13). According to this view, such a sacrifice is morally acceptable, as long as the risks faced by the donor, whether from the medical procedure or the loss of the organ, are outweighed by the benefits received by the recipient.

Pope Pius XII in his address to the Group of Ophthalmologists on May 14, 1956 taught, "A person may wish to donate his body and dedicate it to useful, morally irreproachable and even noble purposes, among which are the desire to help those who are sick and suffering. A person can make this decision with respect for his own body and with full awareness of the respect due to his body. This decision should not be condemned, but is truly justified."

Almost the same as the mandate of Pope Pius XII, in the encyclical "Evangelium Vitae", the Holy Father John Paul II also stated:

"There is daily heroism, which consists of the act of sharing something, big or small, that fosters an authentic culture of life. An example of a deed that is particularly worthy of such praise is the donation of organs, carried out in a way that is ethically acceptable, with the aim of offering the possibility of health and even life itself to sick people, who sometimes have no other hope" (No. 86).

In the encyclical, Pope John Paul II firmly stated that organ donation for humanitarian value, which means giving life to others, is justifiable. However, it is only legitimate if seen from an ethical perspective, that is, the act must meet good moral criteria. The act, intention,



and impact of organ donation must be directed towards goodness, with the primary goal of supporting humanitarian values.

## CONCLUSION

Kidney transplantation is a legal medical procedure and is permitted under applicable law in Indonesia, as long as it is carried out based on humanitarian principles, without any elements of commercialization or organ trading. Urology specialists as the main implementers of this procedure have legal authority as long as they meet competency standards, clinical authority, and practice in accordance with laws such as the Health Law, PP Number 53 of 2021, and the Medical Practice Law. Legal protection for doctors is very important so that they can carry out their duties without worrying about potential criminalization. From a religious perspective, both Islam and Catholicism allow kidney transplantation as long as it is carried out voluntarily, to help others, and does not conflict with ethical principles.

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