



Understand And Interpretate: Article 24 Verse (1) Letters Dregulation Of The Minister Of Health Of The Republic Of Indonesia Number 38 Year 2016 Concerning Organ Transplantation Concerning Written Approval Of Human Body Transplantation With Notary Asset.

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ABSTRACT

In the stages of transplanting human organs from prospective donors to recipients, they must first fulfill the provisions contained in Article 24 Paragraph (1) letter d and Article 32 of the Regulation of the Minister of Health of the Republic of Indonesia Number 38 of 2016 concerning Organ Transplantation Regarding Approval for Human Organ Transplantation, namely there is a written statement with a notary deed. That in the transplant there is no indication of buying and selling or any other special agreement. The sentence (phrase) in the article is "a form of notary certificate or a written statement legalized by a notary public". Sentences (phrases) in the article need to be understood and interpreted by referring to the Notary Position Law (UUJN), in this case whether in the form of a Notary deed or legalized underhand deed (Legalization) or a book (Waarmerking).

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1. Introduction

In accordance with technological advances in the health sector, many Human Organ Transplants (TOTM) have been carried out. Etymologically in English the transplant is "To Transplant", which means "To Move From One Place to Another", which means "to move from one place to another" (Suwasti, 1994). Another definition is also based on Government Regulation number 18 of 1981 (State Gazette 1981 number 23) Concerning Clinical Corpse Surgery and Anatomical Corpse Surgery and Transplantation of Human Organ Organs, that "Transplantation is a series of medical actions for the removal of organs and/or tissues of human organs. originating from one's own body or other people's bodies in the context of treatment to replace tools or tissues of body organs that are not functioning properly".

In general, almost all organs of the human body can be transplanted, among others (Sudarsono, 2010):

1. Heart
2. Kidney
3. Lungs
4. Pancreas.
5. Heart.
6. Intestines.
7. Cornea.
8. Skin.
9. Heart valve.

It can be verified as follows:

Organs in the chest cavity:

1. Heart (Dead Donors Only).
2. Lungs (Living and Dead Donors).
3. Heart / Lung En bloc (Dead Donors and Domino Transplants).

Organs in the abdominal cavity:

1. Kidneys (Living and Dead Donors).
2. Heart (Donor Life and Death).
3. Pancreas (Dead Donors Only).
4. Intestines (Deceased-donor and Living-Donor).

Tissue, Cells and Fluid:

1. Hands (Only Dead Donors).
2. Cornea (Dead Donors Only).
3. Skin including Face replant (autograft) and face transplant (very rare)
4. Islets of Langerhans (a part of the pancreas that contains endocrine) (Living and Dead Donors).
5. Bone marrow / adult stem cells (Living Donors and Autografts).
6. Blood Transfusion / Blood Component Transfusion (Living Donors and Autografts).
7. Blood vessels (Autograft and Donor Death).
8. Heart Valves (Dead Donors, Living Donors and Xenografts).
9. Bones (Living and Dead Donors).

Whereas normatively or based on the prevailing laws and regulations that TOTM is based on the Regulation of the Minister of Health of the Republic of Indonesia Number 38 of 2016 concerning Organ Transplantation. In Article 1 point 1 Regulation of the Minister of Health (Permenkes) has provided a limitation regarding Organ Transplantation, which is the



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transfer of organs from donors to recipients for healing and restoration of recipient health problems.

On the other hand, the MUI (Indonesian Ulama Council) is based MUI Fatwa Number 13 of 2019 has provided guidelines and guidelines for the community and government to use a foundation for medical practice regarding the permissibility of such transplants based on Islam. In the Fatwa, MUI provides a limitation that transplantation is a series of medical actions to remove organs and / or human body tissue from another person's body or the body itself in the context of treatment to replace organs or body tissues that are not functioning properly.

The Permenkes states that there are provisions regarding written statements from prospective donors in the form of a notary deed or a written statement legalized by a notary before the transplant is carried out. As emphasized in Article 24 paragraph (1) letter d "Submit a written statement not to buy body organs from a prospective donor or enter into a special agreement with a prospective donor, which is written in the form of a notary certificate or a written statement legalized by a notary public. "

Written Statement Phrases in the form of a Notary deed or a written statement validated by a Notary need to be understood and interpreted because it relates to the authority of the Notary. The substance of the article is an alternative, whether in the form of a Notary deed or a written statement that is legalized (Legalization) or which is recorded (Waarmerking). This needs to be discussed because it has different legal implications from the perspective of Indonesian Notary Law. Another problem is if the Prospective Donor agrees to donate his organs, is it needed from other parties, for example if the Candidate Donor's husband requires approval from his wife or does the child still need the consent of the biological parent or guardian?

1. Does the written statement from the prospective donors in terms of proof must be a notary deed or a written statement legalized by a notary?
2. What is the legal position if the prospective donors and recipient candidates outside of the written statement make a special agreement or written statement?

3. Method

In this research, the method used is a qualitative descriptive approach. Researchers chose this method to explore and uncover phenomena related to the regulation of the Minister of Health of the Republic of Indonesia number 38 of 2016 concerning organ transparency. Meanwhile, secondary data is data obtained by researchers from existing sources.

4. Result and Discussion

Article 24 paragraph (1) letter d *Permenkes* is an article that is imperative or an order to a Notary if someone is going to carry out a body organ transplant is obliged to make a Written Statement which is written in the form of a Notary deed or a written statement that is legalized by a Notary. If the substance is imperative, the Notary is obliged to do this in accordance with the provisions of Article 15 paragraph (1) of the Law on Notary Position - Amendments (UUJN-P), namely:

(1) The notary is authorized to make authentic deeds regarding all actions, agreements, and stipulations required by statutory regulations and / or that the interested party wants to be stated in the authentic deed, guarantees the certainty of the date of making the deed, keeps the deed, gives grosse, a copy and excerpts of deeds, all of which as long as the deed is drawn up, it is not assigned or excluded to other officials or other persons stipulated by law.

in the article there is the phrase "The notary is authorized to make authentic deeds regarding all actions, agreements, and stipulations required by statutory regulations.... ". So, legal action must be carried out by means of a notary deed if it is ordered by the statutory regulations. Regulation of the Minister of Health of the Republic of Indonesia Number 38 of 2016 concerning Organ Transplantation is a form of Legislation issued by the Minister of Health of the Republic of Indonesia which contains an order if there will be a human organ transplant, the Written Statement as referred to in Article 24 paragraph (1) letter d of the *Permenkes* must be followed. So that the existence of a written statement made with a notary deed is an obligation that must be fulfilled before the transplant is carried out. If a written statement is not made (before the transplant), this includes a violation of the *Permenkes* and a violation of the Doctor's Code of Ethics.

Phrase Article 24 paragraph (1) d Regulation of the Minister of Health of the Republic of Indonesia (*Permenkes*) "Written Statement" which is set forth in the form of a notary deed or a written statement legalized by a notary public". If interpreted the article provides options (alternatives) for the Written Statement, namely :

1. A written statement that is written in the form of a Notary deed, or
2. Legalized written statement (according to Article 15 paragraph (2) letter a UUJN - P), or
3. A written statement that is *waarmerking* (in accordance with Article 15 paragraph (2) letter b UUJN - P).

If the Written Statement is put in the form of a Notary deed (in this case the deed of the Party (Partij), it must be in accordance with Article 38 of the UUJN, which consists of :

- (1) Each Notary deed consists of:
 - a. beginning of deed or head of deed;
 - b. deed body; and
 - c. the end or closing of the deed.
- (2) The beginning of the deed or the head of the deed contains:
 - a. title deed;
 - b. deed number;
 - c. hour, day, date, month and year; and
 - d. full name and domicile of the Notary.
- (3) The deed body contains:
 - a. full name, place and date of birth, nationality, occupation, position, position, residence of the tappers and / or the person they represent;
 - b. information regarding the position of acting before;
 - c. the contents of the deed which constitute the wishes and desires of the parties concerned; and



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- d. the full name, place and date of birth, as well as occupation, position, position and place of residence of each of the identifying witnesses.
- (4) The end or closing of the deed contains:
- a description of the reading of the deed as referred to in Article 16 paragraph (1) letter l or Article 16 paragraph (7);
 - a description of the signature and place of signing or translation of the deed, if any;
 - the full name, place of domicile and date of birth, occupation, position, position and place of residence of each witness to the deed, and
 - a description of the absence of changes that have occurred in the making of the deed or a description of the changes which can be in the form of additions, deletions, or replacement.

In Article 15 paragraph (2) letter a UUJN-P, the deed / letter under the hand can be legalized before a Notary, namely by ratifying the signature (the party who signed the letter) required before a Notary and determining the certainty of the date of the letter in under the hand by registering in a special book. In the practice of the Notary Public, this action is called Legalization.

Legalization is an action from the Notary regarding documents/letters made under the hands of the parties, then the letters / documents are brought by the parties before the Notary, after the document / letter is read or explained by the Notary in front of the parties, then the parties affixing the signature before the Notary, then the Notary registers it in a special book. In legalization, the date of the document or letter concerned is the same as the date of legalization from the notary.

Article 15 paragraph (2) letter b UUJN-P for deeds / letters under hand can be recorded by registering in a special book. In practice the notary is referred to as *Waarmerking*.

Waarmerking is an action from the Notary regarding documents / letters made under the hand that have been signed by the parties to be registered in a special book by the Notary Public, and the date the letter / document must be there first (made, rather than the date of registration by the Notary).

Whereas basically the three forms can be done, and prospective donors can choose, in this connection the substance that must be clear, namely only a written statement does not buy body organs from prospective donors or enter into special agreements with prospective donors and does not arrange to give other approvals. It also needs to be emphasized if a written statement from a prospective donor, if already married / married, is obliged to give mutual consent, likewise for those who are not married, get approval from other relatives of the immediate family concerned. This approval is important so that the prospective donors' actions do not constitute a single act which will be related to the accountability issues of the prospective donors. Written Statements are Declarative (one-sided statement only), and not "not" the Agreement or Agreement between the Prospective Donor and the Recipient, but the (one-sided) Statement of the Prospective Donor to the Recipient.

In Article 32 *Permenkes* confirms that based on preliminary examination and screening, document verification, background tracing of donors, and field verification, the National Transplantation Committee issued a certificate of eligibility for recipient-donor pairs and found no indication of buying and selling and / or commercial. Whereas prospective donors (donors) and recipients are not allowed to carry out organ transplants with indications of trade and / or commerce. It is already the obligation of the National Transplantation Committee to carry out examinations related to letters made before a Notary with no commercial indication, so if there is (as a preventive measure), the National Transplant Committee is obliged to reject it because it would violate the provisions of Article 32. But what if this is done by prospective donors (donors) and recipients outside the knowledge of the National Transplant Committee or outside the knowledge of the doctors and hospitals who handle it or make special commercial agreements? The special agreement may mutually cover / guarantee the cost of living of the prospective donor or his family by the recipient during his life or a certain period agreed between the recipient and the prospective donor. The Special Agreement can also be made with the substance of the recipient that promises something financial or material in nature. If something happens with the prospective donors after the transplant, they will bear all the costs incurred. A Special Agreement like this indicates a transaction.

That if this happens will it be treated as an Agreement or Agreement of the parties? If there is or is done, it can be reviewed based on the provisions of Article 1320 of the Civil Code regarding the Terms of Legality of the Agreement, namely:

- There is an agreement for those who bind themselves;
- The ability of the parties to make an engagement;
- A certain thing; and
- A cause (*causa*) which is lawful.

The first and second terms are called subjective terms because they relate to the subject of the agreement. Meanwhile, the third and fourth requirements relating to the object of the agreement are called objective conditions. If these conditions are not met there will be certain legal consequences for the agreement.

If the objective conditions in the agreement are not fulfilled, then the Agreement is null and void or the agreement has been canceled since the beginning, the law considers the agreement never existed. If the subjective conditions are not fulfilled, the agreement can be canceled or as long as the agreement has not been canceled or has not been canceled by the court, the agreement concerned will continue to be valid.

In connection with the existence of a Special Agreement made by Prospective Donors and Prospective Recipients if it is in the form of an agreement, then in this case whether the "organs of the body" meet the objective requirements as regarding a particular matter; a cause which is not prohibited according to law? Is it permissible / can human organs be used as objects in a transaction?

Regarding a certain matter in Article 1333 of the Civil Code stipulates that an agreement must have the principal of an object of which at least the type can be determined. An agreement must have a certain object and an agreement must be about a certain thing (certainty of terms), meaning that what is being agreed upon, namely the rights and obligations of both parties. The goods referred to in the agreement are at least determinable, and So cause which is not prohibited according to law, and there is a legal cause that is not prohibited according to law. If the object in the agreement is illegal, or is against morality or public order, then the agreement is canceled.



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So that an agreement or agreement is made by prospective donors and recipients (two parties) with the object of human organs, then it has violated a cause which is not prohibited according to law, indicates the sale and purchase of human organs, it becomes prohibited based on the phrase phrase 24 paragraph (1) letter d *Permenkes*.

That what is made the object in an agreement must be goods or objects that are outside the human body, because it is impossible for a human being as a legal subject to transact what is on his body as the object of the agreement.

If this is made an Agreement or Agreement (outside the knowledge of the National Transplant Committee or outside the knowledge of the doctors and hospitals that handle it), it will be a legal problem if one of the parties (prospective donors or recipients) does not carry out the contents of the Agreement or Agreement resulting in Default, so that there will be mutually suing and suing.

There is a possibility that the prospective donor and the recipient will not make an agreement or agreement as described above because it will violate Article 1320 of the Civil Code and the phrase Pas long as 24 paragraph (1) letter d of the Minister of Health, but in this case the recipient makes a special unilateral written statement that the recipient after organ transparency will guarantee the life needs of the prospective donor. So what is made is "not" the agreement / agreement between the prospective donor and the recipient, but a (one-sided) statement from the recipient to the prospective donor made without the knowledge of the other party ..

If the recipient "declares" the recipient's "declare" without being asked by the prospective donor, only because of the recipient's willingness or sincerity or for the sake of humanity of the recipient, this could be something that is not prohibited, because if the statement is tampered with in a district court what is his position law of the statement letter can refer to the Jurisprudence of the Supreme Court no. 3901 k/pdt/1985 dated 29 november 1988 states "statement letters which are mere statements from people who give statements without being examined in court, have no power of proof whatsoever (cannot be equated with testimony)."

4. Conclusions

- Whereas the provisions of Article 24 paragraph (1) letter d of the *Permenkes* do not confirm that a written statement from a potential donor is mandatory with a notary deed, but also does not prohibit prospective donors from making a written statement that is legalized by a notary who is recorded (*Waarmerking*). Based on the evidentiary perspective, it is certainly better for the statement to be made before the Notary with a Notary deed, because in terms of the evidentiary value the Notary's deed has perfect evidentiary power as long as it cannot be proven otherwise. At the time of posting before a Notary Public will be reflected in the sincerity of the prospective donors before the Notary without any coercion and pressure from anyone, and when there is pressure or rejection or hidden promises or special agreements that lead to the sale and purchase of organs, then the Notary is obliged to reject it because it will violate the provisions of Article 32 *Permenkes*. But if the written statement is legalized by the Notary or *waarmerking* of the Notary, it becomes the responsibility of the prospective donor (Prospective Donor) if before the statement is made there is pressure or coercion or there is a certain promise that is not known by the Notary Public, if that happens then it becomes the responsibility of the Prospective Donor and the Recipient.
- Whereas if the prospective recipient and prospective recipient outside the written statement in accordance with Article 24 paragraph (1) letter d of the Minister of Health, it turns out that the prospective recipient and prospective recipient make a special agreement, for example the prospective recipient will help with the cost of living for the recipient candidate after the transplant, if this This happens, of course, is the responsibility of the parties themselves and becomes the authority The National Transplant Committee to conduct an examination, even if it is proven that it cannot cancel the results of the transplant, but at least it has stopped any indications of buying and selling human organs for transplantation.

5. References

- Adjie, H, Pemahaman Awal (Komparasi – Premisse), Isi dan Akhir Akta Notaris, Narotama Unicersity Press, Surabaya, 2020.
- Adjie, H, Kebatalan dan Pembatalan Akta Notaris. Refika Aditama, Bandung, 2011.
- Adjie, H, Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris), Refika Aditama, Bandung, 2008.
- Adjie, H, & Rusdianto Sesung, Tafsir, Penjelasan dan Komentar Atas Undang-undang Jabatan Notaris, Refika Aditama, Bandung, 2020.
- Adjie, H, Bernas-bernas Pemikiran Di Bidang Notaris dan PPAT, Mandar Maju, Bandung, 2012.
- Adjie, H, Meneropong Khazanah Notaris dan PPAT Indonesia (Kumpulan Tulisan tentang Notaris dan PPAT), Citra Aditya Bakti, Bandung, 2009.
- Adjie, H, Menjalani Pemikiran – Pendapat Tentang Kenotariatan (Kumpulan Tulisan), Citra Aditya Bakti, Bandung, 2013.
- Adjie, H, Merajut Pemikiran dalam Dunia Notaris & PPAT, Citra Aditya Bakti, Bandung, 2014.
- Adjie, H, Penafsiran Tematik Hukum Notaris Indonesia (Berdasarkan Undang-undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris), Refika Aditama, Bandung, 2015.
- Adjie, H, Penerapan Pasal 38 UUDN – P Dalam Pelaksanaan Tugas Jabatan Notaris, Bintang Pustaka Madani, Yogyakarta, 2021.
- Adjie, H, Q & A : Problematika dan Solusi Terpilih tentang Hukum Kenotariatan Indonesia, Citra Aditya Bakti, Bandung, 2020.
- Adjie, H, Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik, Refika Aditama, Bandung, 2008.
- Adjie, H, Sekilas Dunia Notaris & PPAT Indonesia (Kumpulan Tulisan), Mandar Maju, Bandung, 2009.
- Agus Yudha Hernoko. Hukum Perjanjian, Asas Proporsionalitas Dalam Kontrak Komersial, LaksBang Mediatama, Yogyakarta, 2008.



Enrichment: Journal of Management

journal homepage: www.enrichment.iocspublisher.org



- [15] Djasadin Saragih, Sekilas Perbandingan Hukum Kontrak Civil Law dan Common Law, Makalah Workshop Comparative Law, Elips Projects – Fakultas Hukum Unair Surabaya, 4 Desember, 1993.
- [16] G.H.S. Lumban Tobing, Peraturan Jabatan Notaris, Erlangga, Jakarta, 1983.
- [17] M. Sudarsono, Dasar-dasar Transplantasi Organ dan Jaringan Tubuh Manusia, Edisi Revisi, Interna Publishing, 2010.
- [18] Mohammad Adib, Tranplantasi Menurut Hukum Islam Dan Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan Ditinjau Dari Segi Pidana dan Perdata, Justicia Journal 5, nomor 1, Agustus 2016.
- [19] Nasional Legal Reform Program, Jakarta, 2010, Penjelasan Hukum Tentang Kebatalan Perjanjian.
- [20] Nyoman Suwasti, Aspek Yuridis Transplantasi Organ Dalam Hubungannya dengan Undang-undang Kesehatan, Kertha Patrika, Majalah Ilmiah Fakultas Hukum Universitas Udayana, Bali, 1994, hal. 258.
- [21] Nyoman Suwasti, Aspek Yuridis Transplantasi Organ Dalam Hubungannya dengan Undang-undang Kesehatan, Kertha Patrika, Majalah Ilmiah Fakultas Hukum Universitas Udayana, Bali, 1994.
- [22] Ricardo Simanjuntak, Teknik Perancangan Kontrak Bisnis, Mingguan Ekonomi dan Bisnis KONTAN, Jakarta, 2006.
- [23] Soekidjo Notoatmojo, Etika dan Hukum Kesehatan, Rineka Cipta, Jakarta, 2010