

# Organ Donation and Transplantation Issues in Islam and Present Situation

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## Abstract

All of the major faiths including Islam, Christianity, Hinduism, Judaism, and Sikhism support organ donation and transplantation. Recent advances in the field of organ donation and organ transplant have introduced new hope for the treatment of serious diseases. Most of the people of many religions still believe that organ donation is prohibited by religion but it not true. This article has tried to focus that; organ donation is not prohibited by Islam. In addition, religions encourage people to help each other. This article has also tried to encourage people to donate organ. Basically, I discuss based on Quran and Hadith of Prophet Mohammad (SWA). It is qualitative research. Primary and secondary resources are used in this paper. The information has been taken from many readings, articles, books, and status. Many people are dying every day for lacking of organ. For example, in the year 2000, more than 5,500 Americans died awaiting transplants and there are currently over 80,000 people awaiting transplants. So that, most of the government and religious scholar are encouraging people to donate organ.

**Keywords:** Organ donation, Transplantation, Islam, Human organ, Patient.

## 1. Introduction:

Organs mean a relatively independent part of the body that carries out one or more special function. Examples of organs include the eyes, ears, heart lungs and liver.<sup>1</sup> Biologically, it is a grouping of tissues into a distinct structure as a heart or kidney that performed a specialized task.<sup>2</sup> In biology, an organ is a collection of tissues joined in a structural unit to serve a common function.<sup>3</sup> Today, human stem cells are also included as part of the human organ whereby it's derived from certain sources i.e. humanfetal tissues following abortions , human embryos that are created by In vitro fertilization (IVF), adult stem cells, which are obtained from bone marrow, skin, liver, pancreas, brain and cloned human embryos. In addition to tailor-made organs or parts of organs, such as the liver for example, it may be possible to use embryonic stem cells (ESC) to colonies damaged parts of the body, including the brain and to promote the repair and regrowth of damaged tissues.<sup>4</sup> In the execution of a specific body function, two or more organs working together from organ system.

Transplantation is the act of surgically removing an organ from one person and placing it into another person, either from the living person to a living person or from the dead person to a living person. Transplantation is needed when the recipient's organs has failed or has been damaged due to certain illness or injury.<sup>5</sup> It is no up to the "whim and fancy" of a person to donate or perform transplant of their own organ and body parts.

## 2. Categories of Donating Human Organ:

### 2.1 Transplant of organ from a living person

Transplant of organ from deceased person is not enough because many patients are waiting for organ transplants. As a result, people offer to donate organ from others. It is called living donor.<sup>6</sup> In addition, people can donate our living organ because organs are able to regenerate themselves. It is presently possible for a living person to donate their kidney, a part of the liver, a lobe of a lung, a part of the intestine and in some rare instances, a part of their pancreas. The benefit of a living donor kidney transplant is that kidneys from a living donor last longer than those that are donated from someone who has died.

The survival rates of patients who receive kidney transplants from live donors are 94% will still be alive 5 years after the transplant and 85% will still be alived 10 years after the transplant. On the other hand, who accept kidney transplants from donors who have died, 85% will still be alive five years after the transplant and 61% will

<sup>1</sup> According to Webster's New World Medical Dictionary.

<sup>2</sup> Dictionary.com.

<sup>3</sup> Widmaier EP, Raff H, and Strang KT (2003) *Vander's Human Physiology*. 11th Ed. McGraw-Hill

<sup>4</sup> Cooper DKC, Lanza RP. *Xeno, The promise of transplanting animal organs into humans*. Oxford, Oxford University Press, 2000.

<sup>5</sup> Farah Salwani Muda, *Issues In Organ Donation: A Malaysia Scenario*, IIUM Islamic Law Collection.

<sup>6</sup> New York Organ Donor Network.

still be alive 10 years after the transplant. According to World Health Organization (WHO), with the rise in cases of kidney disease and renal failure, there are at least 200,000 people on waiting lists for kidneys.<sup>1</sup> Whether or not someone can become a living organ donor depends on whether the blood group of the donor and the recipient are compatible. The tissue type of both the donor and recipient are also vital in determining whether a living donation is possible. The expected benefit to both parties must outweigh any possible harm to the donor. It is forbidden to transplant an organ on which life of the donor depends on, such as transplanting the heart from a living person to another person.

### 2.2 Transplant of organ from a dead person

The deceased has very limited rights as to the disposal of his body in common law and the wishes of the next of kin would normally be supported rather than those of the dead person in the event of conflict. Under Human Tissues Act 1961,<sup>2</sup> that removal of an organ is authorized if there has been a specific request to this effect by the deceased; the removal may be for therapeutic, educational or research purposes. In the absence of such request, section 1(2) provides for the authorization of organ removal if the person lawfully in possession of the body has, after making such reasonable enquiry as may be practicable, no reason to believe that the deceased had expressed any objection to organ removal or that the surviving spouse or any surviving relative of the deceased objects to the body being so dealt with.

There is a duty imposed by the universal feelings of mankind to be discharged by someone towards the dead, a duty and a right to protect from violation and also the duty on the part of others to abstain from violation.<sup>3</sup> Despite of allowing a competent adult to donate any of his body parts effective at death,<sup>4</sup> the purchase or sale of body parts is a felony and can be charged by the State. In Islām, all the religious evidences which may be cited against the mutilation of dead bodies and their disrespectful treatment are only applicable to those actions and not to the separation of organs for the purposes of transplantation which is aimed at making people survive from hopeless disease of internal organs which would invariably culminate in their death.<sup>5</sup>

## 3. Islamic Perspective:

### 3.1 Ancient Times:

This has been a debatable issue in a contemporary era as a consequence of recent scientific advancement in the discipline of organ transplantation. The Islāmic Jurisprudence Scholars could not have dealt with the Sharī'ah rulings as it was never happened in ancient time or the time of the Prophet.<sup>6</sup>

In the ancient time, the basic rule in the discussion of Muslim Jurisprudence was the utilization of parts of the human body is forbidden (ḥarām), whether such transactions occur through sale or otherwise. Al-Marghinani says: "It is not permitted to sell a human being's hair or utilize it in anyway, because humans are highly dignified, therefore no part there from should be undignified or demeaned..."<sup>7</sup> There were many other jurists who were opposing to the utilizing of body parts as against the human dignity and value or because of no legitimate use can be made of those parts. Generally, it is forbidden to violate the sanctity of the deceased, as has been explained by the Ḥadīth;

*"Breaking the bones of a corpse is similar to breaking the bones of someone who is alive".<sup>8</sup>*

However, this Ḥadīth refers to a violation or act on the body that is not permissible in Islām. On the war time during pre-Islāmic era, the enemy would mutilate the corpse who died in the battlefield and this act was forbidden. The removing of body parts for donation shall be done similar to those who are alive, that is with care, meticulous and respect.<sup>9</sup>

### 3.2 Modern Times:

However, there are exceptions pertaining to the ruling for the donation of human organs as agreed by the Muslim Jurist, based on analogy (al-qiyās)<sup>10</sup> by coming up with Ijtihād<sup>1</sup> or new rulings. Organs transplant are performed

<sup>1</sup> Sana Maroof, Nimrah KIyani, et. al. Awareness about organ donation especially kidney donation in Nurpur Shahan, a rural community area in Islamabad, Pakistan. Available at. <http://www.jpma.org.pk/PdfDownload/2944.pdf>, accessed on 25<sup>th</sup> January 2013.

<sup>2</sup> Section 1(1)

<sup>3</sup> *Pierce v. Proprietors of Swan Point Cemetery*, 10 R.I.227 (1872)

<sup>4</sup> UAGA 1987

<sup>5</sup> Sahib Moulavi M.H Babu, "The Islamic Point of View on Transplantation of Organs", Islamic & Comparatively Law Quaterly. Vol VII

<sup>6</sup> The rulings for the donation of human organs in the light of Sharī'ahrules and medical facts, Prof Dr Mohammad NaeemYaseen.

<sup>7</sup> Al-Hidāyati, Part.III,p.34

<sup>8</sup> Narrated by IbnMajjah

<sup>9</sup> Dr. Yusuf Al-Qaradhawi, FatawaMu'asarah, Vol.3.pg 665-666

<sup>10</sup> The extension of a Sharī'ah value from the original case to a new case because the latter has the same effective

to replace non-functional or dead organs in order to cure patients. In the opinion of Islāmic scholars, organ transplants are permissible as it is consistent with the objectives of the Sharī'ah (MaqāṣidSharī'ah)<sup>2</sup> that upholding human welfare and interest, as well as the preservation of human life.<sup>3</sup> This is in line with the instruction of Allāh in the Holy Qur'ān;

“Because of that, we decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then indeed many of them, [even] after that, throughout the land, were transgressors.”<sup>4</sup>

“Allāh does not forbid you from those who do not fight you because of religion and do not expel you from your homes - from being righteous toward them and acting justly toward them. Indeed, Allāh loves those who act justly.”<sup>5</sup>

It is no doubt that organs transplant is in the same category as saving a life. However, organ transplant cannot be bringing harm to the donor himself; even his intention is very clean and pure of saving other people's life or eradicating one's misery. This is based on the Islāmic legal Maxim “harm cannot be removed in a way that leads to another type of harm” and Ḥadīth by Prophet (s.a.w) :

“No harm shall be inflicted or tolerated in Islām”.

Human kind's purpose is to love God and to love other God's creation be it human, plant or animals. Human beings are accountable to God and at the same time humans are responsible for the well-being of the creation.<sup>6</sup>

Donation is Ṣadaqah or charity, to be done voluntarily without any force by anybody including our own self. As mentioned in the Qur'ān,

“By no means shall you attain righteousness unless you give (freely) of that which you love, and whatever you give, of a truth Allāh knows it well.”<sup>7</sup>

There is an exception for obligatory donation in contradiction to voluntary donation that is Zakāt as one of the Five Pillars of Islām. The Muslims has to give 2.5% of their possessions (extra wealth) to charity, generally to the poor and needy as mentioned in many verses of the Qur'ān, amongst others are:

“And we made them leaders guiding by our command. And we inspired to them the doing of good deeds, establishment of prayer, and giving of Zakāt; and they were worshippers of Us”<sup>8</sup>

#### 4. Ownership of Human Organ:

Human beings have been entrusted to take care of their bodies. As such, we are strictly not allowed to sell or buy human organs for any reason what so ever. Under the Islāmic law and perspective, human organs are part of human body and it can be considered as the body of a human. In Islām, organs of a person are the house of the soul created by Allāh s.w.t. Once the soul is gone or the person is dead, the organs stop functioning and the body becomes of no use to its original function. The ownership of human body belongs to Allāh s.w.t as mentioned in the Holy Qur'ān:

“Say, "To whom belongs whatever is in the heavens and earth?" Say, "To Allāh." He has decreed upon Himself mercy. He will surely assemble you for the Day of Resurrection, about which there is no doubt. Those who will lose themselves [that Day] do not believe.”<sup>9</sup>

Human body is considered as a trust by Allāh and we are answerable by Allāh on how we deal and use it during life time. As in the Holy Qur'ān,

“And do not pursue that of which you have no knowledge. Indeed, the hearing, the sight and the feeling in the heart will be questioned.”<sup>10</sup>

The right of Allāh in the human body is referred to in many Sharī'ah rulings such as forbidding suicide, as well

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cause as the former.

<sup>1</sup> The effort made by the Mujtahid in seeking knowledge of the ahkam (rules) of the Sharī'ah through interpretation.

<sup>2</sup> According to Al-'Izzibn 'Abd Salam, MaqāṣidSharī'ah is all obligations referring to the interest of Allāh's creatures in the world and the next. Allāh is not in need of people's worship, nor is He benefited by the obedience of those who obey, nor is He harmed by the disobedience of those who disobey.

<sup>3</sup> Organ Transplant InIslam.TheFiqh of Organ Transplantand Its Application in Singapore.MajlisUgama Islam Singapore.2007

<sup>4</sup> Al-Mā'idah :32

<sup>5</sup> Al-Mumtaḥanah:8

<sup>6</sup> Ghulam-HaiderAasi.Islamic Legal and Ethical Views On Organ Transplantation and Donation.

<sup>7</sup> 'Āli 'Imrān:92

<sup>8</sup> Al-'Anbyā':73

<sup>9</sup> Al-'An`ām -:12

<sup>10</sup> Al-'Isrā':36

as considering suicide as one of the deadliest sins (al-kabā'ir). In the Holy Qur'ān:

“O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allāh is to you ever Merciful.”<sup>1</sup>

In Ḥadīth of Prophet s.a.w;

“He who kills himself with an iron, his iron will be in his hand poking his stomach in the fire of hell, for all eternity; he who has taken poison will continue to take it for all eternity in the fire of hell; and he who throw himself from a mountain to kill himself will fall in the depths of hell fire for all eternity.”<sup>2</sup>

### 5.Existing position and Ruling:

All Jurists unanimously agreed that human organ donation is permissible as it is consistent with the objectives of the Sharī'ah that upholding human welfare and interest, as well as the preservation of human life. As mentioned in the Qur'ān;

“Because of that, we decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely. And Our Messengers had certainly come to them with clear proofs. Then indeed many of them, [even] after that, throughout the land, were transgressors.”<sup>3</sup>

The Jurists are of the consensus opinion that donating organ is a noble deed as encouraged and promoted by Allāh s.w.t;

“...*Help you one another in righteousness and piety, but help you not one another in sin and rancour...*”<sup>4</sup>

In common, organ donation is permitted in Islām. It is a valuable gift to those in pain and suffering from organ failure. Organ donation will not only help the patient, but will also save his life, as well as the livelihood of people who depended on him like his family. Islāmic scholars made permissible organs donations from a deceased person to a living one, if the deceased has consented to it while he was still alive, or if his next-of-kin has consented to it.

IslāmicFiqh Academy<sup>5</sup> declared that “Organs from the deceased can be transplanted to a patient, where the life of the recipient depends on the transplant, or if the continuation of the basic bodily functions of the recipient depends on the transplant. This is however, dependent on the deceased's consent, or that of his net-of-kin after his death, or by the decision of the leaders of the Muslim community, should the deceased be unidentified, or does not have any next-of-kin”.<sup>6</sup> The Highest Council of Scholars in Riyadh affirmed that “It is permissible whole or part of organs from a deceased to another person, if the need for such transplant is significant. Live organ donation is also permitted if the recipient is in urgent need of the organ”.<sup>7</sup>

Fatwā of Mufti of Egypt, Dr Muhammad Syed Tantawi confirmed that “live organs donations are permissible by consensus of jurists, whether the recipient be his relative or a stranger, as long as such a donation is considered to be of benefit, by a trusted doctor...Taking organs from the body of a dead person to transplant to someone who needs it, whether to save his life or to cure him, is permissible, and this ruling is also based on consensus of jurists.”<sup>8</sup>

The Fatwā Committee of Kuwait declared that “If an organ to be transplanted is taken from a deceased person, the ruling is that such transplant is permissible, no matter whether the intention for the transplant by the donor was made in the form of a will by the deceased or otherwise. This is based on exigency (*darūrah*), such as saving a life, that transform what is originally prohibited into a state of permissibility. Thus, organ transplants are permissible, as long as there is an urgent need for it. If the donor is still alive and taking the organ is detrimental to his life, such as taking his heart and lungs, than it is forbidden, no matter whether the donor allows it or otherwise. If the organ or body part that is to be transplanted does not affect the donor's life, that is, the donor can continue living without it, than the ruling depends on several factors. If not having the organ will physically harm the donor, or prevent him from fulfilling his obligations, for example, donating a hand or leg, then it is not permitted. In the case where the life of the donor is not affected by the donation, such as the kidneys, teeth or blood, a transplant is not permissible if it is done without the permission of the donor. It is permissible if it is

<sup>1</sup> An-Nisā':29

<sup>2</sup> Al-Bokhariwa Muslim, MokhtasirSahih Muslim, Part.2, p.31

<sup>3</sup> Al-Mā'idah:32

<sup>4</sup> Al-Mā'idah:2

<sup>5</sup>The Islamic Fiqh Academy is a subsidiary organ of the Organization of the Islamic Conference (OIC), created by the Third Islamic Summit Conference held in Makkah al-Mukarramah (Saudi Arabia) in January 1981. Its members and experts re selected among the best scholars and thinkers available in the Islamic world in every field of knowledge such as fiqh, science, medicine and economy.

<sup>6</sup>The decision of the Islamic Fiqh Academy in its Fourth meeting in Jeddah on February 1988.

<sup>7</sup> decision no.99

<sup>8</sup> Issued on 5th February 1989, when Dr Tantawi held the position of Mufti then.

done with the permission of the donor and if the rate of achievement of such an operation is high.”<sup>1</sup>

In the Fatwā made by Dr Yūsuf al-Qaraḏāwiy<sup>2</sup>, it stated that someone who desires to improve another human’s suffering, such as kidney disease, by donating one of his healthy kidneys, is permitted to do so in Islāmīc law. In fact, it is considered to be a good act and the donor will be duly satisfied. This is based on the Prophetic tradition in which the Prophet s.a.w is reported to have said that those who show kindness on earth will receive God’s mercy and kindness. On this, Dr Qaraḏāwiy was in the opinion that there is no bar from donating an organ or body part to someone who needs it, and to replace his non-functioning organ, such as kidney or heart etc. with the intent of giving charity. And this is considered to be a continual (jariah) donation, and the rewards for the donor continue to be accrued for as long as there are those who benefit from it.”<sup>3</sup> The National Fatwā Council of Malaysia confirmed that cadaveric transplant of the eye and heart is permitted if the following conditions are observed:

“In the case of excessive need and exigency, in which the life of the receiver depends on the organ, and there is sufficient evidence that the transfer process will be successful.”

In the case of heart transplantation, the death of the donor must be determined before the transplant can be performed. Appropriate action must be undertaken to guarantee that there is no killing and trading of organs involved.<sup>4</sup> Even though the organs sanctioned in this fatwā are only the eye and heart, other organs may also be integrated.

The Fatwā Committee of Islāmīc Religious Council of Singapore (MUIS) was of the similar view which permits organ transplantation out of dire necessity that is to save human lives. It was also on the legal maxim of “exigencies (*darūrah*) changes the forbidden into permissible.”<sup>5</sup> The emergence and development of the rulings is due to the vast improvement in medical knowledge which showed an increase in the success rate of organ transplants in treating patients with organ failure. These fatwās are in line with that of the common consensus or dominant majority (*jumhūr*) of contemporary scholars and international fiqh councils, such as those quoted above.

## 6. Conclusion

Based on the arguments, it is clear that we should donate our organ and we should inform people that organ donation is not prohibited by religion of Islam. Islam has encouraged their followers to help people. According to above discussion, it is clear that religion of Islam highly appreciate their followers to help people.

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<sup>1</sup>Decision no. 132 issued in 1979.

<sup>2</sup> DrYūsuf Al-Qaraḏāwiy, “FataawaMu’asarah”, 3rd Edition, pg 532-537

<sup>3</sup>Ibid

<sup>4</sup> The declaration made on The First Meeting of the National Fatwa Council of Malaysia for Islamic Affairs on 23-24th June 1970

<sup>5</sup>In 1995, transplanting corneas is allowed, in 2003 and 2004, transplanting heart and liver is permissible.