



Role of Standard Operational Procedures (SOP) in Organ Transplant Institution for Transplant Law Enforcement in Indonesia

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Abstract - The demand for human organs without an increase in supply poses a problem for many countries, particularly those where organ donation arrangements are not well regulated, as the risks of organ trafficking increase. It is not always easy to judge among donations that are actually donated under psychological stress or with the expectation of financial or other imbalance. The research aims to know how important is the SOP for transplantation and the role of donor agencies and to know how is the law enforcement against transplantation SOP violations. This research is a normative legal research. The type of this research is a Normative Legal Research. Normative legal Research is a research which uses the law as foundation of norm. The result shows that The legal rules regarding the application of standard SOPs in the implementation of Transplantation are not sufficient and not appropriate as the basis for fulfilling legal rules. The legal rules that include the right to receive socialization or information about transplantation, the right to gain access to health facilities and personnel without the involvement of financial transactions with organs, and the right to obtain legal protection are all contained in the legislation but only to the extent of supervision and guidance without there are clear sanctions for parties who are not responsible for the fulfillment of rights in the implementation of transplantation.

Keywords: Organ transplantation, Standard Operating Procedures (SOP), Transplantation institutions.

III. INTRODUCTION

Transplantation is simply described as the process of removing an organ from a person's body (the donor) and then implanting it in the body of a sick person. On the one hand, this transplant is beneficial for the recipient because it gets new organs and the old damaged/non-functioning organs are replaced (in organ transplants). However, for donors, they will experience physical disturbances as a result of the lack of a donated organ. Departing from this condition, a fundamental understanding of the rights of patients (donors) is very important, especially in terms of their rights to their bodies. There are many organ transplant practices in hospitals in Indonesia, but there is no clear concept of the extent to which a person can donate his or her organs to others.

Standard Operating Procedures (SOPs) are written documents that contain detailed, step-by-step and systematic work procedures or a series of standardized written instructions regarding various processes for implementing an action procedure, how and when to do it, where and by whom to do it. The main factor in the success rate of transplantation is the presence of a suitable donor. However, even so, organ transplantation is also a bioethical problem which is also quite complicated, considering the need for human body tissue is increasing day by day, while organ supplies are limited, so that with this emergency

condition a problem arises, namely the suspicion of legal or illegal trafficking of human organs illegal.

Everyone must understand that the self and the members of his body are an integral part of his personal existence in the world. From the time of birth to death, humans as individuals automatically have absolute rights over their bodies. The right to the body is considered to be within the scope of recognition of human rights as individuals as well as part of society. It's just that from so many regulations on human rights there are still no provisions that concretely regulate the right to the body. The definition of "rights" itself can be referred to by several opinions from legal experts. The concept of the unity of ownership of the body gained support when the recognition of the importance of human rights was declared through the Universal Declaration of Human Rights in 1958.

Increasing demand for organs without increasing supply poses problems for many countries, particularly those where direct donation arrangements do not exist or are not well regulated, as the risks of organ trafficking increase. Organ trafficking not only poses a major ethical problem, it also makes it even more difficult to guarantee the quality and safety of organs. Member states of the Council of Europe and the European Union and transplant organizations have taken steps to eliminate the possibility of coercion or organ trafficking. In particular, Article 21 of the Human, Rights and Biomedical Convention states "the human body and its parts shall not give rise to financial gain" (Hukor, 2016). Based on data from the World Health Organization (WHO) in 2008 showed the frequency of organ transplantation in 2008 was around 100,900 each year, namely kidneys around 69,300, liver around 20,300, heart around 5330, lung around 3330 and pancreas around 2380 and small intestine around 260.5 In developed countries the main source of organs is from corpse donors while in developing countries more organs come from living donors (Tempo.co, 2018).

Organ transplantation in Indonesia is still far behind compared to other countries. The number of Indonesian citizen patients who perform transplantation, especially kidney transplants abroad, is estimated to be higher than at home. The low number of transplants in the country is because donors are still sourced from living donors and there are no regulations that can provide legal certainty for transplants with corpse donors, cost factors and cultural factors and public awareness is still low about the importance of organ transplantation. But behind that there is also the practice of organ commercialization between donors and recipients of human organs in Indonesia, making organ transplants often come into contact with legal issues.

Criminal acts in the field of organ transplantation can be categorized as criminal acts of persecution if the victim in this case does not experience loss of life or death. Civil actions in the field of organ transplantation can occur if in the process there is a violation of the agreement of the parties taking part in the transplant (Rahmi et al., 2014).

Fulfilling needs in the health sector is the responsibility of the government together with the community, so government policies must be based on strict guidelines. Historically, health regulations in Indonesia are contained in the Basic Health Law Number 9 of 1960, the Law of the Republic of Indonesia Number 23 of 1992 concerning Health, as amended in the Law of the Republic of Indonesia Number 36 of 2009 concerning Health. The absence of donor agencies in Indonesia, including the regulation of legalizing living and dead donors (cadaver) is a very big obstacle for transplant activities in Indonesia. If only relying on living donors, there will be fewer patients who have the opportunity to transplant. Meanwhile, dead donors can be an option because of the high mortality rate caused by trauma, accidents and natural disasters in Indonesia (Rahmi et al., 2014). The research aims to to know how important is the SOP for transplantation and the role of donor agencies and to know how is the law enforcement against transplantation SOP violations.

II. METHOD

This research is a normative legal research. The type of this research is a Normative Legal Research. Normative legal Research is a research which uses the law as foundation of norm. This means that this research is based on the library research focusing on reading

and analyzing of the primary and secondary materials (Ibrahim, 2006). According to Jacobstein & Mersky (1981), normative legal research is seeking to find those authorities in the primary sources of the law that are applicable to a particular situation. The search is always first for mandatory primary sources, that are constitutional or statutory provision of the legislature, and court decision of the jurisdiction involved. If these cannot be located, the search then focuses on locating persuasive primary authorities that comprise decisions from courts of other common law jurisdiction.

In this research, the author describes the case, seek, and process a variety of data from the document study (libraries) to generate a report of research findings. In this study, researchers examine the legal norms contained in the legislation systematically. The approach method used is: a. Approach to legislation (statute approach), b. Conceptual approach (conceptual approach).

III. RESULT AND DISCUSSION

Standard Operating Procedures (SOPs) and the Importance of the Role of Donors

Organ Transplant Progress

The application of Standard Operating Procedures in every medical action is one of the efforts to maintain patient safety, improve services and avoid malpractice demands. Transplantation of human organs and tissues is a relatively contemporary breakthrough in medical science. Doctors have experimented with transplanting organs from one animal to another living of the same species with little success, a procedure known as an "allograft." However, on December 23, 1954, Dr. Joseph Murray and colleagues performed a donor kidney transplant between two brothers in Hollywood, Florida. This kidney transplant was a major breakthrough, and proved that it was possible to replace a diseased organ with a healthy one.

Organ transplantation is now a very real possibility for many people suffering from organ failure. Current medical technology has expanded transplant procedures that involve living donors not related to the patient and also cadaver (Ratna, 2010). The transplant process must be carried out in a very short period of time because organs with a long ischemic period become unsuitable for transplantation. On the other hand, donor and organ procurement is a complex process that requires professionalism.

Donated organs can come from living donors (kidney or liver only) or deceased donors (corpses). Each source has its own procurement difficulties. Because with living donors there is an inherent risk for the patient to pay for their organs. Today, most transplant regulatory systems are based on the principle of altruism, where it is illegal to buy or sell organs.

Transplants became popular in the medical world since the mid-50's (although skin transplants were actually carried out long before that). Kidney transplantation was first performed in Indonesia in 1977. Prior to the 1998 monetary crisis, kidney transplants were performed at transplant centers in Jakarta, Bandung, Semarang, Yogyakarta, Surabaya and Medan. Currently, kidney transplants are being carried out in Jakarta, Semarang and Malang.

The implementation of donor corpse transplants in Indonesia still faces obstacles despite the Kemayoran Agreement, as one of the results of the 1995 Yagina and Pernefri National Symposium II in Jakarta. The agreement states that all recognized religions in Indonesia accept organ transplants, both transplants with living donors and corpse donors.

The high demand for human organ transplants and the legal problems that arise

As technology improved and became more widespread, the need for healthy organs began to outstrip supply. In response to the growing fear that the human body became a "commodity," laws in the United States were quickly passed to prevent the sale of organs

and the emergence of the black market. Ironically, this has accelerated organ shortages and the emergence of a global black market in organ procurement. The consequence of this black market is a factor of desperation and deception. Wealthy citizens with affluent procurement systems, travel abroad to receive transplant procedures. Known as "transplant tourism," these people can avoid long waiting times for domestic organs by paying high fees to foreign medical organizations for transplants. Behind these transactions are third world "donors" who are duped into supplying their organs, usually kidneys (Taylor, 2005).

The Trafficking in Persons Protocol has been widely ratified and requires member states to criminalize activities such as organ harvesting by deceit, fraud and coercion. Through this instrument, transplant tourism can be classified as an act that promotes human trafficking for organ harvesting, thus member states must criminalize it according to the Trafficking Protocol (M.Sade, 2011).

Since the 1980s, increasing organ shortages globally have developed into a major problem for most countries. For example, in 2008 the United States added 33,051 new registrations to the kidney waiting list and had 139,917 patients on the waiting list for all organs. That year, 7182 patients died while waiting and 4638 people waited for a kidney. In 2005, the average wait for a kidney transplant was about three and a half years. In 2006, it was estimated that around 40,000 Europeans were on kidney waiting lists and fifteen to thirty percent of them would die while waiting. Organ shortages are mainly caused by longer life spans, more reliable and available transplant procedures, adverse dietary and lifestyle changes, and the need for retransplant procedures for previous recipients. Another aspect is the prohibition of organ sales. Regardless of the cause, the supply of organ donors is never sufficient to meet the growing demand, and an international black market in living donor transplants has sprung up. Shortage of organ supply has created international organ trafficking, where patients travel abroad to take advantage of regulatory loopholes. Recipients are assisted by intermediaries or health care providers who arrange procedures and recruit donors (Kidney.org, 2016).

Silke Meyer classifies trafficking in human organs as a first-degree offense because the transactions are often based on mutual consent. Generally, those who donate their organs on the black market are lured, not coerced, into selling their organs. Touts pay only \$1,000 to \$5,000 to donors, but sell organs to recipients for hundreds of thousands of dollars. Medical professionals engage in this trade because the black market for organ transplants requires highly skilled medical staff, intermediaries or brokers to find donors (usually from poor communities), and high-paying clients. Moreover, unlike other forms of trafficking, the transplant procedure cannot take place anywhere, as it requires a medical facility with all the necessary equipment (Hughes, 2000).

Difficulties in implementing SOPs Provision of living donors

The allocation of scarce organs poses the most difficult ethical issues in transplant medicine. In some countries, cadaveric organs available for transplantation are considered public property and allocated to patients on a waiting list. Basically, and for all organs, there are two important factors that determine the chances of getting a transplant, namely the criteria for placing on the waiting list and the criteria for selection from the waiting list (Optn.transplant.hrsa.gov, 2015).

While there are no legal restrictions on family members, the majority of surviving donors are parents or close relatives. This is clearly revealed by the analysis of figures in Denmark which showed that in 1996 of direct donors 64% were from parents, 27% siblings, 2% other family members and only 7% unrelated persons. With respect to the frequency of direct donations, there is a sharp gradient between countries in northern and southern Europe. While in 1996 in Sweden between 35% and 40% of kidney transplants were from living donors (and in Norway almost 50%), the rates for Denmark were 25%, for Germany 6.4% and only 1.3% for Spain. In Portugal, too, very few kidney transplants from living donors are performed (Optn.transplant.hrsa.gov, 2015).

In contrast to the situation in Europe, transplants from living donors are predominant in Japan, and prior to the introduction of the new law, more than 70% of the relatively small number of kidney transplants were performed in that country. Thus, in 1990, out of a total of 741 kidney transplants no less than 532 were from living donors. The reason for the frequent donations from living donors is that most of the donations come from within close family circles (White et al., 2014).

The development of kidney transplantation in Indonesia is slow when compared to other countries. Some of the challenges in the development of kidney transplantation in Indonesia are that new kidney transplants are carried out from living donors, while transplants from deceased donors have not been carried out. A corpse in this case is defined as a person who has made a decision or is allowed by his family to donate with a heart still beating, but brain function has died.

The need for donor agencies in Indonesia

The Health Law on transplantation has existed since 1992 and was renewed in 2009. Since the Health Law No. 36 of 2009 on organ transplantation was enacted, however, until now there has been no Government Regulation on Organ Donor Institutions. A reference is related to donor agencies from other neighboring countries, namely the Philippines where the Philippines is ranked 12th in the world in terms of population with a population of around 100,981,437. However, the development of dialysis and kidney transplantation is much better than Indonesia. In this country, Donor Donation has been around for a long time. The government strongly supports the existence of this institution. Every year, in the Philippines more than 500 people have kidney transplants.

If we compare it with Indonesia, the number of kidney transplant patients in 2017 alone is around 120 people. In fact, the first kidney transplant was carried out since 1978. And until 2019, no more than 1000 people have had kidney transplants in Indonesia. Many patients and donors await the existence of this institution. Whereas the Health Law has existed since 1992 and was updated again in 2009. This means that the Law has been around for quite a while. In 2019, the number of kidney failure patients is estimated to reach 200 thousand people. No more than 1% who do kidney transplants. Every hour, an estimated 1 kidney patient dies. All of them are just waiting for a donor who knows how long.

Law Enforcement Against Violations of Standard Organ Transplant Operational Procedures

Violations and prosecution from the aspect of Administrative sanctions

Broadly speaking, violations of the administrative side of a doctor's practice are basically a violation of the legal obligations of medical administration. These obligations can be distinguished, namely: Administrative obligations related to the authority before the doctor performs/before performing medical services (regarding the authority to practice); For example, having an STR issued by the Indonesian Medical Council (KKI) for a period of 5 years and re-registration, having a Practice License (SIP) issued by a health official in the area of practice concerned. The unlawful nature of medical malpractice lies in the absence of this authority.

Administrative obligations when doctors are carrying out medical services include: Medical Service Obligations in accordance with Professional Standards, Standard Operating Procedures and Patient Medical Needs (see Elucidation of Article 50); Obligation to Refer Patients to Other Doctors Who Have Better Skills or Ability (Article 11 Violation of the Code of Ethics). Obligation to keep everything confidential about the patient (Doctor's Secret) (Article 14, Article 52 jo 45 paragraph (3) of Law No. 29/2004 and Doctor's Oath PP 26/1960). Obligation to provide emergency assistance on the basis of humanity (Article 531 of the Criminal Code which is obliged to help people and Article 51 letter d of Law Number 29/2004 unless someone else is able). Obligation to Increase Knowledge and Follow

Developments in Medical Science and Obligation to Provide Explanations to Patients Before Performing Medical Actions (Article 45 paragraph (1) of Law Number 29/2004).

Violations and prosecution from the aspect of civil law

The civil aspect of organ transplantation especially often arises in the case of organ donors of deceased patients. If the organs of a person who has died, such as the kidneys, liver, cornea of the eye, can help save or improve the life of another living person, then the act of such a donor is morally good and even commendable. However, it should be noted that the donor must give his/her consent freely and conscientiously before his death, or his next of kin must do so at the time of his death. The success of an organ transplant is highly dependent on the freshness of the organ, meaning that the transplant procedure must be carried out as soon as possible once the donor dies. However, the donor may not be declared dead prematurely or his death hastened just so that his organs can be used immediately (Achmad, 2017).

Violations of the medical profession according to civil law are based on two legal grounds, namely:

1. Default (Article 1239 of the Civil Code) In this case the doctor does not fulfill his obligations arising from the existence of an agreement (contractual responsibility). In a literal sense, it is a bad performance which basically violates the contents/agreements in an agreement/contract by one of the parties. The forms of violations in default are as follows:
 - a) Does not provide any achievements at all as promised;
 - b) Delivering performance that is not as it should be, not in accordance with the quality or quantity that was promised;
 - c) Delivering achievements but not being on time as agreed;
 - d) Deliver other achievements than promised.
2. Unlawful Acts (Article 1365 of the Civil Code) In the event that a doctor has acted against the law because his actions are contrary to the principles of propriety, thoroughness and caution that are expected of him in association with fellow citizens. Unlawful acts in medical practice occur when in medical treatment there is an error by causing a loss, then the patient can sue based on an unlawful act as regulated in Article 1365 BW which is implicitly formulated "every unlawful act that causes harm to another person, obliges the person who because of his fault caused the loss to compensate for the loss. ". The formulation of the word "because of fault" in the provisions of Article 1365 of the Civil Code can be in the form of intentional (dolus) or in the form of negligence (culpa) committed by doctors in wrong medical treatment of patients. Acts against the law (onrechtmatige daad) in its development are expanded into 4 (four) criteria, namely:
 - a) contrary to the legal obligations of the perpetrator; or
 - b) against the law of the subjective rights of others; or
 - c) against the rules of ethics; or
 - d) contrary to the propriety, thoroughness and prudence that a person should have in association with fellow members of the community or with respect to other people's property.There are conditions that must be met to claim damages for an unlawful act in Article 1365 of the Civil Code, including the following:
 - a) The existence of an act (daad) which includes the qualification of an unlawful act;
 - b) There is an error (dolus and/or culpa);
 - c) There is a loss (schade). Improper treatment becomes a violation of the agreement (default) and or unlawful acts (onrechtmatige daad) and
 - d) there is a causal relationship between the act and the loss.

For the transplantation of donor corpses, the moral criteria require that the donor must have died before his organs are used for transplantation. The time of death should be determined by a doctor who accompanies the donor at the time of his death or, if not available, at least a doctor will declare his death. The doctor is not allowed to take part in the procedure for removing or transplanting organs. Although this regulation has no impact on the morality of organ transplantation itself, the dignity of the dying person must be protected, and hastening death or ending his life in order to obtain his organs for transplantation is immoral.

Criteria for Death in Indonesia Based on the statement from the Indonesian Doctors Association (IDI) regarding death (1985, 1988, and the IDI statement in 1990), a person is declared dead when the spontaneous function of breathing and circulation has stopped for sure (irreversible). In addition, IDI also states that a person is said to be dead if it has been proven that brain stem death (MBO) has occurred. This IDI fatwa was approved in the IDI Working Meeting in Medan in 1987. This fatwa is contained in IDI's Decree No. 336/PB/A.4/88. Meanwhile, based on Government Regulation (PP) RI No. 18 of 1981, a person is declared dead or dead if the human condition is believed by authorized medical experts that the function of a person's brain, breathing and heart rate has stopped.

Regarding transplantation, clinical post-mortem can be carried out with the written consent of the patient or his family if after the patient dies the cause of death cannot be known, or without the consent of the patient and family if it is indicated that the patient is suffering from a disease that is dangerous to other people and society. around, or if within 2x24 hours it is unknown and/or there is no family who acknowledges the patient who died. Patient consent is a condition that must be met before transplantation activities can be carried out to donors. The agreement is a written agreement with a stamp duty with 2 witnesses, which is then explained that the donor or the donor's family does not have the right to any form of compensation from the transplant activity (Article 13 and Article 16 of PP No. 18 of 1981). This means that an organ harvesting should not be carried out without clear or tangible permission given by the donor (Azhar Ahmad, 1987).

Transplant actions that can be related to the civil transplant law, include:

1. Article 1365 of the Civil Code: every act that violates the law, which brings harm to another person, obliges the person who, because of his fault, published the loss, compensates for the loss.
2. Article 1366 of the Civil Code: Everyone is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness.
3. Article 1367 of the Civil Code: a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or caused by goods under his control.
4. Article 1370 of the Civil Code: In the case of a death intentionally or due to someone's carelessness, the husband or wife who is left behind, the child or parent of the victim who usually earns a living from the work of the victim has the right to demand compensation, which must be assessed. According to the position and wealth of both parties, as well as according to the circumstances.
5. 1371 Civil Code: The cause of injury or disability of a limb intentionally or due to carelessness gives the victim the right to, in addition to reimbursement of healing costs, demand compensation for losses caused by the injury or disability. Also this compensation is assessed according to the position and ability of both parties, and according to the circumstances.
6. Article 1372 of the Civil Code: Civil claims regarding insults are aimed at obtaining compensation and restoration of honor and reputation.
7. Article 55 of Law No. 23 of 1992 concerning Health: (1) everyone has the right to compensation due to errors or omissions committed by health workers.

Violations from the side of Criminal Law

Basically, the relationship between a patient and a doctor is a civil relationship, but medical services outside of professional standards may enter the realm of criminal law, when the doctor's mental conditions (*dolus* or *culpa*) and the consequences of losses from deviant medical treatment become elements of crime, such as death. (Article 359 of the Criminal Code) or injured (Article 360 of the Criminal Code). An act can be categorized as a criminal offense if it fulfills the formulation of a criminal offense, namely the act must be a disgraceful act (*actus reus*); carried out with the wrong mental attitude (*mens rea*), namely in the form of intentional, recklessness or negligentness.

An offender can be held accountable for his actions if in his actions there are elements against the law and there is no justification and excuse for forgiveness and in the act there is an element of error. Criminal acts in the field of organ transplantation can be categorized as criminal acts of persecution if the victim in this case does not experience loss of life or death. This is based on Article 351 paragraph (4) of the Criminal Code which states that intentionally damaging the health of others is included in the category of persecution. If the abuse is carried out preceded by planning and is intended to inflict serious injury, the perpetrator is subject to the severe abuse article, namely Article 355 of the Criminal Code. Organ transplant activities are not only carried out by one party (eg only a doctor) but are carried out by several individuals who have their respective roles. Doctors, for example, who act as executor of transplant activities who were previously assisted by recruiters tasked with finding victims whose organs will be harvested, can be categorized as participants and then enter as participants (Articles 55-56 of the Criminal Code) which can then be subject to criminal sanctions whose rules are regulated in Article 57 of the Criminal Code.

Criminal liability in foreign terms is also called *torekenbaarheid* (Netherlands) or criminal responsibility or criminal liability (UK). An offender can be held accountable for his actions if in his actions there are elements against the law and there is no justification and excuse for forgiveness and in the act there is an element of error. The term criminal offense in Dutch is *strafbaar feit* which is actually an official term in *Strafwetboek* or the Criminal Code (Book of Criminal Law) which is now applicable in Indonesia, the term in foreign language is *delict*. A criminal act means an act for which the perpetrator may be subject to a criminal penalty. In the view of the Criminal Code, the subject of a crime is a human being as an individual. The objective element is if the element is outside the maker (*buiten de dader aanwezing*) which can be; An act is "doing something" and can be in the form of "not doing something, an effect, or problems, all of which are prohibited and threatened by punishment by law.

Malpractice that occurs in the medical world, especially in the case of organ transplants that can be held accountable is a mistake that in practice is done intentionally. The standard of the medical profession in this case is as a means of preventing and/or measuring malpractice by doctors. Criminal acts in the field of organ transplantation can be categorized as criminal acts of persecution if the victim in this case does not experience loss of life or death. This is based on Article 351 paragraph (4) of the Criminal Code which states that intentionally damaging the health of others is included in the category of persecution. If the abuse is carried out preceded by planning and is intended to inflict serious injury, the perpetrator is subject to the severe abuse article, namely Article 355 of the Criminal Code. Organ transplant activities are not only carried out by one party (eg only a doctor) but are carried out by several individuals who have their respective roles. Doctors, for example, who act as executor of transplant activities who were previously assisted by recruiters tasked with finding victims whose organs will be harvested, can be categorized as participants and then enter as participants (Articles 55-56 of the Criminal Code) which can then be subject to criminal sanctions whose rules are regulated in Article 57 of the Criminal Code.

Perpetrators involved in organ trading practices are threatened with criminal sanctions in Article 192 of the health law. a maximum of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Regulations in the Law of Human Organ Transplantation. In criminal law, a very fundamental principle applies, namely the principle of legality. The principle of legality is the

main requirement for taking action against a disgraceful act, namely the existence of a provision in the criminal law that formulates the disgraceful act and provides a sanction against it. The definition of the principle of legality is explained by J.E. Sahetapy as follows:

An act can be punished if it is included in the criminal provisions according to the law. Therefore, punishment based on unwritten law is not possible. The criminal provisions must exist before the act, in other words, the criminal provisions must have taken effect when the act was committed. Therefore, this provision does not apply retroactively, both regarding the provisions that can be punished and the sanctions. So it can be concluded that the principle of legality means that there is no punishment except on the basis of the law. This understanding is very important, because not all despicable acts can be punished. An example is Article 284 of the Criminal Code regarding adultery, in which the values adopted in Indonesian society are mainly Islamic, that what is said to be adultery is all who have a relationship like husband - wife without exception whether they are married or not. However, Article 284 of the Criminal Code requires that those who can be punished are bound by marriage or one of them is bound by marriage, so that adultery committed by people who are not bound by marriage cannot be punished. This is of course contrary to the values held by the community, but the state cannot punish him.

Application of Criminal Sanctions in Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption and Law Number 36 of 2009 concerning Health Against Perpetrators Involved in Gratification and Organ Trafficking Mafia in Indonesia. Gratification as a Form of Corruption That Also Triggered the Growth of the Mafia in the Trafficking of Human Organs. In describing how organ transplantation is arranged, of course, it cannot be separated from this principle, so that later it can be known comprehensively how it is arranged. Organ transplant arrangements are regulated in various regulations in Indonesia, which are as follows:

1. Article 204 of the Criminal Code

"(1) Whoever sells, offers, accepts or distributes goods, knowing that the goods are dangerous to the soul or health of people and the dangerous nature is kept in prison for a maximum of fifteen years".

"(2) If someone dies because of this act, the guilty person is sentenced to life imprisonment or a temporary prison term of twenty years."

2. Articles 84 and 85 of Law Number 23 of 2002 concerning Child Protection

Article 84

"Every person who unlawfully performs a child's organ and/or tissue transplant for another party with the intention of benefiting himself or another person, shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 200,000,000, - (Two hundred million rupiah)".

Subject (normadressaat), Everyone, the core part of the offense (delicts bestanddelen). It is against the law to carry out a child's organ and/or tissue transplant for another party, with the intention of benefiting oneself or others.

Article 85

"(1) Any person who trades body organs and/or body tissues of a child, shall be sentenced to a maximum imprisonment of 15 years (fifteen years) and/or a maximum fine of Rp. 300,000,000 (three hundred million rupiah)".

"(2) Any person who unlawfully performs the harvesting of organs and/or body tissues of a child without regard to the child's health, or health research that uses a child as an object of research without the permission of the parents or does not prioritize the best interests of the child, shall be punished with imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp. 200,000,000 (two hundred million rupiah)".

Subject (normadressaat): Everyone, the core part of the offense (delicts bestanddelen), unlawfully harvests organs and/or body tissues of children without paying

attention to the health of children, or health research that uses children as research objects without parental consent or not prioritize the best interests of the child. Articles 2, 3, 4, 5, 6 and 7 of Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons Law no. 21 of 2007 regulates the prohibition of trafficking in human organs, which is clearly regulated in Article 1 point 7 and Articles 2, 3, 4, 5, 6 and 7, where in these articles the criminal act of trafficking in human organs is included. . In this Law it is stated in Article 13 that the criminal act of trafficking in persons is not only carried out by individuals but can also be carried out by corporations, then further in Article 15 it is determined that the punishment that can be imposed on corporations is a fine with a weight of three (3) times the criminal the fines stated in Article 2, Article 3, Article 4, Article 5, and Article 6 are at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

Article 2 Paragraph 1

“Any person who recruits, transports, harbors, transports, transfers or receives a person by means of the threat of force, use of force, of abduction, of confinement, of fraud, of deception, of abuse of power or of a position of vulnerability, of debt bondage or of providing payments or benefits despite obtaining the consent of person who has control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah)”.

This article is a formal offense where the fulfillment of the core offense above can be subject to this article and does not have to cause consequences and the fulfillment of the core offense for trading organs in the territory of Indonesia.

Article 2 paragraph 2

“If the act as referred to in paragraph (1) results in people being exploited, then the perpetrator shall be punished with the same punishment as referred to in paragraph (1)”.

The core part of the offense (delicts bestanddelen), if the act as referred to in paragraph (1) results in people being exploited, then the perpetrator shall be punished with the same punishment as referred to in paragraph (1). The purpose of this article is that if the guilty person has committed the act as stated in the formulation of paragraph one above and has resulted in the sale of one of the organs of the victim's body, the guilty person will be punished the same as paragraph one.

Article 3

“Everyone who imports people into the territory of the Republic of Indonesia with the intention of being exploited in the territory of the Republic of Indonesia or exploited in another country shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp.600,000,000.00 (six hundred million rupiah)”.

Subject (normadressaat) everyone, the core part of the offense (delicts bestanddelen). Importing people into the territory of the Republic of Indonesia with the intention of being exploited in the territory of the Republic of Indonesia or being exploited in another country. The purpose of this article is that those who can be subject to this article are guilty parties who have imported victims of organ trading from abroad into the country or vice versa.

Article 4

"Everyone who brings Indonesian citizens outside the territory of the Republic of Indonesia with the intention of being exploited outside the territory of the Republic of Indonesia shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp.120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp.600,000,000.00 (six hundred million rupiah)".

Subject (normadressaat) everyone. The core part of the offense (delicts bestanddelen). Bringing Indonesian citizens outside the territory of the Republic of Indonesia with the intention of being exploited outside the territory of the Republic of Indonesia. The accused is charged with the article that it is sufficient to bring him out of Indonesia with the intention of selling the victim's organs abroad.

Article 7 paragraphs 1 and 2

"(1) If the crime as referred to in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6 causes the victim to suffer serious injuries, severe mental disorders, other infectious diseases that endanger his life, pregnancy, or is disturbed or loss of reproductive function, then the criminal threat is increased by 1/3 (one third) of the criminal threat in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6".

"(2) If the crime as referred to in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6 results in the death of the victim, the person shall be punished with a minimum imprisonment of 5 (five) years and a maximum of life imprisonment. and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 5,000,000,000.00 (five billion rupiah)".

The core part of the offense (delicts bestanddelen), causes the victim to suffer serious injuries, serious mental disorders, other infectious diseases that endanger his life, pregnancy, or disruption or loss of his reproductive function, resulting in the death of the victim. Article 7 paragraphs 1 and 2 are aggravating offenses (gequalificeerde delict) from the main offenses in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6.

Article 192 of Law Number 36 Year 2009 concerning Health

Article 192

"Everyone who deliberately trades organs or body tissues with any pretext as referred to in Article 64 paragraph (3) shall be sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)".

CONCLUSION

The legal rules regarding the application of standard SOPs in the implementation of Transplantation are not sufficient and not appropriate as the basis for fulfilling legal rules. The legal rules that include the right to receive socialization or information about transplantation, the right to gain access to health facilities and personnel without the involvement of financial transactions with organs, and the right to obtain legal protection are all contained in the legislation but only to the extent of supervision and guidance without there are clear sanctions for parties who are not responsible for the fulfillment of rights in the implementation of transplantation. The importance of implementing standardized and generally accepted SOPs can be guided by the guidelines contained in the law and statutory regulations. The weakness of the rule of law regarding the implementation of transplantation is contained in the Convention on the Human Rights (Convention on Human Rights) which was only ratified through the Regulation of the Minister of Health (Permenkes) Number 36 of 2016. This is a weakness because the legal force of the Minister of Health is not as strong as compared to with the Act.

Legal consequences of violating the transplant SOP, transplantation of organs, tissues, and cells that are prohibited by Indonesian positive law is that the act "fulfills commercial

elements, endangers organ donors and fraudulent elements". So organ transplants according to positive law are allowed for "humanitarian" interests and their implementation must be in accordance with SPO, as an effort to fulfill basic human needs for health and are prohibited for commercial purposes, endangering the health of donors and carried out by means of fraud. There is a clear gap between supply and demand for organs in which the dimensions and aspects of organ donation and transplantation lead to unlawful attempts to follow illegal donor methods and violate organ transplant SOPs. Violations committed will result in the consequences of ethical sanctions, disciplinary and administrative sanctions for health workers and/or civil and criminal sanctions for anyone involved in an act that violates the law.

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