

ORGAN TRANSPLANTATION: CONTEMPORARY ISLAMIC LEGAL PERSPECTIVES

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ABSTRACT

Research Objectives - This study aims to analyze organ transplantation from an Islamic legal and socio-economic perspective to offer ethical solutions for reducing access disparities and preventing exploitation.

Method - The research employs a literature review and document analysis approach. Analytical techniques include content analysis of fatwas and regulations, as well as a comparative analysis of classical and contemporary scholarly views.

Research Findings - The results indicate that organ transplantation in Islam is only permissible under emergency (*dharurah*) conditions based on the principle of *kemaslahatan* (public interest); MUI Fatwa No. 13/2019 led to a 23% increase in corneal transplants and 67% of kidney transplants involving living donors; and there is tension between medical necessity and commercialization practices, which contradict Sharia ethics.

Theory and Practical Implications - Theoretically, this research enriches the discourse on contemporary *maqasid al-shari'ah* in Islamic bioethics. In terms of policy, it recommends a national donor data system and strengthening anti-commercialization regulations.

Novelty - This study fills a literature gap by offering an interdisciplinary approach that integrates classical *fiqh* analysis with the socio-economic realities of organ transplantation in Indonesia.

INTRODUCTION

The advancement of modern medical technology has brought significant transformations to organ transplantation practices, making it a vital solution for patients with chronic organ failure. However, amidst the substantial medical benefits, complex ethical, legal, and social issues—particularly from an economic and social perspective—remain largely unresolved challenges (Daar & Marshall, 2021). In the economic context, organ commercialization triggers health access inequalities, while from a social aspect, this practice raises moral dilemmas concerning distributive justice and human rights (Scheper-Hughes, 2002). Previous studies have predominantly focused on medical and positive legal aspects, with limited analysis on socio-economic dimensions, especially within the framework of Islamic law that integrates Sharia principles with contemporary needs.

Earlier research by Albar (2007) and Padela et al. (2011) examined organ transplantation from the classical *fiqh* perspective but were limited to textual analysis without considering socio-economic impacts such as structural poverty driving commercial donation. The theory of *maslahah* (*al-maslahah al-mursalah*), a primary foundation, is often criticized for being too abstract in applying the principle of "greatest benefit" (Brockopp, 2008). Furthermore, Moazam's (2006) research revealed a gap between *ulama* fatwas and real-world practices in Muslim communities, where economic necessity often overrides ethical considerations. Other critiques arise against conventional approaches that fail

to integrate political economic perspectives, such as the analysis of organ black markets, which are exacerbated by the absence of Sharia-based regulations (Shirazi, 2019).

The novelty of this research lies in its interdisciplinary approach, combining Islamic law, health economics, and social justice theory to examine organ transplantation. This study fills a gap in the literature by critiquing traditional paradigms that separate *fiqh* discussions from economic realities, while simultaneously offering an inclusive *maslahah*-based regulatory model. This approach is supported by recent developments in Islamic economics, such as the contemporary concept of *maqasid al-shariah*, which emphasizes the balance between the preservation of life (*hifz al-nafs*) and distributive justice (Chapra, 2016).

The objective of this study is to analyze organ transplantation through the lens of Islamic law and socio-economics, focusing on ethical solutions to reduce access disparities and prevent exploitation. However, this study has limitations, particularly in generalizing findings due to differing *fiqh* interpretations among Muslim countries. This research refers to authoritative works such as the fatwa of the Indonesian Ulema Council (MUI No. 10/2016) and comparative studies by the Islamic Organization for Medical Sciences (IOMS, 2018), as well as health economics literature from Arrow (1963) and Sen (1999) to strengthen the theoretical framework.

METHOD

This research employs a qualitative approach utilizing library research and document analysis. The qualitative approach was chosen to gain an in-depth understanding of organ transplantation phenomena from a contemporary Islamic legal perspective through the exploration of texts, regulations, and legal documents (Creswell, 2014). Previous research using similar methods includes Moazzen (2019), who analyzed contemporary fatwas on organ transplantation from an Islamic perspective, and Ismail & Hassan (2020), who examined medical ethics in Islamic law through a qualitative-documentary approach. The rationale for employing this method is the exploratory nature of the research, which necessitates a deep understanding of Islamic legal texts and applicable regulations (Neuman, 2014). Prior research indicates that the qualitative approach is effective in uncovering the complexities of Islamic law concerning biomedical issues (Ghaly, 2015).

Data collection techniques for this study involve primary and secondary literature searches, including the Qur'an, Hadith, *ulama* fatwas, legislation, academic journals, and official documents related to organ transplantation. Data was gathered through textual review and policy analysis to ensure the validity and reliability of the findings (Bowen, 2009). According to Miles et al. (2014), document-based qualitative data collection techniques allow researchers to comprehensively analyze historical context and legal developments. Data sources were selected based on their academic reputation and relevance to the research topic, including works from the World Health Organization (WHO) and the Indonesian Ulema Council (MUI) concerning organ transplantation. Data analysis was conducted using a descriptive-analytical approach, where collected data was identified, categorized, and interpreted to generate a comprehensive understanding of organ transplantation in Islamic law. Analytical techniques include content analysis to explore key themes in fatwas and regulations (Krippendorff, 2018), and comparative analysis to compare the views of classical and contemporary *ulama*.

RESULTS AND DISCUSSION

Provisions Permitting or Prohibiting Organ Transplantation According to Islamic Law.

Organ transplantation has emerged as a crucial issue in contemporary Islamic law, sparking intensive debate between medical necessity and Sharia ethical boundaries. Based on an analysis of fatwas from the Indonesian Ulema Council (MUI), classical scholarly opinions, and modern medical advancements, this practice is regulated through a stringent framework that considers the principles of *maslahah* (*Al-Maslahah Al-Mursalah*), *Darurat Syar'iyah* (Sharia necessity), and respect for the integrity of the human body. This research reveals that 67% of kidney transplant cases in Indonesia involve living donors with family consent, while cornea transplants from cadavers have increased by 23% since MUI fatwa No. 13/2019 (Republika.co.id, 2021).

Organ transplantation is only permissible under conditions of medical emergency that meet the criteria of *dharurat syar'iyah*, meaning life-threatening situations where no other treatment alternatives exist. QS. Al-Baqarah 2:195 serves as a primary foundation, stating:

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا ۚ إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ

"And spend in the way of Allah and do not throw [yourselves] with your [own] hands into destruction, but do good; indeed, Allah loves the doers of good."

The passage emphasizes the prohibition against self-harm unless it is to save a life. Liver transplantation for patients with end-stage cirrhosis exemplifies the application of this principle, given that the risk of mortality reaches 85% without intervention (Abdullah, 2018).

The Indonesian Council of Ulama (MUI) distinguishes between two levels of necessity: *dharurah* (critical emergency) and *hajah* (urgent need). Heart transplantation is permitted only at the *dharurah* level, whereas corneal transplantation may be performed at the *hajah* level with strict conditions. MUI Fatwa Number 13 of 2019 concerning Organ & Tissue Transplantation from Living Persons to Others (hereinafter referred to as MUI Fatwa No. 13/2019) mandates an emergency certificate from three specialist doctors prior to the procedure (Rizkiah, 2024).

Among the ethical considerations for organ donation within Sharia are: a) Living Donors and the Principle of Voluntariness, which dictates that living donors must meet the criteria of *ahl al-tabarru'* (legal capacity to give) with full consent and no coercion (Nahdlatul Ulama Banten, n.d.). The Shafi'i school of thought requires donors to be at least 21 years old and in a stable mental condition (Nahdlatul Ulama, n.d.). A 40% increase in kidney transplants between siblings in Indonesia post-MUI fatwa demonstrates the application of the *silaturrahim* (kinship) principle in medical practice (Rizkiah, 2024). b) Organ Procurement from Cadavers is governed by a *hadith* narrated by Muslim that prohibits the desecration of a corpse. Consequently, organ retrieval from a deceased individual is only permissible after clinical and legal death have been declared by three physicians (Yusriadi & Zulhamdi, 2022). c) The Prohibition of Transactional and Commercial Activities is strict. The MUI explicitly states that organs are *amanatullah* (a trust from Allah) and not economic commodities (Republika.co.id, 2021). Sharia sanctions for violations, where contemporary scholars apply the concept of *ta'zir* (discretionary punishment) for those involved in organ trafficking, include fines up to 10 times the transaction value and social rehabilitation (Rizkiah, 2024). d) The Classification of Organs and Legal Implications distinguishes between regenerative and non-regenerative organs. Regenerative Organs, such as blood, bone marrow, and skin, are permissible for donation based on the principle of *qillat al-darar* (minimal harm) (muslimafiyah.com, n.d.). Bone marrow transplants have seen a 35% increase in Islamic hospitals in Indonesia, with leukemia recovery rates reaching 78% (Nahdlatul Ulama Banten, n.d.). Non-Regenerative Organs, including kidneys and parts of the liver, are permitted under strict conditions. Data from the National Transplant Center indicate that 92% of living kidney donors remain healthy after 5 years, fulfilling the criterion of *la darar wa la dirar* (neither harming oneself nor harming others) (Rizkiah, 2024).

The prohibition aims to safeguard the principle of *hifzh al-nasl* (preservation of progeny) within *Maqasid Al-Syariah* (objectives of Islamic law). The principle of *Maslahat* (public interest) in transplantation is analyzed through a benefit-risk assessment. Scholars utilize a *maslahat-mafsadat* (benefit-harm) weighing methodology with parameters including: the level of medical urgency, the probability of transplant success, and the long-term impact on the donor.

Transplantation is prohibited if its purpose is cosmetic or for non-medical experimentation. MUI Fatwa Number 30 of 2013 concerning Medicine & Treatment forbids facial transplantation except for severe burn victims, requiring special permission from the Ethics Committee (Rizkiah, 2024). This clearly indicates that facial transplantation is only permissible for urgent health reasons, where its omission could lead to significant discomfort related to the affected organ.

Fiqh Madhabs offer varying perspectives on transplantation from non-Muslims. The Hanafi school permits organ transplantation from non-Muslims to Muslims in emergency situations, while the Maliki school mandates religious commonality (Yusriadi & Zulhamdi, 2022). These differences are based on interpretations of QS. Al-Maidah 5:2 concerning cooperation in good deeds. For

Contemporary Ijtihad, the OIC Islamic Fiqh Academy in 2021 issued a resolution allowing inter-species organ transplantation (xenotransplantation), such as pig hearts to humans, under strict conditions of sterilization and absolute emergency (Rizkiah, 2024).

The National Legal Framework, specifically Indonesian Ministry of Health Regulation No. 91 of 2022, adopts the MUI fatwa by requiring an emergency statement from three doctors and a notarized donor consent deed, alongside prohibiting inter-religious transplantation without MUI's permission. Organ transplantation in Islamic law represents a complex paradigm that integrates timeless ethical principles with contemporary medical needs. The implementation of MUI Fatwa No. 13/2019 necessitates support through: a) massive education on organ donation laws; b) strengthening the national donor registration system; and c) law enforcement against commercialization practices. Further research is required to evaluate the psychosocial impact of reproductive organ transplantation and the development of Sharia-compliant stem cell therapy alternatives.

Organ transplantation in Islamic law is governed by deep considerations of *maslahat* (public interest), *dharurat* (necessity), and the principle of avoiding *mudharat* (harm). Here are the summarized conditions and stipulations that permit or prohibit this practice: a) Principle of Necessity (*Dharuriyat*): Organ transplantation is only permissible in life-threatening medical emergencies for the recipient, when no other alternative treatment is available. This condition refers to the *fiqh* maxim "*al-daruratu tubihu al-mahzurat*" (necessity makes the forbidden permissible). For example, kidney transplantation is justified if the patient is suffering from end-stage renal failure; b) Prohibition of Vital Organ Removal: The transplantation of vital organs such as the heart, liver, or brain is prohibited because their removal can lead to the donor's death. This is based on QS. An-Nisa 4:29 regarding the prohibition of self-killing and the *hadith* "*la dharar wa la dharrar*" (neither harming oneself nor harming others) (Abdullah, 2018); c) Living Donor Consent: Living donors must provide full consent without coercion, on the condition that the donated organ does not threaten their own survival. Kidney transplantation from a living donor is permitted because humans can live with one kidney (UIN Alauddin Makassar, n.d.); d) Respect for the Deceased: Organ procurement from a cadaver is only allowed after medical and legal death have been declared. The process must respect the deceased, in accordance with the *hadith* about the prohibition of breaking a corpse's bones. Corneal transplantation from a cadaver is permissible with prior testament; e) Prohibition of Organ Commercialization: All forms of organ trade are prohibited because the human body is considered an *amanah* Allah (trust from Allah), not a commodity. The MUI fatwa emphasizes that organs are not *haqqul milki* (property rights) (Republika.co.id, 2021); f) Regenerative Organs: The transplantation of regenerative organs like blood, bone marrow, or skin is more permissible compared to permanent organs. This is based on the principle of minimal risk to the donor (muslimafiyah.com, n.d.); g) Prohibition of Reproductive Organ Transplantation: Genital and reproductive organs, such as ovaries or testes, are prohibited from transplantation to prevent the mixing of lineage (*nasab*) and to safeguard the purity of progeny (Nahdlatul Ulama, n.d.); h) Principle of Public Benefit: Transplantation must aim for the recipient's benefit without disregarding the donor's rights. The MUI fatwa mandates that procedures be performed by competent medical personnel with adequate technology; i) Prohibition of Experiments Without Medical Indication: Transplantation is prohibited if it is for commercial purposes, non-medical research, or aesthetic enhancement (*tabshiniyat*). Every action must have a clear therapeutic basis; j) Differences of Opinion Among Scholars: * Permitting Opinion: This view argues based on QS. Al-Maidah 5:32 concerning saving lives by preserving human life and the maxim "*dar'u al-mafasid muqaddamun ala jalb al-mashalih*" (averting harm takes precedence over gaining benefits) (Nahdlatul Ulama, n.d.). Prohibiting Opinion: This view relies on *hadith* prohibiting the desecration of the body and the absolute principle of *hifz al-nafs* (protection of life) (Nahdlatul Ulama Banten, n.d.).

Interpretation methods and sources of Islamic law, including fatwas from the Indonesian Council of Ulama, are utilized to establish the legal framework for organ transplantation in the context of modern medical advancements. The Indonesian Council of Ulama (MUI) employs the *istinbath istislahi* method in establishing the legal framework for organ transplantation. This method emphasizes deriving rulings based on *kemaslahatan* (public interest)

from general Islamic texts and utilizing analogy (*qiyas*) (Martha, 2022). This approach is preferred because, in the case of organ transplantation, there are no specific texts that explicitly address the issue (Permata Sari, 2024).

In the context of organ transplantation, MUI refers to the principles of *maqasid syariah*, particularly *hifz al-nafs* (preservation of life), as the primary basis for permitting organ transplantation, provided certain conditions are met (mui.or.id, n.d.). This principle serves as the foundation for accommodating advancements in medical science that can save human lives (Martha, 2022).

The Islamic legal sources used by MUI include the Al-Qur'an, Hadith, *fiqh* maxims, and previous fatwas (mui.or.id, n.d.). MUI refers to verses that emphasize the prohibition of self-harm and the obligation to save lives, such as QS. Al-Baqarah:195 (Tim TafsirWeb, n.d.) and QS. Al-Ma'idah:32 (Nahdlatul Ulama, n.d.), as well as *fiqh* maxims like *la darar wa la dirar* (neither harming oneself nor harming others).

MUI Fatwa No. 13 of 2019 specifically regulates the transplantation of organs and body tissues from deceased donors to others (Martha, 2022). This fatwa stipulates that organ transplantation is permissible, provided there is an urgent medical need, it does not harm the donor, and it is performed voluntarily without any commercial elements.

The *istinbath istislahi* method employed by MUI differs from the *ta'lili* method used by other fatwa institutions, such as Dār al-Iftā al-Miṣhiriyyah (Martha, 2022). MUI prioritizes *kemaslahatan* and uses general religious texts and analogy, whereas the *ta'lili* method focuses more on cause-and-effect reasoning to deduce rulings from implicit texts (Martha, 2022).

In establishing the legal framework for organ transplantation, MUI also considers the advancements in modern medical science, including the medical community's ability to reduce transplant risks and complications (Martha, 2022). This demonstrates the integration of medical knowledge with Sharia principles in contemporary *ijtihad* (Martha, 2022). MUI conducts collective *ijtihad*, involving *fiqh* and medical experts, to ensure that the issued fatwas are relevant and applicable to current conditions (Martha, 2022). This process also involves an in-depth study of the ethical, legal, and social aspects of organ transplantation (Martha, 2022).

The MUI fatwa asserts that organ transplantation must not be performed for commercial purposes or for body beautification (*tahsiniyat*); instead, it must be based on the intention of mutual assistance and saving lives (mui.or.id, n.d.). This reflects Islamic ethical values that uphold human dignity and prevent exploitation (Martha, 2022). Additional legal sources referenced by MUI in establishing organ transplantation fatwas also come from international conferences, such as the Organization of Islamic Cooperation (OIC) Conference and fatwas from other global Islamic *fiqh* institutions (Martha, 2022). This strengthens the legitimacy of MUI's fatwa within a global context (Martha, 2022).

Overall, the interpretation methods and sources of Islamic law used by MUI in establishing the legal framework for organ transplantation demonstrate flexibility and adaptability to scientific advancements. The *istinbath istislahi* approach allows Islamic law to remain relevant and capable of addressing modern medical challenges while adhering to the principles of *maqasid syariah* and Islamic ethics.

The Relevance of the Principles of Maslahat and Preservation of Life in Establishing the Legal Framework for Organ Transplantation in Islam. Organ transplantation in Islam is regulated with deep consideration for the principle of *maslahat* (public good) and *hifz al-nafs* (preservation of life) from the *Maqasid Al-Syariah* (objectives of Islamic law), which form the basis for its legal rulings. An analysis of the relevance of these two principles is outlined in four main points.

First, the Principle of *Maslahat* in Organ Transplantation. *Maslahat* is a primary consideration because transplantation aims to save lives and improve the quality of life for recipients. Several key points include: a) Emergency as a primary condition: Transplantation is permitted only when there are no other treatment alternatives and in medically urgent conditions (Rosmini, n.d.), such as end-stage renal failure requiring a kidney transplant. b) Prohibition of commercialization: Organs may not be bought or sold, as this contradicts the principle of mutual assistance (*ta'awun*) and avoids exploitation (UIN Alauddin Makassar, n.d.). Gifts or donations of organs without material

compensation are permissible. c) Balance of benefits and harms: Transplantation must provide greater benefit to the recipient without harming the donor (Abdullah, 2018). For example, kidney donation from a living donor is only allowed if the health risk to the donor is minimal.

Second, the Preservation of Life (*Hifz al-Nafs*) as a Basis for Legitimacy. *Hifz al-nafs* is one of the *Maqasid Al-Syariah* that must be preserved. Organ transplantation aligns with this principle through: a) Saving the recipient's life: Transplantation is considered a form of continuous charity (*amal jariyah*) if it saves a life (Nahdlatul Ulama, n.d.). The Al-Qur'an emphasizes the importance of preserving life (QS. Al-Maidah: 32) (Nahdlatul Ulama, n.d.). b) Protection of the donor's life: Organ donation from a living person is only permitted if it does not threaten the donor's safety (Nahdlatul Ulama Banten, n.d.). Sheikh Al-Buthi affirmed, "Donation is forbidden if it is strongly suspected to endanger the donor's life" (Nahdlatul Ulama Banten, n.d.). c) Criteria for permissible organs: Vital organs (such as the heart) may not be donated from living individuals, while non-vital organs (such as kidneys) are permissible under strict conditions (Nahdlatul Ulama, n.d.).

Third, the Integration of Maslahat and Hifz al-Nafs in Islamic Law. These two principles complement each other in establishing the legal framework for transplantation: a) Prioritization of collective *maslahat*: Organ transplantation from a deceased person (with the consent of heirs) is permitted because the *maslahat* of saving a life takes precedence over the prohibition of altering a corpse. b) Ethical-religious boundaries: The transplantation of animal organs (such as pigs) is debated due to considerations of impurity (*najis*) and potential harm (*mudharat*), except in absolute emergency conditions without alternatives. c) Role of medical and religious authorities: Transplantation decisions must involve both doctors (to assess risks) and religious scholars (to ensure Sharia compliance).

Fourth, Controversies and Solutions. Some controversial issues (Nahdlatul Ulama, n.d.) include: a) Reproductive organ transplantation: Prohibited due to the potential for mixing lineage (*nasab*). b) Brain or identity organ transplantation: Not permitted as it concerns the "essence of life," which is solely Allah's right. c) Inter-religious donation: Permissible as long as it meets the conditions of *maslahat* and there is no exploitation.

The principles of *maslahat* and *Hifz Al-Nafs* serve as fundamental pillars in the legitimacy of organ transplantation in Islam. Both emphasize a balance between saving lives, respecting the human body, and avoiding harm. Their implementation requires multidisciplinary collaboration among *fiqh* scholars, medical professionals, and relevant parties to ensure Sharia compliance while advancing the medical field.

CONCLUSION

This research aimed to identify and analyze the stipulations that permit or prohibit organ transplantation practices according to Islamic law, as well as the interpretation methods and legal sources utilized in establishing these rulings within the context of modern medical advancements. The findings indicate that Islamic law, as reflected in the fatwas of the Indonesian Council of Ulama (MUI) and classical scholarly views, governs organ transplantation through a stringent framework. Transplantation is permissible in life-threatening medical emergencies where no alternative treatments exist, based on the principles of *dharurat syar'iyah* (Sharia-based necessity) and *kemaslahatan* (public interest). Donor consent, whether from living or deceased individuals (after clinical and legal death has been declared), is an absolute prerequisite, with an emphasis on voluntary agreement free from coercion and respect for the deceased. The commercialization of organs is strictly prohibited, considering the human body as an *amanah* (trust) from Allah, not a commodity. Furthermore, there is a differentiation in organ classification, where regenerative organs have more flexible regulations compared to non-regenerative and vital organs. The transplantation of reproductive organs is generally forbidden to preserve lineage (*hifz al-nasl*).

The novelty of this research lies in its elucidation of the *istinbath istislahi* method employed by MUI, which prioritizes *kemaslahatan* and utilizes general Islamic texts and analogy, contrasting with the *ta'lili* method that emphasizes cause-and-effect reasoning, as used by other fatwa institutions. This study also highlights how MUI integrates modern medical advancements into its *ijtihad* process, such as considering the risks and success rates of transplantation. Additionally, the research identifies

regulatory implementation in Indonesia through Ministry of Health Regulation No. 91 of 2022, which adopts the MUI fatwa, demonstrating efforts to synchronize Islamic law with positive law in regulating organ transplantation practices. The implications of these findings underscore the necessity for widespread education, strengthening the national donor registration system, and enforcing laws to prevent organ commercialization. Further research is recommended to evaluate the psychosocial aspects of reproductive organ transplantation and the development of Sharia-compliant stem cell therapies.

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