

The Urgency of Regulating Written Statement Format as an Administrative Requirement for Organ and Tissue Transplants

Azzavira Salsa Anandita¹⁾, Djumikasih²⁾, Rino Arief Rachman^{3)*}
^{1,2,3)} Faculty of Law, Brawijaya University, Indonesia

*Corresponding Author
Email: azzaviras@gmail.com

Abstract

This study discusses the administrative requirements for organ and tissue transplantation in Indonesia, particularly the form of the “written statement” which has not been fully accommodated in the current health legislation. There is a discrepancy between administrative requirements in Government Regulation No. 28 of 2024 and Ministry of Health Regulation No. 38 of 2016. Therefore, a normative ambiguity arises, which the author addresses through this research questions: (1) What is the urgency of regulating the form of a 'written statement' as an administrative requirement for organ and human tissue transplantation in Indonesia? and (2) What is the appropriate form of the “written statement” as an administrative requirement for transplantation? To answer these questions, the author uses normative juridical research methods and applies three approaches: statutory, conceptual, and comparative. The analysis is conducted through grammatical and systematic interpretation. The study finds that the regulation of the written statement is still unclear, causing legal uncertainty. Yet, such a document is crucial for ensuring that the transplantation process is legal, voluntary, and transparent, and to prevent organ trafficking. Therefore, a more specific regulation is needed. The study concludes that notarial deed is the most appropriate form to express the donor’s consent legally, ethically, and responsibly.

Keywords: *Legal Certainty, Written Consent, Human Organ and Tissue Transplantation.*

INTRODUCTION

Health is a fundamental human need, both physically and mentally. It is one of the essential aspects of human life alongside food, clothing, and shelter. Without good health, a person cannot live meaningfully or engage in daily activities. The importance of health is reinforced in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which guarantees the right to a healthy life and access to healthcare services.

In line with this, the Indonesian government aims to improve public health as an integral part of national development. One area reflecting medical advancement is organ and tissue transplantation, a method used to treat severe organ dysfunction. Organ transplantation involves transferring healthy organs from donors to recipients and is a critical life-saving procedure that significantly enhances patients' quality of life.

Medical science continues to evolve over time, particularly in terms of treatment and care. Health disorders or diseases experienced by individuals cannot always be cured solely through medication, as each type of illness has different characteristics, requiring varied methods of treatment and healing. One example is the treatment of diseases through organ and tissue transplantation. Organ and tissue transplantation has become a last resort for patients to restore their health, representing a significant advancement in the field of medicine. The development of human organ transplantation technology is carried out by transferring a healthy organ from a donor to replace a damaged organ in the recipient. (Batubara 2021)

The rapid progress in the field of human organ transplantation provides continuity in medical treatment. It is no longer limited to kidney transplants but has extended to other organs such as the heart, liver, and several other organs, including human body tissues such as muscles, ligaments, and nerves. Organ transplantation is a crucial medical procedure for individuals suffering from both minor and major organ dysfunctions. It is performed with the primary aim

of prolonging and improving the quality of life of patients. However, its implementation remains suboptimal due to limited regulation in the previous Health Law (Law No. 36 of 2009) and sociocultural factors, which discourage the practice. Consequently, many patients seek treatment abroad. (Siswanti 2015)

To address this, Law No. 17 of 2023 on Health introduces new provisions, including regulations on organ and/or tissue transplantation for humanitarian purposes. It strictly prohibits organ trade under any circumstance, as emphasized in Article 124(3) and further regulated in Government Regulation No. 28 of 2024, which mandates that all donations must be voluntary and non-commercial.

In addition, Law No. 21 of 2007 on the Eradication of Human Trafficking, which aligns with the Palermo Protocol, criminalizes the commercial exploitation of human organs. (Selviana 2024) Fatwa No. 13 of 2019 issued by the Indonesian Ulema Council (MUI) also forbids organ sales, allowing donations only under strict religious and ethical conditions.

Despite the legal framework, discrepancies arise between Government Regulation No. 28 of 2024 and Minister of Health Regulation No. 38 of 2016 regarding administrative requirements for both donors and recipients particularly concerning the definition of a "written statement". The former only requires a standard written declaration, while the latter mandates an authentic deed or notarized document. This inconsistency creates normative ambiguity, potentially leading to legal uncertainty and loopholes that may be exploited for organ trafficking.

A real case highlighting this issue occurred at Saiful Anwar Hospital, Malang, where a kidney transplant between a donor and recipient was allegedly conducted without a notarized document, raising suspicions of organ trade. Such situations harm all parties involved hospitals, donors, and recipients and emphasize the need for clear, harmonized regulations. (Momentum 2017)

Therefore, the ambiguity surrounding the form of the written statement as an administrative requirement needs urgent legal clarification. It is crucial to establish a uniform legal standard to ensure transparency, prevent misuse, and uphold ethical practices in organ and tissue transplantation. Based on this, the author is motivated to further examine **The Urgency of Regulating Written Statement Format as an Administrative Requirement for Organ and Tissue Transplants.**

RESEARCH METHODS

This research is normative judicial research. According to Peter Mahmud Marzuki, normative legal research is an activity aimed at identifying legal rules, legal principles, and legal doctrines in order to address the legal issues at hand (Marzuki 2005). The legal research approach used in this writing is *Statute Approach* or regulatory approach involves the use of legislation and regulatory instruments. The author analyzes all relevant legislation and regulations pertaining to the legal issue under consideration. *Conceptual Approach* is to analyze the prevailing legal views and doctrines relevant to the legal issue being studied. *Comparative Approach* is carried out by comparing the legal framework of one country with that of other countries, namely India and Quebec, in order to broaden perspectives and address the shortcomings of the existing legal system in Indonesia. This normative thesis research utilizes primary, secondary, and tertiary legal materials, considering both their types and sources. Several primary legal materials analyzed in this thesis include Law Number 17 of 2023 concerning Health, Minister of Health Regulation Number 38 of 2016, and Government Regulation Number 28 of 2024. This study employs legal interpretation techniques such as grammatical interpretation and systematic interpretation. The purpose of the legal material analysis technique is to elucidate the problems or legal issues that constitute the research problem in this study. Consequently, it

aims to provide accurate answers and appropriate solutions concerning the urgency of regulating the form of the 'written statement' as an administrative requirement for organ and human tissue transplantation.

RESULT AND DISCUSSION

1. Urgency of Regulating Written Statement Format as an Administrative Requirement for Organ and Tissue Transplants In Indonesia

A. Analysis of Regulatory Administrative Requirements for Organ and Human Tissue Transplantation in Indonesia

Health is an integral part of human rights and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation, as mandated by the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Article 28H paragraph (1) of the UUD NRI 1945 states:

“...everyone shall have the right to live in physical and spiritual prosperity, to reside, and to enjoy a good and healthy environment, and shall have the right to obtain health services...”

With regard to health services, Article 34 paragraph (3) of the Fourth Amendment to the UUD NRI 1945 mandates that:

“The state shall be responsible for the provision of proper health service facilities and public service facilities.”

The State guarantees every citizen's right to a good, healthy, and prosperous life in order to achieve the national objective of protecting the entire Indonesian people and the homeland, and to promote general welfare. (Nasional 2017) Therefore, all efforts and activities to improve the highest attainable standard of public health must be carried out based on the principles of welfare, equity, non-discrimination, participation, and sustainability. These are essential for the development of Indonesian human resources, the strengthening of national resilience, and the enhancement of national competitiveness. The government bears the responsibility of providing adequate infrastructure and facilities to ensure optimal medical care. (Noya 2022) A representative instance of this type of medical service, representing an advancement in the field of medicine and requiring advanced anatomical surgical skills, yet fraught with legal complexities, is organ and human tissue transplantation.

In Indonesia, the regulation of organ and tissue transplantation is governed by three main legal instruments: Law Number 17 of 2023 on Health; Government Regulation Number 28 of 2024 concerning the Implementation of Law Number 17 of 2023 on Health; and Minister of Health Regulation Number 38 of 2016 on the Implementation of Organ Transplantation.

The implementation of organ and tissue transplantation, administrative requirements are regulated in order to prevent misuse and protect the rights of all parties involved. Government Regulation Number 28 of 2024 regulates administrative requirements in Articles 337(1) to 339 and Articles 368 to 369, while Minister of Health Regulation Number 38 of 2016 regulates them in Articles 19 and 24. The relevant provisions include:

Article 337 of Government Regulation No. 28/2024

“Administrative requirements for the registration of prospective living donors as referred to in Article 336 shall at minimum include:

- a. being at least 18 years old;*
- b. submitting a written statement of voluntary willingness to donate organs without requesting compensation;*
- c. obtaining family consent;*

- d. understanding indications, contraindications, risks, organ transplantation procedures, post-operative care guidelines, and providing informed consent; and
- e. **submitting a statement of not engaging in organ selling or entering into any agreement with the recipient implying a sale or compensation arrangement.**”

Article 339 of Government Regulation No. 28/2024

“Administrative requirements for the registration of prospective **recipients** as referred to in Article 336 shall include:

- a. a certificate from the attending physician at the hospital indicating medical indication and the absence of contraindication for organ transplantation.
- b. willingness to pay for health services related to living donor organ transplantation as referred to in Article 335 paragraph (2) either independently, through the national health insurance mechanism in accordance with prevailing laws, or through another insurer;
- c. understanding indications, contraindications, risks, and procedures of organ transplantation and giving informed consent; and
- d. **willingness not to purchase organs or enter into agreements with donors that imply a sale or compensation.**”

Article 368 of Government Regulation No. 28/2024

“(1) To be registered as a prospective **tissue donor**, each donor at an eye bank and/or tissue bank must meet the following requirements.

(2) At minimum, the prospective donor shall:

- a. **submit a written statement of voluntary willingness to donate eye or other tissues without requesting compensation;**
- b. obtain family consent; and
- c. understand indications, contraindications, risks, procedures, post-transplant care guidelines, and give written informed consent.

(3) The provisions on family consent and mechanism shall follow the same rules applicable to organ donors as stipulated in Article 368.”

Article 369 of Government Regulation No. 28/2024

“To be registered as a prospective **tissue recipient**, the following are required:

- a. certificate from the attending physician at a healthcare facility confirming medical indication for tissue transplantation;
- b. willingness to pay for the cost of tissue retrieval and processing or submission of a guarantee letter of such payment if insured by an insurance provider or another guarantor;
- c. understanding of the indications, contraindications, risks, and procedures of tissue transplantation; and
- d. **a written statement affirming not to engage in tissue purchase or in any agreement with donors implying a sale or commercialization.**”

Article 19 of Minister of Health Regulation No. 38/2016 (Donor Requirements)

(1) The administrative requirements as referred to in Article 18 letter a shall at least consist of:

- a. a medical certificate from a licensed physician;
- b. proof of being at least 18 years of age through an ID card, family card, or birth certificate;
- c. **submission of a written statement of voluntary willingness to donate organs without compensation;**
- d. a declared voluntary reason for donating the organ to the recipient;
- e. written consent from spouse, adult children, biological parents, or siblings of the donor;

f. *a declaration of understanding of indications, contraindications, risks, organ transplantation procedures, post-operative guidelines, and informed consent; and*

g. ***a statement confirming no organ sale or special agreement with the recipient.***

(2) If the donor intends to donate only to a specific recipient, documentation of familial or spousal relationship verified by a competent regional official must be provided.

Article 24 of Minister of Health Regulation No. 38/2016 (Recipient Requirements)

(1) To be registered as a prospective recipient as referred to in Article 12 paragraph (1), the recipient or their family must register with the National Transplant Committee or its regional representative upon meeting the following requirements:

a. *written confirmation and consent from the hospital transplant team;*

b. *written consent to pay the cost of transplantation or a guarantee letter if insured;*

c. ***submission of a written statement of understanding of indications, contraindications, risks, and transplantation procedures, along with informed consent;***

d. ***submission of a notarized statement of not purchasing organs or entering into special agreements with the donor.***

(2) Further provisions on recipient requirements shall be regulated in the guidelines issued by the National Transplant Committee.

Upon close examination of the above provisions, a notable discrepancy exist, particularly regarding the administrative requirements for prospective recipients of organ and tissue transplantation. The Minister of Health Regulation No. 38 of 2016 requires prospective recipients to submit a notarized written statement, affirming that they will not purchase organs or enter into special agreements with prospective donors. In contrast, Government Regulation No. 28 of 2024, particularly Article 369, only requires a written statement without specifying the need for notarization. For prospective donors, both the Regulation and the Government Regulation require a written statement of voluntary organ donation without compensation.

From a linguistic standpoint, the phrase “written statement” consists of two core words “statement” and “written.” According to the KBBI, “statement” refers to the act or result of expressing something clearly, whether verbally or in writing. “Written” refers to something that has been inscribed in letters or characters, “written statement” means an expression made in writing, not spoken.

According to Sudikno Mertokusumo, a written statement or document can be defined as any form of writing that contains readable signs expressing a person's inner thoughts or ideas, created to serve as evidence. Article 1867 of the Indonesian Civil Code (KUHPerdata) stipulates that written evidence may be either authentic documents or private writings. An authentic document is one made in a legally prescribed format by or before a competent public official, while a private writing is one created without the involvement of a public official (e.g., letters, lists, and other informal writings). (Mertokusumo 2013)

From the foregoing, it may be concluded that health laws in Indonesia stipulate “written statement” as an administrative requirement for organ and tissue transplantation. However, the ambiguous phrase “written statement” creates legal uncertainty in the implementation of documentary requirements. This discrepancy concerns whether the written statement must be in private form or authentic (notarized) form. Current legislation lacks clarity on the exact legal format of the document required as part of the administrative procedures for organ and tissue transplantation.

B. Analysis of the Property Law Aspects of Organ and Human Tissue Transplantation in Indonesia

Human organs and tissues are integral parts of the human body and are considered part of a legal subject, although not legal subjects in themselves, as they lack independent will. In this context, human organs and tissues are intended for transplantation. (Slabbert 2009) According to Article 124 paragraph (2) of Law No. 17 of 2023 on Health,

“Organ and/or tissue transplantation, as referred to in paragraph (1), is the act of transferring organs and/or tissues from a donor to a recipient based on medical necessity.”

This means that, in the context of transplantation, organs and tissues can be transferred, used by someone else, and serve a medical purpose.

According to Subekti, in its broadest sense, the term object (*zaak*) refers to anything that can be owned by an individual. In this context, an object is understood as something that stands in contrast to the subject or person within the legal framework. (Subekti 1994) The term “object” originates from the Dutch word *zaak* or the English term *material*. In legal literature, the concept of an object encompasses three meanings:

1. As a physically visible or tangible item (a narrow interpretation);
2. As an individual’s wealth, including rights and income;
3. As an object in law, as opposed to a legal subject.

The law of property is regulated in Book Two of the *Burgerlijk Wetboek* (Indonesian Civil Code). In accordance with Article 499 of the Civil Code, property encompasses all goods and rights that may be owned or possessed as property. (Badruzaman 2010) Organs and tissues in the human body form an inseparable unity with the body itself. Their existence is a right inherent to every individual as part of their natural being. This is because every human being has authority over their own body, which is composed of interrelated organs and tissues that function together as a system supporting life.

Human organs and tissues do not fully meet the criteria to be classified as objects under classical property law. However, in the context of transplantation, they are treated as limited legal objects because, while they can be transferred through transplantation, they cannot be freely owned or traded. (Dickens 1992)

According to the provisions in the third and fourth sections of Book Two of the Indonesian Civil Code (KUHPerdata) concerning classification, human organs and tissues may be categorized as *res extra commercium*, or objects outside the realm of commerce. Such objects are prohibited from being the subject of commercial transactions due to legal, moral, or public order considerations. Nonetheless, within certain boundaries, they may still be transferred or assigned for specific, non-commercial purposes. This categorization is grounded in the notion that *res extra commercium* refers to objects that cannot be subjected to legal transactions because of their intrinsic connection to human dignity or the public interest.

In line with this, Article 124 paragraph (3) of the Health Law explicitly states that human organs and/or tissues shall not be commercialized or traded under any circumstances. This provision provides a clear and absolute prohibition on treating human organs and tissues as objects of commerce.

In addition to human organs and tissues, other items classified as *res extra commercium* include cultural heritage objects, firearms, and protected wildlife. Since these items cannot be traded commercially, their transfer is not conducted through sale and purchase, but rather through specific legal mechanisms such as donations, voluntary grants, state authorization or designation, and use for public interest. Therefore, the transfer of *res extra commercium* must follow a special legal procedure that is valid under the law. Each is subject to administrative procedures and official permits. However, it appears that the transfer of human organs and tissues is not

adequately accommodated, as the transfer process is limited to written consent, the form of which remains unclear.

C. Analysis of the Legal Aspects of the Commercialization of Organ and Human Tissue Transplantation in Indonesia

Indonesian positive law essentially permits the transplantation of human organs and tissues for therapeutic purposes. However, one of the emerging issues surrounding transplantation is the limited availability of donors compared to the number of patients in need, leading to a new problem, namely, the trafficking and sale of organs. (Sylvana 2021) The emergence of organ trade has already been anticipated by the government in order to protect its citizens and to ensure the rights and safety of recipients.

Article 432 of the Health Law regulates criminal sanctions against the commercialization of human organs and tissues, stating:

- 1. Any person who commercializes the transplantation of organs or tissues as referred to in Article 124(3) shall be subject to imprisonment for a maximum of five (5) years or a fine of up to IDR 500,000,000 (five hundred million rupiah).*
- 2. Any person who buys or sells organs or tissues for any reason as referred to in Article 124(3) shall be subject to imprisonment for a maximum of seven (7) years or a fine of up to IDR 2,000,000,000 (two billion rupiah).*

The commercialization of organs and tissues is an illegal act as stipulated in Article 124 of the Health Law. The elucidation of this article affirms that the commercialization of organs and tissues, including blood, is strictly prohibited because it constitutes human exploitation and contravenes both humanitarian principles and medical ethics. Accordingly, organs and tissues, including blood, must not be treated as commercial goods or as a means of profit-making. This prohibition is intended to ensure that organ and tissue transplantation is genuinely aimed at medical treatment and health recovery. Based on these provisions, It is clearly established that Indonesian law explicitly prohibits the transplantation of organs and tissues in the absence of a valid medical justification.

Notably, in 2007, the Indonesian Government enacted Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking, which specifically addresses human trafficking offenses, including those involving the illegal transplantation of organs and/or tissues as a form of exploitation.

The trade in human organs is classified as an extraordinary crime due to its inherent involvement in human exploitation, which violates human dignity and fundamental human rights. The trafficking of organs and tissues through digital platforms, commonly referred to as the internet, has now become widespread and openly conducted, in contrast to the previously clandestine nature of such practices. This phenomenon increasingly resembles the commercial transaction of electronic goods. Furthermore, mounting economic pressures are often cited by organ sellers as a justification for such actions.

D. A Comparative Analysis of the Forms of 'Written Statements' in the Administrative Requirements for Organ and Human Tissue Transplantation

In the context of the administrative requirements for the transplantation of human organs and tissues, a written statement may take the form of a deed (akta) with distinct definitions and legal characteristics. A comparison between an authentic deed (akta otentik) and a private deed (akta di bawah tangan) reveals that an authentic deed offers significantly greater legal strength and certainty. (Harahap 2008) An authentic deed is a document drawn up by or before a public official authorized by law, such as a notary and executed in accordance with the formalities and procedures stipulated by statutory provisions. Due to these characteristics, an authentic deed possesses full probative value, is legally binding, and offers stronger legal protection to the parties involved in the transplantation agreement, namely the donor and the recipient.

In contrast, a private deed is merely a document prepared and signed by the parties themselves without the involvement of a public official, Therefore, its legal force is limited and heavily reliant on future acknowledgment by the parties. Although a private deed may be legalized by a notary, such legalization does not elevate its status to that of an authentic deed. (Palit 2015) Therefore, in the practice of organ transplantation, which involves complex legal, medical, and ethical dimensions, the use of an authentic deed is strongly recommended to ensure maximum legal certainty and protection.

E. Analysis of the Human Organ and Tissue Transplantation Systems in India and Quebec

In India, the transplantation of human organs and tissues is governed by the Transplantation of Human Organs and Tissues Act, 1994 (THOTA), along with its implementing regulations. The donation process must be carried out voluntarily, with valid and documented consent. Donors are required to complete specific forms (Form 1A, 1B, or 1C) depending on their relationship with the recipient. This process must be verified by a Notary Public and approved by the relevant authorities. Although Indian law does not recognize the concept of authentic deeds as in Indonesia, notarized documents are regarded as the highest form of legal proof (*prima facie* evidence) and play a crucial role in preventing illegal organ trade. (Shroff 2009)

Meanwhile, in Quebec (Canada), the organ donation system follows an opt-in approach, whereby individuals must give explicit consent to become donors, typically by registering through the RAMQ health insurance card. This consent may also be formally declared before a notary and recorded in a notarial deed, which is then registered in an official database. The notary's role in Quebec is vital, as they ensure that the donor's intent is expressed consciously, voluntarily, and in a legally documented manner. Within Quebec's legal framework, notaries act as public officers who draft and retain notarial deeds with full probative value, comparable to the authentic deeds recognized in Indonesian law. (Bellavance 2020)

F. Analysis of the Appropriate Form of 'Written Statement' Related to Organ and Human Tissue Transplantation in Indonesia

Based on an analysis of the organ and human tissue transplantation systems in India and Quebec, it can be observed that these countries have established comprehensive systems and regulations concerning organ and tissue transplantation, particularly with regard to the formal requirements for written statements. Therefore, the author argues that Indonesia should also formally regulate the format of written statements for organ and tissue transplantation within its national legislation.

In Indonesia, the organ transplantation system generally adopts an opt-in model. Under this system, individuals are required to provide clear informed consent indicating their willingness to donate their organs. This transplantation model aligns with the systems employed in both India and Quebec. Referring to the practices of these countries and the Indonesian legal framework, the most appropriate form of legal instrument to express one's intention to donate organs or tissues is a notarial deed.

This deed must include several key elements, such as the full identity of the donor or recipient, their legal capacity, and a declaration of the donor's voluntary consent, free from any form of coercion or duress. Additionally, the deed must contain an explicit statement that no material compensation or reward is involved in the transplantation process. It should also include a written declaration specifying the organs or tissues to be donated, the relationship between the donor and recipient (e.g., close relative, spouse, or other parties), a statement confirming the absence of coercion or compensation, as well as the date and place of execution and the signatures of all parties involved.

India and Quebec have established comprehensive systems for organ and tissue transplantation, particularly regarding the form of the donor's written consent. Indonesia, which adopts an opt-in system, also needs to explicitly regulate the form of such consent in its

legislation. The most appropriate form is a statement deed made before a notary public, containing the donor's full identity, voluntary willingness without coercion, absence of compensation, the type of organ donated, and the relationship between donor and recipient. This deed is an authentic legal document with full evidentiary power in the eyes of the law and can prevent misuse and legal disputes. The involvement of a notary serves as a preventive legal control, and this practice has become an international standard in India and Quebec. Therefore, the notarized deed is the ideal legal instrument to protect the rights and intentions of donors in the organ transplantation process.

An instrument executed before a notary constitutes an authentic deed that holds full probative value before the law, both with respect to its content and the time and place of its execution. In the context of organ transplantation, the validity of such documentation is crucial to ensure that the donor's consent is genuinely given in a conscious, voluntary, and free from any form of coercion.

A notary, as a public official who carries out a legal service profession for the community, must be granted protection and guarantees in the performance of their duties to ensure legal certainty. In addition, as a public official, the notary is capable of providing guarantees of legal certainty, order, and protection through written evidence in the form of authentic deeds concerning legal acts, events, or circumstances conducted within the scope of their official authority. In this process, the notary plays a crucial role in ensuring the legality of legal consent.

Organ and human tissue transplantation is a medical procedure that involves multiple parties, including the donor, recipient, their families, medical personnel, and hospitals. The role of the notary in organ transplantation is essential to ensure legal certainty, particularly in preventing legal disputes. The notary plays a key role in ensuring that all documents related to the transplantation are executed lawfully, clearly, and transparently. Authentic deeds prepared by a notary carry strong evidentiary weight, thereby helping to prevent disputes among donors, recipients, and medical professionals.

Organ transplantation is a medical procedure that carries legal consequences for all parties involved, particularly the donor and the recipient. In the absence of legal certainty, there is a risk of rights violations or abuse of authority, which may lead to legal disputes or even criminal acts such as organ trafficking. Therefore, the role of the notary in ensuring the protection of the rights and obligations of the parties becomes crucial. A notary, authorized to draw up authentic deeds, can safeguard the rights and obligations of all involved. Through an authentic deed, the notary can ensure that the donor provides consent knowingly and voluntarily, and that the recipient receives the organ legally, without any element of commercial transaction. This, in turn, provides hospitals and medical personnel with a strong legal foundation for carrying out the transplantation procedure.

CONCLUSION

The urgency of regulating the form of written consent as an administrative requirement in the transplantation of human organs and tissues is grounded in both philosophical and legal foundations—namely, the protection of citizens and the state's responsibility to provide healthcare services. Since human organs and tissues are classified as *res extra commercium* (objects outside of commerce), a legally valid document is necessary to ensure that the transplantation process is conducted in a lawful and ethical manner, and to prevent the commercialization of human body parts. A comparison with the systems in India and Quebec shows that although all three jurisdictions adopt an *opt-in* system requiring explicit consent, only India and Quebec have clearly defined the formal requirements for written consent. Therefore, it is essential for Indonesia to establish that the valid form of written consent should be a notarial

deed, containing key elements such as the identity of the donor or recipient, legal capacity, voluntary consent without coercion, absence of material compensation, and specific details regarding the relationship between donor and recipient as well as the organ or tissue to be donated. Such regulation is crucial to ensure legal certainty, uphold ethical standards, and maintain accountability in the transplantation process.

REFERENCES

- Badruzaman, Mariam Darus. 2010. *Mencari Sistem Hukum Benda Nasional*. Bandung: Alumni.
- Batubara, Sonya Arini. 2021. "Transplantasi Organ Tubuh Pada Mayat Perspektif Hukum Positif di Indonesia." *Diversi Jurnal Hukum Vol.7 No.1* 30.
- Bellavance, Sylvain. 2020. "Organ Donation After Death in Québec: Should Family Involvement on Consent Be Restricted?" *Harvard Extension School*.
- Caulfield, Timothy. 2016. "Trafficking in Human Beings for the Purpose of Organ Removal and the Ethical and Legal Obligations of Healthcare Providers." *Transplant Direct*.
- Harahap, M. Yahya. 2008. *Hukum Acara Perdata (Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan)*. Jakarta: Sinar Grafika.
- Maghen, Ariella. 2019. "The Kidney-Transplant Waiting List and the Opioid Crisis." *The New England Journal of Medicine* 2274.
- Meliala, Djaja S. 2015. *Perkembangan Hukum Perdata tentang Benda dan Hukum Perikatan*. Bandung: Penerbit Nuansa Aulia.
- Mertokusumo, Sudikno. 2013. *Hukum Acara Perdata*. Yogyakarta: Cahaya Atma Pustaka.
- Nasional, Pusat Analisis dan Evaluasi Hukum Nasional Badan Pembinaan Hukum. 2017. *Laporan Akhir Kelompok Kerja Analisis Evaluasi Hukum Pemenuhan Hak Kesehatan*. Jakarta: Kementerian Hukum dan HAM.
- Noya, Ekberth Vallen. 2022. "Hukum Berparadigma Cita Hukum Indonesia Demi Tercapainya Keadilan." *SANISA: Jurnal Kreativitas Mahasiswa Hukum Vol.2 No.2* 74.
- Palit, Richard Cisanto. 2015. "Kekuatan Akta Di Bawah Tangan Sebagai Alat Bukti di Pengadilan." *Lex Privatum Vol. III No. 2* 138.
- Shroff, Sunil. 2009. "Legal and Ethical Aspects of Organ Donation and Transplantation." *Indian Journal of Urology* 350.
- Siswanti, Sri. 2015. *Etika dan Hukum Kesehatan Dalam Perspektif Undang-Undang Kesehatan*. Depok: Raja Grafindo.
- Subekti. 1994. *Pokok-Pokok Hukum Perdata*. Jakarta: Intermassa.
- Sylvana, Yana. 2021. "The Ethical and Legal Consequences of Organ Donation." *Interdisciplinary Social Studies* 457.