

NOTARY DILEMMA IN STATEMENT OF GIVING DONOR ORGANS

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Abstract

Human organs to be donated to patients are always needed Notary's statement about giving donors free of charge. The Health Act prohibits the sale and purchase of human organs. The writing method is normative juridical. The formulation of the problem is how the Notary's dilemma is in the statement of organ donation? The notary faces a problem in making or not making a statement for the donor because this is a requirement for the doctor doing organ transplantation. The notary who makes the donor statement fears that he/she will be considered to be involved in organ trafficking, hence does not want to make the donor statement causing the patient's life can't be helped, therefore Notary should instead make a legalized private statement.

Keywords: Donor; Notary; Organs

I. INTRODUCTION

Notary as an evidence maker of legal actions made by the parties to make an agreement or a written statement to purchase organs. Transplantation of organs or tissues is only intended for humanitarian purposes and not for commercial use. Someone can become a donor voluntarily without reward but an organ or tissue cannot be used for trading and only for humanitarian purposes.

The aim of the research is to clarify the task of Notary who make evidence but not participating in organs trading, so that the Notary does not hesitate to give a statement organ donation from a donor.

II. RESEARCH PROBLEMS

How is Notary dilemma in giving statements of organ donation?

III. RESEARCH METHOD

Writing method used is the normative juridical that use secondary data as the main data and primary data as supporting data. Secondary data sources used include the official documents, books, research results in the form of reports, and so on obtained by study literature.

IV. DISCUSSION

Organ Transplantation

Organ transplantation is the organ transplant from a donor to a recipient for recovery of the recipient's health. Organs and / or tissue transplantation can only be used for humanitarian purposes and not for commercial purpose under any circumstances. (Article 64 of Law of the Republic of Indonesia Number 36 Year 2009)

Donors are those who donate his organs to a recipient.

The recipient is a person who receives an organ donation from a donor.

Organ transplantation ruling is to protect Donors, Recipients, Doctors and medical personnel who administer the transplant (Article 2 of Regulation of the Minister of Health of the Republic of Indonesia Number: 38 2016);

Organ transplantation is a story of remarkable achievement and an ongoing challenge. Immunosuppression needs to be improved to further extend the life of the grafts with induction of tolerance still the goal;

preservation techniques need to be modified to reduce the ischaemic injury that organs sustain, and which contributes to premature failure. Nevertheless, the main factor limiting the success of transplantation continues to be the shortage of suitable donor organs¹

Organ transplantation is associated with the sale and purchase of organs which under any circumstances shall be punished with maximum imprisonment of ten years and a maximum fine of one billion rupiah (Article 192 of Law of the Republic of Indonesia Number: 36 Year 2009). Organ donation used for organ transplantation to help ease the burden of other human being and help save other human lives is not an act that is prohibited by any religion and is not an act that violates the laws and regulations in any country, but is a noble and commendable act.² All these things is the cause for of non-family donors to be afraid to willingly donate their organs for humanity.

Advances in technology in the field of medicine have enabled the transplantation of human organs. This is very beneficial for human survival because by transplanting organs of human body that have been damaged or no longer functioning normally can be replaced with organs that are still functioning properly while still observing the applicable laws and regulations.³

Sections 33 and 34 of the HT Act demand prior approval by the HTA of live donor transplant, and make it an offence to remove any organ or part of an organ from a live donor unless all the requirements of the Act and the Regulations are met. The HTA must be satisfied that: (i) no reward has been or will be given to the donor; (ii) lawful consent to donation has been obtained; and (iii) an independent assessor has interviewed both the recipient and the donor separately, and submitted a report to the HTA⁴

Even Notary who are asked to make a statement or agreement regarding the organs is afraid to make it because many existing criminal laws that threaten or can be considered participating in organs trafficking.

Notary

Notary is public official whose duties are to make authentic deeds as evidence of a legal act. Donor and/ or Recipients are asked by the doctor to make a written statement that recipients did not buy organs from donors or do a special agreement in the form of notarial deed or statement which is notarized (Article 24, paragraph 1 (d) of the Regulation of the Minister of Health of the Republic of Indonesia number: 38 Year 2016), it is intended for donors who do not have blood relations with Recipients.

Notary who intended to make the statement after the enactment of Government Regulation No: 38 Year 2016 is afraid to make it for fear of being considered participating in the buying and selling of organs which are prohibited.

From 170 (one hundred and seventy) Notary in Semarang who were asked to make such a statement only 10% (ten percent) are willing to make, simply to help the patient as the recipient for humanitarian purposes and not for commercial purpose.

Notary, who do not want to make it, is less familiar with what intended by the Act and afraid of the sanctions which is maximum imprisonment of ten years and maximum fine of one billion rupiah (Article 192 of Law of the Republic of Indonesia Number 36 Year 2009) because written agreement is made on stamped paper with 2 (two) witnesses. (Article 13 Government Regulation of the Republic of Indonesia number 18 Year 1981);

Interview with Notary who do not want to make that statement reveals that they want to avoid issue with criminal charges and does not have the money for the fines imposed, namely one billion, Meanwhile a

¹ Watson, C.J.E & Dark, J.H. (2012). "Organ Transplantation: Historical Perspective and Current Practice". British Journal of Anaesthesia 108 (S1): i29-i42 (2012). doi:10.1093/bja/aer384

² Rachmawati, Fauziah. 2019. "Kepastian Hukum Transplantasi Organ yang Mencerminkan Nilai Kemanusiaan". Jurnal Hukum Media Bhakti, Volume 3, No.1, pp.79-87 ISSN : 2580-7277, doi:10.32501/jhmb.v3i1.49

³ Lintang, Reggy.2013. *Aspek Hukum Terhadap Pemanfaatan Organ Tubuh Manusia Untuk Kelangsungan Hidup*. Lex et Societatis, Vol. I/No.5/September/2013

⁴ Ann R Coll Surg. Engl. (2010 May). *Law and Medical Ethics in Organ Transplantation Surgery*. doi: 10.1308/003588410X12664192076250

Notary who want to make a statement that requested by doctors in accordance with the laws and regulations are Notary who based on humanity reason because without the deed or the letter, the doctors will not operate as the doctor is also afraid to be considered participating in organs trafficking so that the patient / recipient will not recovered and eventually died without getting an alternative to cure them and this Notary understands the meaning of the legislation which is to protect all.

Notary, though willing to make a statement from donors, will also a legalized private statement. Notary states that in private statement, notary only validates the signature of the donor and / or recipient so do not get caught in the buying and selling of organs.

A Notary in accordance with professional oath states that he/she will run the office with a mandate, honesty, thoroughly, independently and impartially and to maintain the attitude of his/her behavior, will perform the duties in accordance with the code of ethics, honor, dignity and responsibility as a Notary.

A notary task is not like an advocate who defends his client, but the Notary should not side with the one who pay but had to sit in the middle and not defending the interests of one party. Professional ethics is the overall demands of moral that affected the implementation of a profession, so the ethics of the profession concerned with the ideal and practices that develop due to their inherent responsibilities and privileges in the profession, which is an expression of the attempt to explain the circumstances that is unclear and vague and the application of common moral values in a more specialized field further defined in the code of ethics.

Code in this case is defined as:

A systematic collection, compendium or revision of laws, rules or regulations.

Ethics implies:

of relating to moral action, conduct, motive or character; as ethical emotion; Also treating of moral feeling, duties or conduct; containing precepts of morality; moral (Black, 1979: 233 and 496).

The code of ethics is a guide, guidance or morals or decency guidelines for a particular profession or a list of obligations in running a profession which was prepared by the members of the profession itself and bind them in practice. Thus the code of ethics for notary is a guide, guidance or moral or decency guidelines for notary, both as personal and public officials who are appointed by government in the provision of public services, especially in the field of deed making. In this case, it can include both the notary code of ethics that applies in this organization and the Notary Position Regulations in Indonesia that come from Reglement op het Notaris-ambt in Indonesia, Ordonansi 11-1-1860 S. 1860-3⁵

Notary is a profession that has a difficult duty and are altruistic because it should put public service above everything. In addition to the profession, a notary is also an expert. Therefore sense of both individual and social responsibility, particularly adherence to the norms of positive law and willingness to abide by the code of professional ethics, is a must, so that it will reinforce the positive legal norms that already exist.⁶

Notary, as humans with high prestige, is expected to follow professional ethics willingly. Ethics adherence means that sanctions are not imperative such as sanctions against legal norms such as violating criminal law as well as violating disciplinary law (extern tuchtrecht) and administrative law so that enforcement is enforced by the state.

Disciplinary law compiled by professional organizations in the form of a code of ethics, enforcement is by professional ties (internal tuchtrecht). If the deviant act violates the norms of criminal law and violates Tuchtrect, the sanctions will be aggravated or strengthen the existing criminal law norms, but it can happen that the deviant acts violate the norms of criminal law but not violate Tuchtrect, then the sanctions will be reduced or can be abolished.⁷

⁵ Tedjosaputro, Liliana, *Etika Profesi Notaris Dalam Penegakan Hukum Pidana*, Indra PT.Bayu Grafika, Yogyakarta, 2012, hlm.10-11

⁶ *Ibid.*, Hlm.13.

⁷ *Ibid.*, Hlm.12.

V. CONCLUSION

Notary who knows and understands the importance of the statement or agreement from the donor and / or agreement between the donor and the patient / recipient, should want to make the statement based on the responsibility of the professional duties, the professional oath and code of professional ethics, though made not as an authentic deed but it can as a legalized private statement because the legislation allowed it.

Notary, who makes the private statement is only certify the signatures of the related parties on that day and the deeds was made with the request made, so the Notary did not participate in the act, and also not be considered as the intellectual party.

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