



ORGAN TRANSPLANTATION FROM THE ISLAMIC PERSPECTIVE



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Transplantation Unit
Medical Development Division,
Ministry of Health Malaysia,
Level 5, Block E1, Complex E,
Federal Government Administrative Centre,
62590 Putrajaya,
Malaysia.

Tel (603) 8883 1165
Fax (603) 8883 1155
Email transplantation_unit@moh.gov.my

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Table of Contents

	<i>Page</i>
Foreword from the Director-General of Health Malaysia	4
Foreword from the Director-General of Malaysia Department of Islamic Development (JAKIM)	5
1. Introduction	7
2. Islam and Organ Transplantation.....	9
3. Basis for the Permissibility of Organ Transplantation.....	11
4. Fatwas in Malaysia.....	15
4.1 National Fatwa	
4.2 Perlis	
4.3 Sarawak	
4.4 Selangor	
4.5 Johor	
4.6 Penang	
5. International Fatwas.....	23
5.1 Fatwa of the Islamic Religious Council of Singapore	
5.2 Fatwa of the Senior Ulama Council of Saudi Arabia	
5.3 Fatwa of Kuwait	
5.4 Fatwa of Majma' al-Fiqh al-Islami	
5.5 Fatwa of Majma' al-Fiqhi al-Islami al-Hind	
5.6 Fatwa of the Islamic Sharia Council, United Kingdom	
5.7 Fatwa of Dr. Yusuf al-Qardawi	
6. Brain Death	27
7. Frequently Asked Questions	29
7.1 Is organ donation similar to torturing the dead?	
7.2 Are organ donors violating the rights and trust given to him in preserving his body's dignity and honour when he donates his organs?	
7.3 Will the donor bear the sins of the persons who receive his/her organs?	
7.4 Will organ donors be raised on the Day of Judgement with the organs that were donated?	
7.5 Can Muslims receive organs from non-Muslims?	
7.6 Can Muslims donate organs to non-Muslims?	
8. Conclusion.....	35
9. References.....	37



Foreword by the Director-General of Health Malaysia

Assalamualaikum w.b.t and Salam 1Malaysia,

The number of patients suffering from end-stage organ failure increases every year. In the year 2001, there were 7,837 kidney patients undergoing dialysis nationwide and this has increased to 22,932 in the year 2010. The increase is actually more than three times over a period of only ten years and this is expected to increase further in the coming years. Most of end-stage kidney failure patients are eligible for kidney transplant to replace the diseased kidney. Apart from kidney transplant, Malaysia also has the expertise to perform transplant of liver, heart, lungs and tissues like corneas.

However, the main obstacle faced by the national healthcare system in this country to helping these patients is the low organ and tissue donation rate in Malaysia. In the year 2010, there were only 38 Malaysians who have donated their organs/tissue after death and this only represents 1.4 donations for every million population. From 1975 to 31 October 2011, only 345 Malaysians have donated their organs/tissue after death and this is far behind other developed countries.

Among factors that have been identified contributing to the current scenario is the inaccurate perception on organ donation from the religious point of view, especially among the Muslim community in Malaysia. For that reason, the Ministry of Health in collaboration with relevant agencies, especially the Malaysia Department of Islamic Development (JAKIM) will continue to educate the society and to cultivate organ donation as a noble act of charity. The society will always have the option of making independent choices, but it is the responsibility of the Ministry to ensure that such options are made based on accurate and appropriate information. It is hoped that this publication will help to meet that objective. The Ministry of Health Malaysia highly appreciates the role and contribution of JAKIM and other relevant agencies or individuals.

Thank you.

DATO' SRI DR HASAN BIN ABDUL RAHMAN
Director-General of Health Malaysia



Foreword from the Director-General of Malaysia Department of Islamic Development (JAKIM)

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Firstly, I would like to express my gratitude to Allah SWT for His Divine Grace in enabling the publication of this booklet, *Organ Transplantation from the Islamic Perspective*. This publication is an effort crucial in ensuring Muslims in particular, and the community in general, to gain in-depth understanding on this topic that is usually deemed sensitive by the society.

Looking at the current scenario, the statistics of organ pledgers in Malaysia shows an increasing trend from 1997 to 2011. As a matter of fact, the total number of new pledgers for the year 2011 has reached more than 20,000 persons. The improvement shows that the society's awareness in helping other people who are in need is on the increase.

However, this awareness needs to be further instilled and nurtured. This is because although there is an increase in the number of organ pledgers, the figure is still too small if compared to the total population of Malaysia. The number can be improved by further boosting the effort of educating and explaining the public, specifically tackling the issue from the religious perspective. Thus, the publication of this booklet containing explanation from the Islamic perspective is timely in disseminating information and awareness to the community on the significance of organ transplantation as a means to save lives.

I would like to take this opportunity to congratulate all parties who are involved in the publication of this booklet. I hope that this booklet can be referred to by Muslims in Malaysia and can serve as an inspiration for non-Muslims to offer their helping hands for those who are in need.

Thank you,

DATO' HAJI OTHMAN BIN MUSTAPHA
Director-General
Malaysia Department of Islamic Development





Introduction



1. Introduction

In Islam, there is no such thing as “giving up”. As *khalifah* of Allah SWT on earth, mankind should make full use of their reasoning faculty given by Allah SWT to solve any problem and challenge they face.

This also applies to treating illnesses and diseases. With the rapid development in modern medicine, various treatments have been discovered. One of the treatments is organ transplantation, which has proven to be successful in treating end-stage organ failure. The effort of curing illnesses is in accordance with the following Hadith:

عَنْ أُسَامَةَ بْنِ شَرِيكٍ، قَالَ: قَالَتِ الْأَعْرَابُ: يَا رَسُولَ اللَّهِ، أَلَا تَتَدَاوَى؟ قَالَ: " نَعَمْ، يَا عِبَادَ اللَّهِ تَدَاوَوْا، فَإِنَّ اللَّهَ لَمْ يَضَعْ دَاءً إِلَّا وَضَعَ لَهُ شِفَاءً، أَوْ قَالَ: دَوَاءً إِلَّا دَاءً وَاحِدًا " قَالُوا: يَا رَسُولَ اللَّهِ، وَمَا هُوَ؟ قَالَ: الْمَرَمُ

Translation:

Narrated Usamah ibn Sharik: The desert Arabs then came from here and there. They asked: Apostle of Allah, should we make use of medical treatment? He replied: Make use of medical treatment, for Allah has not made a disease without appointing a remedy for it, with the exception of one disease, namely old age.¹

Organs can be transplanted from a donor to a recipient for the purpose of replacing the organs that fail to function. Transplantable organs and tissues include the heart, heart valves, liver, kidneys, lungs, cornea, bones, and skin.

These organs can be transplanted either from a living or a deceased donor. Organs that can be donated from living donors are one of the kidneys and/or a part of the liver. Meanwhile, potentially all organs and tissues can be donated from a cadaveric donor.

1 Al-Tirmidzi, Muhammad ibn 'Isa ibn Sawrah ibn Musa ibn Dahhak. (1975). *Sunan al-Tirmidzi*, Volume 4. Egypt: Mustafa al-Babi al-Halabi. P. 383.



Islam and Organ Transplantation



2. Islam and Organ Transplantation

In Islam, the permissibility of organ transplantation and donation is not specifically mentioned in the main sources of reference, namely the Quran and Hadith. This is because organ transplantation and donation are modern developments in medicine. Nevertheless, Islamic scholars have discussed these developments since the 1950s. In Malaysia, the issue of organ transplantation has been discussed since the 1960s as evidenced from the decree of the Mufti of Perlis in 1965.²

The opinions of Islamic scholars regarding organ transplantation are *ijtihad* in nature, which means that the *ijtihad* (juristic interpretation) is based on Islamic legal maxims. A fatwa that is based on *ijtihad*, as described by Dr. Yusuf al-Qaradawi, is a fatwa that is still open for discussion because it is related to a new development that was not discussed by previous scholars.³

Basically, organ transplantation and donation are permissible in Islam. This is because organ transplantation and donation fulfil the requirement in the preservation of human life, which is one of the five objectives in *maqasid al-syar'iyah* (objectives of the Islamic law).



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- 2 Fatwa Division, Jabatan Mufti Negeri Perlis. (2011). Derma organ: Satu kebajikan. Working paper presented during Seminar Pendidikan Fatwa Isu Pendermaan Organ organized by Jabatan Mufti Negeri Perlis in collaboration with Jabatan Kesihatan Negeri Perlis on 20th June 2011.
 - 3 Yusuf al-Qaradawi. (1995). *Fatwa Masa Kini* (Volumes 7 & 8). Kuala Lumpur: Pustaka Salam. P. 365.



Basis for the Permissibility of Organ Transplantation



3. Basis for the Permissibility of Organ Transplantation

Organ transplantation is performed as a final option to save a patient's life who is suffering from end-stage organ failure. The methodology used in determining the permissibility of organ transplantation is based on the urgent need to save the life of the patient. In other words, organ transplantation is carried out only in critical and crucial situations. The life of the patient depends greatly on organ transplantation.

The legal maxims used are as follows:

- (i) **Deeds are judged by their goals and purpose** (الأُمُور بِمَقْصَدِهَا):
Under this legal maxim, all deeds are judged by their goals and purpose. The goal and purpose of organ transplantation is to save the patient's life. Organ transplantation is not performed with the intention of humiliating or agonising the deceased. Instead, it is carried out with the intention of saving a life.
- (ii) **Harm must be eliminated** (الضَّرَرُ يَزَالُ):
Eliminating harm is one of the objectives of Islamic law. In the context of organ transplantation, this procedure fulfils the objective of preserving human life. Allah SWT promises great rewards for the effort of preserving human life. This is mentioned in the Quran as follows:

وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا

Translation:

"...and if anyone saved a life it would be as if he saved the life of the whole people..."⁴

Given two situations with different degree of harmfulness, priority is given to avoid the more harmful by choosing the less harmful. In the context of organ transplantation, the more harmful situation is to allow the patient in need of organ transplantation to pass away. Therefore, in this situation, the lesser harm is given higher priority, which is donating organs from a deceased donor to be transplanted to the patient in need of that organ.

4 Surah al-Maidah (5): 32.



Organ transplantation provides the option to eliminate harm. A patient has the option to receive organs from a deceased donor in order to replace his/her damaged organs. In this context, preventing harm takes priority over preserving the body of the deceased.



(iii) **Hardship begets facility** (المشقة تجلب التيسر):

Organ transplantation is a facility made available to mankind as a means to overcome hardship faced by patients with end-stage organ failure. This is supported by the following Quranic verse:

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

Translation:

“...Allah intends every facility for you He does not want to put you to difficulties...”⁵

5 Surah al-Baqarah (2): 185.



Islamic law permits one who is in an urgent situation to do the unlawful (haram) in order to eliminate the harm he faces, under the condition that there are no other lawful options available. In this context, the last available option to save the life of a patient with end-stage organ failure is by organ transplantation. This permissibility is supported by the following verse in the Quran:

فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

Translation:

“...But if one is forced by necessity without wilful disobedience, nor transgressing due limits—then is he guiltless. For Allah is Oft-Forgiving Most Merciful.”⁶

When one is in a difficulty that is unbearable if the situation persists, allowance should be given to him/her to eliminate the difficulty. In the context of organ transplantation, a patient with end-stage organ failure is facing death. Thus, organ transplantation is an option allowed in Islamic law as an effort to save the patient’s life.

⁶ Surah al-Baqarah (2): 173.



Fatwas in Malaysia



4. Fatwas in Malaysia

The issue of organ transplantation has been discussed since the 1960s. As a result, a fatwa regarding organ transplantation was issued in 1970 by the National Fatwa Council. The fatwa is used as reference for matters pertaining to organ transplantation and donation in Malaysia, and is adopted by states which do not have a specific fatwa regarding the issue.

States with their own fatwa regarding organ transplantation and donation are Perlis (1965), Sarawak (1996), Selangor (2000), Johor (2001), and Penang (2010).

4.1 National Fatwa

The National Fatwa Council, which sat on 23rd and 24th June 1970, deliberated on organ transplantation, specifically on eye and heart transplants.

The Council decided that **eye and heart transplants from cadaveric donors to living recipients are permissible in Islam**,⁷ under the following considerations:

- (i) It is carried out in critical and crucial situations where the life of the recipient depends on the organ transplantation, and the transplantations have a high degree of success.
- (ii) In heart transplantation, the death of the donor must first be ascertained.
- (iii) Necessary actions must be taken so that no human killing and organ trading are involved.
- (iv) Permission must be obtained from the donors prior to transplantation (in cases of normal death) or from the family members (in cases of death resulting from accidents).

These are based on the following legal maxims:

- (i) Harm must be eliminated.
- (ii) Hardship begets facility.
- (iii) Choosing the lesser of two harms.

The permissibility of donating and transplanting organs is also bound to the following conditions which are meant to protect all interests in accordance to Islamic law. These are:

7 <http://www.e-fatwa.gov.my/fatwa-kebangsaan/derma-organ-pemindahan-jantung-dan-mata>



- (i) Living donors are not inflicted with harm such as death or disabilities (lost of hearing, sight, and mobility).
- (ii) Transplantation is performed with the permission from the donors.
- (iii) The permission is obtained from donors who are legally able to do so. As such, permission cannot be given by children, mentally-incompetent people, or individuals who are confused, under pressure or coerced to donate.
- (iv) Not conducted in ways that could violate human dignity such as organ trading. It should be done for altruistic reasons.
- (v) Doctors involved in the transplantation have sufficient knowledge to assess the donors' and recipients' conditions based on the principles of *maslahah* (benefits) and *mafsadah* (harms) according to Islamic law.

4.2 Perlis

Perlis is the first state in Malaysia that had discussed the issue of organ donation and transplantation, specifically cornea donation. The fatwa of Perlis which was issued on 6th November 1965 states that **transplanting corneas from a cadaveric donor is permissible** if the donor has given permission before death.⁸

By donating, the donor is able to help others who are in need, especially those with visual impairment. The donation needs to be done with sincere intention and is beneficial to the recipients' quality of life. This act does not violate or humiliate the dignity of the donor. Rather, Islam permits this act because of its wider benefits.

4.3 Sarawak

Sarawak's fatwa was decided on 23rd December 1996 and gazetted on 31st December 1996 focusing on donation and transplantation of kidneys. The fatwa states that **donation of kidneys to patients with kidney failure is permissible** under certain conditions:⁹

8 Fatwa Division, Jabatan Mufti Negeri Perlis. (2011). Op. cit.

9 Ordinan Majlis Islam (Pemerbadanan) Fatwa Mengenai Pendermaan Organ. (1996). Ref. No.: PKM/SUK/SUL/56/A; SAG/C/A/7. Enakmen Swk. L.N. 100.



Conditions for living donor:

- (i) The donor is sincere to donate his or her kidney.
- (ii) Medical experts have verified that the donation will not pose any danger to the donor.
- (iii) No trading is involved.

Conditions for cadaveric donor:

- (i) Before death, the donor has stated that he or she has consented to donate his or her kidneys to other people upon death, or permission is given by his or her legal guardian, and the donation is not done under coercion.
- (ii) Medical experts have verified that the kidneys from the donor can be used for donation.
- (iii) It must be made certain that the kidney transplantation is done solely for medical purposes.
- (iv) No trading is involved.

4.4 Selangor

Selangor's fatwa was issued in the year 2000 and is among the most comprehensive fatwa in Malaysia because it touches on a wide ranging transplantation issues, including brain death, which is the prerequisite for cadaveric organ donation.

Selangor's fatwa¹⁰ states that:

- (i) It is **permissible to transplant organs from cadaveric donors** because it is beneficial to the masses.
- (ii) It is **permissible for Muslims to donate organs to non-Muslims**.

For living donor, the fatwa is based on these conditions:

- (i) Careful and professional medical examination on the effects of organ transplantation towards the donor and recipient must be conducted (to identify the advantages and disadvantages, as well as possibilities of success and failure).
- (ii) It is performed voluntarily and is not under any coercion.
- (iii) There is an urgent need to save the life of the recipient especially one having family relationship.
- (iv) The transplantation has a high degree of success.
- (v) The transplanted organ is not for the purpose of trade because this could only lead to the act of abuse that would harm the recipient, benefiting the middle man, and provide financial opportunities to irresponsible doctors.

10 Excerpt from the minutes of Mesyuarat Fatwa Negeri Selangor Bil. 4/2000. Fatwa mengenai pendermaan organ (Fatwa on organ donation).



- (vi) Written consent is obtained from the donor, and the donor is free to withdraw the consent at any time.
- (vii) Although the organ has been donated, a significant part of the organ still remains with the donor to allow him or her to continue living (for example, one of the kidneys, and part of the liver).

For cadaveric donor, the fatwa is based on these conditions:

- (i) Careful and professional medical examination on the effects of organ transplantation towards the donor and recipient must be conducted (to identify the advantages and disadvantages, as well as possibilities of success and failure).
- (ii) It is performed under the donor's consent through a will or through his/her guardian, or declaration from the Government.
- (iii) The transplantation has a high degree of success.
- (iv) The transplantation is performed with full discipline, knowledge, faith and piety, and respect should be accorded to the deceased following Islamic law, and humiliation should not take place.
- (v) There is an urgent need to save the life of the recipient especially one having family relationship.
- (vi) The transplanted organ is not for the purpose of trade because this could only lead to the act of abuse that would harm the recipient, benefiting the middle man, and provide financial opportunities to irresponsible doctors.

With regard to brain death, Selangor's fatwa stresses that the determination of brain death must be in accordance with the following conditions:

- (i) Medical examination on brain death should be conducted professionally.
- (ii) It is encouraged that consent from immediate family members is obtained (husband, wife, children, mother or father).
- (iii) Certification of brain death should be made by at least three professional doctors (priority given to Muslim doctors).
- (iv) Should there be a medical treatment that can reverse or cure brain death, this fatwa is void.

4.5 Johor

Another state that has issued a fatwa that covers a wide ranging issue of organ transplantation is Johor whose fatwa was decided on 18th October 2001. The fatwa stresses that **organ and tissue transplantation and donation are prohibited if there is no urgency but is permissible in critical and crucial situations** based on certain stipulated conditions.¹¹

11 Jabatan Mufti Johor. (2010). *Fatwa Transplan Organ dan Mati Otak*. Johor Bahru: Jabatan Mufti Negeri Johor.



For living donor, the conditions that permit organ transplantation and donation are:

- (i) Careful and professional medical examination on the effects of organ transplantation towards the donor and recipient must be conducted by at least two specialists with priority given to Muslim doctors (to identify the advantages and disadvantages, and possibilities of success and failure).
- (ii) It is performed voluntarily and is not under any coercion (and consent from guardian is highly encouraged).
- (iii) The benefits of the transplantation have been identified.
- (iv) The transplantation has a high degree of success.
- (v) There is an urgent need to save the life of the recipient especially one having family relationship.
- (vi) The transplantation is performed with full discipline, knowledge, faith and piety.
- (vii) The transplanted organ is not for the purpose of trade because this could only lead to the act of abuse that would harm the recipient, benefiting the middle man, and provide financial opportunities to irresponsible doctors.
- (viii) Written consent is obtained from the donor, and the donor is free to withdraw the consent at any time.
- (ix) Although the organ has been donated, a significant part of the organ still remains with the donor to allow him or her to continue living (for example, one of the kidneys, and part of the liver).

For cadaveric donor, the conditions that permit organ transplantation and donation are:

- (i) Careful and professional medical examination on the effects of organ transplantation towards the donor and recipient must be conducted by at least two specialists with priority given to Muslim doctors (to identify the advantages and disadvantages, and possibilities of success and failure).
- (ii) It is performed under the donor's consent through a will or through his/her guardian, or declaration from the Government (if the deceased does not have any next of kin).
- (iii) The transplantation has a high degree of success.
- (iv) The transplantation is performed with full discipline, knowledge, faith and piety, and respect should be accorded to the deceased following Islamic law, and humiliation should not take place.
- (v) There is an urgent need to save the life of the recipient especially one having family relationship.
- (vi) The transplanted organ is not for the purpose of trade because this could only lead to the act of abuse that would harm the recipient, benefiting the middle man, and provide financial opportunities to irresponsible doctors.



With regard to brain death, Johor's fatwa decides that **those who experience brain death are deemed to be dead**. The conditions related to brain death are as follows:

- (i) Medical examination on brain death should be conducted professionally.
- (ii) It is encouraged that consent from immediate family members is obtained (husband, wife, children, mother or father).
- (iii) Certification of brain death should be made by at least three professional doctors (priority given to Muslim doctors).
- (iv) Should there be a medical treatment that can reverse or cure brain death, this fatwa is void.

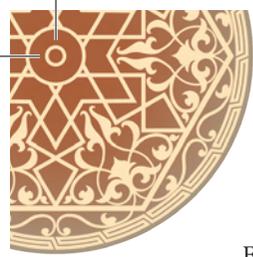
4.6 Penang

Penang Fatwa Committee which sat on 30th December 2009 issued a comprehensive fatwa regarding organ transplantation and donation. The fatwa was gazetted on 9th December 2010, stating that the **organ and tissue transplantations are permissible**¹² under certain conditions.

For living donor, the conditions are as follows:

- (i) Careful and professional medical examinations must be conducted by medical specialists to guarantee the safety of the donor to continue his or her life, the benefits, the advantages and disadvantages, as well as the success and failure of the transplantation.
- (ii) The transplantation is performed with the willingness and consent from the donor without any kind of coercion from any parties.
- (iii) Organ transplantation is the final resort in a critical and crucial situation, and there is an urgent need to save the life of other people especially those with family relationship.
- (iv) Written consent is obtained from the donor, and the donor is free to withdraw the consent at any time.
- (v) The organ and tissue taken are from paired organs or a small part of an organ that can be taken without endangering the life of the donor.
- (vi) Medical practitioners should observe medical ethics.
- (vii) The transplanted organ and tissue are not for the purpose of trade.

12 Warta Kerajaan Negeri Pulau Pinang – Hukum Transplan Organ dan Tisu. (2010). Ref. no.: JMNPP/ (S)/19/1101/001(16); PUNPP 152.100.1/2/2 Jld. 2. Enakmen No. 864.



For cadaveric donor, the conditions are as follows:

- (i) The death is not part of a pact or a plan to gain profit.
- (ii) The death of the donor should be carefully ascertained.
- (iii) It is performed under the donor's consent through a will or through his/her guardian and it must be witnessed by two witnesses.
- (iv) There should not be any humiliation to the deceased.
- (v) Medical experts have verified that the organ and tissue from the donor can be used for donation.
- (vi) The transplantation has a high degree of success.
- (vii) The transplantation is performed with full discipline, knowledge, faith and piety, and respect should be accorded to the deceased following Islamic law, and humiliation should not take place.
- (viii) The cadaver should be managed for burial.
- (ix) If the donor is underaged or mentally-incompetent, consent from his or her legal guardian should be obtained.
- (x) Organ transplantation is the final resort in a critical and crucial situation, and there is an urgent need to save the life of other people especially those with family relationship.
- (xi) Prayers (*du'a*) should be offered to the deceased (for Muslims).
- (xii) The transplanted organ and tissue are not for the purpose of trade.

Penang's fatwa also stresses the following matters:

- (i) The recipient of the organ and tissue must use the organ and tissue responsibly.
- (ii) It is **permissible to transplant organs and tissues from a Muslim donor to a non-Muslim recipient, and vice versa.**
- (iii) It is not permissible to donate organs and tissues from a Muslim donor to a *kafir harbi* (non-Muslim who wages war on Muslims).



International Fatwas



5. International Fatwas

5.1 Fatwa of the Islamic Religious Council of Singapore

In 1986, the Islamic Religious Council of Singapore issued a fatwa that **permits organ transplantation** in critical and crucial situations for the purpose of saving lives. The principle used on this matter is the Islamic legal maxim of “emergency (*darurah*) permits matters that are prohibited” or *الضَّرُورَاتُ تَبِيحُ الْمَحْظُورَاتِ*.¹³ Aside from this general fatwa on organ transplantation, there are also other fatwas on the transplantation of specific organs issued by the Islamic Religious Council of Singapore, such as a fatwa issued in 1995 on the permissibility of cornea transplantation to relieve the sufferings of those with vision impairment. Other fatwas were issued in 2003 and 2004 that permit the donation of heart and liver for the same reason as the transplant of kidneys that is to save the life of patients.¹⁴

5.2 Fatwa of the Senior Ulama Council of Saudi Arabia

As early as 1967, the Senior Ulama Council of Saudi Arabia has **permitted cornea transplant**.¹⁵ In 1982, the Senior Ulama Council of Saudi Arabia **permitted the transplant of whole or parts of organs from cadaveric donors to living persons** provided that there is no other alternative.¹⁶ This council also unanimously permits living organ transplant.

5.3 Fatwa of Kuwait

In 1979, the Kuwaiti Council of Fatwa ruled that the act of **transplanting organs from the deceased is permissible**, with or without the deceased’s consent. This fatwa is issued because there is a dire need (emergency) to save life.¹⁷ For living donors, the decree for transplantation is also permissible. However, it is prohibited if the organs that are to be transplanted are organs that can result in death if transplanted, for example heart and lungs.

13 Islamic Religious Council of Singapore. (2007). *Pemindahan Organ di dalam Islam*. Singapore: Islamic Religious Council of Singapore. Pp. 10-11.

14 Ibid. Pp. 10-11.

15 Mohammed Ali Albar. (2010). Islamic ethics of organ transplantation and brain death. In Ismail Ibrahim and Abu Bakar Yang. (eds). *Islam dan Pemindahan Organ*, Second Edition. Kuala Lumpur: Institute of Islamic Understanding Malaysia. P. 101.

16 Purport of the Senior Ulama Commission. Decision No. 99, dated 06-11-1402 H. In *Directory of the Regulations of Organ Transplantation in the Kingdom of Saudi Arabia*. (n.d.). Jeddah: Saudi Center for Organ Transplantation. P. 46.

17 Mohammed Ali Albar. (2010). Op. cit. P. 105.



5.4 Fatwa of Majma' al-Fiqh al-Islami

In its fourth conference in Jeddah, Saudi Arabia on 11th February 1988, Majma' al-Fiqh al-Islami issued a fatwa that **permits organs from a deceased person to be transplanted to a living person** if the life of the organ recipient depends on the organ to be received provided that consent is obtained from the donor before death, or from the deceased's guardians after death, or from the head of the Muslim community if the deceased cannot be identified or does not have any next of kin.¹⁸ This fatwa also emphasizes on the prohibition of trading and smuggling of organs.¹⁹



In its working session held on 17th October 1987, Majma' al-Fiqh al-Islami recognised the concept of brain death as death. The decree stated that a patient who is attached to a resuscitation apparatus, if has been confirmed by three specialists that there is total cessation of all cerebral functions, the apparatus can be switched off although the patient's cardiac and respiratory systems still function with the aid of the device.²⁰

18 Ibid. P. 105.

19 Ibid. P. 105.

20 Abdul Monir Yaacob and Mohd Fauzi Mustaffa. (2010). Konsep asas rawatan pemindehan organ menurut Islam. In Ismail Ibrahim and Abu Bakar Yang. (eds). Op. cit. Pp. 57-58.



5.5 Fatwa of Majma' al-Fiqhi al-Islami al-Hind

Majma' al-Fiqhi al-Islami al-Hind (Islamic Fiqh Academy, India) was established to facilitate Muslims in India in addressing issues relating to Islamic law. During a conference in New Delhi in March 1989, a fatwa that **permits the replacement of a patient's organ with another person's organ on the basis of emergency** was decreed. Organs can be donated either from living or cadaveric donors.²¹

5.6 Fatwa of the Islamic Sharia Council, United Kingdom

In 1995, the Islamic Sharia Council of United Kingdom issued a fatwa that the council **supports and recognises organ transplantation as an approach to cure illness or save lives based on Islamic legal maxims**. The council also permits the legal guardian of the deceased to give their consent for the deceased's organs to be donated in order to save lives of others. This fatwa is in line with the Islamic legal maxim of "emergency permits matters that are prohibited" (الضَّرُورَاتُ تَبِيحُ الْمَحْظُورَاتِ) as well as meeting one of the objectives of the *maqasid al-syar'iyyah* that is "preserving life".²²

5.7 Fatwa of Dr. Yusuf al-Qaradawi

Dr. Yusuf al-Qaradawi, a well-known contemporary scholar from Egypt, stated that the donation and transplantation of organs from a living or a deceased person is **permissible in critical and crucial situations provided that the act does not bring significant harm to the donor or those who have the rights on the donor**.²³ He also stressed on the **permissibility of organ donations to non-Muslims**,²⁴ and **prohibition of organ trading**.²⁵ **Legal guardians are allowed to donate organs of their deceased family member** who has not instructed otherwise,²⁶ and it is **permissible for Muslims to receive organs from non-Muslims**.²⁷

21 Abu Fadl Mohsin Ebrahim. (2002). Organ transplantation: An Islamic ethico-legal perspective. In *FIMA Year Book 2002*. Islamabad: Federation of Islamic Medical Associations. Pp. 76-78.

22 Howitt, R. (2009). *Islam and Organ Donation: A Guide to Organ Donation and Muslim Beliefs*. London: NHS Blood and Transplant

23 Yusuf al-Qaradawi. (1995). Op. cit. Pp. 367-371.

24 Ibid. Pp. 371-373.

25 Ibid. Pp. 373-376.

26 Ibid. Pp. 376-379.

27 Ibid. Pp. 379-381.



Brain Death



6. Brain Death

The issue of brain death was first discussed in 1985 by international Islamic scholars who gathered in Jeddah, Saudi Arabia even though at that time, no decision was made. The issue was later discussed in greater detail in 1986 in Amman, Jordan. The fatwa from this conference stated that death can occur due to two reasons. The first is when the heart stops functioning in totality and the doctor verify that there is no hope for it to recover. The second, is when the functions of the brain stops in totality and the specialists in this field verifies that there is no hope for recovery upon complete analysis.

Therefore, Islam accepts brain death as death. This matter is also touched on by state fatwas issued by Selangor (2000) and Johor (2001).





Frequently Asked Questions



7. Frequently Asked Questions

7.1 Is organ donation similar to torturing the dead?

In a Hadith, the Prophet SAW said:

عَنْ عَائِشَةَ أَنَّهَا سَمِعَتِ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ:
"إِنَّ كَسْرَ عَظْمِ الْمَيِّتِ مِثْلُ كَسْرِ عَظْمِهِ حَيًّا"

Translation:

From `Aisyah RAH, she heard the Prophet SAW said, "Verily the act of breaking the bones of the deceased is the same as breaking the person's bones while he is alive."²⁸

Basically, the Hadith prohibits any kind of humiliation on the deceased. Islam is very strict in giving due respect to the deceased, whether they are Muslims or non-Muslims. The act of breaking the bones of the deceased is regarded as an act of torturing the deceased as mentioned in the Hadith. This is because such act is malevolent and does not bring any benefit at all.

However, organ donation and transplantation are not done because of any malicious intent or without any beneficial purposes. These acts are performed as a final resort to save the lives of patients who are in need of organs. Preserving life is one of the elements in *maqasid al-syar'iyah* or purposes of Islamic law. The prohibition in the Hadith becomes void when there exists a more crucial and critical need (الضَّرُورَاتُ تَبِيحُ الْمَحْظُورَاتِ) that is to save human lives. The intention behind the act of donating organs is virtuous and benevolent. Organ donation will only be done when there is no other alternative to save a patient's life. In this matter, the following verse applies:

فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

Translation:

But if one is forced by necessity, without wilful disobedience, nor transgressing due limits,- then is he guiltless. For Allah is Oft-forgiving Most Merciful.²⁹

28 Abu `Abdillah Ahmad ibn Muhammad ibn Hanbal ibn Hilal ibn Asad al-Syaibani. (2001). *Musnad al-Imam Ahmad ibn Hanbal*, Jilid 42. Beirut: Mu`assasah al-Risalah. P. 431.

29 Surah al-Baqarah (2): 173.



7.2 Are organ donors violating the rights and trust given to him in preserving his body's dignity and honour when he donates his organs?

Mankind is the best and the most noble creature created by Allah SWT. This is mentioned in the Quran as follows:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ
عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا

Translation:

We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation.³⁰

The verse explains that Allah SWT ennobles mankind as His greatest creation, and this includes the human body. As a Muslim, we believe that the body that we have is a gift and a trust from Allah SWT. This means that we need to take care of our body and to duly give our body its rights both during life and death. The rights of the body include maintaining physical health, safeguarding the body from self-inflicted injuries and so on. Its rights upon death are to be bathed, shrouded, prayed upon, and buried.

The act of donating organs while someone is alive or after his death does not mean that the person is violating the trust and rights of his body, because the organ donor does not mutilate his body intentionally. On the contrary, the act of donating organs is made with good intention that is to save other people's lives. In other words, organ donation gives other people the chance to continue living. With regard to this, Dr. Yusuf al-Qaradawi said that the act of donating parts of a deceased's body does not violate the dignity of the deceased.

Furthermore, if we believe that our body belongs to Allah SWT, we should not feel begrudged to donate our organs to be used by others. As a matter of fact, the lives that are to be saved also belong to Allah.

30 Surah al-Isra' (17): 70.



7.3 Will the donor bear the sins of the persons who receive his/her organs?

No, because every *mukalaf* (a person who has reached the age of maturity and of sound mind) is responsible for his own deeds. Allah SWT said in the Quran:

قُلْ أَغَيْرَ اللَّهِ أَبْغِي رَبًّا وَهُوَ رَبُّ كُلِّ شَيْءٍ وَلَا تَكْسِبُ كُلُّ نَفْسٍ إِلَّا عَلَيْهَا وَلَا تَزِرُ
وَأَزْرَهُ وَزِرُّ آخَرَىٰ ثُمَّ إِلَىٰ رَبِّكُمْ مَرْجِعُكُمْ فَيُنَبِّئُكُم بِمَا كُنتُمْ فِيهِ تَخْتَلِفُونَ

Translation:

Say: "Shall I seek for (my) Cherisher other than Allah, when He is the Cherisher of all things (that exist)? Every soul draws the meed of its acts on none but itself: no bearer of burdens can bear the burden of another. Your goal in the end is towards Allah. He will tell you the truth of the things wherein ye disputed."³¹

On the other hand, Dr. Yusuf al-Qaradawi opines that those who donated their organs will be rewarded because the act of donating organs is one of the three deeds that is continuously rewarded even after his death. In a Hadith, the Prophet SAW is reported to have said:

عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: " إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ
عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ: إِمَّا مِنْ صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ "

Translation:

From Abu Hurairah RA verily the Prophet SAW said, "When a person dies, his actions come to an end except in three matters: Continuous charity (*jariah*), knowledge from which benefit can be derived, or a virtuous son who prays for him."³²

31 Surah al-An'am (6): 164.

32 Muslim ibn al-Hajjaj Abu al-Hasan al-Qusyairi al-Naisaburi. (n.d.). *Sahih Muslim*, Third Ed. Beirut: Dar Ihya' al-Turath al-'Arabiyy. P. 1255.



7.4 Will organ donors be raised on the Day of Judgement with the organs that were donated?

Every Muslim believes that the Day of Judgement will come. When the Day comes, everything will be destroyed. Nothing will escape unharmed including the human body. Only Allah SWT will remain. After that, human will be resurrected in the Hereafter according to their deeds when they were alive. If a person has many good deeds, he will be resurrected in a condition which is better than when he was alive on Earth. If his evil deeds outweigh his good deeds, he will be resurrected in the worst of conditions. Thus, as faithful Muslims, the issue of whether we will be resurrected with or without the donated organs does not arise, because we believe that everything will be destroyed on the Day of Judgement. We will be resurrected by Allah SWT to be judged for all the deeds that we have done. The Might of Allah SWT to give life is stated in the Quran:

قُلْ يُحْيِيهَا الَّذِي أَنْشَأَهَا أَوَّلَ مَرَّةٍ وَهُوَ بِكُلِّ خَلْقٍ عَلِيمٌ

Translation:

Say, "He will give them life Who created them for the first time! for He is Well-versed in every kind of creation!"³³

7.5 Can Muslims receive organs from non-Muslims?

There are no restrictions in Islam to transplant organs from non-Muslims to Muslims. This is because human organs cannot be categorized as Islam or otherwise, because organs are tools used by humans to perform his religious duties and his means for living. When an organ is transplanted from a non-Muslim to a Muslim, that organ will become a part of a Muslim's body that can be used for the purpose of fulfilling his responsibilities as ordained by Allah SWT.

Furthermore, Dr. Yusuf al-Qaradawi decreed that the organs of non-Muslims are considered to be Muslim. This is because, according to him, a person's faith – whether a Muslim or a non-Muslim – does not depend on his organs, but his soul.³⁴ Thus, there are no restrictions for Muslims to benefit from the organs of non-Muslims.

33 Surah Yasin (36): 79.

34 Yusuf al-Qaradawi. (1995). Op. cit. Pp. 379-381.



7.6 Can Muslims donate organs to non-Muslims?

In the Malaysian context, donors cannot indicate who can or cannot receive the organs to be donated. Instead, the organs will be transplanted to those who are most suitable and with the biggest chance of success. At the same time, Malaysian non-Muslims are categorized as *kafir dzimmi* (non-Muslims who pledge their loyalty to the country), and hence they must be protected, aided and saved when they are in distress or pain. This includes saving their lives through organ transplantation. Thus, in the context of Malaysia, the issue of whether it is permissible or not to donate organs to non-Muslims does not arise because they (the non-Muslims) should be helped when they are in need.

This matter is explained in the following verse:

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

Translation:

“Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just.”³⁵

The Prophet SAW also reminded us that Muslims should always give to others and help those who are in need. This is mentioned in a Hadith from Abdullah bin ‘Umar RA which is narrated by Imam Bukhari:

عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ وَهُوَ عَلَى الْمَيْتَرِ، وَذَكَرَ الصَّدَقَةَ، وَالتَّعَفُّفَ، وَالْمَسْأَلَةَ: "الْيَدُ الْعُلْيَا خَيْرٌ مِنَ الْيَدِ السُّفْلَى، فَالْيَدُ الْعُلْيَا: هِيَ الْمُنْفِقَةُ، وَالسُّفْلَى: هِيَ السَّائِلَةُ"

Translation:

Narrated Ibn ‘Umar: I heard Allah’s Apostle SAW while he was on the pulpit speaking about charity, to abstain from asking others for some financial help and about begging others, saying, “The upper hand is better than the lower hand. The upper hand is that of the giver and the lower (hand) is that of the beggar.”³⁶

35 Surah al-Mumtahanah (60): 8.

36 Muhammad ibn Ismail Abu Abdullah al-Bukhari. (1422 H). *Sahih al-Bukhari*, Volume 2. Dar al-Tawq al-Najaat. P. 112.



Conclusion

8. Conclusion

Ibn Qayyim al-Jawziyyah placed the sacrifice of the body and soul as the highest level of sacrifice from ten categories of sacrifices that he mentioned in *Madarij al-Salikin*. Organ donors can be categorized under the sacrifice of body and soul as mentioned by Ibn Qayyim al-Jawziyyah. This is because the donors willingly donated their organs to patients who are in need. Saving human lives is also one of the objectives of Islamic law.



Organ donation can also inculcate altruism in individuals and society. Altruism will drive people to help each other regardless of religion, race, status and wealth. Islam also encourages its followers to help each other as stated in the following verse from the Quran:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ
الْعِقَابِ

Translation:

“Help ye one another in righteousness and piety, but help ye not one another in sin and rancour: fear Allah. for Allah is strict in punishment.”³⁷

والله أعلم بالصواب.

37 Surah al-Maidah (5): 2.



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Attachment

Group of writers and researchers from Yayasan Ilmuwan

Shaikh Mohd Saifuddeen Shaikh Mohd Salleh

Mazilan Musa

Muhammad Zaki Ramli

Siti Noorzuraidawati Mihat

Nor Adyani Marsom

Mohd Rezuan Masran

Review panel

Taqwa Zabidi
Assistant Director,
Planning and Research Division,
Malaysia Department of Islamic Development.

Khairul Azhar Idris
Fellow,
Centre for Economics and Social Studies,
Institute of Islamic Understanding Malaysia.

Dr. Hirman Ismail
Principal Assistant Director,
Transplant Services Unit,
Medical Development Division,
Ministry of Health Malaysia.

Munshi Abdullah
Principal Assistant Director,
Health Education Division,
Ministry of Health Malaysia.

Mohd Razif Zakaria
Principal Assistant Director,
Health Education Division,
Ministry of Health Malaysia.



Professor Datuk Dr. Abdul Monir Yaacob
Department of Syariah and Law,
Academy of Islamic Studies,
University of Malaya.

Associate Professor Datin Dr. Paizah Ismail
Department of Islamic Law,
Ahmad Ibrahim Kulliyah of Laws,
International Islamic University Malaysia.

Datin Dr. Fadhilah Zowyah Lela Yasmin Mansor
Chief Clinical Manager,
National Transplant Resource Centre,
Hospital Kuala Lumpur.

Dr. Muhammed Anis Abd. Wahab
Clinical Manager,
National Transplant Resource Centre,
Hospital Kuala Lumpur.

Datuk Dr. Ghazali Ahmad
Senior Consultant of Nephrology,
Head of Nephrology Department,
Hospital Kuala Lumpur.

Dato' Dr. Zaki Morad Mohamad Zaher
Senior Consultant of Nephrology,
Ampang Puteri Specialist Hospital.