



Ethical Canons of Organ Transplantation from Islamic Perspective: A Brief Review

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Abstract

Organ transplantation involves removing a given body organ from prospective organ donor, dead or alive, and transplanting it into the body of an intended recipient, often with the aim of replacing the recipient's damaged or failing organ with a healthy one. Apart from the concerns made about the possible health complications that might arise from conducting this operation, this practice raises certain moral and legal issues related to the dignity and sanctity of the bodies of those involved. This paper uses analytical method, and intends to expose the ethical and jurisprudential canons that regulate organ transplantation from Islamic perspective. With brief introduction to organ transplantation, this paper presents a concise review of the opinions of the Muslim jurists and ethicists on this subject.

Keywords: organ transplant, human body, ethical canons, Islamic perspective.

Abstrak

Pemindahan organ yang melibatkan penyingkiran organ-organ tertentu daripada bakal penderma organ, sama ada hidup ataupun tidak bernyawa, dan memindahkannya ke dalam badan penderma dengan tujuan menggantikan organ yang tidak berfungsi kepada organ yang sihat. Selain daripada kebimbangan yang timbul mengenai komplikasi kesihatan akibat daripada menjalankan pembedahan ini, amalan ini juga membangkitkan isu-isu moral dan undang-undang tertentu berkaitan dengan maruah dan kesucian tubuh mereka yang terlibat. Hasil penulisan ini menggunakan kaedah analisis, dan mendedahkan peraturan-peraturan etika dan jurisprudens yang mengawal pemindahan organ dari perspektif Islam. Penulisan ini membentangkan kajian ringkas daripada pendapat ulama Islam dan ahli etika mengenai perkara ini dengan pengenalan ringkas dan latar belakang sejarah pemindahan organ

Kata Kunci: pemindahan organ, badan manusia, peraturan-peraturan etika, perspektif Islam

Introduction

Organ transplantation involves the process of removing certain parts of a body such as kidney and eye from a certain place to another in the same body, or from the body of given organ donors to the body of the intended organ recipients (WebMD, 2009). The *Concise*

Dictionary of Modern Medicine stated that an organ transplantation is "any organ or tissue that has been transplanted (Sengen, J.C. & Segen, M., 2006), while some scholars define it as "the transplantation of an organ (or part of one) from one body to another, for the purpose of replacing the recipient's damaged or failing organ with a working one from the donor (Organ transplantation, n.d.). Transplantable organs or body parts include among others, tissues, kidneys, liver, lungs, heart, pancreas, intestine, and thymus, bones, tendons, cornea, skin, heart valves, nerves and veins. The kidney, liver and pancreas constitute the most commonly transplanted organs, while the cornea and

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musculoskeletal grafts are among the most commonly transplanted tissues. This process basically involves an organ donor, the donated organ and the recipient of the donated organ. In some cases, donated organs are received from living donors, while there are instances in which organs are received from deceased individuals. Organs can also be obtained from living persons who might sell or donate his or her organs to the respective patients, or can be received from brain dead individuals, whose brain is damaged, and they may or may not be on a ventilator but with functioning organs such as liver, heart, and etc. In addition, transplanted organs can also be harvested from dead persons. On top of that, there are instances in which organs are given in exchange of some form of payment, while in some instances organs are given to the patients freely. In general, the success rate of organ transplantation is rapidly increasing, and recent advancement in biomedical facility seems to have eased the difficulties related to organ transplantation. However, yet organ transplantation is not free of challenges. This is because, apart from the scarcity of needed organs in the hospitals, serious complications of organ rejection, in which the body of the recipient refuses to accept the transplanted organ may occur. Complications might eventually leads to transplant failure and the need to immediately remove the organ from the recipient (Hashi, 2015). It is true that since the beginning of the 20th century, the practices of organ transplantation are rapidly growing, and today it becomes part of the medical profession. Besides medical challenges such as body rejection of the transplanted organ, the practice of organ transplantation has also faced certain moral and legal issues around the world. With the rise of organ transplantation practices, both legal and religious communities have raised certain serious concerns about the legality as well as the morality of organ transplantation in relation to the sanctity of the body and the dignity of those involved.

Historically, from the middle of the twentieth century, particularly in the early 1950s when the Grand Mufti of Egypt permitted cornea transplant (Al-Bar, 1988; Safi, 1988), controversies related to organ transplant have been discussed in the

Muslim world. In the subsequent decades, Muslim organizations, *fiqh* councils and academies had addressed moral and legal dimensions of organ transplantation, and have since then issued a number of decrees on matters related to organ transplantation. For example, in 1969 the allowed cornea transplant (Academy, 1988), and from 1972 to late 1980s, *fiqh* councils in Muslim countries including Algeria, Egypt, Malaysia, Jordan, Saudi Arabia, Kuwait, and others, had on various occasions, issued *fatwas* (religious decrees) on issues and practices related to organ transplantations. Among the useful academic works on organ transplant form the Islamic perspective include articles and studies published in different issues and volumes of the *Majalah Majma'a al-Fiqh al-Islamiyi* (Academy, 1988) since 1988, published by the Islamic *Fiqh* Academy. These articles and studies were originally presented in the conferences organized by Organization of the Islamic Countries (OIC), then published by its journal. The series of researches on various contemporary issues, including biomedical issues and practices like organ transplantation, from the perspective of the Islamic jurisprudence (Arif, 2011a,b), written by the contemporary writer, Arif Ali Arif, is worth of mentioning. Abdul Fadl Mohsin Ebrahim's two books on biomedical ethics, namely; *Abortion, Birth and Surrogate Parenting: An Islamic Perspective* (Ebrāhīm, 1989), and *Biomedical Issues: Islamic Perspective* (Ebrāhīm, 1993), in which the author highlighted ethical implications of several biomedical issues and practices according to the Islamic ethical values, are among the important academic works of this field. This paper aims to illustrate briefly the opinions of the Muslim jurists on the governing ethical principles of organ donation for transplantation from the Islamic perspective, particularly as reflected in the works of the jurists. The author does not intend to take any evaluative position on the given jurists' opinions; rather the writer aims to expose the ethical positions held by Muslim jurists as well as moral justifications of given moral opinions on organ transplantation.

Ethical Concerns about Organ Transplantation

Although medical operations involving organ transplantation is improving day by day, issues related to the morality and the legality of removing body parts from one person and transplanting it into another, are often raised. These concerns are related to the traditional beliefs about the sanctity of the human body, the need to preserve life, as well as the protection of human rights and dignity. Among various moral concerns made in this regard is, can a man's body be used as spare parts which can be placed and replaced according to the needs of man? Do we own our body in such a way that we have the right to donate or sell our organs and tissues like we do with other properties? If yes, when did we own our body? If not, then who owns our body? Another question is can incentives, in whatever form might be, be offered to those who donate their organs? Can the poor people be allowed to sell some of their organs to earn their income? Should organ and tissue transplantation practices be confined to the instances of life-saving, or could these practices be extended to fulfil the cosmetic desires of those who wish to change their appearance? Do age and the mental condition of a donor play any role in determining the prospective organ donors? (Hashi, 2015, pp. 95-96) These and many other ethical concerns are commonly raised about organ transplantation. Similar ethical concerns of organ transplantation are raised by Muslim ethicists and jurists. The Islamic teachings promote healing and therapeutic practices that are deemed fit to improve health and life preservation. However, organ transplantation involves practices, which fall beyond the traditional healing practices. These practices are mainly sought for health reasons and sometimes for cosmetic desires. Therefore, the question is whether organ transplantation could be accepted as part of medical practices that are deemed fit to preserve life. With these concerns in mind, and with the intention of balancing between the need of increasing the scientific breakthroughs in biosciences, and the protection of man's safety, honor and the sanctity of the body, Muslim scholars, particularly ethicists and jurists, addressed different aspects of organ

transplantation (Arif, 2011b). In their discussions on this subject, Muslim jurists and ethicists addressed issues related to the rationale and the moral justifications of organ transplantation. They have also addressed moral concerns about the sources of the organ such as the health and age of the organ donors, as well as the safety of organ removal and the means of getting the consent from the donors to remove their organ.

Muslim Jurists and Moral Concerns About Organ Transplantation

The opinions of the Muslim jurists on organ transplantation are varied; some jurists took a general position that rejects organ donation (Arif, 2011b). This group of jurists cited a number of evidences to supports their positions including the sanctity of human body, the ultimate owner of which is the Almighty God. As the real owner of the human body is Almighty God, argues this group of jurists, man is entitled to benefit from it, not to donate or sell it; hence organ donation is not permissible. The reason is because according to this group of jurists, if organ donation is allowed, whereby prospective organs are removed from the organ donor, then "in this case the donor's act of transferring his or her organs is tantamount to someone who donates or sells something that he or she does not own, which according to the *shari'ah* laws is null and void" (Hashi, 2015, p.98). Furthermore, in their contention against organ donation for transplantation, this group of jurists equated organ donation to body mutilation (*tashwih al-jism*), which is not acceptable in Islam. This so because, due to the belief in the sanctity of the body, under normal circumstances removing any part of the body is not permissible from the *shari'ah* perspective; hence this group of jurists extended this prohibition to organ donation, and thus prohibited it. To justify their anti-organ donation position further, this group of jurists also cited the Islamic principle which states that harm must not be inflicted (*la darar wa la dirara*), the spirit of which, according to this group of jurists, goes against organ transplantation. In addition, the opponents of the organ donation employed the jurists' principle that dictates what is extracted from living thing, is judged as the dead body of such leaving things

(*ma abyana min hay fahuwa kamaytatihi*), (Ali Arif, 2011a). This principle denotes that if certain organs are taken from a living animal, the status of that organ is tantamount to the status of the dead body of that animal. It means, if an organ is removed from a living animal, then that organ is regarded to be impure (*najis*) and hence cannot be consumed. This group of jurists extended this principle to organ donation, whereby the removed organs from the living organ donors is impure (*najis*) and thus cannot be used for organ transplantation. Based on these grounds this group of jurists argued that organ donation is not permissible.

In contrast to the Muslim jurists who opposed to organ donation and organ transplantation, there are others who permitted it, but with certain conditions, the details of which are illustrated in the following points; *first* based on the Islamic principle of life preservation (*hifz al-nafs*) (*The Qur'an* 4: 29; 2:192; 5:32), Muslim jurists agreed (Safi, 1988), in principle, on the permissibility of medical therapeutic treatments which are intended to cure ailments and thus safe life. According to the opinion of the mainstream of the Muslim jurists organ transplantation is not an exception of this principle (Safi, 1988). This principle implies that, as the duty of medical doctors is to improve health conditions of the given patients by taking all necessary means to provide relevant health services, and if organ transplantation is the only choice of treatment, then, the process should be allowed. This is to say that organ transplantation is permissible only if it is the only way of reducing the perceived harm, i.e., by means of necessity (*darurah*), in such a way that, the life of the patient cannot be preserved through other therapeutic practices. In this case, organ transplantation is morally justified. This is based on the Islamic principle that states “necessity begets mitigation, i.e., *al-mashaqatu tajlib al-taysir*”, in the instances in which the life of the patient is in danger, and other medical services cannot help the patient, organ transplantation is then sought. This is evident from the *fatwas* (religious decrees) given by different councils of *Fiqh*, in different Muslim majority countries. The *fiqh* councils of Muslim majority countries like Saudi Arabia (Highest Council of Scholars in Riyadh, 1982), Egypt

(Tantawi, 1989), Malaysia (National Fatwa Council of Malaysia for Islamic Affairs, 1970) and others Al-Qardawi, 2003), have agreed, in principle, on the permissibility of organ transplantation on the basis of necessity (*darurah*) and harm prevention (*daf'u darar*). *Second* as mentioned earlier, some jurists and ethicists have questioned the morality of organ transplantation, due to the harms inflicted to the organ donors, during the removal of the intended organ. These jurists and ethicists equated the removal of the organ from the prospective organ donors to mutilation of the body, therefore this group of ethicists made strong argument against organ transplantation. Nevertheless, Muslim jurists who permitted organ transplantation responded to this argument, by saying that, in the ordinary circumstances, removing any part of the body is tantamount to body mutilation, and thus not permissible. However, in the extraordinary conditions of life saving, removing certain parties of the body is permissible as long as there is no other medical treatment for given patients. In line with the Islamic jurisprudential maxims like “*yuzal al-darar al-ashaddu bi al-darar al-akhaff*, i.e., a greater harm is eliminated by means of a lesser harm”, this group of Muslim jurists permitted the removal of organs from living donors, so that the life of the recipient is saved. This is so, as argued by this group of jurists, organ transplantation would be permissible only if the benefits of removing the organ from living donors are more than the harm caused by the removal of the organ (Bakru, 2001). However if the harm of removing organs or tissues from the living donors is more than the expected benefits of organ transplantation, then organ transplantation is deemed unnecessary and hence prohibited. *Third* as discussed earlier, there are instances, in which morality of organ transplantation is questioned on the bases of religious beliefs, particularly religious teachings in which the ownership of the human body is attributed to God, who is the real owner of everything and everyone (*maliku kuli shay'in*). Based on this view, some jurists and ethicists questioned that since we do not own our body, can we donate given organs of the body to others? If the answer is yes, then such act would imply a transfer of ownership of something

(organ in this case) that is not our own property, which is not acceptable in the laws of the *shari'ah* (Hashi, 2015; op. cit., p. 103). Though it seems to be a convincing moral position, Muslim jurists responded to this argument on the basis that according to the norms of the *shari'ah*, the right owner of the body is ultimately God, but the person owns the right of benefiting from it, whereby God and the person are both owners of the body (Arif, 2011b). Thus, an organ can be removed and transplanted into another part of the same body or in another person as long as the permission of the donor, as well as the permission of the Almighty, Allah, is obtained. In this case, the permission of the person is obtainable by means of getting his or her consent (Arif, 2011b), while the permission of God, the ultimate owner of the body, is obtained once medical professionals confirm that the donated organs will help to preserve the life of the recipient. In fact, "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 in this case the organ donor is not wasting his or her organs in vain. On the contrary, the act of donating organs is made with good intention that is to save other people's lives (Ministry of Health Malaysia (MOH) & Malaysia Department of Islamic Development (JAKIM), 2011). This is so because, "if we believe that our body belongs to Allah (*s. w. t.*), 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 (MOH & JAKIM, 2011). For the body of the organ donor and that of the organ receiver belong to God, organ transplantation then implies removing a property owned by God and restoring it into another property owned by Him. Therefore, organ transplantation is morally justified. *Fourth*, under the conditions of necessity (*darurah*) in which there is no other means to save the life of given patients, Muslims ethicists allowed organ donation, with the condition that the living donors should be medically fit to donate the organs at the time of organ removal. Similarly, his or her health condition should not deteriorate as a result of donating the organs. This is in line with the Islamic moral principle that dictates harm must

be eliminated but not by means of another (*al-dararu yuzalu walakin la bi dararin mithluhu*). In this respect, if the removal of the intended organ inflicts life threatening harm on the organ donor, then organ donation should be avoided. Obviously, the reason is because, in this case the equation is the same, whereby we are solving one problem, i.e., saving the life of the patient, but threatening the life of the living organ donor. *Fifth*, the consent of living organ donors should be obtained prior to organ removal; not by means of coercive measures, neither by means of intoxication. In fact, removing organs from living persons without their consent is not only immoral, but is tantamount to criminal conducts, which might result in capital punishment in the court of law. The consent to remove the organ from the intended donors must be obtained, whereby the prospective organ donor understands the process and the implication of removing the intended organs from his or her body. *Sixth*, Muslim ethicists also made it clear that, not only it is important to obtain permission from the living organ donors to remove their organs, but also the prospective organ donors must be mature and mentally sound (MOH & JAKIM, 2011). In this respect, age and mental condition of the donors are important factors to determine whether the individuals are potential organ donors or otherwise. Minors, children and mentally disable people are not counted as potential living organ donors. *Seventh*, with regards to the donated organs, Muslim scholars classified organs into two; organs that can be donated by living organ donors under the circumstances of necessity (*darurah*) and organs that cannot be donated by living organ donors in all circumstances. The former includes organs, the removal of which does not pose a threat to the life of the donor, nor does it violate the honour and the progeny of the organ donor, such as the kidney, intestines and pancreases, and etc. The later includes those organs, the removal of which poses threat to the life of living donor, such as the heart, brain, nervous system, and etc, as well as the organs that might not pose threat to the life of the organ donor, but lead to corruption of family lineage and honour, such as ovary and testicles. This is because the donation of the parts of the reproductive system implies transfer of an

important part of the hereditary attributes and thus would lead to confusion of lineage, a process which violates the objectives of the Islamic moral system. Hence, Muslim jurists and ethicist rejected donating organs of reproductive system. *Eight*, another condition imposed by Muslim jurists and ethicist is that, in the process of removing the intended organs from the organ donor and transplanting into given organ recipients, safety measures must be given a high priority. In the whole process of organ transplantation, medical doctors and nurses are required to comply with the clinical code of conduct and professional norms, so that the safety and the honour of involving parts are ensured. *Ninth*, although Muslim jurists and ethicists have under the conditions of necessity, agreed on the permissibility of organ transplantation, they have unanimously prohibited organ selling. All forms of intended monetary gains or trade off with other commodities are immoral and thus prohibited. *Tenth*, organs can be obtained from the prospective cadaveric donors as long as the death is not part of a pact or a plan to gain profit, and the death of the cadaveric donor should be carefully ascertained, by relevant medical expertise. Similarly, prior to the death of cadaveric organ donor, his or her consent to organ removal should be obtained.

Conclusion

It seems that, in principle the mainstream of the Muslim jurists and ethicists have agreed on the permissibility of organ transplantation, as the last resort of life saving and harm reduction. However, in practice they have imposed various rulings, which form the ethical and legal guidelines for safe and sound organ transplantation. These ethical rulings strive to reduce harm and thus to save lives, as well as to protect human dignity, honor, the sanctity of the body, from all forms of maltreatment.

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