

Prudential Principles Notary in Making Deed Agreement Between Transplant Donor and Recipient

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Abstract

Introduction: Transplantation of organs in humans is one of the fastest-growing alternative treatments. The use of donors from non-family members is one of the considerations. Is a notarized agreement between the organ giver and the organ recipient necessary so that problems do not occur in the future?

Objective: This study's objective was to analyze the principle precautionary in a notarized deed agreement between the donor and recipient transplant.

Method Research: This research method uses a normative and empirical juridical approach with descriptive-analytical and normative research specifications.

Conclusion: This study found that the alleged buying and selling of kidneys leaves underhand agreements' ongoing problem. The paradigm that applies in the work of notaries is the principle of prudence in doing notarial deeds. Prudence comes from the word prudence, which is analogically closely related to the supervisory function management as it applies to banking. A notary caution is required to draft a transplant notary agreement between donors and recipients so that disputes do not occur in the future.

Keywords: *Transplantation Agreement; Notary; The Precautionary Principle.*

Introduction

Organ transplantation is a medical technology for replacing organs; medical patients were not functioning organs from another individual¹. In implementing Kidney, transplants are directly related to parties such as the recipient (receiver kidney donor), tendons, and doctors. Measures such as renal transplant medicine begin with between the parties, giving birth to an agreement for an agreement transplant². That means an agreement between the donor and the recipient to implement the kidney transplant voluntarily. The agreement is an act with which one or more binds himself to one or more people binds himself to something right against someone or another person³.

The status of kidney transplant agreements is often declaring contrary to Law number 36 of 2009 concerning health, which prohibits being traded commercial organs for kidney transplantation. However, there are still many internal problems with a medical transplant that requires the parties' agreement, even if it is not deep in the context of buying and selling organs⁴.

Notaries in carrying out their duties and positions are required to implement the principle of prudence in the process of doing authentic deeds because there are parties who violate the terms valid of the agreement, such as providing false letters or false information into deeds made a notary⁵. It can prevent crimes that might plunge notaries into legal issues, as stated in the Law on Notary Position regarding the guidelines and guidance for notaries to act more carefully, thoroughly, and carefully in the process of doing authentic deeds.

Problems Medical agreements in kidney transplantation are still not a significant issue among the public. Many organ transplants have, even though donors and recipients have not used the agreement.

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Buying and selling body organs has been rife among the public due to the difficulty of finding donors to improve the body's health and prolong its span of life⁶. Blood transplant donors and recipients are only required to show their identity. These identities are National Identity Card, family card, marriage certificate. However, this document is straightforward to forget. Because the proof of identity is often problematic, it is necessary to have an under-hand agreement made by donors and recipients whose contents are entirely in blood. There is no buying and selling of kidney organs, which are then legalized or legalized by a notary public. If the donor and the recipient are not in blood, they are required to do a notarial deed that states that there is no buying and selling of kidney organs⁷.

Every authority given to a position must have a legal rule. As a limitation, the position can run well and does not conflict with other positions' authority. Thus, if an official (Notary) commits an action outside the predetermined authority, it can be categorized as an act of violating authority. A notary's authority in Article 15 paragraphs 1, 2, and 3 of Law Number 2 of 2014 concerning a Notary Position.

Research Methodology

This research's type of research is normative legal research, namely legal research that places the law as a norm system building. The norm system in question is regarding the principles, norms, rules of the statutory regulation. The juridical approach method used is by examining legal rules or regulations as a system building associated with a legal event⁸. The data used in this study are secondary data, which consists of primary and secondary legal materials, which from books, literature, papers, laws and regulations, and other data sources. Secondary data collection uses the method literature approach, namely a library research using legal library materials that support this research. Secondary data in the form of primary legal materials in the form of legal materials are collected and processed, analyzed by normative methods, and then presented descriptively.

Discussion

Transplantation can only if its safety and proven benefits in the article on organ transplantation aim to provide protection and legal certainty for donors, recipients, organ transplant hospitals, and health workers providing organ transplants services. Article 65 of Law Number 36 of 2009 concerning Health explains the

competency requirements for health workers and health service facilities in carrying out organ transplants and the need for *informed consent* in the implementation of organ transplants. According to Regulation of the Minister of Health Number 290 of 2008 concerning Approval of Medical Actions (*Informed Consent*), Article 1 states 65 Law Number 36 of 2009 concerning health states that organ transplantation can occur only by health workers who have the authority to carry out in individual health care facilities. Harvesting of organs or tissue from a donor must pay attention to the donor's health and obtain the donor and heir's approval or family⁹.

The agreement letter has an essential function when agreeing in a letter because black and white evidence applies between the two parties. In the patient-doctor relationship, known informed consent is. Meanwhile, the relationship between donors and recipients is considered in the informed consent clause, whereas informed consent only involves medical activities¹⁰. The relationship between donors and recipients in organ transplants has a specific relationship regulated in law, where the main point is that there is no buying and selling of organs¹¹.

An agreement between the donor and recipient of the transplant needs to be where the agreement has several rules and functions, namely: As authentic evidence that certain parties have entered into an agreement or agreement; Become a basis for doing things that have been mutually agreed upon by the parties making them; The agreement letter can also be used as a guide when used to sue parties who violate the agreement specified in the agreement letter; The parties who have agreed will feel calm because there is certainty in the agreement letter; Can be used to know the rights and obligations between the parties who enter into the agreement or agreement; Can avoid disputes between the parties to the agreement, which is likely to arise in the future; and Used as a guide in resolving a problem or dispute that may arise as a result of the agreement.

Notaries must comply with applicable legal provisions regarding how far they can act and what they can and cannot do. If the prohibited provisions have, the deed concerned will lose its authenticity¹². The Notary has moral integrity, honest, and aware of the limits of their authority. Must also have an intrinsic sense of justice, not be influenced by the amount of money, and not merely create formal evidence to pursue legal

certainty, but ignore the sense of justice. The code of ethics also plays an essential role in social control and prevents supervision or interference by the government or by the community. Besides, the code of ethics also plays a significant role in developing the notary profession to prevent misunderstanding and conflict as much as possible.

The paradigm that applies in the work of a Notary is prudence in making Notary deeds. The principle of prudence because in Article 16 paragraph (1) letter a of the notary position law, the article has not explained the obligations and examples of careful actions of Notaries in doing authentic deeds, so that the Notary's obligation to act carefully is not clear and creates multiple interpretations. Therefore, in carrying out its duties, the Notary must act more carefully and thoroughly in examining the documents and statements of the parties who wish to do an authentic deed so as not to cause legal problems with the deed he makes at a later date.

Conclusion

The agreement deed can also be used as a guide when used to sue parties who violate the agreement specified in the agreement letter. Therefore, the forms of the prudential *principle* that a notary should carry out in the deed-making process identify the complainant's identity, verifying the data of the subject and object of the observer carefully, giving a grace period in working on the deed, acting carefully, being careful and thorough in the deed work process, fulfilling all the technical requirements for making deeds are forms of precautionary principles that a notary public should not carry out. The Notary can prevent legal problems arising from the authentic deed he makes in the future.

Ethical Clearance: Yes.

Conflict of Interest: No

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