

THE LEGAL STUDY OF NORMS OF CORNEAL DONOR REGULATION IN INDONESIA

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Abstract

This research is determined to analyze about Indonesian citizen human rights and constitutional rights as a corneal transplant donors and recipients, also to analyze legal protection for Indonesian citizens. This research is a normative juridical method which is research that discusses about principles in law science, to look for solutions or legal issues to identify the basic meanings of rights and obligations, legal events, legal relations, and legal objects. Using a statute approach, a conceptual approach, and a comparative approach. Corneal donor and transplantation in Indonesia is a human right that must be protected and has been regulated in Article 25 of the United Nations Declaration of Human Rights and are also emphasized in Article 12 of the International Convention on Economic Social and Cultural Rights. Meanwhile the constitutional rights of Indonesian citizens as donors and recipients of corneal transplants have actually been stipulated in Article 28 H of the 1945 Constitution jo, Article 9, Article 64 Paragraph 1 and Paragraph 2 of the Health Law No. 36 of 2009, Article 28 of the Republic of Indonesia Government Regulation Number 53 of 2021, but these regulatory norms still do not provide optimal guarantees for both donors and recipients of corneal transplants.

Keywords: *Corneal Donors; Legal Protection; Norms; Regulations.*

A. Research Background

Indonesia is a welfare state as contained in the Preamble to the 1945

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Constitution of the Republic of Indonesia, paragraph 4, which states that, Indonesia protects the entire Indonesian nation and all of Indonesia's bloodshed and to advance public welfare.¹ Everyone has human rights as basic rights that humans have, their existence is inherent in human nature from birth. Humans are creatures of God Almighty who are equipped and endowed with fundamental rights, so that no one can ignore or sideline them. Human rights are basically possessed by humans because they are human, not because these rights are granted by the state, law, or other human beings. So that its existence does not depend on recognition from the state, law, or other human beings. Human rights are universal, meaning that human rights apply not limited by space or place (anywhere), not limited by time (anytime), not limited to certain people (for anyone), and cannot be taken, separated and violated by anybody.² Rights are interests protected by law. Meanwhile, "human rights" are fundamental and absolute interests that must be protected by law.

Health is part of human rights and one of the elements of well-being according to the ideals of the Indonesian nation as stated in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. So that, all activities and efforts to improve health status are very important. Disturbance health will cause various human suffering both as individuals and society, as defined in the health bill: a state of physical, mental, and social well-being that allows everyone to live productively socially and economy.³ Efforts to improve health status in Indonesia are starting to experience significant developments with the development of technology. Genetic treatment technology and health experiments on the human body, one of which is organ transplantation.⁴

¹ Marilang, "Ideologi *Welfare State* Konstitusi: Hak Menguasai Negara Atas Barang Tambang", *Jurnal Konstitusi*, Vol. 9, No. 2, 2016, p. 16.

² A. Widiada Gunakaya, 2017, *Hak Asasi Manusia*, Publishing ANDI and Bandung Law College, Bandung, p. 1-3.

³ Irwan S, 2017, *Etika dan Perilaku Kesehatan*, CV. Absolute Media, Yogyakarta, p. 23.

⁴ M. Faizal Zulkarnaen, "Implementasi Medikolegal Transplantasi Organ dari Donor Jenazah Untuk Peningkatan Kesehatan Masyarakat", *Jurnal UNTAG Semarang*, Vol. 9, No. 2, 2016, p. 23.

In Indonesia, a transplant that is quite often done is a corneal transplant, currently Indonesia has a special institution that provides eye corneas for people who need it, namely the Eye Bank. Corneal disease is included in the 4th largest cause of blindness according to WHO data, after cataracts, glaucoma, and age-related macular degeneration. According to research by the Indonesian Ophthalmologists Association (PERDAMI), 1 in 1000 people suffer from blindness due to corneal disease in Indonesia. In Indonesia, according to data from the Indonesian Eye Bank (BMI), approximately 2 million Indonesians live with corneal blindness which can be restored with a corneal transplant.⁵ According to Tjahjono D. Gondhowiardjo, Chairman of BMI lacks cornea donors, the waiting list for corneal transplant patients in Indonesia alone is more than 20 thousand people. Meanwhile, in the last three years, only 35 people have donated corneas. Corneal imports from cornea exporting countries such as India, Sri Lanka, the Netherlands, and the United States can only meet 5-10% of transplants.⁶

According to BMI data, from 1968 - 2008 the number of corneal donor patients queued up to 18,020 patients, but the number of operations that could be performed was only 3,547 patients, a total of 3,023 donors obtained from imported corneas, and only 524 local donors (14.7%). However, the number of donated corneas often decreases every year due to regulations in various countries where the Eye Bank will send donor corneas only if the needs in the country have been met.⁷

Government Regulation of the Republic of Indonesia Number 53 of 2021 Concerning Organ and Tissue Transplantation article 3 paragraph 2 says "Organs and/or body tissue as referred to in paragraph (1) are obtained from donors

⁵ Nyoman Yenny Khristiawati. "Memperkuat Bank Mata di Indonesia Untuk Peningkatan Angka Transplantasi Kornea Mata", <https://baliportalnews.com/2022/04/memperkuat-bank-mata-di-indonesia-untuk-peningkatan-angka-transplantasi-kornea-mata/>, accessed 12 October 2021.

⁶ Nabigha Yushatia Putri, 2016, *Karakteristik Penderita Katarak Di Balai Kesehatan Mata Masyarakat (BKMM) Makassar Tahun 2016*, Thesis, Fakultas Kedokteran University of Kedokteran Makasar, Makasar. p. 65.

⁷ Nyoman Yenny Khristiawati, *Loc.Cit.*

voluntarily". The voluntary system implemented in Indonesia is different from the law implemented in Singapore through the Human Organ Transplant Act (HOTA) which allows organ transplants from donors who have died to recipients who need them if the donor does not register his objection to becoming a donor before he dies. Based on the description above, the author wants to study and analyze the Legal Study of Corneal Regulation Norms in Indonesia.

Yoga and Turingsih analyze the corneal donor agreement of the prospective donor and the Yogyakarta branch of the Eye Bank whether it can qualify as a power of attorney agreement or not, and to analyze the legal consequences and settlement if the prospective donor's heirs do not contact the Yogyakarta branch of the Eye Bank after the prospective donor dies after 6 hours, because if after that time, the cornea of the eye cannot be used for transplantation⁸.

Effendi⁹ examine the legal relationship between eye cornea donors and the Indonesian Eye Bank contained in the statement made by the Indonesian Eye Bank. This research concerns the delegation of power between donors and the Indonesian Eye Bank by using several powers of attorney, will, and grant theories. The third object of study is regarding the actions of the donor's heirs who disagree when the eye cornea donation is carried out using several theories in default.

Based on this background, the formulation of the problem is as follows human rights and constitutional rights of Indonesian citizens as donors and recipients of corneal transplants and what is the legal protection for Indonesian citizens as donors and recipients of corneal transplants. The purpose of this study is to analyze the human rights and constitutional rights of Indonesian citizens as donors and recipients of corneal transplants and to analyze the legal protection of Indonesian citizens as

⁸ R. A. Yoga Dwi Marta and Antari Innaka Turingsih, 2018, *Tinjauan Yuridis Perjanjian Pendonoran Kornea Mata di Bank Mata Cabang Yogyakarta*, Thesis, Department of Civil Law Faculty of Law, University of Gajah Mada, Yogyakarta, p. 3.

⁹ Nuril Hikam Effendi, 2016, *Hubungan Hukum Antara Pendonor dengan Bank Mata Indonesia terhadap Transplantasi Kornea Mata*, Thesis, Faculty of Law University of Jember, Jember, p. 6-7.

donors and recipients of corneal transplants.

B. Research Method

This type of research is normative juridical research, namely research that discusses principles in the science of law, by seeking solutions or legal issues to identify the basic understanding of rights and obligations, legal events, legal relations, and legal objects. This study examines the legal norms contained in certain laws and regulations legally written and systematically.¹⁰

The approaches used in this study are the statute approach, the conceptual approach, and the comparative approach. The statutory approach is an approach that examines and analyzes all laws and regulations that are related to the legal issues being handled. Conceptual approach (conceptual approach) is an approach that departs from the views and doctrines that developed from the science of law, so that by studying the views and doctrines that developed in the science of law, the author can find ideas that gave rise to legal understandings, concepts law, and legal principles relevant to the issue at hand.¹¹ As well as the comparative legal approach used in terms of research problems which dispute the existence of a void in norms, where researchers carry out a comparative approach by comparing norms related to corneal transplants.¹²

The primary legal materials used by the author include:

1. 1945 Constitution
2. Law of the Republic of Indonesia Number 17 of 2023 concerning Health.
3. Law No. 39 of 1999 concerning Human Rights.

¹⁰ H. Zainudin Ali, 2015, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, p. 25-26.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Persada Media Group, Jakarta, 2019, p. 39.

¹² I Made Pasek Diantha, 2018, *Metode Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Prenadamedia Group, Jakarta, p. 156-162.

4. Law No. 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation.
5. Republic of Indonesia Government Regulation No. 53 of 2021 concerning Organ and Tissue Transplants.
6. Regulation of the Minister of Health of the Republic of Indonesia Number 29 of 2016 concerning the Implementation of Eye Health Services in Health Service Facilities.
7. Regulation of the Minister of Health of the Republic of Indonesia Number 37 of 2014 concerning Determination of Mortality and Utilization of Donor Organs.
8. Human Organ Transplant Act, Chapter 131A, The Statutes of the Republic of Singapore.
9. Universal Declaration of Human Rights (UDHR).

Secondary legal materials are legal materials that provide an explanation of primary legal materials. Secondary legal materials in the form of draft laws, research results, or opinions of legal experts. Tertiary legal materials, namely materials that provide instructions and explanations of primary legal materials and secondary legal materials, such as dictionaries (laws), and encyclopedias.

In collecting legal materials, researchers conducted a document study, namely collecting various legal library materials in the form of laws and regulations, books on law, journals, literature, legal dictionaries, and medical books. Where the steps for collecting legal materials are carried out, namely reading, studying, quoting, linking legal materials from primary legal materials, secondary legal materials, and tertiary legal materials so that they become a unit that will be easily understood and conveyed.

The method of analysis of legal material applied in this study is the normative descriptive method, because this research does not use concepts that are measured by

numbers or expressed by statistical formulas, the analysis of legal materials in this study is carried out by adhering to or based on legal norms or rules (in a broad sense, namely those consisting of legal values, legal principles, legal principles in a narrow sense and authoritative texts or legal rules), legal concepts and legal doctrine contained in the framework or literature review are those used to answer research problems.

The legal materials that were successfully collected and obtained for research were then processed systematically and consistently, then an analysis was carried out in a series of statements that described the results of the research and were based on the problem under study. Then a theoretical analysis of the legal material is carried out to determine, understand, and explain the legal studies of people with corneal blindness in Indonesia.

C. Research Result and Analysis

1. Human Rights and Constitutional Rights of Indonesian Citizens as Corneal Transplant Donors and Recipients

Human rights (HAM) consist of 3 words namely rights, basic, and human. The word right comes from Arabic which is taken from the word "*haqq*" which means true, real, and obligatory. Can be interpreted as the authority or obligation to do or not do something. The word basic comes from "*asasiy*" which means the origin, principle, or basis of everything. Humans is an Indonesian word that means intelligent beings, human beings, or people. So etymologically, human rights can be interpreted as fundamental rights inherent in human beings. In foreign languages, human rights are known as "human rights" in English, "*droits de l'homme*" in French, "*Grundrechte*" in German, "*Mensen rechte*" in Dutch. Where all the meaning is almost

the same, namely basic human rights.¹³

Human rights, in the opinion of several experts, including John Locke, interpret human rights as rights that are given directly by God as something that is natural. According to Jan Materson, human rights are rights inherent in humans, without which it is impossible for humans to live as humans. According to Baharuddin Lopa, the notion of human rights as given by Jan Materson is added to the sentence "it is impossible to live as a human being" which means "it is impossible to live as a responsible human being", because apart from having rights, humans also have responsibilities for what they do.¹⁴

According to Joel Feinberg, human rights are general moral rights which concern something that is fundamentally important and belongs to all people equally, unconditionally and cannot be contested. According to Umozurike UO in the book by Mashood A. Baderin, human rights are a series of claims that are no exception supported by ethics and should be supported by law submitted to society, especially submitted to state administrators, by individuals or groups based on humanity. Furthermore, according to Soetandyo Wignjosoebroto, the notion of human rights is the basic right that has been generally recognized as rights possessed by humans because of their nature and nature as human beings. Universal because it is part of human beings regardless of skin color, age, gender, background, religion, or belief.¹⁵ Rights protected by human rights:¹⁶

a. The Right to Self-Determination

The right to self-determination in health services is a human right to determine what a doctor may or may not do to a patient.

b. Discrimination Prevention

¹³ Yulianto, 2022, *Hak Kesehatan: Perspektif Hak Asasi Manusia dan Hak Konstitusional Warga Negara*, Scopindo Media Pustaka, Surabaya, p 2.

¹⁴ *Ibid*, p. 3.

¹⁵ *Ibid*, p. 4.

¹⁶ *Ibid*, p. 41-46.

Some of the rights included in the prevention of discrimination are the right to equal wages for women and men, no discrimination in jobs and positions between men and women, prohibition of discriminatory practices against women, eradication, and punishment of crimes of differential skin color, elimination of intolerance and discrimination in religion and belief.

c. Prohibition of Torture

The UDHR and the International Covenant strictly regulate guarantees for freedom from the practice and crime of torture. If this is done it could even be classified as a serious human rights crime. The prohibition of torture is also stated in the Geneva Convention where prisoners of war must not be treated cruelly, as well as victims of international and national armed conflicts.

Health is one of the rights to basic human needs. The Lancet shows that the health status of Indonesian people in general has experienced great progress or increased. However, unfortunately there are still gaps in several health indicators between provinces. In The Lancet Global Health, researchers analyzed hundreds of diseases, injuries, and health risk factors in Indonesia in a new systematic manner based on data from the 2019 Global Burden of Disease (GBD) Study.¹⁷ The degree of health has long been understood as one of the human rights that must be protected and fulfilled by the state. With constitutional guarantees, it is hoped that the government will pay greater attention to development in the health sector.¹⁸

The rights of donors and recipients of corneal transplants in Indonesia are explained by the fact that their clarity is disturbed due to acquired or congenital diseases, so that the patient's vision will be disturbed. If this happens, then a corneal

¹⁷ Holy Kartika Nurwigati Sumartiningtyas, "Derajat Kesehatan Masyarakat Indonesia Meningkatkan", <https://www.kompas.com/sains/read/2022/10/12/160300523/derajat-kesehatan-masyarakat-indonesia-meningkat-studi-ini-jelaskan?page=all><https://www.google.com/search?q=derajat+kesehatan+negara+indonesia>, accessed 29 September 2022.

¹⁸ Indra Perwira, 2014, *Memahami Kesehatan Sebagai Hak Asasi Manusia*, Lembaga Studi dan Advokasi Masyarakat, Jakarta, p. 23.

transplant is one of the patient's vision rehabilitation therapies. The success rate for corneal transplants is currently up to 90% due to technological developments in the field of cornea, where previously all layers of the cornea would be replaced with donor corneal tissue but now only the affected layer of the cornea will be replaced there by reducing the possibility of tissue rejection.¹⁹ The corneal donation process was carried out by the eye bank after receiving information that a cornea donor had died. Corneal tissue is collected from a donor no later than 6-10 hours after the donor dies, especially in tropical countries, so that the quality of the cornea obtained is still good. The sooner the corneal tissue is taken from the donor, the better the quality obtained.²⁰

Organ or tissue transplantation is a medical procedure for severe organ or tissue dysfunction. Is a replacement therapy which is the best effort to help patients because the results are more satisfactory than conservative therapy.²¹ The main goal of organ and tissue transplantation is humanity, avoiding death or illness that will occur if the transplant is not carried out, restoring the function of organs and tissues that have been damaged or have abnormalities. In accordance with the provisions of Article 64 paragraph 1 and paragraph 2 of Health Law No. 36 of 2009 concerning Health states that:

- (1) Cure for disease and restoration of health can be done through organ and/or tissue transplantation, drug implants and/or medical devices, plastic and reconstructive surgery, and the use of stem cells.
- (2) Transplantation of organs and/or body tissues as referred to in paragraph (1) is carried out only for humanity and is prohibited from being commercialized.

The definition of transplant according to RI Government Regulation Number 53 of 2021 concerning Organ and Tissue Transplantation is the transfer of organs

¹⁹ JEC, "Lion Eye Bank Indonesia", <https://jec.co.id/id/service/lions-eye-bank-jakarta>, accessed 27 September 2022.

²⁰ Giovanna Karinny Pereira Cruz, "Marcos Antonio Ferreira Junior, Cornea Donation Process and Tissue Quality for Transplantation", *PLOS ONE*, Vol. 16, No. 4, 2021. p. 45.

²¹ M. Jusuf Hanafiah and Amri Amir, 2018, *Etika Kedokteran dan Hukum Kesehatan*, EGC, Jakarta, p. 41.

and tissue from a donor to a recipient to cure disease and restore the recipient's health. Corneal transplants are included in tissue transplants which are regulated in Article 28 of the Indonesian Government Regulation Number 53 of 2021.

The definition of a donor according to Government Regulation Number 53 of 2021 concerning Organ and Tissue Transplants is a person who donates organs and/or body tissue to recipients for the purpose of curing disease and restoring the recipient's health. The donor's rights regulated in this law are the confidentiality of his identity and the results of his medical examination, obtaining priority as a recipient if a transplant is needed, and revoking his registration in the data of potential donors until before the start of the preparation for transplant surgery.

The definition of a recipient according to Government Regulation Number 53 of 2021 concerning Organ and Tissue Transplantation is a person who receives donor organs and/or tissue for the purpose of curing disease and restoring health. The rights of recipients of corneal tissue in Indonesia are also regulated in article 25 which has the right to know the identity of the donor and related medical information and to know the order of the waiting list for prospective recipients to obtain donors. Matters regarding the use of donor organs are regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 37 of 2014 concerning Determination of Mortality and Utilization of Donor Organs. Diagnostic criteria for clinical or conventional death for cornea donors are regulated in Article 8 paragraph (1): "Criteria for the diagnosis of clinical/conventional death as referred to in Article 7 are based on the proven permanent cessation of the functions of the cardiac circulatory system and respiratory system." Utilization of donor organs has been regulated in Article 16:

- (1) Organizing the utilization of donor organs is carried out by applying and screening health technology.

- (2) The application and screening of technology as referred to in paragraph (1) is carried out in accordance with religious, moral, and ethical norms.
- (3) (1) Utilization of donor organs referred to in paragraph (1) is carried out after the donor is declared brain stem dead.
- (4) In addition to the organs referred to in paragraph (1), utilization can be carried out in the form of tissue and/or cells.

According to Government Regulation Number 53 of 2021 concerning Transplantation of Organs and Body Tissues Article 30 An eye bank is an agency that aims to recruit donors, screen, take, process, store, and distribute tissue for non-profit health service purposes. According to this Government Regulation, the central government, regional government, or community can organize an eye bank according to their capabilities and must have a permit from the Minister. To get the results to be achieved, the Eye Bank will accept and carry out the registration of potential donors. After the donor registers with the Eye Bank, the prospective donor will undergo a clinical examination and fill out a statement that if he dies, he will give up his eyes to be transplanted to those who are entitled. The statement letter must be known and signed by the husband or wife or children or heirs and another witness, also signed by the management of the Eye Bank. Then the donor will authorize the Eye Bank to carry out the retrieval and transplant procedure after the donor is declared dead.²²

Transplantation has been regulated in national positive law, but please note that transplant surgery is not an act that is prohibited by religion. The Islamic religion has given its views on transplantation through the fatwa of the Indonesian Ulema Council (MUI) on June 13, 1978 "A person who during his life made a will donate his eye cornea after death with the knowledge and approval of his heirs, then this can be carried out and must be carried out by experts' surgery".²³

²² Sidarta Ilyas, 2002, *Ilmu Penyakit Mata*, CV Sagung Seto, Jakarta, p. 167.

²³ Nurul Hikam Effendi, 2016, *Hubungan Hukum Antara Pendorong Dengan Bank Mata Indonesia Terhadap Transplantasi Kornea Mata*, Thesis, Faculty of Law University of Jember, Jember, p. 1.

Based on a study of the law on eye donation, based on aspects of the law on health and government regulations as well as fatwas from the MUI, there are no contradictions, but in Islamic law the fatwa is still not fully accepted by all levels of Islamic law. The Indonesian Ulema Council (MUI) and Nahdlatul Ulama (NU) are two Islamic mass organizations that always provide legal views related to phenomena that often occur and develop in society, including views on the law regarding human corneal transplantation. The MUI once discussed this through its fatwa commission in the 3rd Indonesian Ijtima' Ulama Fatwa Commission in 2009 in Padang Panjang, West Sumatra, namely "The law of transplanting corneas to people who need it is permissible if it is really needed and there are no other medical efforts to cure it. This shows that there are still contradictions regarding eye donation.

2. Legal Protection for Indonesian Citizens as Corneal Transplant Donors and Recipients

Legal protection is one of the many discourses that has been rolled out to guarantee people's rights. According to Satjipto Rahardjo that legal protection is to protect human rights that are harmed by other people, and provide protection to the community so that they can enjoy all the rights regulated by law and statutory regulations.²⁴ Meanwhile, according to the Kansil CST²⁵, legal protection are various legal actions and remedies that must be taken and provided by law enforcement officials to protect themselves and the community from interference and various threats from any party, so as to provide a sense of security. The legal protection of Indonesian citizens as donors and recipients of corneal transplants is explained by two protections, namely preventive legal protection as follows.

²⁴ Satjipto Rahardjo, *Administrasi Keadilan dalam Perubahan Masyarakat*, *Journal of Legal Issues*, Vol. 1, No. 3, 2016, p. 4.

²⁵ *Ibid*, p. 5.

a. Preventive Legal Protection for Corneal Transplant Donors and Recipients

Preventive legal protection for donors and recipients of corneal transplants in Indonesia has been stated in various laws and regulations made by the Government.

In Law Number 36 of 2009 concerning Health Article 64:

- (1) Disease healing and health recovery can be carried out through organ and/or body tissue transplants, implants of drugs and/or medical devices, plastic and reconstructive surgery, and the use of stem cells.
- (2) Transplantation of organs and/or body tissues as referred to in paragraph (1) is carried out only for humanitarian purposes and is prohibited from being commercialized,
- (3) Organs and/or body tissues are prohibited from being traded under any pretext.

In Law Number 39 of 1999 concerning Human Rights Article 13 it says that "Everyone has the right to develop and benefit from science and technology, arts and culture in accordance with human dignity for the welfare of himself, the nation and people." This is one of the protections for corneal transplant recipients so they can benefit from the growing development of technology in the field of eye health for the treatment of corneal blindness.

One of the preventive legal protections for donors and recipients of corneal transplants is regarding the determination of clinical death as a condition for donor corneas, which is regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 37 of 2014 concerning Determination of Mortality and Utilization of Donor Organs Article 8:

- (2) Diagnostic criteria for clinical/conventional death as referred to in Article 7 are based on the proven permanent cessation of the functions of the cardiac circulatory and respiratory systems.
- (3) The process of determining clinical/conventional death as referred to in paragraph (1) is carried out in accordance with professional standards, service standards and standard operating procedures.

Arrangements for organ transplants aim to ensure security, safety,

volunteerism, benefits and fairness in organ transplant services for donors and recipients, these efforts are also made to provide protection for the dignity, privacy and honor of donors and recipients. This preventive legal protection effort also aims to increase the donation and availability of organs and body tissues for efforts to cure disease, restore health and improve the quality of life of the community. In RI Government Regulation No. 53 of 2021 concerning Organ and Body Tissue Transplantation Article 41 it has been said that to become a donor you must meet various administrative requirements as well as medical requirements. This administrative requirement is important to prevent abuse or conflicts regarding cornea donors in the future. In article 42 it is said that the conditions for donors are to make a statement of willingness to donate eyes voluntarily, have received the approval of the next of kin, have understood the indications, contraindications, risks, and procedures and have made a letter of approval, and have not entered into a sale and purchase agreement or a reward agreement with the recipient.

In RI Government Regulation No. 53 of 2021 concerning Organ and Tissue Transplantation also involves the participation of the community to prevent violations of the law, in Article 64 paragraph (3): "Preventing the sale and purchase of organs and body tissue as referred to in paragraph (1) letter c is carried out through complaints and reporting".

b. Repressive Legal Protection for Corneal Transplant Donors and Recipients

Law is seen as an instrument of change and it is believed that it will be better if the law is open to reconstruction.²⁶ To be responsive, the system needs to be open in many respects, it needs to encourage participation and it needs to anticipate new social interests that allow them to be recognized in difficult situations.²⁷ Law in

²⁶ I Dewa Gede Atmadja and I Nyoman Putu Budiarta, *Teori-Teori Hukum*, Setara Press, Malang, 2018, p. 45.

²⁷ Rio Christiawan, 2021, *Omnibus Law: Teori dan Penerapannya*, Sinar Grafika, Jakarta, p. 45.

society has a role as a servant of repressive power, as a separate institution capable of taming repression and protecting its own integrity, as well as law as a facilitator of various responses to social needs and aspirations. For example, although there is coercion in all types, the degree of coercion varies.²⁸ Coercion is dominant in repressive law, being in autonomous law, and lacking in responsive law. Repressive, autonomous, and responsive are abstract concepts whose empirical reference sources are often difficult to understand. Repressive, autonomous, and responsive law are not only different types of law, but in some respects also stages of evolution in the relation of law to social order and political order.²⁹

Pound's theory of social interests is a more explicit attempt to develop a model of responsive law. In this perspective, good law should provide something better than just procedural justice. Good law must be competent, fair, able to recognize the will of the public, and have a commitment to achieving substantive justice.³⁰

Responsive law is a philosophical approach to law that emphasizes socially relevant legal remedies. The rule of law is said to be responsive if it can act as a means of responding to social provisions and public aspirations, prioritizing accommodation to accept social changes in order to achieve justice and public emancipation.³¹ The main figures in the responsive legal system are Philippe Nonet and Philip Selznick, who view this law as sociological jurisprudence and realist jurisprudence. According to Philippe Nonet and Philip Selznick, responsive law contrasts with repressive law and autonomous law. In autonomous law, what is put forward is a strict separation between power and law. Its legitimacy lies in laws that are free from political influence. In repressive law, the law is intended as a tool of

²⁸ R. Soeroso, 2021, *Pengantar Ilmu Hukum*, Cetakan kedua puluh dua, Sinar Grafika, Jakarta, p. 238.

²⁹ Philippe Nonet and Philip Selznick, *Hukum Responsif*, Penerbit Nusa Media, Bandung, 2021, p. 17-23.

³⁰ *Ibid*, p. 83-83.

³¹ Utsman, Sabian, 2016, Menuju Penegakan Hukum Responsif: Konsep Phillippe Nonet & Philip Selznick Perbandingan Civil Law System dan Common Law System Spiral Kekerasan & Penegakan Hukum, Pustaka Pelajar, Yogyakarta, p. 54.

repressive power which aims to maintain the status quo of the authorities on the grounds of ensuring order. So that this law is often formulated to bind everyone except the ruler or law maker.³²

In responsive law, law is seen as a facilitator of social needs and aspirations. These two things are the constitutive norm, the goal and starting point of a responsive legal order. From this there are two main doctrines, first that law must be functional, pragmatic, purposeful and rational. Second, competence is the benchmark for evaluating all law enforcement.³³

Repressive legal protection for donors and recipients of corneal transplants in Indonesia has been stated in various laws and regulations made by the Government. In Law Number 36 of 2009 concerning Health Article 192 "Any person who deliberately trades organs and or body tissue as referred to in Article 64 paragraph (3) shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of up to Rp. 1,000 000,000.00 (one billion rupiah).

The act of buying and selling human organs is a special crime, because the Criminal Code itself does not regulate the crime of selling human organs. Article 204 of the Criminal Code reads: "Anyone who sells, delivers, or distributes goods that he knows endangers people's lives or health, even though the dangerous nature is not notified, is punishable by a maximum imprisonment of 15 years". The sale and purchase of organs and/or human tissue is included in the context of human trafficking because trafficking in persons explains the purpose of exploitation, which is an act that has the aim of gaining profit, one of which is taking or transplanting human organs and/or tissue.³⁴

³² *Ibid*, p. 54.

³³ Sulaiman, 2018, *Hukum Responsif: Hukum Responsif sebagai Lembaga Sosial yang Melayani Kebutuhan Sosial di Masa Transisi*, Malikussaleh University, Aceh, p. 4.

³⁴ Erita Noviana, "Pidana Jual Beli Organ", <https://mh.uma.ac.id/pidana-jual-beli-organ-human/>, accessed 21 October 2022.

D. Conclusion

The conclusions of this study include *first*, actions to perform donors and recipients of corneal transplants are right to health is a Human Right in accordance with Article 25 of the United Nations Declaration of Human Rights (UDHR) and Article 12 of the International Convention on Economic Social and Cultural Rights (ICESCR). Constitutional rights of Indonesian citizens as donors and recipients of corneal transplants. *Second*, Legal protection for Indonesian citizens as donors and recipients of corneal transplants in a preventive manner, namely in terms of the existing legal norms, especially those contained in RI Government Regulation No. 53 of 2021 concerning Organ and Tissue Transplants, Article 41 and Article 42 still do not provide optimal guarantees for both donors and recipients of corneal transplants. Meanwhile, repressive legal protection can only allow citizens who feel disadvantaged to file lawsuits against the government.

Suggestions for this research include *first*, the high number of queues for corneal transplant recipients currently requires concrete action to rethink legal products to facilitate the current problem of corneal donors. The results of a comparison of the law against Singapore with the HOTA system in force in Singapore which implements a negative legal system can provide new insights into new legal products that can improve the tissue donation system, especially the cornea in Indonesia so that more people with corneal blindness can have the opportunity to live their lives. who is better and prosperous. Therefore, the eye donor system in Indonesia requires regulatory updates regarding eye donation which regulate the (technical) system of protection and legal certainty regarding eye donation. *Second*, Republic of Indonesia Government Regulation No. 53 of 2021 concerning Organ and Tissue Transplantation by adhering to a negative system and socialization from a religious perspective is needed so that Indonesian people with religious pluralism get a better understanding of the benefits

of being a cornea donor for others. According to Islamic law, eye donation is a gift. However, currently there are several regulations that still need to be clarified so that the government can immediately create and enforce specific and specific laws and regulations regarding every authority, obligation and right of Bank Mata Indonesia. Then the government created a new formula to reduce the cost of corneal transplantation in Indonesia to reach all groups for mutual prosperity, and the statement letter made by the Indonesian Eye Bank should be made in the form of an agreement.

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