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Kolej Universiti Islam Malaysia

**THE CONCEPT OF ORGAN DONATION IN THE QUR'AN AND  
SUNNAH**

0000019584

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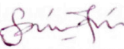
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## AUTHOR'S DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah S.W.T, Most Gracious, Most Merciful.

Here, I would like to express my gratefulness, as I am able to complete the academic project under the topic “ The Concept of Organ Donation in the Qur’an and Sunnah”. This project is a partial fulfillment to all third year students to obtain a Bachelor Degree from the Islamic University College of Malaysia (KUIM).

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May Allah bless you all.

## ABSTRAK

Kajian ini membincangkan konsep pendermaan organ mengikut Al-Qur'an dan Sunnah. Tujuan kajian ini adalah untuk menerangkan tentang cara pendermaan organ yang betul dalam Islam serta beberapa isu yang berkaitan dengannya. Selain itu diuraikan juga apa yang dikatakan pendermaan organ serta fatwa mengenainya. Kaedah yang digunakan ialah kajian perpustakaan. Hasil yang diperolehi daripada kajian ini bahawa pendermaan organ diharuskan di dalam Islam dengan mematuhi syarat-syarat yang telah ditentukan.

## ABSTRACT

This study discusses the concept of organ donation in the Qur'an and Sunnah. The aim of this research is to explain the right concept about organ donation in Islam and some related issues about it. Other than that, it also discusses its meaning and opinions of scholars regarding it. The methodology used is through library research. The study concludes that organ donation is necessary in Islam, but with certain conditions.

## ملخص البحث

هذا البحث يتكلم عن قضية زرع الأعضاء في ضوء القرآن والسنة. والغرض في هذا البحث البيان عن الموقف الصحيح في كيفية زرع الأعضاء في الإسلام وبعض المسائل المتعلقة به من تعريفه وأقوال العلماء فيه. وهذا البحث مستند على منهج المكتبي في جمع المعلومات. أن نتيجة هذا البحث، يجوز زرع الأعضاء في الإسلام بشروط معينة.

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## TRANSLITERATION

## 1. ALPHABET

| <u>Arabic</u> | <u>Latin</u> |
|---------------|--------------|
| ء             | ,            |
| ب             | b            |
| ت             | t            |
| ث             | th           |
| ج             | j            |
| ح             | ḥ            |
| خ             | kh           |
| د             | d            |
| ذ             | dh           |
| ر             | r            |
| ز             | z            |
| س             | s            |
| ش             | sh           |
| ص             | ṣ            |
| ض             | ḍ            |
| ط             | ṭ            |
| ظ             | ẓ            |
| ع             | c            |
| غ             | gh           |
| ف             | f            |

|   |                         |   |
|---|-------------------------|---|
| ق | ABBREVIATION            | q |
| ك |                         | k |
| ل | maah/yaw                | l |
| م | axter                   | m |
| ن | eraw/ adimon/ called by | n |
| ه | hah/yah                 | h |
| و | no author/ no critic    | w |
| ي | page                    | y |

## 2. LONG VOWEL

|      |                                  |   |
|------|----------------------------------|---|
| ا، ي | rediya Allah 'abu / 'ahā / 'ahum |   |
| ي    | alla Allah 'abih wa sallam       | ā |
| و    | subhānahu wa 'alā                | ī |
|      | volume                           | ū |

## 3. DIPHTHONG

|    |     |
|----|-----|
| و  | aw  |
| ي  | ay  |
| يّ | iyy |
| وّ | uww |

|          |          |                       |
|----------|----------|-----------------------|
| Example: | الضرورات | ad-ḍarūrāt            |
|          | العاده   | al- <sup>c</sup> ādah |
|          | الأدميه  | al-a'damiyyah         |

## ABBREVIATION

|        |                                     |
|--------|-------------------------------------|
| AD     | masihi year                         |
| Dr.    | doctor                              |
| ed.    | editor/ edition/ edited by          |
| H      | hijriyyah                           |
| M      | miladiyyah                          |
| n.a    | no author/ no artist                |
| p.     | page                                |
| trans. | translator/ translated by           |
| RA     | raḍiya Allah ʿanhu / ʿanhā / ʿanhum |
| SAW    | salla Allah ʿalayh wa sallam        |
| SWT    | subhānahu wa taʿalā                 |
| vol.   | volume                              |

## INTRODUCTION

The topic of this research is "The Concept of Organ Donation in Qur'an and Sunnah. In this research, it discusses the methods of organ donation in Islam. It also explains detail in the concept that can be used in organ donation or transplant as practiced today, which was unknown to the classical Muslim jurists. The methods of organ transferring treatment develop rapidly, in the modern times. Organs like eye cornea, heart, kidney and pancreas can be removed and transplanted between two individuals.

This issue of organ transferring treatment and ethics based on Islam was widely discussed by the scholars and many decision were made in the form of guidelines and fatwa's. Based on all these differences of opinions scholars, it is important to know what is the real position of the Qur'an and Sunnah in this matter so as to present a universal Islamic principle that can be applied in the modern time.

The transplant of organs is now established part of medical practice. But, some people not understand about this treatment. Some of them also confuse about this issue from the views of Muslim scholars. Now, this issue so interesting and get more attention. Although, the community must be given explanation about this issue, especially the view of 'ulama' in this case.

Donating an organ is not an act of mutilation. Mutilation is done with malice and vengeance and serves no good purpose, while donation of an organ is an act of charity and benevolence as it can save a human life. The principle supports organ transplant is contained in verse 185, Surah Al-Baqarah ﴿يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ﴾.

Allah intends every facility for you. He does not want to put you to difficulties. Islam considers a disease as a natural phenomenon. However, man should seek remedy. Allah, who causes ailments, also brings cure and redemption. Muslims are therefore encouraged to search for new modes of treatment and should apply them if proved successful.



## CHAPTER ONE

### The Concept of Organ Donation (General Perspective)

#### 1.1 The Meaning of Organ Donation

The community knows that the important thing to organ donation is that it can save other's life. Nevertheless, there are not so many people who are brave enough to donate their organs. This may due to the people's belief or understanding that organ donation is not good and painful. This wrong belief causes the community to become afraid to donate organs. Most of them believe that organ donation will be harmful to them. But, if we realize that, actually organ donation is very important that it can save life by replacing failing vital ones. Allah has mention in Al-Qur'an: -

﴿مَنْ أَجَلٍ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا﴾<sup>1</sup>

"Whosoever saves the life of one person it would be as if he saved the life of all mankind."<sup>2</sup>

Organ donation is the gift of an organ to help someone else that needs an organ transplant. Hundreds of people's lives are saved each year by organ transplants. Organs that can be donated by people who have died include the heart, lung, kidney, liver, pancreas and small bowel. Skin tissues, bone, heart valves and corneas can also be used to help others.

<sup>1</sup> Al-Qur'an. Al-Māidah 5: 32.

<sup>2</sup> All Quranic translation in this writing are based on Muhammad Farooq-i-Azam Malik. 1997. English Trans. of Meaning of Al-Qur'an. The Institute of Islamic Knowledge Houston, Texas, USA.

One of the basic aims of the Muslim faith is the save life. This is one of fundamental objective of the Shari'ah and Allah greatly rewards those who save others from death. Violating the human body, whether living or dead, is normally forbidden in Islam. The Shari'ah, however, waives this prohibition in a number of instances, firstly in cases of necessity and secondly in saving another person's life. It is this Islamic legal maxim *الضرورات تبيح المحظورات* that has great relevance to organ donation. If you happened to be ill and in need of a transplant, you certainly would wish that someone would help you by providing the needed organ.<sup>1</sup>

Organ donation means transferring an organ of the people who volunteer to be donated after death to someone needed, whether from his family or somebody related to him even from other person. Other than, organ donation also means transferring whichever organs people volunteer to donate during life to somebody who needs it. However, if the transplantation operation fails, it can bring more dangerous for the safety of the patient<sup>2</sup>. Human are vicegerents of Allah honoured from the rest of the creation. Allah has mentioned in Al-Qur'an: -

﴿وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ﴾<sup>3</sup>

“Indeed, We have honoured the children of Adam”

Allah has honoured man with give beautiful faces and choose them as vicegerents on this earth. Allah also gives command to all angels to show respect for human beings. Allah also gives brain to human being to differentiate between good and bad.

Based on my understanding, organ donation is to donate the part of body to somebody who need it. There are two concepts of organ donation, one is organ donation during life and second is organ donation after death or cadaver. Each type of donation must fulfill certain conditions as mentioned in the Al-Qur'an and Hadith. Organ donation and

<sup>1</sup>n. a., 18 August 2003. *Organ Donation*. <http://www.uktransplant.org.uk>.

<sup>2</sup> Basri Ibrahim. 1999. *Perubatan Moden Menurut Perspektif Islam*. Kuala Lumpur: Darul Nu'man. p. 182.

<sup>3</sup> Al-Qur'an. Al- Isrā' 17: 70.

transplantation saves the lives of countless people every day and by becoming an organ or tissue donor, you could save the lives of countless people. There is no restriction on the age at which you can choose to become an organ donor and you can become an organ donor by signing up with one of the voluntary organizations that promote organ donation.

Organ transplantation is a mode of treatment for serious and life threatening diseases which has been proven to be successful, and hence should be continued. Recent advancements in surgical procedures and the availability of anti-rejection drugs have contributed tremendously to the success of organ transplantation. The primary sources of organ transplantation are a dead body. As the process of death set in, the organs of the body begin to putrefy rapidly. Thus, if possible organ must be retrieved from a dead body whose vital functions are being sustained artificially. Such bodies are often of patient who die after a trauma that destroys their brain but leaves other organs intact. The term 'brain death' or cadaver is used to describe these bodies. Return to life is considered scientifically and medically impossible. Very strict brain related criteria are used to certify that a patient is brain dead.<sup>1</sup>

## 1.2 When can Organ Donation take place and how it is done?

Doctors and nurses are committed to do everything possible to save life. Organs are only removed for transplantation when all attempts to save life have failed and after a doctor or doctors who are entirely independent of the transplant team have certified death. Most donated organs come from people who died from a severe brain injury and those who received treatment on a ventilator in an intensive care unit. The brain injury damages vital centers in the brain stem, which are essential to maintain life. No one can live once these centers have been destroyed. Tests can show conclusively when this has happened.<sup>2</sup>

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<sup>1</sup> Abu Bakar Abdul Majeed. 2001. *Making The Best Of Both Worlds: Faith and Science*. Kuala Lumpur:IKIM. p. 170.

<sup>2</sup> n. a.. 18 August 2003. *Organ Donation*. <http://www.uktransplant.org.uk>.

In some circumstances, patients who die in hospital but are not on a ventilator may also donate their organs. They are called non-heart beating donors. Sometimes people who do not die in hospital can also become tissue donors. The consent, or lack of objection, of those closest to the patient is always sought before organs can be donated. This is why it is so important for people to discuss their wishes with their loved ones. Donation is an individual choice and views differ even within the same religious groups. Many families who agree to organ donation have said that it helps to know some good has come from their loss. The removal of organs is carried out with the greatest care and respect.<sup>1</sup>

The transplantation of organs is now an established part of medical practice. Some of the law governing transplantation is no more than the application of general principles. Thus, health professionals must exercise due care when carrying out the procedures involved and they must obtain the consent of the donor and recipient. The latter raises no special legal problems. However, at one stage it was arguable that the donor's consent would be invalid because the operation was not expected to provide the donor with any benefit.

### **1.2.1 Organs that can be donated**

There are two procedures related to organ donation. Some organs can be donated during life and some after the death. Organs like hearts and kidneys can be donated during life only, whereas organ donation after death includes using all tissues and organs, as long as the donor agrees before his death or by the agreement of his close family after his death. If the family of the donor does not agree to his decision, then the doctors could not continue with the operation.

There are twenty-five organs that can be donated after death with the condition that the organs do not die. To make sure that a person has died, it is usually based on the heartbeat or confirmation from a doctor that the person is dead. Previously, to confirm someone's death was through checking the heart beat only. But, with modern technology, we can use

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<sup>1</sup> n. a., 18 August 2003. *Organ Donation*. <http://www.uktransplant.org.uk>.

brain dead method to make sure that someone has died. Normally, two doctors will confirm the patient's death. They will make confidential report about death. If the two reports are same, the patient is declared died. After making sure someone has died, they will refer to his or her family to get permission to take the organ. If their members of family agreed, then the transfer of organ will be done fast.<sup>1</sup>

After taking out the organ, it will be transferred at that time to the eligible patient. The patients have to wait to receive that organ. The organ must be checked to be appropriate and suitable before commencing the transfer. For organ donation during life, suitability can be found among family members only. This happens because it very complicated and requires suitability between two peoples. Kidneys transfer always happens among child and mother or parents to child. Other that, transfer of tissue also happens at others parts of the some body like in blood duct from leg to the heart.

Organ donation is only possible when a person's brain has died and that person is on a ventilator in an intensive care unit in a hospital. In most cases, organ donors have died from a head injury or from bleeding in the brain. As with any patient, doctors and nurses will fight to save your life to the best of their ability. Only after the brain has died will organ donation be considered. Anyone up to the age of 80 years can be considered as an organ or tissue donation and corneas can be donated up to 85 years of age. Age and medical condition at the time of death will determine which organs and tissues can be donated.<sup>2</sup>

A decision to donate your body to medical science generally means that organ donation is not an option. There are a number of factors that are considered when organs are being allocated including blood group, tissue typing, height and weight compatibility, medical urgency and time on the waiting list.

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<sup>1</sup> Abu Jaafar Mukmir. 2001. *Keajaiban Organ Tubuh Manusia Menurut Perspektif Islam & Sains*. Kuala Lumpur: Al-Hidayah. p.246.

<sup>2</sup> n. a.. 18 August 2003. *Organ Donation*. <http://www.idirect.com>.

According to Dr. Zaki Murad bin Mohd Zaki, Neurologi Specialist Consultation, Kuala Lumpur Hospital, the tissue and organs that can be donated are<sup>1</sup>: -

| Organs                | Living donor                            | Dead donor         | Disease   |
|-----------------------|---|--------------------|---|
| Kidney<br>(Cadaveric) | Cadaveric donor                         |                    | Fail of kidney  |
| Liver                 | Cadaveric donor                         | With heart disease | Fail of liver (Biliary Atresia)                       |
| Lung/Heart            | Lung disease                            | Longenital disease |   |
| Pancreas              | Cadaveric donor                         |                    | Diabetes  |
| Bowel                 | Cadaveric donor                         |                    | Include bowel   |
| Bone                  | Bone cadaveric donor<br>Cadaveric donor |                    | Change the bone that operation cause cancer or injury |
| Eye (cornea)          |   |                    | The kind of disease cause blind                       |

<sup>1</sup> Basri Ibrahim. 1999. *Perubatan Moden Menurut Perspektif Islam*.p. 223

### **1.2.2 Organ that cannot be donated**

Donors have to be checked to ensure that they are healthy and free from any infectious diseases. Those who have dangerous diseases like HIV cannot become a donor because they can inflict their disease to the receivers. But in some countries it happened because the procedure has become like a profit making business and not that to save lives.

Having a medical condition does not prevent a person from becoming a donor. The medical team treating an ill person is separate from the transplant team and organs are only removed when two doctors, working independently, have certified that the person is dead following a series of strict tests. The removal of organs is carried out with the same care and respect as any other operation. It is important to remember that organ donation does not disfigure the body or change the way it looks nor does it cause any delay to funeral arrangements.

The organ receivers also take his turn and satisfy other conditions. Among that are accident case, suitability of the organ, age of patient, and size of body. Actually, the hospital will take emergency cases first, because they are more important. Other than that, medical team will give to young patient from older patient who are above 60 years. Medical teams do not differentiate between tribe, religion, and whatever patient and donor hold. Chinese organs are not for the Chinese patients only but for whom those are eligible. In this situation, solidarity can be happen with out bias and specific to any nation.

### **1.2.3 Organ donation from a living donor**

Everyone is a potential organ and tissue donor. Typically, organ donors are healthy people who have suffered an irreversible brain injury (most often due to a motor vehicle accident) or a brain hemorrhage resulting in brain death. The health of the donor and his organs and tissues, not his or her age, is what the transplant surgeon considers. The organs and tissues used for transplantation cannot have sustained any damage at the time

of death. Brain death means that the brain is no longer functioning and can never recover, but vital organs and tissues can be supported artificially for a limited time and saved for possible transplantation.

It necessary to donate the part of their body during lives. The donation can be done if the donor is healthy. Organ like heart however cannot be donated because it is in the body. In truth, human bodies are generous gift from Allah and necessarily to take care it. Allah has mention in Al-Quran:

﴿ وَأَوْثَوْهُمْ مِّن مَّا لَِلَّهِ الَّذِي آتَاكُمْ ﴾<sup>1</sup>

“And give them some of the wealth which Allah has given you”

Allah create that property as human’s own, to managed that property. For that, someone can donate half of property to be kind to other people. Someone also can donate the part of his or her body to other person. That means two property are different, someone can donate all their but cannot donate all part of their body to others people. In addition, it is forbidden for Muslim give their live to safe patient from damage, illness, and suffering. When one Muslim is able to dive in sea to safe drown person, or to safe fire victim, so why not he sacrifice the part of his body to others people when needed?

This epoch, we can see blood donation activity. Blood is one of the parts of body. These activities also happen in Islam country without protest from theologian, but they encourage this activity. These activities are necessary and acceptable in Islam. The procedure in Islam mention “الضرر يزال” for that, we encourage to help people in difficult, give medical treatment to patient, give food to hungry people, free captive, save people who is nearing death or has damaged his body. One Muslim cannot just sit and see anything bad befell his fellow Muslim when he is able to help. In truth, the effort-to help patient with kidney problem is necessarily in Islam. In addition, this is a praiseworthy

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<sup>1</sup> Al-Qur’an. An-Nūr 24: 33.

manner and will get blessings from Allah. The organ must be donated by a mukallaf, person who has attained puberty and person that have brain.

The donor cannot give one of his vital organs that would end his life. It is an act of homicide or suicide, both of which are considered as one of the most detestable crimes in Islam. Donation should cause no harm or a minimal increased risk top the health of the donor. It invokes the principles of accepting the lesser harm when face with two evils. The harm done by the disease that can kill a human being is not to be compared to the supposed harm incurred by donation.

Blood donation or organ or part of body is farḍu kifāyah. This procedure must be executed without constraint and doesn't harm the donor. What are the procedure to donate and its condition from medical profession liability to conduct this effort? Cooperation between human organ banks in others country are needed. The second caliph Umar al-Khattab has decided, if someone died in one district because of hunger, community in that district is compulsory to pay fidyah<sup>1</sup>. This case is same with one patient died because of lack of blood or kidney damage. Allah has mentioned in the Qur'an:

﴿وَيُؤْتُونَ عَلَىٰ أَنفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ﴾<sup>2</sup>

“And prefer those Muhājirin over themselves, even though them selves are poor”.

You can donate certain organs while you are alive, this means you are called a living donor. Living donors can donate kidneys, tissues such as skin (for treating burns) and bone.

<sup>1</sup> S.M. Hatta. 1995. *Perubatan Psikologi Islam*. Kuala Lumpur : Dewan Bahasa & Pustaka. p.26

<sup>2</sup> Al-Quran. Al-Hashr 59:9

#### 1.2.4 Organ donation after death

In Hadith Rasulullah S.A.W, he has mentioned: -

" كسر عظم الميت ككسرة حيا"<sup>1</sup>

The Hadith means, breaking bone of human beings is forbidden in Islam and one of sins. It is because a human being is one of creature that honoured during life or after dead. The prophet Muhammad forbid Muslim to cut dead person, like what happened in Jahiliyyah. It's also forbidden to dig a grave and damage the bones of dead person. But this is not the case in organ donation.

An organ donation after death is also known as cadaveric donation. This cadaveric donation will be performed quickly to avoid organ from dying. Normally, this organ have limit to be durable without oxygen and blood contribution. Organ like heart, its limit or durability is not more than twelve hour, whereas organ like liver can be durable not more than eighteen hour. Organ like kidneys can be durable during twenty-four hour after it is taken out from the donor's body. Normally, medical team will do the organ transplant quickly to save their patients. At the time of death, the donor or the next closest kin may offer organs such as liver or kidney for donation. It is important for everyone to communicate her or his wishes regarding organ donation to the family. In the event of death, it is the family who must sign for consent for organ donation.

Organ donors are usually victims of an accident resulting in an injury to the head whereby the patient is declared brain-dead. The declaration of brain dead means that all activity in the brain has stopped and none of the damage to the brain is reversible. If consent for organ donation is given, the donor's blood pressure is maintained by artificial means until the surgical team arrives to remove the organs. They are removed by sterile surgical procedure in the operating room. Once the organs are removed, they are flushed with a

<sup>1</sup> Al-Imām Abi Al-Hassan Al-Hanafī. 2000. *Sunan Ibn Majah*. Bayrut: Darul Al- M'arifah Kitab Janāiz. Bab Fi Al- Nahī 'an Kasr 'izām Āl-Māyyit. Jūz' 2. ed. 3. p. 278. # 1616.

special solution that helps preserve them until they are transplanted. After flushing, they are placed in sterile bags in a cooler with ice and transported to the center in which the transplant surgery will take place.

We know, from the Hadith of the Prophet, upon whom be blessing and peace, that breaking the bone of the dead person like breaking the born of a living person. We are not allowed to mutilate or disfigure human bodies. This was related to the days in early Islam, when the enemy used to mutilate to dead bodies of its opponents as a sign of revenge and humiliation. What is happening today is for the benefit of the community as a whole, because organ donation is serving the purpose, which is needed by the community. Serving the needs of the community is the same as a humiliating the enemy therefore donating organs is acceptable if it is done for any good medical reason.

Recent scientific advancements in the area of organ transplants and surgery, and even blood transfusion, have been tackled by some leading modern day ‘ulama’. After much deliberation, they have arrived at the comprehensive and well through out decision on the matter, based on one source that of the Shari’ah. Remember that the main sources consist of the Qur’an, Hadith, Qiyās (analogy), and Ijma’ (consensus) plus another six subsidiary sources which can be considered when legislating on matters which have not been referred to at all in the texts of the Qur’an and Hadith. Public interest is one of these extra sources. In Arabic this is referred to as ‘al-maṣlaḥah al-mursalah’<sup>1</sup>.

Many great developments in the history of the Muslim Ummah have been dealt with under this source category. What does this mean? It means that we have to consider the intrinsic value of the matter we are deciding. That is because blood transfusion and organ transplantation are in the public interest, is of benefit, and has not been specially banned in the Shari’ah and scholars have decided not to object to these operations being carried out but it was not all that easy. A Hadith of the Prophet, blessings and peace be on him, has been recorded as saying “breaking the bones of the dead person is like breaking the bones of someone who is living”. This means that we need to respect the human body,

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<sup>1</sup> Dr. S. M. Darsh. 1999. *Question & Answers About Islam*. London, United Kingdom: Ta-Ha Publishers Ltd. Wynne Road. p. 190.

whether it is a live dead. The fact that, we are allowed to mutilate bodies posed a dilemma for scholars considering the case of transplant surgery. They considered what is the nature of what the surgeons do. They decided that transplant surgery is not ‘an act of mutilation’ but rather a good service to the Muslim community and that as such it should be allowed.

Organ donation after dead has brought some question about it. The main point is success of its operation to cut organ dead person. Organ donation in Islam needs operational structure in taking benefits from human being to save the life of other person. Beside that, its purpose is to safeguard somebody from crime accusation. The body of person that is dead will be damaged if you do not take benefit from it. If situation like this exist, why don't we take the organs after the people has died and transfer it to other peoples that need it.

## CHAPTER TWO

### Views of contemporary Muslim scholars on Organ Transplant

#### 1.1 Opposing viewpoints and arguments

Insofar as organ transplant is concerned one ought to bear in mind that both the Qur'an and Sunnah neither sanction it nor condemn it. Contemporary Muslim jurists have deliberated on the issue in question and came up with certain juristic guidelines based on deductions from the broad teachings of the two original sources of the Shari'ah, namely the Quran and Sunnah. Muslim scholars of the most prestigious academies are unanimous in declaring that organ transplant is an act of merit and in certain circumstances can be an obligation. Therefore, what normally happens is that in all matters that have not been specially dealt with in these two original sources, there is bound to be differences of opinion as will be illustrated in this chapter.

Two prominent Muslim scholars who have written against organ transplant are the late Mufti Muhammad Shafi' of Pakistan and Dr. Abd al-Salam al- Sukri of Egypt. Mufti Shafi' work is in the Urdu language and entitled *Insani A'za-E ki Paivankari*, while that of Dr. al-Sukri is in Arabic and entitled "نقل وزرعة العاده الأدميه من مندر اسلامي" Mufti

Shafi' holds that organ transplant is not permissible on the basis of the following dicta<sup>1</sup>:-

- i) Sacredness of human life or body
- ii) The human body as an amānah (trust)
- iii) And finally that such a procedure would be tantamount to subjecting the human body to materials ends.

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<sup>1</sup>Abul Fadl Mohsin Ebrahim. 1998. *Organ Transplantation*. AS Noordeen. p. 56.

### 1.1.1 Sacredness of Human Life or Body

Man is the vicegerent of Allah on earth. Allah has mentioned in Al- Qur'an :

﴿وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ﴾<sup>1</sup>

“ Note that occasion, when your Rabb said to the angels: I am going to place a vicegerent on the earth. They said: “Will You place there one who will make mischief and shed blood will we sing Your praises and glorify Your name?” Allah said: “ I know what you know not”.

Allah also said he have honored the progeny of Adam. The human being should always keep his dignity even in disease or misfortune. The human body, living or dead should be venerated likewise. The prophet Muhammad S.A.W rebuked a man who broke the bone of a deceased, which he found in the cemetery. Due respect and reverence should be given to the dead body as exemplified by the Prophet Muhammad S.A.W who stood in veneration for a passing by funeral of a Jew, at the time when Jews were his bitter enemies. One of the companions exclaimed: “ It is only a funeral of a Jew!” The Prophet Muhammad S.A.W answered, “ Is it not a human soul?”<sup>2</sup>

All human beings are equal and Allah will only judge their deeds and intentions. The Prophet Muhammad S.A.W said “ An Arab is no better than non Arab, a white is no better than a black and vice versa, except by the fear of Allah and good deeds”<sup>3</sup>. Allah has mentioned in Al-Qur'an:

﴿يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ﴾<sup>4</sup>

<sup>1</sup> Al-Qur'an. Al-Baqarah 2:30

<sup>2</sup> Dr. Ismail Hj. Ibrahim. 1999. *Islam dan Pemindehan Organ*. Kuala Lumpur:IKIM. p. 96.

<sup>3</sup> Dr. Ismail Hj. Ibrahim. 1999. *Islam dan Pemindehan Organ*. p. 97.

<sup>4</sup> Al-Qur'an. Al-Hujurat 49:13

“ O mankind! We created you from a single pair of a male and a female, and made you into nations and tribes that you might get to know one another. Surely, the noblest of you in the sight of Allah, is he who is the most righteous. Allah is All Knowledgeable, All Aware.

Mutilation is proscribed and considered an anathema. However, doing a postmortem or dissection to study anatomy or donating an organ is not an act of mutilation. Mutilation is done with malice and vengeance and serves no good purpose, while postmortem and studying anatomy is essential to study medicine and to increase our knowledge about diseases and human body. Ibn Rushd (Averros) of Cordova said those who study anatomy see the greatness of God and become more faithful to Him. Imam Shafie who lives in the 8<sup>th</sup> century AD said “ Knowledge (science) has two major branches that which concern religion and that which concern the Human body”. Similarly, donation of an organ is not mutilation. It is an act of charity and benevolence as it is going to save a human life.<sup>1</sup>

The harm done, if any, by removing an organ from a deceased should be weighed against the benefit obtained and the new life given to the recipient. The principle of saving human life takes precedence over whatever assumed harm would befall the corpse. However organs cannot be harvested had consented in his lifetime and his relatives agree. If the identity of the corpse is unknown then a Muslim Qadi can order procurement of organs from such a cadaver.<sup>2</sup>

From the teachings of the Qur'an it can be deduced that man is enjoined to protect and preserve his own life as well as that of others. For example, man is forbidden from taking his own life<sup>3</sup>:

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<sup>1</sup> Dr. Ismail Hj. Ibrahim. 1999. *Islam dan Pemindahan Organ*. p. 98.

<sup>2</sup> Dr. Ismail Hj. Ibrahim. 1999. *Islam dan Pemindahan Organ*. p. 98.

<sup>3</sup> Abul Fadl Mohsin Ebrahim. 1998. *Organ Transplantation*. p. 57.

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا﴾<sup>1</sup>

“O believers! Do not consume one another’s wealth through unlawful means in stead, do business with mutual consent do not kill yourselves by adopting unlawful means. Indeed Allah is Merciful to you.”

﴿وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ﴾<sup>2</sup>

“Give generously for the cause of Allah and do not cast yourselves into destruction by your own hands. Be charitable, Allah loves those who are charitable.”

Likewise, the Qur’an imbues in man the gravity of the sin for taking someone else’s life:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَابْتَغُوا إِلَيْهِ الْوَسِيلَةَ وَجَاهِدُوا فِي سَبِيلِهِ لَعَلَّكُمْ تُفْلِحُونَ﴾<sup>3</sup>

“ O believers! Fear Allah and seek the means to be closer to Him and make Jihād in His Way so that you may be successful.”

In the Hadith literature it is recorded that the Prophet Muhammad S.A.W made the following assertive statement in his Farewell Sermon (Khutbat al Wada’):

“Your life and your property and your honour are sacred until you meet the Lord”.

The abovementioned citations have led Muslim jurists to include any form of aggression that is directed, not against the life of a human being but to parts of his or her body as a crime. This view also gains support from the following Hadith: -

"كسر عظم الميت لكسر عظم الحي في الإثم"<sup>4</sup>

In the light of the above Hadith the following questions may rightly be asked: How can one therefore be permitted to cut up a man’s body and remove an organ from it? Would

<sup>1</sup> Al-Qur’an. An- Nisa’ 4:29.

<sup>2</sup> Al-Qur’an. Al- Baqarah 2: 195

<sup>3</sup> Al-Qur’an. Al- Māidah 5:35

<sup>4</sup> Al-Imām Abi Al-Hassan Al-Hanafi. 2000. *Sunan Ibn Majah*. Bayrut: Darul Al- M’arifah Kitab Janāiz. Bab Fi Al- Nahī ‘an Kasr ‘izām Āl-Māyyiṭ. Jūz’ 2. ed. 3. p. 278. #1617.

that not constitute an act of aggression against the human body and thus tantamount to mutilation of the body?<sup>1</sup>

### 1.1.2 The Human Body as an Amānah (Trust)

The Qur'an tell us that Allah S.W.T has honoured man, made subservient to him whatever is in the heavens and on earth as a blessing and mercy. Likewise, it also mentions that Allah S.W.T has endowed and entrusted man with all that he is in need of in respect of his body organs. This understanding leads one to logically conclude that man has no right to donate any of his organs since these organs are not in reality his own, but have rather been endowed to him as a trust.<sup>2</sup> Allah have mentioned in the Qur'an:-

﴿ يُسَبِّحُونَ اللَّيْلَ وَالنَّهَارَ لَا يَفْتُرُونَ ﴾<sup>3</sup>

“ They glorify Him night and day and do not pause.”

﴿ أَلَمْ نَجْعَلْ لَهُ عَيْنَيْنِ ﴾<sup>4</sup>

“ Have we not given him two eyes to observe?”

Therefore, since a human being does not own his body, her or she cannot makes a gift in respect of any part of his or her body either during his or her lifetime or after death. Thus to include organ donation in one's will would not be in order since one cannot give away that which one does not legally own. The human body is an Amānah that must be taken cared any damage and harm. But, it can be used in a good manner to get benefit from it. For example, use the body in organ donation to save others live. This is encouraged in Shari'ah Islam. But, it must follow the given procedure to avoid any problems. The health must be excellent for a person to be an organ donor and it should not be dangerous for any of the donor or receiver.

<sup>1</sup> Abul Fadl Mohsin Ebrahim. 1998. *Organ Transplantation*. P. 58.

<sup>2</sup> Abul Fadl Mohsin Ebrahim. 1998. *Organ Transplantation*. p. 58.

<sup>3</sup> Al-Qur'an. Al-Anbiyā' 21:20.

<sup>4</sup> Al-Qur'an. Al-Balad 90:8.

Another manifestation on the dignified status of man in the Creator is the subjugation of the entire creation to man's benefit and service. This is confirmed in Al-Qur'an where God Most High has declared in an open address to mankind. Allah has mention in Al-Qur'an :

﴿وَسَخَّرَ لَكُم مَّا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ جَمِيعًا مِّنْهُ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ  
يَتَفَكَّرُونَ﴾<sup>1</sup>

“ He also subjected to you whatever is between the heavens and the earth, all from Himself. Surely, there are signs in this for those who think”.

References are also abounding in the Qur'an to the benefit and beauty of so many of God's creation. The evidence that is reviewed here also lends support to another conclusion, since everything in the created world is subjected to man's benefit.<sup>2</sup>

### 1.1.3 Subjecting the Human Body to Material End.

The impermissibility of subjecting of the human body to material ends may be deduced from these two examples, Firstly, from the fatāwa 'Alamgiriyyah, it is stated that if a person, owing to hunger, finds himself on the verge of death, and is unable to find even the meat of a dead animal in order to save himself, and at the instant is offered human flesh, it would not be permissible from him to partake of it.<sup>3</sup>

Secondly, it is recorded in the Hadith literature that the Prophet Muhammad S.A.W is reported that Allah S.W.T has denounced or cursed the one who joins the hair of a woman to that of another so as to make her hair appear long and Allah S.W.T has also cursed the woman with whose hair such hair is joined.

<sup>1</sup> Al-Qur'an. Al-Jāthiyah 45:13.

<sup>2</sup> Mohammad Hashim Kamali. 1999. *The Dignity Of Man: The Islamic Perspective*. Selangor: Ilmiah Publisher. p. 44.

<sup>3</sup> Abul Fadl Mohsin Ebrahim. 1998. *Organ Transplantation*. P. 58.

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" لعن رسول الله ﷺ الوصالة والمستوصلة، والواشمة والمستوشمة"<sup>1</sup>

It is also stated that it is permissible for women to increase their locks by means of animal wool. It may therefore be rightly inferred that the use of human hair for this purpose is unlawful. By extension, from the above two examples, the use of parts of the human body will also be unlawful.<sup>2</sup>

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Man is entrusted with his body as well as with his wealth. He should use it in the proper way, as envisaged and prescribed by Allah and His Messenger. Donation of organs is an act of charity, benevolence and altruism in which many lives are saved. Human's organs are not a commodity or a chattel, and hence should only be given for the love of fellowmen. Commercialism, entrepreneur and organ trafficking is an affront to human dignity and hence deplored and proscribed.<sup>3</sup>

In order to avoid any under the carpet dealings the governments restricted the living donors to relatives. The donor however should not suffer financially as a result of his donation. He should not burden any expense of the operation or hospitalization. In fact he should be compensated for his loss of income during his stay in hospital and convalescence. Encouraging donors by giving medals, certificates of recognition, provision of free medical services, or provision of half rate tickets in air sea or land travel are all considered Islamically ethical and acceptable.<sup>4</sup>

#### 1.1.4 Sanctity of the Human Body

It is a manifestation of the dignity of man that Islam has placed an infinite value on human life. This is expressed in the Al-Qur'an:

<sup>1</sup> Abi Daud Sulaiman. 1996. *Sunan Abi Daud*. Darul Al-Kitab Al-Ilmiyyah:Bayrut. Kitab Tarajjul. Juz'3. p. 79. #4168.

<sup>2</sup> Abul Fadl Mohsin Ebrahim. 1998. *Organ Transplantation*. p. 59.

<sup>3</sup> Dr. Ismail Hj. Ibrahim. 1999. *Islam dan Pemindehan Organ*. p. 100.

<sup>4</sup> Dr. Ismail Hj. Ibrahim. 1999. *Islam dan Pemindehan Organ*. p. 100.

﴿مَنْ أَجْلٍ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا﴾<sup>1</sup>

“On account of that incident, We ordained of the Children of Israel that whoever kills a person, except as a punishment for murder or mischief in the land, it will be written in his book of deeds as if he had killed all the human beings and whoever will save a life shall be regarded as if he gave life to all human beings”.

The reference to the children of Israel that is the Jews represents continuity of the basis values that are common to all revealed religions. Both Judaism and Islam are committed to the protection of human life. It makes no difference whether the victim is a Jew, a Muslim or anyone else. The value that is advocated is holistic and indivisible in that aggression against one is tantamount to aggression against all. Life is not only of infinite value, it also sacred. Allah has mention in Al-Qur’an:

﴿وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ﴾<sup>2</sup>

“ You shall no kill anyone whom Allah has forbidden, except for just cause under the law”.

Ghazālī has quoted these verses and drew the conclusion that “ in respect of the sanctity of life and the prohibition of aggression against it, Muslims and non-Muslims are equal. Attack on the personal safety of non- Muslims invokes the same punishment in this world and the hereafter”.<sup>3</sup>

In times of military engagement, the warriors are under a personal duty not to destroy civilian life. It is consequently unlawful to attack women and children, the elderly in the insane, the ill and the invalid and this include the blind, the lame, the crippled and the unconscious. The exempted categories also included the priest and the monk and those engaged in worship as well as farmers who occupy themselves with their works in the

<sup>1</sup> Al-Qur’an. Al-Māidah 5:32.

<sup>2</sup> Al- Qur’an. Al- Isrā 17:33.

<sup>3</sup> Mohammad Hashim Kamali. 1999. *The Dignity Of Man: The Islamic Perspective*. p. 31.

field provided that they are not involved in the conflict. The Hadith contains detailed instructions on all of these and the Prophet Muhammad S.A.W has generally advised military commanders and soldiers in the battlefield to be fair avoid excessive violence and incline toward peace.<sup>1</sup>

On the basis of this Hadith: “كسر عظم الميت لكسر عظم الحي في الإثم”<sup>2</sup>

Means: “breaking the bone of a dead person is equal (in sinfulness and aggression) to breaking it while a person is alive”, the ‘ulama’ makes it an incumbent duty to rebury human bones or remains, if for any reason they are taken out of the graves. It is also equally obligatory to bury the limb that has been severed from a criminal. As well as humans nails, hairs and others in honour of the sanctity of the human body.<sup>3</sup>

### 1.1.5 Prohibition of Making use of Forbidden Things as Medicines

Islam considers disease as natural phenomenon, and the type of tribulation, which expiates sin. Those stoics who forebear and endure in dignity are rewarded in this world on the Day of Judgment. However, man should seek remedy. The Prophet Muhammad S.A.W said: “O Servants of Allah seek remedy. Allah who caused ailment also brought cure and redemption”. He also declared that there is a cure for every illness, though we may not know at the time. Muslims are encourage to new modalities of treatment and should apply them if proved successful.<sup>4</sup>

The Hadith of the Prophet S.A.W: “Allah created the disease and also the cure and for every disease. He has provided a cure. So treat yourselves with medicines but do not treat yourselves with prohibited things”.

<sup>1</sup> Mohammad Hashim Kamali. 1999. *The Dignity Of Man: The Islamic Perspective*. p. 32.

<sup>2</sup> Al-Imām Abi Al-Hassan Al-Hanafi. 2000. *Sunan Ibn Majah*. Bayrut: Darul Al- M<sup>ʿ</sup>arifah Kitab Janāiz. Bab Fi Al- Nahī ‘an Kasr ‘izām Āl-Māyyiṭ. Jūz’ 2. ed. 3. p. 278. #1617.

<sup>3</sup> Abul Fadl Mohsin Ebrahim. 1998. *Organ Transplantation*.p. 59.

<sup>4</sup> Dr. Ismail Hj. Ibrahim. 1999. *Islam dan Pemindahan Organ*. p. 95.

Renders utilizing humans organs in treatment procedures impermissible by virtue that of fact that, as already cited the Hanafi School of Islamic Jurisprudence renders destable making use of Human bones in treatment.<sup>1</sup>

Abd al Rahman bin Uthman RA reports that a doctor came to the Prophet S.A.W and asked him about the permissibility of making use of frogs in medicines. The Prophet S.A.W forbade him from doing that. Since this Hadith censures the killing of frogs so as to use them in medicines, would it not, therefore more deserve to safeguard the honour of human life by not allowing any of its organs to be used in treatment procedures?<sup>2</sup>

Organ transplant is a new modality of treatment for serious life threatening diseases that proved successful and hence should be applied. The all-contemporary jurists sanctioned blood transfusion though blood is an organ and is “Najas”. Muslim jurists allowed the use of “Najas” in medicine if it was deemed necessary for cure and if a competent Muslim physician on this point prescribed it, if he is competent and known to be a man of integrity. The new method of treatment should cause no harm, or minimal harm compared with the great benefit expected from it. The recipient of the new modality of treatment should give his informed consent. The guardian of the minor recipient should give consent on behalf of the minor except emergency situations when the life of the minor is threatened. However the donation of a minor, and that of the mentally incapacitated is invalid. The guardian or parent cannot act, as proxy in such a case as donation of an organ is not in the best interest of the donor.<sup>3</sup>

## 1.2 Favorable Viewpoints and arguments

To date, no Muslim scholar has yet attempted to write an exclusive work in support of organ transplant. However, Muslim Scholars in various parts of the world have at the

<sup>1</sup> Abul Fadl Mohsin Ebrahim. 1998. *Organ Transplantation*. p. 60.

<sup>2</sup> Abul Fadl Mohsin Ebrahim. 1998. *Organ Transplantation*. p. 60.

<sup>3</sup> Dr. Ismail Hj. Ibrahim. 1999. *Islam dan Pemindahan Organ*. p. 95.

most either written favorable essays or issued positives religious decrees (fatāwa) on the issues in question.

Muslim scholars who advocate the permissibility of organ transplant are of the opinion that organ transplant should be recognized as a form of altruistic service to fellow Muslim. Their stance on organ transplantation may be summarized as follows:

### 1.2.1 Al-Maṣlaḥah (The Well- Being and General Welfare of the Muslim Ummah).

It is true that Islam forbids any act of aggression against human life as well as the body after death. Thus if one were to take an organ out of the dead man's body so as to transplant it into another person, it could justifiably be argued to be tantamount to mutilation of the body and violation of the sanctity of the corpse. However, it is to be noted here that the Islamic legal system takes the interests of man into consideration. This accounts for the following juridical rules:<sup>1</sup>

- i) الضرورات تبيح المحظورات (necessity makes the unlawful permissible).
- ii) إذا تعارضت مفسدتان روعى أعظمهما ضرار بارتكاب (when two interests conflict let the one that will bring greater benefit take precedent).
- iii) يجوز إرتكاب بأخف الضررين (lesser of the two evils).

The above rules are founded on the principles of establishing what is in the general interest and preventing what is against it. So, if the general gain outweighs the negative aspect of an action, it is allowed but if the negative consequence of such an action outweighs the good then it is prohibited. In this context, for example Islamic Law would permit the cutting of the belly of the dead pregnant woman in order to remove

<sup>1</sup> Abul Fadl Mohsin Ebrahim. 1998. Organ Transplantation. p. 62.