



Constructing the *Sui generis* Legal Status of Living Donor Kidneys in Indonesian Health Law

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Abstract

Background: Kidney transplantation in Indonesia remains very low (below 3%), despite a growing dialysis population, with 127,900 active patients and 134,057 hemodialysis cases recorded in 2024. Although organ commercialization is legally prohibited, conceptual uncertainty persists in both positive law and Islamic legal perspectives regarding the juridical status of living donor kidneys, affecting regulatory certainty and ethical safeguards in transplantation practice.

Objective: This study examines whether a kidney separated from a living donor may be classified as an object of property under Indonesian law and explores alternative legal constructions that better reflect human dignity.

Methods: This study employs a mixed-methods socio-legal approach, integrating doctrinal analysis of Indonesian health legislation, civil law, and Islamic fatwas with 20 semi-structured interviews, observations, and policy document review at a national referral transplant hospital.

Results: Indonesian law, bioethical principles, and *Maqāsid al-Sharī'ah* consistently reject organ commercialization. Transplantation is legitimate only when conducted voluntarily, for therapeutic purposes, and on a non-commercial basis. As Indonesian regulations neither define the legal status of living donor kidneys nor establish structured donor protection, living donor kidneys should be classified as a *sui generis* legal entity — neither property nor a transferable commodity, but a specially protected biological entity under public law.

Conclusion: This article proposes classifying the living donor kidney as a *sui generis* legal entity — situated outside the traditional property regime yet within a framework of legal, ethical, and religious protection — offering a coherent normative foundation for transplant regulation and stronger donor protection.

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INTRODUCTION

The global prevalence of chronic kidney disease continues to rise, currently affecting approximately 10–13% of the world's population, making it an increasingly significant cause of mortality, particularly in the United States, where diabetes is the largest contributor to cases. In Indonesia, this trend is reflected in the increasing number of patients with end-stage renal disease (ESRD), placing substantial pressure on the national healthcare system. Kidney transplantation is internationally recognized as the most effective renal replacement therapy, offering improved survival rates and better quality of life compared to long-term dialysis (Chen et al., 2024; Lee & Kang, 2021; Rosso & Salvadori, 2024). Nevertheless, despite its clinical superiority and its introduction in Indonesia since 1977, transplantation remains markedly underutilized, with utilization rates below 3% of total renal replacement therapy. This discrepancy highlights a

widening gap between medical necessity and institutional capacity within the national healthcare framework.

The dominance of dialysis further illustrates this structural imbalance. According to the Indonesian Society of Nephrology (Pernefri), 60,526 new dialysis patients were recorded in a single year, with 127,900 active dialysis patients nationwide. In 2024 alone, BPJS Kesehatan reported 134,057 individuals undergoing hemodialysis. This dependence is also evident in the distribution of healthcare facilities, where approximately 60% of dialysis units operate within private hospitals, reinforcing the system's reliance on routine and long-term dialysis services. Although national referral centers such as RSUP Dr. Sardjito have revitalized transplantation programs—performing 144 kidney transplant procedures as of November 2025 and being designated under Ministerial Decree No. HK.02.02/D/3938/2025 as a supervisory hospital for transplantation services—these advancements remain disproportionately small compared to the growing ESRD burden (Borovoy, 2025; Kirkeskov et al., 2021; Konozy, 2024; Y. Wang et al., 2025).

This persistent imbalance cannot be understood solely as a matter of medical infrastructure or technical capacity. Rather, it reflects broader regulatory, ethical, and conceptual challenges that shape the governance of living donor transplantation in Indonesia. While national health legislation permits transplantation strictly for therapeutic purposes and prohibits commercialization, and Sharia fatwas allow donation under conditions of voluntariness and non-exploitation, the legal classification of organs—particularly those derived from living donors—remains conceptually unresolved (Altnörs & Haberal, 2018; Kiani et al., 2018; Yousuf et al., 2021). The absence of a clear juridical framework defining the status of detached organs contributes to regulatory ambiguity, potentially affecting donor protection, institutional accountability, and the consistent enforcement of anti-commercialization principles. Consequently, strengthening transplantation practice in Indonesia requires not only clinical expansion but also a coherent legal and ethical foundation capable of addressing these structural and conceptual gaps.

Various jurisdictions have developed legal frameworks regarding the human body and its organs. The United Kingdom's Human Tissue Act 2004 emphasizes that bodily tissue should not be regarded as ordinary property, while the Istanbul Declaration prohibits commercialization and organ trafficking. In Indonesia, organ transplantation is regulated under Law No. 17 of 2023 and Government Regulation No. 28 of 2024, which underscore therapeutic purposes and prohibit the sale of human organs. From a Sharia perspective, the Indonesian Ulema Council issued three fatwas in 2019 permitting transplantation under strict conditions based on the Qur'an, Hadith, and Fiqh principles in accordance with the maqasid al-shariah. Nevertheless, illegal practices, such as the kidney trafficking cases in Bandung during 2014–2015 and exploitation in Majalaya, demonstrate the weak implementation and existing legal loopholes. Regulatory enforcement still faces gaps in supervision, inter-agency coordination, and law enforcement capacity, creating opportunities for violations of ethical, legal, and human dignity principles.

Despite the presence of national regulations and Sharia fatwas, Indonesia's legal framework does not yet adequately define the legal status of human organs, particularly kidneys from living donors. Debate persists as to whether organs removed from the body can be classified as civil law "objects" or require a distinct legal category. In comparative law, the doctrine of no property in a human body rejects proprietary claims over bodily parts. Yet in modern medical practice, detached organs inevitably enter structured legal relationships, creating tension between non-proprietary principles and regulatory needs (Kuttymuratov et al., 2025; Victorino & Wilson, 2017; S. Wang & Chen, 2024). This conceptual gap remains unresolved in both Indonesian positive law and Islamic jurisprudence. Although both systems firmly prohibit commercialization, Islamic law bases its position not on ownership theory but on the concept of the human body as a divine trust (*amanah*), thereby rejecting proprietary claims while permitting transplantation under strict ethical conditions. Consequently, neither framework provides an explicit juridical classification of detached organs within civil law.

Based on the foregoing discussion, this study examines whether kidneys obtained from living donors, once removed from the human body, can be legally classified as objects under Indonesian law. This question is crucial because it lies at the intersection of property law and the protection of human dignity—an area not clearly articulated in existing legislation. Through an integrative analysis of Indonesian positive law, the common law doctrine of no property in a human body, and Sharia principles that regard the human body as a trust rather than property, this research identifies both convergence and conceptual tension among these frameworks. It

ultimately proposes a *sui generis* legal status for living donor kidneys—positioned outside conventional property regimes yet fully protected by legal, ethical, and religious norms—to establish a more coherent and dignity-based framework for transplantation regulation in Indonesia.

Although previous studies in Indonesia have addressed organ transplantation from the perspectives of health regulation, criminal enforcement, and Islamic legal permissibility, these discussions remain fragmented and largely focused on implementation rather than conceptual reconstruction. Comparative scholarship has debated the doctrine of no property in a human body and the limits of commodification, yet such debates have not been systematically situated within Indonesia's plural legal framework. Likewise, Islamic legal discourse has emphasized the concept of *amanah* in permitting transplantation under strict ethical conditions, but it has rarely been examined in dialogue with civil law classifications of objects and property. As a result, there is no comprehensive analysis clarifying whether kidneys derived from living donors, once detached, fall within existing civil law categories or require a distinct juridical status. This unresolved intersection between property theory, health regulation, and Sharia principles constitutes the central research gap addressed in this study.

METHOD

This study employed a qualitative approach to explore the legal status of living donor kidneys as *sui generis* objects, representing a special legal category for human kidneys. The research adopted a socio-legal approach, aiming to integrate normative legal analysis with observations of social realities in the field concerning kidney transplantation practices. This approach recognized law not merely as a set of formal norms but as a reflection of social phenomena in everyday life, allowing for a nuanced understanding of whether kidneys should be considered as property or non-property under the law (Fuad, 2021). The socio-legal perspective was particularly suitable for evaluating the implementation of kidney transplantation regulations in Indonesia, by combining statutory considerations with insights from medical practice and the religious values perceived by the parties involved.

This study adopted a socio-legal approach by examining three interconnected units of analysis: legal norms, institutional practices, and actors' interpretations. At the normative level, it analyzed statutory provisions, civil law doctrines on ownership and object classification, and fatwas issued by the Indonesian Ulema Council. At the institutional level, it evaluated transplantation governance, including hospital procedures and consent mechanisms. At the interpretative level, it explored how medical personnel, donors, and recipients understood and applied legal and religious principles in practice. This integrated framework enabled a contextual assessment of the legal status of living donor kidneys, bridging doctrinal analysis with empirical realities to identify gaps between normative regulation and actual implementation.

This research adopted a single instrumental case study design, conducted at RSUP Dr. Sardjito, Ministry of Health of the Republic of Indonesia, located in Yogyakarta Special Region. The hospital was deliberately selected due to its strategic role as a national referral center and one of Indonesia's leading institutions for kidney transplantation services. As of November 2025, RSUP Dr. Sardjito had performed 146 kidney transplant procedures and was officially designated by the Ministry of Health under Ministerial Decree No. HK.02.02/D/3938/2025 as the supervising hospital for kidney transplantation services in private hospitals. These characteristics made it a critical case for examining the implementation of legal norms, ethical standards, and governance mechanisms in living donor kidney transplantation.

As an instrumental case study, the objective was not to generalize statistically to all hospitals in Indonesia, but to generate in-depth analytical insights into how legal and religious norms operated within a leading national transplantation center. Therefore, while the findings may not be universally generalizable, they offered analytical generalization by contributing to broader theoretical discussions on the legal status of living donor kidneys and transplantation governance. The study was conducted from May to November 2025.

The hospital's photograph is available via the following internet link:
<https://share.google/wjrSDmbpCHoRGOHmv>



Figure 1. This is Hospital Building RSUP Dr. Sardjito

The geographic coordinates of RSUP Dr. Sardjito are available via Google Maps at the following link : <https://maps.app.goo.gl/dsMwWqVgWCh722HG7>

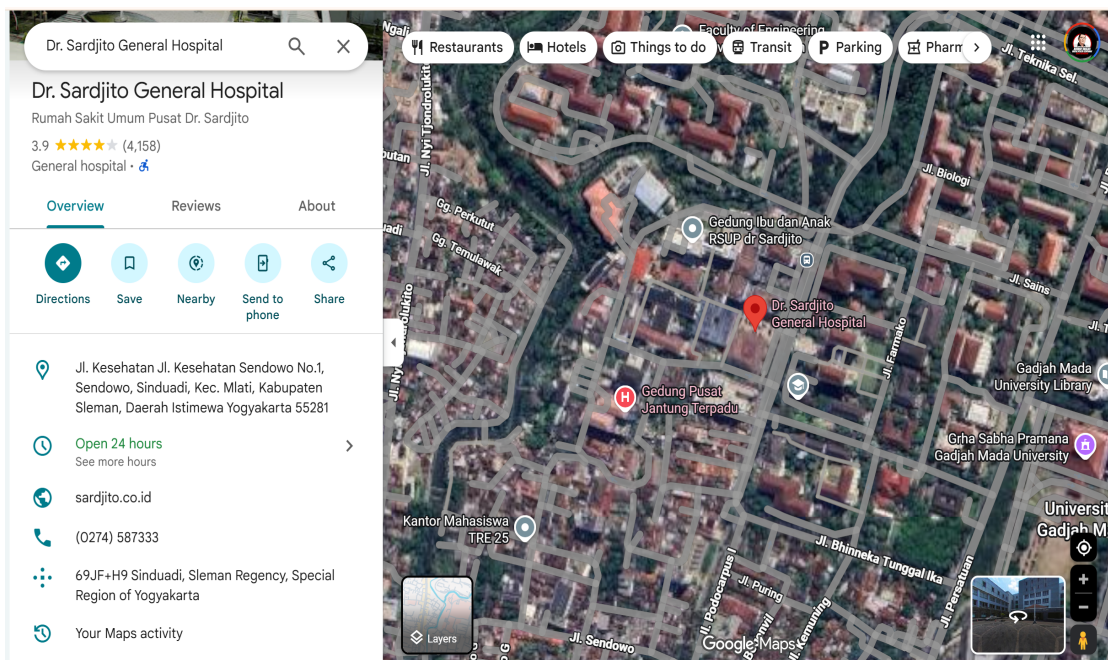


Figure 2. The coordinates of RSUP Dr. Sardjito by Maps

Using a socio-legal approach, data collection in this study integrated legal document analysis with qualitative interviews to elucidate gaps between written law and social practice, as well as to formulate a *sui generis* legal model reflecting the social reality of organ transplantation law (Fung & Remzi, 2025; Muhdlor, 2012; Yuliantiningsih et al., 2023). Normative analysis was conducted by examining Law No. 17 of 2023 on Health, its implementing regulations, fatwas from the Indonesian Ulema Council, and relevant scholarly literature on ownership theory, the no-property rule, and bodily integrity.

Empirical data were collected through non-participant observation and semi-structured interviews. Observations were conducted in specific clinical and institutional settings, including: (1) the Dialysis Unit, (2) the Outpatient Urology Surgery Clinic, (3) the Urology Surgery Office, and (4) the Advocacy Room of the Ethics and Legal Committee. The focus of observation included: (a) the donor–recipient advocacy workflow, (b) disclosure of medical and legal risks, (c) question-and-answer sessions between medical staff and patients, (d) potential signs of pressure or coercion, and (e) informed consent procedures. Observation data were documented in the form of structured field notes (systematic recording of processes and interactions) and reflective field notes (researcher interpretations and contextual reflections).

Nine informants were purposively selected, comprising three transplant surgeons, three living donors, and three transplant recipients. Interviews were semi-structured and guided by four primary indicators: (1) the legal status of human organs, (2) ethical and normative considerations, (3) legal protection and governance mechanisms, and (4) socio-cultural dimensions of living donation. All interviews were conducted between 12 September and 17 October 2025. To ensure consistency, each interview session lasted 60–120 minutes. Interviews were audio-recorded with the consent of participants and transcribed verbatim. Confidentiality was strictly maintained by anonymizing all participants using coded identifiers (Dr1–Dr3, Dn1–Dn3, R1–R3), and no personal identifying information was included in the transcripts or publications. The detailed implementation of the interviews is described as follows:

Table 1. Interview Implementation Details

No	Code	Interview Date	Duration	Interview Location
1.	Dr1	12 September 2025	60 sd 120 minutest	Dialysis Unit
2.	Dr2	19 September 2025	60 sd 120 minutest	Urology Surgery Office
3.	Dr3	26 September 2025	60 sd 120 minutest	Outpatient Urology Surgery Clinic
4.	R1	3 Oktober 2025	60 sd 120 minutest	Dialysis Unit
5.	R2	10 Oktober 2025	60 sd 120 minutest	Dialysis Unit
6.	R3	17 Oktober 2025	60 sd 120 minutest	Dialysis Unit
7.	Dn1	3 Oktober 2025	60 sd 120 minutest	Advocacy Room, Ethics and Legal Committee, RS Sardjito
8.	Dn2	10 Oktober 2025	60 sd 120 minutest	Advocacy Room, Ethics and Legal Committee, RS Sardjito
9.	Dn3	17 Oktober 2025	60 sd 120 minutest	Advocacy Room, Ethics and Legal Committee, RS Sardjito

All empirical data were analyzed using thematic analysis to identify recurring legal, ethical, and socio-cultural patterns. Triangulation was conducted by comparing interview data, observation notes, and institutional documentation.

Table 2. Indicator Matrix – Sub-Issue – Resource

Indicator	Example Sub-Issues	Normative References
Legal Status of Organs	Ownership vs. no-property rule; limits of commodification; prohibition of organ trade	Law No. 17/2023 on Health; Government Regulations on Transplantation; Ownership Theory; No-Property Rule Doctrine
Ethics and Norms	Voluntariness; autonomy; absence of coercion; beneficence; non-maleficence	Medical Ethics Code (KODEKI); MUI Fatwas on Organ Transplantation; Bioethics Principles (Beauchamp & Childress)
Legal Protection & Governance	Informed consent validity; documentation procedures; oversight mechanisms; liability issues	Law No. 17/2023; Hospital SOPs; Ministerial Regulations; Transplantation Governance Policies
Socio-Cultural Dimensions	Family pressure; altruism; religious motivations; stigma	MUI Fatwas; Socio-legal Theory; Cultural Studies on Donation

Additionally, supplementary documentation from RSUP Dr. Sardjito was examined, including annual reports, advocacy workflows, donor-recipient request forms, written consent statements, and institutional policies. Consent forms and donor/recipient declarations were analyzed to assess the fulfillment of autonomy, the absence of coercion, and guarantees of legal protection in the living donor process. Service schedules and procedural documents were reviewed to understand governance and institutional oversight mechanisms. These institutional documents functioned as triangulation instruments linking statutory norms, religious guidance, organizational policy, and clinical practice (Noor, 2023; Zainuddin & Karina, 2023).

Data analysis was conducted qualitatively using the socio-legal approach as the main analytical framework, while thematic analysis functioned as the operational technique (Purwanda & Wulandari, 2023). The socio-legal framework guided the integration between normative legal sources and empirical findings, whereas thematic analysis was employed to systematically code and organize interview transcripts, observation notes, and institutional documents.

The analysis proceeded interactively through data reduction, data display, and conclusion drawing. All interviews were transcribed verbatim, anonymized using coded identifiers (Dr1–Dr3, Dn1–Dn3, R1–R3), and coded into four analytical themes: (1) legal status of organs, (2) ethical and religious norms, (3) legal protection and governance, and (4) socio-cultural dimensions. The reduced data were presented in thematic matrices to enable cross-case comparison and the identification of patterns.

Conclusions were drawn by interpreting empirical findings within the socio-legal framework and critically comparing them with legislation, regulations, ethical codes, and religious fatwas. Triangulation functioned as an operational validation technique, consisting of data triangulation (interviews, observations, documents, and legal texts) and method triangulation (normative and empirical analysis), to enhance credibility and ensure coherence between written norms and clinical practice.

RESULTS AND DISCUSSION

Result

This study applied a socio-legal approach aimed at bridging normative legal analysis with an understanding of the social dynamics occurring in kidney transplantation practices. The research design was structured within a qualitative framework, combining a literature review of legislation, legal doctrines, bioethics, and contemporary fiqh, with the collection of empirical data through in-depth interviews, field observations, and examination of hospital documentation. Collected data were analysed thematically through stages of reduction, presentation, and conclusion drawing, carried out simultaneously throughout the research process, with

triangulation between normative and empirical findings to enhance the validity of the analysis. Informants were selected purposively based on their relevance to the study focus, while ethical considerations were maintained through informed consent and protection of the confidentiality of respondents. Through these systematic methodological steps, the study produced a series of findings that are presented and analysed in the following sections.

Normative findings revealed a relatively consistent pattern across legal systems and ethical frameworks, positioning human body organs outside the category of objects or property rights as understood in classical civil law. Examination of international legal doctrines, bioethical principles, contemporary fiqh, national regulations, and comparative studies indicated a shared perspective that the human body and its parts possess intrinsic value rooted in human dignity. Consequently, body organs cannot be reduced to commodities or treated as transactional objects. In the common law tradition, the no-property-rights-in-the-human-body principle affirms the absence of ownership rights over the human body. This principle has adaptively evolved to accommodate modern medical practice while maintaining the fundamental prohibition against organ commercialisation. A similar policy direction is reflected in international instruments and national regulations, consistently framing organ transplantation as a humanitarian act aimed at saving lives and providing healthcare, rather than a civil transactional relationship.

From a bioethical perspective, the normative findings indicate that living donor kidney transplantation is governed by four fundamental principles underpinning modern biomedical ethics: respect for autonomy, beneficence, non-maleficence, and justice. The principle of autonomy requires that donor consent be given consciously, voluntarily, and free from coercion, reflecting the donor's individual will. Beneficence positions transplantation as an effort to save lives and improve the recipient's quality of life, while non-maleficence serves as a boundary to prevent disproportionate risk to donors. Justice mandates that legal and medical relations in transplantation avoid inequality, discrimination, and exploitative practices, particularly against vulnerable parties. Collectively, these four principles form a normative framework regulating the legal relationship resulting from organ separation, ensuring that transplantation is not narrowly understood as human objectification. Therefore, although kidneys can be physically separated from the body, their normative status remains bound to the protection of human dignity and bodily integrity, and cannot be equated with property under civil law.

Similarly, the Islamic legal perspective provides a coherent normative basis through the framework of Maqasid al-Shari'ah. Various fatwas and contemporary fiqh literature affirm that organ transplantation is permissible as long as it aims to protect life (*ḥifẓ al-nafs*). At the same time, the commercial trade of organs is strictly prohibited, as the human body is considered a divine trust, not property (*mal*) that can be transferred. This view positions human organs in a special category: they may be altruistically donated within ethical and legal limits, while remaining protected from commercial exploitation.

Analysis of Indonesian regulations shows that Law No. 17 of 2023 on Health, along with its implementing regulations, explicitly frames organ transplantation as a therapeutic medical intervention and normatively prohibits all forms of organ commercialisation. However, these regulations do not clarify the legal qualification of organs once removed from the body, leaving their status within the national legal system undefined. This reflects a tendency in Indonesian positive law not to classify human organs as property under civil law, but without providing a comprehensive alternative normative framework. Legal studies also indicate that the prevailing regulatory approach is largely repressive, emphasising criminal sanctions without recognising the special legal status of voluntarily donated organs or distinguishing them from commercial exploitation. Comparative analysis with other jurisdictions shows that a regulatory strategy relying solely on criminal prohibition is inadequate to address the complexities of organ transplantation. Consequently, the study underscores the need to establish the legal status of living donor kidneys as *sui generis* a special category outside property law. Comparisons with jurisdictions such as the Philippines further highlight that criminal sanctions alone are insufficient to resolve the legal complexities; a more comprehensive, operational, and responsive legal system is required to address medical and ethical practice dynamics while maintaining legal, ethical, and humanitarian protections.

Overall, the literature review findings demonstrate significant conceptual, ethical, and juridical support for establishing a *sui generis* legal status for human organs, while also revealing

regulatory and practical challenges that remain inadequately addressed within national legal systems, making them highly relevant for further exploration in this study.

Observations and interviews with doctors, recipients, and donors revealed consistent thematic patterns regarding the status of human organs in transplantation practices. Among the nine respondents, there was a coherent thematic pattern concerning the legal status of organs and transplantation practices, which is summarised in the table below:

Table 3. Thematic Findings on Organ Status, Ethics, Law, and Socio-Cultural Dimensions

Aspect	Dimension	Respondent	Description
Organ Status	Kidney Status	Dr1,2,3	Stated that living donor kidneys are not understood as property or commodities, but as parts of the human body that can only be transferred medically for therapeutic purposes.
		R1,2,3	Viewed kidneys as part of the human self with inherent human value, not as objects of ownership, and as a trust (<i>amanah</i>) from the donor.
		Dn1,2,3	Believed in altruism and mutual assistance, viewing the kidney as part of the self that can be donated to help others, emphasizing humanitarian value rather than ownership.
	Relationship	Dr1,2,3	Emphasized that donor-recipient relationships are medical and ethical, not contractual or civil.
		R1,2,3	Rejected interpreting the relationship as a transaction, instead framing it as a human and familial/social solidarity bond.
		Dn1,2,3	Rejected any notion of buying/selling; donation is seen as a humanitarian act of helping within family or social networks.
Ethics and Religious Norms	Autonomy and Sincerity	Dr1,2,3	Highlighted the importance of informed consent as a primary ethical requirement, while considering bioethical values.
		R1,2,3	Emphasized respect for the donor's decision as a reflection of personal will and dignity.
		Dn1,2,3	Stated that the decision to donate a kidney is made consciously, voluntarily, and without coercion, either from family or medical staff.
	Religious Norms	Dr1,2,3	Respect mutual assistance and fulfill the <i>amanah</i> to help recipients; viewed organ trade as contrary to religious teachings since the body is a trust, not tradable property.

Aspect	Dimension	Respondent	Description	
Legal Aspect		R1,2,3	Interpreted transplantation as a divine blessing, honoring the donor's sacrifice; considered organ trade contrary to religious teaching, rendering monetary gain unblessed, since the kidney remains a trust.	
		Dn1,2,3	Viewed transplantation as a moral and religious act to help others (<i>hifz al-nafs</i>); considered organ trade sinful and unblessed, while donation is done with divine approval for spiritual reward.	
	Legal Certainty and Protection	Dr1,2,3	Considered Indonesian health regulations sufficiently clear in prohibiting organ trade, but not specifying the legal status of kidneys after removal.	
		R1,2,3	Perceived legal protection as primarily procedural (permits, consent) without clear substantive guarantees.	
		Dn1,2,3	Felt inadequately protected legally, as organ donation is often suspected of being trade due to strict prohibitions.	
		Dr1,2,3	Aware but unable to detect trade violations; emphasized the need for more operational, ethics-based regulation.	
	Risk of Deviations	R1,2,3	Aware of potential deviations; rejected buying/selling, viewing the donor as new kin due to the organ donation connection.	
		Dn1,2,3	Aware of potential deviations; refused to engage in buying/selling kidneys, as it conflicts with the donor's sincere intentions and the law.	
	Socio-Cultural	Social Perception	Dr1,2,3	Considered it a professional duty to help according to expertise and to correct social misconceptions.
			R1,2,3	Recognized social stigma and misunderstandings about kidney donation, particularly assumptions of organ trade; transplantation as humanitarian action improved social acceptance.
Dn1,2,3			Acknowledged social stigma regarding selling kidneys, but focused on altruistic intent,	

Aspect	Dimension	Respondent	Description
			accepting social perception without concern.
		Dr1,2,3	Viewed it as a social duty to help according to professional knowledge.
	Humanitarian Value	R1,2,3	Viewed kidney transplantation as a practice of solidarity and compassion toward others.
		Dn1,2,3	Viewed kidney transplantation as social and humanitarian solidarity, not economic activity, motivated solely by helping others.

Based on interviews and observations, the perspectives of doctors, donors, and recipients demonstrated consistency across four main criteria. First, regarding the status of the organ, all respondents viewed living donor kidneys not as property or commodities, but as integral parts of the human body possessing inherent human value and transferable solely through medical procedures for therapeutic purposes, in line with the no property in the human body doctrine and the religious understanding that organs are a divine trust (*amanah*), not objects of ownership. Second, regarding ethics and religious norms, doctors emphasised the importance of informed consent and the application of bioethical principles as a manifestation of respect for donor autonomy and dignity, while donors and recipients viewed transplantation as a conscious, voluntary, and altruistic act aimed at helping others. This practice is simultaneously recognised as a moral-religious act (*ḥifẓ al-nafs*), reflecting the donor's willingness to provide a kidney for the health of another. Accordingly, the commercial trade of organs is explicitly rejected as it contradicts religious teachings and undermines the purity of the donor's intent. Third, from a legal perspective, respondents acknowledged that Indonesian health regulations clearly prohibit organ trade, yet the perceived legal protection remains primarily procedural and does not provide certainty regarding the legal status of kidneys after separation, raising concerns about stigma and potential misinterpretation as illegal transactions. Fourth, in the socio-cultural dimension, doctors viewed transplantation as a professional duty and social responsibility to correct public misconceptions, whereas donors and recipients recognised the social stigma associated with alleged organ trade but continued to interpret transplantation as an act of solidarity, compassion, and humanitarianism that fosters new social bonds rather than an economic activity.

Discussion

This discussion examines in depth the practice of living donor kidney transplantation by analyzing both normative and empirical findings through a synthesis of legal doctrines, bioethical principles, *Maqāṣid al-Sharī'ah*, and national regulations, juxtaposed with empirical evidence reflecting the perspectives of physicians, donors, and recipients. This interdisciplinary framework is employed to evaluate the adequacy of positive law and to identify persisting normative gaps. Through this approach, the study formulates a conceptualization of the legal status of living donor kidneys that places human dignity as its central normative orientation.

Donor–Recipient Relationship from a Bioethical Perspective

The donor–recipient relationship in this study is framed within bioethical principles: autonomy, beneficence, non-maleficence, and justice, and analyzed through Philipus M. Hadjon's Theory of Legal Protection, distinguishing preventive and repressive protection. In the biomedical context, this theory positions the human body as a legally protected entity, requiring safeguards before and after medical intervention. Informed consent thus functions not merely as an ethical formality but as a preventive legal instrument ensuring voluntary and conscious decision-making.

Although transplantation is understood as altruistic and non-commercial, the relationship cannot be considered entirely non-contractual. Administrative procedures and written consent introduce legal elements; therefore, it is more accurate to describe it as non-commercial rather

than non-contractual. The legal structure operates primarily as regulatory and protective, not civil-commercial.

Empirical findings confirm that transplantation is perceived as a humanitarian act. However, global bioethics discourse highlights risk of subtle social coercion within families, where emotional obligation or moral pressure may affect voluntariness. This creates potential normative tensions between ethical ideals and social realities. Consequently, legal protection must function preventively to ensure autonomy and substantively to address possible exploitation or relational imbalance.

Kidney Transplantation in the Perspective of Maqāṣid al-Sharī'ah

From the perspective of *Maqāṣid al-Sharī'ah*, kidney transplantation may be classified primarily within the category of *daruriyyat* (essential necessities), as it directly serves the preservation of life (*ḥifẓ al-nafs*). In this hierarchy, saving a patient from life-threatening renal failure justifies medical intervention under strict conditions, including voluntary donor consent, medical proportionality, and the prohibition of commercialization. At the same time, considerations of *ḥifẓ al-'ird* (protection of dignity) and *ḥifẓ al-din* (protection of religion) reinforce the principle that the human body is an *amanah* (divine trust), thereby excluding organ trade as incompatible with *Sharī'ah* objectives.

However, potential tensions between *maqāṣid* may arise. For example, the imperative to preserve life (*ḥifẓ al-nafs*) must be balanced against the protection of bodily integrity and dignity of the donor. If medical risks to the donor become disproportionate, or if subtle familial pressure compromises voluntariness, the hierarchy of *maqāṣid* may require re-evaluation. In such cases, the principle of preventing harm (*dar' al-mafāsīd*) must take precedence over achieving benefit (*jalb al-maṣaliḥ*).

Empirically, donors perceive transplantation as an altruistic and religiously meaningful act, while recipients view it as a divine blessing. Nevertheless, global bioethical discourse cautions against romanticizing altruism, as social expectation or moral obligation within family structures may affect genuine autonomy. Therefore, while transplantation aligns with the objectives of *Sharī'ah* in preserving life and promoting justice, its permissibility depends on maintaining proportionality, voluntariness, and the absence of coercion in practice.

Implications for Reformulating the Legal Status of Living Donor Kidneys

The integration of normative and empirical findings supports redefining the legal status of living donor kidneys as a *sui generis* legal entity, meaning that kidneys are neither objects of property nor contractual commodities, but specially regulated human biological entities under public law protection. This status removes kidneys from the civil-commercial property regime while ensuring specific legal safeguards grounded in bioethical principles, human dignity, and non-commercialisation.

An affirmative regulatory framework in this context refers to proactive and structured legal mechanisms, including: (1) mandatory and substantive informed consent, (2) independent psychosocial and medical assessment of donors, (3) ethics committee review, (4) transparent documentation and traceability systems, and (5) state supervision and sanctions against commercialisation. These mechanisms function preventively to protect donor autonomy and bodily integrity, and repressively to address violations.

Empirical findings indicate that transplantation is socially perceived as altruistic and humanitarian. However, potential normative tensions may arise where familial expectations, moral obligation, or socio-economic imbalance subtly influence consent. Therefore, the *sui generis* status must operate not only declaratively but institutionally, ensuring that voluntary donation is clearly distinguished from exploitation and that transplantation is conducted ethically, proportionally, and with dignity, thereby strengthening the social legitimacy of living donor transplantation.

Integrative Hybrid Analytical Framework

Building on the four dimensions discussed above, this study develops a hybrid analytical framework that integrates Indonesian positive law, bioethical principles, and *Maqāṣid al-Sharī'ah* in evaluating living donor kidney transplantation. This approach is more comprehensive than sectoral analyses, which tend to separate legal, medical-ethical, and religious dimensions. By

synthesizing normative and empirical findings, the study emphasizes that kidney transplantation cannot be adequately addressed solely through criminal prohibitions. Instead, it requires a legal protection framework oriented toward recognition of human dignity, legal certainty, and the security of the legal subjects involved.

From the perspective of positive law and bioethics, the study extends the Theory of Legal Protection into the biomedical domain by demonstrating that the donor–recipient relationship is not contractual but ethical, medical, and social in nature. Bioethical principles—autonomy, beneficence, non-maleficence, and justice—function not only as clinical normative guidance but also as preventive protective instruments that necessitate the presence of appropriate legal mechanisms. Empirical findings reveal that transplantation practice constitutes a humanitarian act and an expression of social solidarity, challenging the still repressive and minimalist legal approaches.

Within the *Maqāṣid al-Sharī'ah* framework, the study further illustrates that the legitimacy of kidney transplantation extends beyond the objective of preserving life (*hiḥfz al-naḥfs*) to include the protection of dignity (*hiḥfz al-'ird*) and religious faith (*hiḥfz al-dīn*). Empirical insights regarding the religious interpretation of donors and recipients confirm that *Maqāṣid al-Sharī'ah* operates contextually and socially, making it suitable for integration into the formulation of modern health law that is just and dignified.

Theoretical Contribution

The primary theoretical contribution of this study lies in formulating the living donor kidney as a *sui generis* legal entity, defined operationally as a human biological element that is neither a transferable property right nor a commercial object, but a specially regulated subject of public-law protection grounded in human dignity. This formulation is positioned in dialogue with existing theories such as the property-based approach, the no-property rule doctrine, and bioethical non-commercialization models, which generally focus on prohibiting organ trade without fully constructing an integrated legal status framework.

Unlike those approaches that treat commercialization prohibitions as isolated regulatory measures, this study proposes an integrative legal protection model that systematically links bioethics, property theory, and *Maqāṣid al-Sharī'ah*. In this model, the kidney is placed outside conventional property regimes while remaining under structured legal protection through preventive safeguards (informed consent, independent assessment, ethics review) and repressive mechanisms (sanctions and oversight). This approach shifts the discussion from mere prohibition toward a coherent regulatory architecture based on dignity, proportionality, and voluntariness.

By synthesizing empirical findings with normative analysis, this framework contributes to the development of a human-dignity-based theory of legal protection in the biomedical context. It also advances bioethics and *Maqāṣid al-Sharī'ah* from abstract normative principles toward more operational, institutionally grounded, and socially responsive applications.

CONCLUSION

This study originates from a fundamental legal problem: although Indonesian law explicitly prohibits organ commercialization, it does not clearly define the legal status of living donor kidneys nor provide a structured framework for donor protection. This normative ambiguity creates uncertainty regarding how organs should be positioned within the legal system and how donor rights should be safeguarded in practice. In response, this study concludes that living donor kidneys should be recognized as a *sui generis* legal entity, meaning they are neither transferable property nor contractual commodities, but specially regulated biological entities under public-law protection grounded in human dignity. Operationally, this *sui generis* framework consists of four legal incidents: first, absolute non-commodifiability; second, limited autonomy-based authorization through voluntary and informed consent; third, mandatory state-regulated oversight including ethics review and independent assessment; and fourth, protective legal remedies in cases of coercion, exploitation, or procedural violations. Through this structure, kidneys are removed from conventional property regimes while remaining subject to comprehensive legal protection aligned with bioethics and *Maqāṣid al-Sharī'ah* principles.

To translate this framework into practice, several reforms are necessary. Legislatively, the Health Law and its implementing regulations should be amended to explicitly codify the *sui*

generis status of living donor organs and to strengthen donor protection mechanisms beyond commercialization prohibitions. Administratively, the Ministry of Health, Organ Transplantation Committees, and hospital ethics boards should establish standardized national protocols for psychosocial screening, independent consent verification, traceability, and post-donation monitoring. Judicially, courts should interpret organ-related disputes within a dignity-based public-law paradigm rather than property or contract law frameworks. Institutionally, hospitals must ensure transparent documentation, independent counseling, and proportional risk assessment to safeguard voluntariness and prevent subtle coercion.

This study is limited by its reliance on normative analysis and interviews with medical professionals, donors, and recipients, without comprehensive engagement with policymakers, regulatory authorities, and regional supervisory bodies. Limited access to institutional oversight data also restricted the evaluation of regulatory effectiveness at implementation levels. Future research should therefore involve the Ministry of Health, regional governments, transplant oversight committees, and judicial institutions to assess how the *sui generis* framework can be operationalized across diverse socio-legal contexts. Comparative and broader socio-legal studies are needed to evaluate regional variations, institutional capacity, and cultural influences affecting donor protection. Ultimately, recognizing living donor kidneys as *sui generis* entities is not merely a conceptual refinement but a necessary step toward constructing a dignity-centered biomedical legal order. Without clear legal status and structured safeguards, transplantation remains ethically justified yet institutionally vulnerable; a coherent regulatory framework is therefore essential to ensure that life-saving transplantation is conducted transparently, fairly, and with full respect for human dignity.

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AUTHOR CONTRIBUTION STATEMENT

Banu Hermawan solely conceived and designed the research, conducted normative and empirical data collection, performed thematic and socio-legal analysis, and wrote and revised the manuscript. The author approved the final version of the manuscript for publication.

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