



Examining the Agreement Object as Good Deeds from the Consequentialism and Deontology Perspective

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Abstract

This study aimed to analyze the agreement object as good deeds from the legal philosophy perspective. Postulated to legal positivism, this rejects the deviation of the agreement on the good deed of transplanting organs or body tissues. The results compiled using normative legal research methods described the flow of consequentialism and deontology. The flow states that kidney transplant procedures conducted voluntarily based on humanity have benefited recipients and donors. Therefore, they increase the happiness level of both parties without leaving the concept of Kantian moral ethics.

I. Introduction

An agreement or contract is a juridical instrument used to protect the parties' interests in legal action. Agreements vary in form, substance, and the parties involved, meaning that they have principles. These principles ensure each stage in the agreement does not violate the legislation provisions, justify every cause, and crash into community morality and propriety. The parties often select an underhand agreement without involving a notary. This agreement is relatively less costly and meets its validity requirements regulated in Article 1320 of the Civil Code. However, the agreement sometimes requires a notary to make a notarial deed. As a noble profession (*nobile officium*), the notary's movements and behavior should be based on applicable legal norms and ethics.

Related to the notary's role and function, this aimed to examine the agreement object made by the parties before a notary. Although the study problem is commonplace, it becomes interesting when the agreement object to be analyzed is essentially a gray

area. The agreement object made before a notary is a derivative of the kidney transplant performed by the parties. Specifically, the agreement object¹ is a promise of a good deed from one party to another. For instance, the donor would be given medical expenses during surgery until he is declared cured. In this case, each party would not file a lawsuit when the future organ or body tissue transplantation affects the parties' health conditions. This agreement object is the realization of a good deed from the recipient to the organ or body tissue donor made before a notary. Good deeds are limited only when the donor and recipient are alive. When one party dies, the realization of achievements according to article 1234 of the Civil Code would be another matter. Philosophically, good deeds embody inner, moral, and ethical attitudes to act autonomously, independently, and voluntarily. In this case, one person's actions do not violate the law based on morality and justice for individuals and the universe ([Mayo, 1986](#)).

A review of several publications on organ or body tissue transplantation shows that the existing publications only discuss descriptively with no correlation with legal schools. For instance, Abhimantara publications emphasized that body organs or tissues are objects that cannot be commercialized based on legislation ([Ida B. Abhimantara, 2018](#)). Furthermore, a transplant agreement based on personal will does not violate the law, but it violates humanity and requires a more comprehensive regulation of legal norms ([Aristantie et al., n.d.](#)). According to Lembong et al. (n.d.), a non-penalty policy is needed to avoid legal irregularities in organ or body tissue trade transactions.

The available legal norms indicate that organ or body tissue transplantation has been regulated internationally and domestically. Indonesia has ratified the Palermo Protocol through Law Number 14 of 2009 concerning Ratification of the Protocol to Prevent, React, and Punish Human Trafficking, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. This ratification was strengthened by the issuance of Law Number 21 of 2007 concerning the Eradication of the Human Trafficking Crime. The law emphasized that organ or body tissue transplantation under the pretext, motive or commercial reasons is prohibited and unlawful. This affirmation is also seen in Law Number 36 of 2009 concerning Health, where trade in organs or body tissues may not be transacted with any argument.

The prohibition of trading in organs or body tissues has shifted with the dynamics and demands of development in the health sector. The amendment was marked by the issuance of Government Regulation Number 53 of 2021 concerning the Transplantation of Body Organs and Tissues. This Government Regulation allows for organ or tissue transplantation with rigid administrative and medical operational limitations. The Regulation stipulates that transplantation could only be performed voluntarily, for humanitarian purposes, and prohibited from being traded under any pretext. The

1 The notarial deed containing the good deeds as legal material in this research was deliberately not published because it relates to the confidentiality of the agreement documents made by notaries in several areas of Central Java and Yogyakarta. However, to maintain the objectivity of the research, the entire document has been documented.

Government through Article 24 paragraph (1) (d) Regulation of the Health Minister Number 38 of 2016 concerning Organ Transplantation confirms that donor recipients must submit a written statement not to buy body organs of the prospective donor or make a special agreement with them. The agreement should be submitted as a notarial deed or written statement legalized by a notary to avoid legal smuggling in transplanting organs or body tissues.

This study focuses on preparing an authentic deed before a notary concerning organ or tissue transplant. The answer to this legal issue is illustrated when the case is examined from a positivist perspective. According to legal positivism, the parties' actions to agree to a notary are prohibited from contradicting or colliding with legal norms. Violations of legal norms would result in strict sanctions, and the formulated agreement may be nullified ([Austin, 1862; Singer, 2005](#)). However, the taboos of legal positivism are still practiced by notaries. In pre-study interviews, several notaries² stated that the agreement object formulated by the parties is separate from the main organ or tissue transplant agreement. Furthermore, the notaries stated that the agreement object formulation is supported by legal schools. Therefore, this study aimed to analyze the agreement object from Mills's consequentialism and Kant's deontology.

II. Methods

This study was written using a normative legal method with case approach philosophical approaches. Data were obtained from secondary legal sources using content analysis, structured interviews, and literature review. The conclusion was obtained using the legal syllogism and hermeneutics method.

III. THE agreement Object is 'good deed' from consequentialism and deontological Perspectives

A. Mill's consequentialism view of 'good deeds' in an agreement

Utilitarianism is part of the consequentialism theory family with a view that a good or bad action leads to its consequences, and happiness is a major goal to be achieved by every human being. Many utilitarianism theories classify humans' good and bad actions in performing their roles as social beings. The philosophical study of a good deed in John Stuart Mill's thinking is a refinement of the utilitarianism theory developed by Jeremy Bentham. According to the two utilitarianism theories, it is essential to see the impact of action as a logical consequence that qualifies the act as good or bad.

Mill's book entitled *Utilitarianism* sparks a philosophical discussion of the categories that determine the goodness of human action through basic questions.

2 The interview was conducted in a structured manner, where the name and the work area of the notary were deliberately kept secret to maintain privacy, but all the evidence was stored.

Logical analysis is needed to help prove the good deeds of medical science that contribute to providing health for humans. Moreover, the analysis should show that music is a good thing when enjoyed by many listeners. In this case, Mill agrees that not all good deeds could be proven, though this does not mean that it is based on unclear standards. Assessment of the good and bad action should be based on logical and rational thinking accompanied by evidence.

Mill used a logical basis to explain the standards to determine the good and bad of action. Therefore, it is necessary to understand the different concepts of happiness, benefit, and pleasure ([John Stuart Mill, 1863](#)). According to Mill, benefits and pleasures are different things, and the measure of happiness is relative. One person's standard of happiness with another cannot be based on the same measure ([O'Connor, 1997](#)). In this case, fulfilling actions that bring happiness is difficult for people with a high living standard. They have everything and perceive the world as a condition full of imperfections, unlike people with a lower living standard. In this context, a lower living standard applies to the poor and those with a simplicity spirit, where something small makes them happy.

Another analogy used by Mill to describe different standards of goodness, contentment, and happiness is expressed through the parable of Socrates and the man of no breadth. Socrates would find it more difficult to be satisfied with what he already knew. However, people with a narrow view would be easily satisfied because they do not think of certain parts. In this analogy, it would be better to be Socrates that are not easily satisfied with the knowledge obtained, though this could also mean that more effort should be made to achieve happiness. This is different from the analogy used to describe the happiness obtained based on human living standards.

The utilitarian view stated that happiness is part of a benefit ([Edwards, 1986](#)). People only achieve their goals when they consistently uphold the nobility of character based on goodness. In this theory, the basic principles a person adheres to are inseparable from an ethic adopted as a moral value and principles appropriate with the social nature of humans. By adhering to the principle of achieving happiness, people would strive to distance themselves from pain to obtain the quantity and quality of pleasure ([Michael Robertson & Garry Walter, 2017](#)). As explained in Mill's analogy, the standard of quantity and quality of striving for happiness depends on the people's experiences. Based on self-awareness and observations to make comparisons, everyone would know the efforts needed to achieve happiness.

The good deeds to achieve happiness should be morally appropriate with the perception built on the applied rules to regulate human actions. Therefore, the actions needed to achieve happiness could still be accounted for individually

and all living beings. According to Mill, happiness is the only standard of morality because everyone wants a happy life. As proof, people desire to achieve something that fits their happiness definition. This means that good deeds lead to happiness, while bad actions result in unhappiness.

The concept of happiness is simply indicated by the presence of pleasure and the absence of pain ([Escamilla, 2008](#)). However, no one type of happiness should be owned by everyone, and its attainment is not the end of a rational act or a moral value ([Hamudy, 2019](#)). The morality of utilitarianism recognizes the great power of a sacrifice to achieve happiness. In this case, people could do good deeds by sacrificing something that means a lot for the happiness of others. However, Mill stated that sacrifices without increasing happiness are futile. The understanding of the Utilitarianism principle by Mill has provided the basis to examine an action as a good deed ([Marseille & Kahn, 2019](#)).

This study aimed to examine the possibility of the agreement object of an organ transplant to fulfill the elements of good deeds expressed by Mill in the theory of Utilitarianism. An agreement contains parts that should be fulfilled as a condition for validity. This section comprises *essentialia*, *naturalia*, and *accidentalia*, which contain the parties' achievements ([Muhamad Noor, 2015](#)). Furthermore, the agreement is valid and lawful when it does not violate legal provisions ([Hartana, 2016](#)). In this context, good deeds are important as an object in an organ transplant agreement. This cannot be ignored because organ transplantation could be a form of legal smuggling from trade transactions. Therefore, it is necessary to analyze whether an object agreed as a reward for the organ transplant process meets the criteria of good deeds and not for the sale of kidneys. The basic spirit of the utilitarianism principle and the making of an agreement aims to benefit the parties involved.

The principle of utilitarianism explains that the benefits received from a good deed are true happiness as the main goal of every human being. The main purpose of making an agreement is to fulfill its object and the parties' achievements. Therefore, the parties have agreed to reciprocate good deeds to bring benefits and happiness in line with the agreement. Based on the arising engagement, an agreement is considered valid as a special law for the parties that bind themselves and reach a consensus ([Harry Purwanto, 2009](#)).

In this discussion, the agreement that applies as law for parties in the organ transplant process has been legally contained and made before a notary. The agreement explained that the second party had donated his kidney to the first party. Furthermore, the donor covered all costs, including pre-operative, operating, and post-operative, until the doctor handling the transplant states that the second party is in good health. These conditions necessitate a review of the organ transplantation cost as the agreement object. The Law on Health

