

UNIVERSITI TEKNOLOGI MARA

**PRESUMED CONSENT MODEL FOR
DECEASED ORGAN DONATION IN
MALAYSIA: A COMPARATIVE
STUDY**

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Dissertation submitted in partial fulfillment
of the requirements for the degree of
**Master of Medical Ethics and Medical
Jurisprudence**

Faculty of Medicine

March 2021

ABSTRACT

Malaysia currently employs the opt-in model in obtaining consent for its deceased organ donation programme that may contribute to the low donation rate. Thus, there is a need to explore the presumed consent model in getting consent for deceased organ donation from other countries. This research is a comparative socio-legal study. To answer the three-tier research questions, this research utilising the doctrinal-research method, library-based method and an in-depth interview. Data were collected from primary legal sources, secondary resources and outcome from the interview conducted with relevant policymakers in the Malaysia Ministry of Health. The fundamental part of this research examine and compare the current legal framework on deceased organ transplantation in Malaysia to the legal framework on deceased presumed consent organ transplantation in Singapore, Italy, and England. This research also explores the social factor influencing the implementation of deceased presumed consent organ transplantation in those three countries. Finally, this study proposes a soft type of presumed consent model with the priority scheme model applied in Singapore and the combination of the opt-in and opt-out model of registry applied in Italy and England to be adopted in Malaysia. This study also proposes an amendment to the existing Human Tissue Act 1974 (opt-in) to complement the proposed *sui generis* presumed consent law.

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CHAPTER ONE

INTRODUCTION

1.1 Research Background

1.1.1 History and Background of Organ Transplantation

Medicine is a field of study that is never stagnant; it is dynamic, ever-changing and developing. Progressive development in medicine is in terms of approaches to reach a diagnosis, provide treatment, methods of communication with patients, and the technology used. “Renal transplantation, when it worked, was considered a miracle,” (Bennett, 2000, p. 1548). The word “miracle” mentioned by the president of the American Society of Nephrology implies that before the first successful solid organ transplant in 1954, people in the healthcare industry had never imagined that organ transplantation could be a successful method in treating patients from end-stage organ failure. The World Health Organization (2020) defines transplantation as “the transfer (engraftment) of human cells, tissues or organs from a donor to a recipient with the aim of restoring functions in the body”.

Historically, the idea of replacing a damaged body part had already emerged before the modern era of medicine. In 600 B.C., there was a procedure to replace a missing nose using an autogenous skin flap (Barker & Markmann, 2013). Multiple attempts at transplantation had also been made before the 20th century. However, before the 1900s, those attempts were not well-documented due to the unsuccessful outcomes. The illustrious history of transplantation was only documented in detail from 1954, after the first case of successful solid organ transplantation (Barker & Markmann, 2013). The first successful solid organ kidney transplantation between identical twins, the Herrick brothers, was performed in 1954 by Dr Joseph Murray (he was awarded the Nobel Prize in medicine for his pioneering work in transplantation) and his team. Then, in the late 1960s, successful heart, liver and pancreas transplants were performed, followed by lung transplants in the early 1980s, and intestinal organ transplant in the late 1980s (Organ Procurement and Transplantation Network, n.d.).

An organ for transplantation can be procured from either a deceased or living donor (Ministry of Health [MOH], 2011b). Although the viability of organs procured