

# Implementing Laws on Organs and Tissue Donation in Vietnam

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**Abstract.** In Vietnam, the Law on donation, collection, transplantation of human tissues and donation and collection of corpses was issued in 2006. This issue has also been regulated in the 2005 and 2015 Civil Code. However, the enforcement of the law on organ donation still faces many challenges. This problem is not only in Vietnam but also in worldwide. In this article, the authors analyze the practical problems that countries around the world are facing when enforcing the law on organ donation. From there, it is related to the current situation of Vietnamese law and withdraw lessons that can be drawn to overcome these limitations and challenges in the future.

## 1. INTRODUCTION

The development of medicine and anatomy in the world has changed human life miraculously, from the point where people can die due to a diseased or damaged body part, people can be reborn through the transplantation of a tissue or body part donated by someone who has died... To create a legal corridor for the above miracle to develop, to save patients from danger, not only national laws but also international law has recognized this issue very early.

The first international legal framework includes the International Convention on Economic, Social and Cultural Rights, abbreviated in English as CESCR, and the International Convention on Civil and Political Rights, abbreviated in English as CCPR, adopted by the United Nations General Assembly on December 16, 1966 and effective from March 23, 1976. Vietnam joined these two Conventions on September 24, 1982. Within the framework of the World Health Organization (WHO), a Resolution on the development of transplantation activities was adopted in 2004. In particular, UNESCO has established an agency directly related to this field, the International Commission on Biomedical Ethics. This agency has also published the Universal Declaration on Bioethics and Human Rights. It sets out general principles to protect human rights and is widely recognized, such as the principle of non-commercialization of human organs, tissues, blood, and cells. Principle of protection of minors and persons protected by law must have the consent of the person concerned for donation.

Within the framework of the Council of Europe, there is the Convention on the protection of human rights and human dignity in the application of medical and biological advances of 4 April 1997 (abbreviated as the OVIEDO Convention). This Convention has set out basic principles such as the consent of the person concerned is required; the right to information for both the donor and the recipient. In addition, the European Union's legal sources can point to Directive 2004/23 on establishing quality and safety standards applicable to activities of donating, obtaining, controlling, processing, preserving, storing and distributing human tissues and cells... Through international and regional conventions, it can be seen that donating and transplanting tissues and body parts plays a particularly important role and is considered a human right. To ensure that this activity takes place effectively, the international community has had principled regulations on this issue as a standard and an important source for countries in the process of researching and developing their own laws on donating human tissues and body parts.

## 2. LITERATURE REVIEW

### 2.1. The Principles of Donation of Human Tissues and Body Parts

Regarding national laws, many countries have also built a legal corridor on this issue very early, typically: England in 1961, Denmark in 1975, and Greece in 1983. In Asian countries, from 1959 to present, many countries such as Thailand, Hong Kong, Taiwan, Japan, Singapore, Malaysia, Indonesia, Philippines have had legal provisions allowing the collection of human tissues and body parts from cadavers for transplantation. In general, the laws of countries in the world focus on the following regulations: principles of donation, collection and transplantation of tissues and body parts; conditions for donation, collection and transplantation of human tissues and body parts; regulations on the mechanism of consent in the donation of human tissues and body parts; authority, order and procedures for donation of tissues and body parts; national transplant coordination center and tissue bank, as well as the rights and benefits that donors enjoy when participating in donating to save patients.

The principles of human tissue and organ donation are the main ideas and viewpoints on building and implementing laws on donation, taking and transplanting human tissue and organs. In addition to the general principles recognized by the whole world on this issue, the laws of each country also stipulate their own principles depending on the reality, tradition and culture of the country. In France, in the laws on biomedical ethics, it is stipulated that the donation and transplantation of human tissue and organs must respect the following principles: respect for the human body; the principle of having the consent of the person concerned (Article L.1211-2 of the Public Health Code of the French Republic); the principle of medical safety and caution (Article L.1211-6/7) of the donation of organs from a deceased person for medical purposes may be carried out on the condition that the person did not refuse to donate his or her organs while alive, and that there is no objection from the person's family after his or her death. In Morocco, the 1998 Law on Donation, Removal, Transplantation of Human Organs and Tissue Donation, stipulates that if the donor is a living person, he or she must be an adult and must express his or her willingness to donate before the

competent state agency.

## 2.2. Health Conditions

This is a particularly important condition in the case of donation of tissues and organs for medical purposes, and has been regulated by many countries, including France, as a principle of medical safety and caution. Because if the competent medical facilities do not carefully check the health status of the donor and the donor has a terminal illness, it can be dangerous for the recipient or if the biochemical factors are not carefully checked, the compatibility between the two bodies of the donor and the recipient can lead to unpredictable consequences such as tissues or body parts being unusable. Therefore, the laws of each country have very specific regulations on this issue such as the donor must not have terminal diseases such as AIDS, hepatitis B, C, ... (Article L. 1211-6/7 of the Health Code of the French Republic). The question is whether the conditions for donating human tissues and body parts when alive and after death are different and whether the health conditions are the same in the case of donating for different purposes. For example, donating for medical purposes is different from donating for scientific research purposes. The health conditions for the donor and recipient are not different between living donation for medical purposes and post-mortem donation for medical purposes. However, the difference is in living donation, the important issue is to ensure maximum safety for the donor, while in post-mortem donation, this issue is rarely raised. In the case of donation for medical purposes and scientific research purposes, the conditions are different because their purposes are different. Therefore, it can be seen that there are many cases where the conditions for donating tissues and body parts for medical purposes are not met, but can still be donated and used for scientific research purposes.

## 2.3. Regarding The Issue of Determining Brain Death in the Case of Donating Tissues and Body Parts After Death

The laws of all countries stipulate that the time when a competent medical facility is allowed to collect tissues and body parts after death is the time when the donor's brain is dead. The problem is how to determine brain death, which is a controversial issue. The law of the French Republic is very specific on this issue, but countries such as the UK, the US, Canada and many European Union countries do not have very specific regulations but they give doctors relative freedom in their diagnosis. In Canada, the law does not regulate clinical examination but allows the application of new techniques to diagnose brain death, even a new technique in the experimental stage can be applied. The reason why France has such specific regulations on brain death determination comes from the idea of French lawmakers to build people's trust. Therefore, the regulations are not intended to guide doctors in diagnosing brain death but to help reassure people. France only requires two doctors to determine brain death and does not specify the expertise of each person. To diagnose brain death, French law requires that it be based on the results of clinical examination. Clinical testing in one of two ways: 2 EEGs and Cerebral angiography once. In addition, the law of this country also stipulates the clinical signs of brain death such as falling into a deep coma, losing consciousness and losing all natural movements; loss of all brain stem reflexes; complete cessation of breathing (removing the ventilator and checking the carbon dioxide concentration in the blood). In today's world, not only does it stop at regulations allowing the collection of tissues and body parts from brain-dead people, but some countries have developed programs to collect tissues and body parts from people with cardiac arrest, the main organs taken in this case are the kidneys and liver. According to the Maastricht Agreement, it is possible to collect tissues and body parts in the case of cardiac arrest in the following 04 cases:

- i. Heart stops beating at home, emergency treatment and taken to the hospital;
- ii. Heart stops beating at the hospital;
- iii. Stopping care;
- iv. Brain death leading to cardiac arrest.

France has also implemented this program, but to avoid panic among the people and the medical team that performs the removal of tissues and body parts. This country only allows the removal in cases of brain death leading to cardiac arrest and cases of cardiac arrest in the hospital. As for cases of cardiac arrest at home, emergency treatment and transfer to the hospital, the law of the French Republic does not allow the removal of tissues and body parts because this is a relatively sensitive case because the patient's family will not be able to understand why a dead person is still being resuscitated, given emergency treatment and transported to the hospital just to serve the purpose of removing organs or cardiac arrest due to discontinuation of care. Nordic countries and Spain allow organ retrieval in this case, but this is not accepted by French law.

## 2.4. The Mechanism of Consent to Donate Tissues and Organs after Death

There are two legal systems: the presumed consent system (or opting-out system), and the express consent system (or opting-in system). In countries that follow the presumed consent system such as France, Spain, Norway, Portugal, Austria, or Belgium, the law considers that people who do not express an opposing view to donating tissues and organs while they are alive are willing to donate their tissues and organs when they die. This system is based on the value that individuals are willing to donate their tissues and organs. In countries with a system of voluntary consent such as the UK, the US, New Zealand, Germany, the Netherlands, etc., only patients who express their wishes to donate before death are considered donors. Both models of voluntary consent, presumption and active consent are based on the principle that "the wishes of the deceased are the basis for decisions *and must be respected*". In Spain, the presumption of consent mechanism is more effective in collecting tissues and organs than the active consent mechanism. Based on the UNOS (US) chart on the situation of organ harvesting in the US, it can be seen that the number of organ transplants from living people increased rapidly to 6,499 in 2001, larger than the number of organ transplants from deceased people, but the number of organ transplants from deceased people also increased. According to statistics, in some European countries from 1996-2001, we can see that the rate of increase and decrease is relatively stable. For France, the rate of organ harvesting from brain-dead people has increased from 15 to 20 cases per one million people. With a population of 60 million people, that means there are 1200 cases of organ harvesting from brain-dead people and about 2000 organs, 2400 kidneys, 1500 hearts have been harvested. According to statistics from the Lancet Journal, since the Spanish National Transplant Organization (ONT) officially started operating in 1989, the rate of donors was 14.3 people/million people, up from 33.7 donors/million people in 2002. However, the actual application shows that there are currently a number of countries with an increasing tendency to follow the mechanism of presumptive consent. For example, in the United Kingdom, the Medical Association has in recent years called for the adjustment of English law from active consent to the mechanism of presumed

consent (British Medical Association, 2003). Even in countries with less developed health systems, there is support for the mechanism of presumed consent, such as Mexico. A draft law was presented in 2000 with the aim of adopting the system of presumed consent, and Argentine lawmakers voted in favor of this system in 2004.

## 2.5. The Purpose of Donating Human Tissues and Organs

Most countries in the world clearly stipulate the use for medical purposes and scientific research. Similar to France and Tunisia, the purpose of donating human tissues and organs in Morocco is only carried out for certain purposes such as donation for medical purposes or scientific research, by licensed facilities.

## 2.6. The Commercial Nature of Human Tissue and Body Parts Donation

According to international conventions, in principle, tissues and body parts are not considered commodities and are not considered to be commercial (exchanged or sold). However, through the laws of countries and through research, it can be seen that the law stipulates this but the views are still different.

Some countries directly stipulate in the law that they do not recognize the commercial nature of human tissues and body parts and do not even consider tissues and body parts as property in the pure sense that they can be exchanged or sold. Typical of this view are countries such as France and Germany. Article 16-5 of the Civil Code of the French Republic stipulates: "*Any agreement concluded for the purpose of using the human body, human body parts or products from the body as a property is invalid*". The French Republic does not recognize the use of human bodies and organs for commercial purposes because they believe that it will destroy morality and human feelings. On the one hand, it should recognize the donation of tissues and organs for commercial purposes because body parts are property, each individual when giving away a part of their body part, they have the right to receive a certain material benefit, which is a completely legitimate right and ensures that buyers, sellers, and intermediaries all benefit in this matter. On the other hand, the demand for organ transplants is actually very large, many people are willing to spend money to get what they need. This view seems similar to the views of some countries such as the US, Iran, etc. In these countries, due to the culture, people here live pragmatically and in these countries, a tissue and organ market has been formed where people can exchange or buy and sell. According to 2003 Nobel Prize-winning economist Gary Baker, he calculated that each human body in the US costs about US\$220,000, each kidney costs about US\$45,000 on the US market and less than US\$20,000 in China where one can buy a liver for US\$40,000 and an egg for US\$5,000. According to the report of the NGO, Annes International and Organs Watch, 10 countries in the world have organ transplant services: Brazil, Bulgaria, Haiti, India, Mexico, Moldova, Mozambique, Pakistan, Paraguay, Peru, El Salvador, Türkiye. To have the source of tissue and organs for this transplant activity, it is not only taken from donated sources but also from cases of buying and selling. Besides, the donation of bodies and human body parts for commercial purposes should be recognized but within certain limits. For example, a person commits a particularly serious crime, he is sentenced to death by the Court, his family is in great difficulty, his parents are old and unable to work, he wants to sell his body parts to get a certain amount of money to repay his parents for raising him, of course, this sale must be kept secret. On the other hand, the law prohibits donating tissues and organs for commercial purposes, but the feasibility is not high because between the donor and the recipient, they agree with each other to make a sale contract, but to hide the law, they show that the donation is voluntary, not forced, coerced in civil law. This is called a fake contract and illegal because human body parts are not the subject of a sale of goods contract. Although knowing that is illegal, but can the law control it? Therefore, we need to have a multi-faceted view of this issue. These are very practical issues that lawmakers need especially to consider to make appropriate choices.

## 2.7. Management Agency for Tissue and Organ Donation and Transplantation, and Tissue Bank

In France, to ensure that tissue and organ donation and transplantation activities are carried out professionally and effectively, the country established the National Transplantation Center very early. This Center previously had a Director General under the direct management of the Minister of Health. Then in 2005, this Center was renamed the National Biomedical Agency. In Spain, after the Law on Donation and Transplantation of Human Tissues and Organs was enacted in 1979, the National Transplantation Organization (ONT) was officially established in 1989 and played an important role in helping Spain become one of the leading countries in the world in tissue and organ donation for medical treatment and scientific research. In Morocco, there is no independent agency at the national level responsible for managing the donation and transplantation of human tissues and organs. This task is directly managed by the Ministry of Health. However, this country has an Advisory Council on Human Organ Transplantation. However, in reality, this Council has not yet operated effectively. In addition, to ensure the availability of tissue for transplantation, Moroccan law provides for the establishment of tissue banks, but until 2006, the country only focused on training medical staff and corneal transplants were mainly sourced from foreign imports. Unlike Morocco, Tunisian law provides for an independent agency to centrally manage the donation and transplantation of tissues and organs, similar to the French model, which is the National Center for the Development of Human Organ Transplantation (abbreviated as CNPTO). This agency is independent of the Ministry of Health and has an organizational structure similar to the French Biomedical Agency. In addition, to serve the effective donation, collection and transplantation of tissues, similar to Morocco, Tunisia also established a national tissue bank under the CNPTO.

## 2.8. The Procedures for Donating Human Tissues and Organs

According to French law, the procedure for registering as a living donor and registering as an opt-out of donation after death is carried out through the National Biomedical Agency and licensed medical facilities. For example, the procedure for collecting tissues and body parts for donation after death in France is to first treat the person. If the patient cannot be saved, a diagnosis must be made to determine whether the person is dead. After confirming that the person is dead, the next step is to check medical safety. This procedure is strictly regulated in the biomedical ethics laws. Next is the stage of organizing the collection of human tissues and body parts. Then comes the stage of distributing the graft. All these procedures are very specifically regulated in French law. In Tunisia, the donor must express his consent before the Chief Justice of the Court of First Instance where he resides or before the Director of the medical facility. The law of this country also stipulates that the donor can withdraw his consent at any time, in any form. In Morocco, the living donor must express his consent to the donation before the Court of First Instance. In case

an individual does not want to donate tissues or organs after death, he must register his refusal to donate in the Donation Refusal Register at the Court of First Instance.

### 3. VIETNAM'S LAW ON ORGAN DONATION

#### 3.1. Provisions of Vietnamese Law on Organ Donation

Organ donation is recognized as a personal right of citizens in the 2015 Vietnamese Civil Code as follows:

- i. *Individuals have the right to donate their tissues and organs while alive or to donate their tissues, organs, or bodies after death for the purpose of treating others or for medical, pharmaceutical, and other scientific research.*
- ii. *Individuals have the right to receive tissues and organs from others for their own treatment. Medical examination and treatment facilities and legal entities with authority over scientific research have the right to receive human organs and bodies for medical treatment, medical testing, pharmaceutical testing, and other scientific research.*
- iii. *Donation, collection of human tissues and organs, donation, and bodies must comply with the conditions and be carried out in accordance with the provisions of this Code, the Law on Donation, Collection, and Transplantation of Human Tissues and Organs, and Donation, Collection, and other relevant laws.*

Recognizing this right as a civil right of citizens has contributed to completing the legal basis on organ donation as stipulated in the 2005 Civil Code and the previous the 2006 Law on Donation, Removal, and Transplantation of Human Tissues. Article 4 of the 2006 Law on Donation, Removal, Transplantation of Human Tissues and Organs Donation and Collection also stipulates the principles in donating, removing, transplanting human tissues and organs donating and collection of bodies like some countries in the world, which are that there must be the voluntary participation of the donor; not for commercial purposes; keeping confidential information related to the donor and the recipient, unless otherwise agreed by the parties or otherwise provided by law. It can be seen that most countries stipulate that keeping confidential information between the donor and the recipient is an important principle, unless otherwise provided by law.

Vietnam's law has relatively specific provisions on the mechanism of consent to donate tissues and organs while alive and the mechanism of donating tissues, organs and bodies after death. It stipulates that individuals who meet the legal conditions to donate tissues and organs are based on the mechanism of active consent (that is, the donor, whether donating while alive or after death, must have a written Donation Registration Card at a competent medical facility). However, the law also stipulates a number of exceptions such as in the case of donating tissues and organs while alive, in an emergency that requires tissue transplantation for a parent, or sibling, tissue from a person who has not registered to donate is allowed to be taken if that person agrees. In the case of not having a tissue or organ donation card after death, the taking must have the written consent of that person's parent or guardian or spouse or representative of that person's adult children. In these two cases, to ensure the treatment of patients, the Law does not require a Registration Card for Donating Tissues and Organs. Regarding the implementation procedures, in Vietnam, the law stipulates that people who meet the conditions prescribed by the Law on Donation, Tissue Transplantation and Donation and Collection of Organ in 2006 have the right to express their wishes to donate their tissues and organs to medical facilities. Upon receiving information from the donor of tissues and organs, the medical facility is responsible for notifying the National Coordination Center for Human Organ Transplantation. After receiving notification of a case of donating a body or human organ, the National Coordination Center for Human Organs is responsible for notifying the medical facility that has sufficient equipment and medical staff to carry out the registration procedures for the donor. Upon receiving notification from the National Coordination Center for Human Organ Transplantation, the medical facility specified in Article 16 of this Law shall be responsible for directly meeting the donor to provide information related to donation, tissue and organ collection, and guidance on registration for donation according to the application form; and conducting health checks for the donor. At this point, the donor must ensure health conditions. In the case of donating a body after death, it shall be implemented according to the provisions of Article 19 of this Law.

It can be seen that the procedures for donating tissues and organs in other countries are quite clearly and openly regulated. These procedures aim to ensure the right to donate of individuals and ensure their voluntariness in the process of donating or refusing to donate without being subject to sanctions from the state.

Current Vietnamese law stipulates that individuals must be 18 years of age or older to have the right to donate tissues and organs while alive and after death. Indeed, Vietnam's law stipulates the age of donation after death of an individual later than in France (Vietnamese law stipulates that only those aged 18 or older can donate or register to donate after death, while French law stipulates that they are from 13 years old). The reason for such a provision is because Vietnam's lawmakers believe that at that age, the donor is fully developed mentally, physically as well as legally. They are people with full civil capacity and can participate in establishing certain rights and obligations according to the provisions of law by their actions. If age is a quantitative sign, it is a necessary condition. In order to donate tissues and organs, the ability to perceive and control behavior is a qualitative sign to determine whether an individual is psychologically and cognitively mature or not. In Vietnam, current law stipulates that in addition to the purpose of donating tissues and organs for medical treatment and scientific research, tissue and organ donation can also be used for teaching purposes. Article 35 of the 2005 Vietnamese Civil Code stipulates: "*It is strictly forbidden to receive or use other people's body parts for commercial purposes*", and Article 4 of the 2006 Law on Donation, Transplantation of Tissues and Organs and Donation and Collection of Corpses recognizes this issue as the principle of "*Not for commercial purposes*". The fact that Vietnamese law strictly prohibits the use of human body parts for commercial purposes is completely correct and appropriate for the following reasons:

- i. First, in terms of terminology, the word "donation" itself clearly shows the voluntary nature of donating bodies and body parts without requiring any exchange of material benefits, so when it comes to donation, it cannot be for commercial purposes but for a much nobler purpose, which is to cure patients or to serve the cause of medical research to find ways to prevent and treat people with serious diseases.
- ii. Second, the donation of tissues and organs demonstrates mutual love and humanity between people. Therefore, if we do a good job of propagating to all citizens to understand the meaningful role of donating bodies and body parts, everyone in society will agree and be willing to participate in the donation of tissues and organs, just like blood donation has been carried out for many years.
- iii. Third, although human body parts have value and use value, they are not something that humans can create in the production process, but are given to each person by nature and form the unity of the human body so that humans can exist and develop normally, it is associated with the personal rights of each person. Therefore, it cannot be considered

a commodity and of course it is not allowed to be exchanged and bought and sold on the market for commercial purposes. In Vietnam, the determination of brain death is also regulated in current law, unlike France, the determination of brain death in Vietnam is based on the decision of 3 experts: an expert in emergency resuscitation, an expert in neurology or neurosurgery, and an expert in forensic examination. This law also specifically regulates clinical standards and time standards for determining brain death. This shows that Vietnamese law also has very specific regulations on determining brain death and the time of brain death. These regulations are necessary to ensure the safety of donors and to avoid the exploitation of individuals and organizations with authority in taking human tissues and organs from people who are not yet brain dead for personal gain... In addition, Vietnamese law also devotes a whole chapter to regulations on Tissue Banks and the National Coordination Center for Human Tissue and Organ Transplantation. These regulations have made a very important contribution to medical examination and treatment and ensuring the health of Vietnamese people.

### 3.2. Challenges in Implementing the Law on Tissue and Organ Donation in Vietnam

Vietnam has about 16 medical facilities capable of effectively collecting and transplanting tissues and organs and has successfully performed 1,281 kidney transplants, 54 liver transplants, 16 heart transplants, 08 bone marrow transplants, 01 kidney-pancreas transplant and 01 heart-lung transplant, clearly demonstrating that Vietnam's medical technology is not inferior to other countries in the region and the world in terms of tissue and organ donation and transplantation. After nearly 10 years of implementing the Law on Donation, Collection and Transplantation of Human Tissues and Donation and Collection of Organs in 2006 (effective from July 1, 2007) and the system of legal documents guiding its implementation, many shortcomings and inadequacies have been revealed that need to be amended and supplemented.

Firstly, although there are regulations on principles similar to the laws of some countries in the world on tissue and organ donation as the author mentioned in the above sections, Vietnamese law does not clearly stipulate caution and safety for donors and transplant recipients as a separate principle like the law of the French Republic.

Secondly, Vietnamese law should not equate the commercial nature of donating human bodies and organs with the fact that donors are compensated with a certain benefit. These are two issues that both bring benefits to donors of human bodies and organs, however, these two issues have impacts in two different directions. If donating human bodies and organs for commercial purposes and paying for buying and selling like normal property is not suitable for the culture and social ethics of our country, it is even illegal and creates negative impacts on social life and on the management of body and organ donation. On the contrary, compensation for donors of human bodies and body parts such as donors or their relatives can receive certain incentives and support in terms of medical care, even economic benefits equal value but from feelings, from gratitude is in line with the cultural and ethical traditions of the Vietnamese people. Thereby, the author recommends that lawmakers should also consider this issue to have regulations suitable to the actual situation of our country.

Thirdly, in Vietnam, the law does not have regulations on the case of taking tissue, body parts in case of cardiac arrest, but indirectly it can be understood that the case of cardiac arrest due to brain death and ensuring the conditions stipulated in the Law on Donation, Tissue and Organ Transplantation and Donation, Collection of Corpse in 2006 can still be carried out. Therefore, in the coming time, if the Law on Donation, Tissue and Organ Transplantation and Donation, Collection of Corpse in 2006 is amended and supplemented, there should be clearer and more specific regulations on the cases and ways to determine the time when tissue and body parts can be taken, transplanted.

Fourth, on the issue of tissue, organ and body part donation of minors, Vietnamese law does not allow the removal of tissue or body parts from living minors, but does not limit the recipients of tissue or body parts to only relatives as in French law, provided that this can only be done after obtaining written consent from the Advisory Council for the Collection and Transplantation of Human Body Parts. On the other hand, Vietnamese law stipulates that people aged 18 and over have the right to register to donate tissue and body parts after death. Another issue is that French law specifically stipulates that if a minor dies, but if there is written consent from that person's parents, a competent medical facility can still proceed to remove human tissue or body parts. Vietnamese law only stipulates that in cases where there is no registration card for donation of human tissues or organs after death, the removal must have the written consent of the person's parents or guardians or the spouse or representative of the adult children of the person. This has also happened in practice in Vietnam. However, the Law does not have clear regulations on whether deceased minors can have their tissues or organs removed if their parents or legal guardians agree. In my personal opinion, it can still be done because although it is not directly regulated, the Law has indirectly acknowledged it (in cases where a donor does not have a registration card after death but has the written consent of the person's parents or guardian, it is still possible). Finally, regarding the implementation procedures, the 2006 Law on Donation, Transplantation of Tissues, Donation and Collection of Organs in Vietnam only generally stipulates that both donors and recipients must undergo health check procedures, but the Law does not specify what the health check includes. However, studying the specific regulations in Decision No. 43/2006/QĐ-BYT dated December 29, 2006 of the Minister of Health on promulgating the technical procedures for kidney transplantation from living people and the technical procedures for liver transplantation from living people, which stipulates that the conditions for donors to be used are not to have cancer, cirrhosis, HIV positive, etc., which shows that specific regulations on health for kidney or liver donors in Vietnam are specifically stipulated in sub-law documents and it can be seen that the regulations on this issue are relatively strict to ensure the health of both donors and recipients. Therefore, to facilitate the implementation and research of the law on donation of tissues, organs and body parts, the provisions on these procedures should be included in legal documents rather than sub-legal documents.

### 3.3. Recommendations

Through the above general analysis of the legal regulations on tissue and organ donation of some countries in the world and Vietnam, the authors propose some specific solutions as follows:

First, it is necessary to stipulate the issue of ensuring health, life and psychology as a principle of law. Vietnamese law should specifically stipulate ensuring medical safety and caution as a principle in donating and transplanting human tissues and organs.

Second, on the mechanism of consent in donating human tissues and organs, the current law of Vietnam stipulates that the mechanism of active consent is suitable for the economic infrastructure as well as the culture of the people, but in the long term, when the social infrastructure has developed, people's awareness is increasingly high while the need for tissue and organ transplantation is increasing, it is necessary to study and stipulate the mechanism of presumption of consent.

Third, on the conditions for donating tissues and organs. The authors believe that it is necessary to have specific regulations

on the conditions for donating tissues and body parts for the purpose of scientific research and teaching, because as analyzed in the above section, it can be seen that the conditions for donating tissues and organs for medical purposes is not exactly the same as donating tissues and organs for teaching and scientific research purposes. Therefore, it is necessary to specify detailed conditions for donating tissues and organs for each type of purpose to ensure that tissue and organ donation is carried out more legally.

Fourth, to ensure the donation of tissues and organs by donors, there must be a reasonable treatment and remuneration regime for donors. There may be regulations on insurance for tissue and organ donors. Thus, when tissue and organ donation of living people will be guaranteed, creating peace of mind when they donate tissues and organs if there are risks during the process of tissue and organ donation.

#### 4. CONCLUSION

From the above analysis, it can be seen that Vietnamese law on donation of tissues, organs and body parts is quite complete and consistent with the provisions of international law as well as some other countries on this issue. In general, from 2006 to present, Vietnam has had a relatively complete legal system related to the activities of donation, collection and transplantation of tissues, organs and body parts, creating an important legal corridor for the Vietnamese organ transplant industry to be born and develop.

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