

The Law On Human Trafficking For The Purpose Of Illegal Organ Trade

Hasudungan Sinaga

Faculty of Law, Universitas Tama Jagakarsa, Indonesia

Email : hassinaga@gmail.com

Keywords

human trafficking, illegal organ trade, positive law.

ABSTRACT

The merits and drawbacks of organ sales are vigorously debated in Indonesia. Nevertheless, some argue that the trade in human organs should be prohibited, a stance supported by Indonesian law. Both organ recipients and donors bear significant responsibility in organ trade, as financial gain serves as the primary motive for organ brokers and medical professionals alike. This research aims to conduct a Legal Analysis of Human Trafficking for the Purpose of Organ Illegal Trade. The methodology employed is a literature review through online searches on various journal platforms such as Google Scholar, Science Direct, and the Garuda Portal, focusing on national and international scientific journal articles. The search, limited to the last four years (2019-2023), employed subject-specific terms like "human organ trafficking," "person trafficking," or "positive law." The search excluded articles containing only conceptual discussions. The findings reveal that the buying and selling of organs are ethically reprehensible and illegal in the healthcare industry, as outlined in Health Law Number 36 of 2009. Although ethical kidney transplants using organs obtained through sales are impossible, specific considerations should be noted. The purchase and sale of human organs and/or biological tissue constitute a specialized crime, with Article 192 of Law Number 36 of 2009 specifying criminal punishments. Those found deliberately engaging in organ or body tissue trade, as defined in Article 64 paragraph (3), may face a maximum sentence of 10 years in prison and a fine of IDR 1,000,000,000 (one billion rupiah).

INTRODUCTION

For every human being, health is an essential component of life. They are keeping in mind the directive found in the Preamble Provisions of the 1945 Constitution of the Republic of Indonesia (hereafter referred to as the 1945 Constitution of the Republic of Indonesia) makes it abundantly evident that the state's objective is to promote public welfare, among other things. A healthy individual will lead a better life. (Nathalia & Rusdiana, 2023; Zhou et al., 2023a) In Indonesia, there is significant debate over the benefits and drawbacks of organ sales. Nonetheless, some individuals believe that human organ trade shouldn't occur. Positive Law states that this activity is forbidden in Indonesia. Although it is technically unlawful and forbidden by religious law, the sale and purchase of human organs typically takes place on the black market (Maksum, 2021).

Both organ receivers and donors will bear a significant deal of responsibility in the organ trade, as financial gain serves as the primary motivator for both organ brokers and the medical staff (Kituuka et al., 2023). Donors, in particular, may find their contributions completely disregarded and neglected once their kidneys are removed. Organ donors might not receive the promised cash reimbursement, and their surgical care after surgery might be disregarded, which could result in complications, including bleeding, infection, and even death. Because the trade of organs is prohibited in each of these nations, organ donors are at risk of being detained and prosecuted for violating local laws, and they lack the legal

means to conduct a lawful transaction (Chang et al., 2022; Khan, 2023). Because medical evaluations of donors for infectious diseases have typically been inadequate, recipients of such organs have some of the blame as well (Bastani, 2020).

According to Charisma & Ibrahim, 2023, the study's findings indicate that the law in Indonesia still has to be finished to find solutions for persons in need of organs and for ethical donors. Regulations must also be created. An essential conclusion from this study is the development of regulations to combat and combat organ trafficking. It's a start, but more comparative research from other countries is needed to create better rules and regulations.

Based on Handayani's (2021) research, criminal law has been functionalised in implementing kidney trading to benefit transplants. Criminal law enforcement is responsible for ensuring that criminal law is followed by legally processing the facts of organ trafficking in the field. This repressive action is designed to have a deterrent effect and is a long-term preventive strategy with the intention of preventing future incidents of organ trafficking (Konrad et al., 2023; Yazici, 2022; Zhou et al., 2023b). It is critical to recognise that the threat of punishment must remain the last resort and is applied if social control is ineffective (Green et al., 2023).

Organ transplantation on corpses is already regulated by law in Indonesia, both at the constitutional level and through the execution of rules such as the Ministry of Health Regulation (Greiner-Weinstein & Bacidore, 2023; Salat, 2022). But when it comes to the use of organ transplantation from unidentified corpses, the current legal regulations are thought to be ambiguous and narrowly focused, particularly when it comes to the period spent searching for an identity, settling conflicts, and the criminal provisions about the use and commercialisation of organ transplantation from identified corpses (Gaitis, 2023). The protocol surrounding the organ transplantation of deceased individuals does not adequately consider, safeguard, or uphold the fundamental rights of deceased individuals (Febriyanto Poetra et al., 2023).

Patients with terminal kidney failure now have new hope because of modern technological advancements, particularly in the area of transplantation (Albright et al., 2020; Fatima et al., 2022). Kidney organ transplantation has its challenges, though, especially in Indonesia. In the legal framework, organ transplants and body tissues can treat illnesses and restore health. However, the lack of donors in Indonesia and the lack of laws protecting terminally ill patients who attempt to transplant organs using kidneys acquired through purchase or sale present two challenges (Susanti, 2019).

Because there is not a single article in the Criminal Code, Law Number 23 of 1992 concerning Health, or the RKUHP of 2004 that describes actions that fall under the category of purchasing and selling human organs, law enforcement against the illegal act of organ trafficking has not been as successful as anticipated (Buś et al., 2019; Cardoso et al., 2023). One aspect that is always emphasised to execute the law and end criminal conduct quickly is the firmness of law enforcement personnel (Abdullah & Fatriansyah, 2022).

According to Global Financial Integrity's (GFI) Transnational Crime and the Developing World research, around 12 thousand human organs are illegally trafficked around the world each year. The entire transaction value per year is expected to be between \$800 million and \$1.7 billion. The unlawful trading of human organs is considered a transnational crime by GFI since it typically includes cross-border networks. Professional networks of brokers, medical staff such as surgeons, anaesthetists, nurses, and individuals in public institutions such as hospitals, aeroplanes, and laboratories typically carry out this crime. Human organs for sale are typically sourced from nations where the majority of the population has a poor economy and a low level of education. Meanwhile, the majority of buyers are wealthy individuals from the Developed Countries. Therefore, this research aims to examine **"The Law On Human Trafficking For The Purpose Of Illegal Organ Trade"**.

METHODS

The method employed in this research is a literature review conducted utilising an online search methodology for national and international scientific journal articles on multiple journal search engines such as Google Scholar, Science Direct, and the Garuda Portal. Search by subject (title) with the keywords "human organ trafficking," "person trafficking," or "positive law." Articles containing only concepts are eliminated from the search, and article subjects are restricted to the last four years (2019-2023).

RESULTS

Human Organ Trafficking According to Positive Law in Indonesia

The World Health Organization (WHO) believes that 10% of the world's demand for purchasing and selling organs is met by the current level of human organ trade, which is still growing. Up to 15,000–20,000 thousand kidneys are sold illegally each year worldwide, according to a US human rights organisation that keeps an eye on human organ trafficking. (Listanti et al., 2020) In Indonesia, there is significant debate over the benefits and drawbacks of organ sales. Nonetheless, some individuals believe that human organ trade shouldn't occur. Positive Law states that this activity is forbidden in Indonesia. Since it is actually against the law and forbidden by religion, the purchase and sale of human organs takes place mainly on the underground market. (Nathalia & Rusdiana, 2023)

According to (Perpem, 2021), Transplantation has been acknowledged as one of the most significant medical discoveries, successfully extending and enhancing the quality of life for thousands of patients worldwide. Transplantation, as defined by medical theory, is the process of moving all or a portion of a donor's organs and tissues into the body of a recipient. Compared to alternative conservative therapy for patients with terminal organ failure, organ transplantation has improved life expectancy and decreased the risk of death. In the interim, tissue transplantation can enhance the patient's quality of life through restorative and aesthetic procedures and save their life.

Article 28A of the 1945 Constitution guarantees human rights, which state that "every person has the right to live and has the right to defend his or her life and living." and earn the respect of health. Therefore, laws that control everyone's health in society are required. Furthermore, Organ and tissue transplantation is one method of restoring health and curing disease, according to Article 64 of Law Number 36 of 2009 concerning Health. Organ and tissue transplants are not allowed to be commercialised; they are solely performed for humanitarian reasons. It is forbidden to exchange bodily parts or organs for any reason. Indonesia still lags significantly behind other nations in terms of organ transplantation. There are reportedly more Indonesian citizens receiving transplants outside of their home country, particularly kidney transplants. The nation has a low transplant rate due to several reasons, including low public awareness of the significance of organ transplantation efforts, the fact that many donor sources are still living, the lack of regulations that could provide legal certainty for transplants originating from brain stem or brain dead donors, and cost and cultural considerations.

A criminal activity known as "human organ trafficking" is the buying, selling, or trading of human organs for financial gain. Human rights are being violated by this technique, which also seriously affects victims and the integrity of the human body. A legal framework governs the trade in human organs in Indonesia and establishes criminal consequences for anyone involved. The act of purchasing and selling human organs under coercion, deception, or threats—with or without the victim's consent—is known as human organ trafficking. Reproductive organs such as the kidneys, liver, lungs, heart, and eyes are frequently trafficked. Human organ trafficking has significant adverse effects on victims' physical and mental health. Organ damage, an increased chance of infection, and other health issues are examples of physical effects. Psychological effects encompass profound despair, stress, and trauma. (Kemenkumham, 2023)

In recent years, several institutions have taken part in upholding the law and assisting those who have been the victims of human trafficking. Though their structures are not yet operating efficiently, these include the Women's Empowerment Integrated Service Center (P2TP2A), Special Police Units - Women and Children Services Unit (PPA), and Special Services Room (RPK). Due to capacity constraints,

many cases of human trafficking are being handled by other units instead of the PPA. Victims frequently bear forensic medical examination costs due to financial limitations. The National Task Force to Prevent and Handle HT/TIP, the Recovery Center (Integrated Service - PPT), and shelters are among the other organisations that offer assistance to victims.(Naibaho, 2023)

Criminal Sanctions under Positive Law in Indonesia for Human Organ Trafficking Offenders

Transplantation is one way that human organ trafficking can take place. This is impacted by significant changes in human life patterns that lead to numerous ailments that people suffer from, as well as by the advancement of knowledge, particularly in health sciences. Since new diseases will constantly emerge daily, the medical field must adapt by expanding the medical professionals' knowledge of health. Initially, only human hearts were used for transplants; however, over time, liver, kidney, eye, and other organ transplants and human body parts like skin, muscle, and nerve tissue have also been included in the category of human organ transplants. (Charisma & Ibrahim, 2023) The process of performing a human organ transplant from a donor to a recipient necessitates medical professionals with specialised training since it involves sophisticated machinery and medical procedures such as organ and tissue transplantation between the donor and recipient.

Due to multiple instances of human trafficking, especially involving women and children being trafficked for sexual and economic exploitation, Indonesia was placed on the Trafficking in Persons Report's tier-2 (watch list) in 2020 and 2022. According to the report, the Indonesian government has failed to meet the basic requirements for victim protection and law enforcement. There have been substantial attempts made to stop human trafficking despite these obstacles. (Naibaho, 2023) The reality of human trafficking in Indonesia poses a developing concern that calls into question the mechanics of the situation as it stands today. Perpetrators frequently get human trafficking victims through the use of forged paperwork, fictitious work permits, and links to more serious crimes such as drug trafficking. It's critical to comprehend the responses of law enforcement and government representatives to this issue, as well as the obstacles and possibilities that must be overcome to lower the number of similar occurrences and guarantee victim justice. A literature survey can shed light on victim protection, which is an essential facet of the problem. Negative views about victims frequently lead to insufficient care and social protection.

The purchase and sale of organs is morally wrong and against Law Number 36 of 2009 concerning Health, even in the medical field. Although it is not ethically acceptable for a physician to perform a kidney transplant using kidneys acquired through the sale of human organs, there are a few things you should be aware of. First, if the number of recipients of organs does not match the number of donors, there is a chance that the lucrative practice of organ sales will continue to exist. The Criminal Code does not contain regulations on this. However, Law Number 36 of 2009 Article 64 paragraph (3) prohibits the buying and selling of organs and body tissues under any circumstances. Therefore, it is considered a specific crime to purchase and sell human organs and bodily tissue. Article 192 of Law Number 36 of 2009 contains the provisions for criminal sanctions outlined in this article. It stipulates that anyone found to be intentionally trading in organs or body tissue under any pretext, as specified in Article 64 paragraph (3), faces a maximum sentence of 10 (ten) years in prison and a maximum fine of IDR 1,000,000,000 (one billion rupiah).(Abdullah & Fatriansyah, 2022)

In addition to being complicated by both the Criminal Code and the Health Law, purchasing and selling organs is currently a common practice thanks to the internet. Unquestionably, having easy access to the internet has made it possible for people to donate their organs through social media platforms or websites that are currently quite popular among internet users. Law Number 11 of 2008 concerning Electronic Information and Transactions contains restrictions on cybercrimes; nevertheless, the ITE Law does not cover the sale of body organs through online services. In actuality, however, law enforcement officers have the authority to apply cumulative charges or multiple articles for a crime that

satisfies the additional requirements of the Health Law crime. The articles that govern transactions involving the purchase and sale of Internet media are as follows: (Nathalia & Rusdiana, 2023)

1. Article 34 paragraph (1): Anyone who knowingly and unlawfully manufactures, markets, obtains for use, imports, distributes, gives, or owns any of the following:
2. Article 27 Paragraph (1): Anybody who knowingly and without authorisation disseminates, transmits, or makes electronically stored information and documents available with offensive content

States that provide transplant care are required to propose laws pertaining to the removal and transplantation of organs. The principles of justice and altruism, which are meant to preserve the integrity of the transplant system, and respect for autonomy, which are meant to protect the dignity and other interests of the individuals involved, are at the heart of the current framework on transplantation, which is widely accepted worldwide. These transplantation and organ donation tenets are codified in national, international, and regional laws and regulations. (UNODC, 2022) Furthermore, It is absolutely possible that the same factual circumstances can fulfil both the components of TIP for OR and those of organ trafficking due to the probable overlap in the legal frameworks. As a result, there is a genuine chance that: 1) victims of TIP for OR could be charged with selling organs illegally or face other administrative sanctions that go against the non-punishment principle, which could have a very negative impact on their lives and the overall effectiveness of crime control; and 2) offenders could face two prosecutions and punishments.

CONCLUSION

It can be concluded that the advantages and disadvantages of organ sales are hotly debated in Indonesia. However, many think that the trade in human organs ought not to occur. Positive Law declares that this kind of behavior is prohibited in Indonesia. The acquisition and sale of human organs occur mainly on the black market because it is actually illegal and prohibited by religion. Even in the healthcare industry, the buying and selling of organs is morally repugnant and illegal under Health Law Number 36 of 2009. While a doctor cannot perform an ethical kidney transplant using kidneys obtained through the sale of human organs, there are some things you should know. Buying and selling human organs and biological tissue is a specialised offence. The provisions for criminal punishments specified in this article are included in Article 192 of Law Number 36 of 2009. It states that anyone detected willfully dealing in organs or body tissue under any pretext, as stipulated in Article 64 paragraph (3), receives a maximum term of 10 (ten) years in jail and a maximum fine of IDR 1,000,000,000 (one billion rupiah).

REFERENCES

- Abdullah, M. Z., & Fatriansyah, F. (2022). Juridical Analysis Regarding the Criminal Act of Buying and Selling Body Organs. *Legalitas: Jurnal Hukum*, 14(1), 156. <https://doi.org/10.33087/legalitas.v14i1.318>
- Albright, K., Greenbaum, J., Edwards, S. A., & Tsai, C. (2020). Systematic review of facilitators of, barriers to, and recommendations for healthcare services for child survivors of human trafficking globally. *Child Abuse and Neglect*, 100. <https://doi.org/10.1016/J.CHIABU.2019.104289>
- Bastani, B. (2020). The present and future of transplant organ shortage: some potential remedies. *Journal of Nephrology*, 33(2), 277–288. <https://doi.org/10.1007/s40620-019-00634-x>
- Buś, M. M., Schellberg, T., & Budowle, B. (2019). Human trafficking – Multinational challenge for forensic science. *Forensic Science International: Genetics Supplement Series*, 7(1), 403–405. <https://doi.org/10.1016/J.FSIGSS.2019.10.029>
- Cardoso, A. S., Bryukhova, S., Renna, F., Reino, L., Xu, C., Xiao, Z., Correia, R., Di Minin, E., Ribeiro, J., & Vaz, A. S. (2023). Detecting wildlife trafficking in images from online platforms: A test case using

- deep learning with pangolin images. *Biological Conservation*, 279. <https://doi.org/10.1016/J.BIOCON.2023.109905>
- Chang, K. S. G., Tsang, S., & Chisolm-Straker, M. (2022). Child trafficking and exploitation: Historical roots, preventive policies, and the Pediatrician's role. *Current Problems in Pediatric and Adolescent Health Care*, 52(3). <https://doi.org/10.1016/J.CPPEDS.2022.101167>
- Charisma, R. A., & Ibrahim, A. L. (2023). Comparison of Criminal Law Related to the Trafficking of Human Body Organs in Indonesia and the Philippines. *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan*, 17(1), 1. <https://doi.org/10.35931/aq.v17i1.1767>
- Fatima, S., Hussain, Z., Hamid, S., Idrees, Z., Mansoor, M., & Idrees, T. (2022). Donatio organorum-reluctance to organ donation medical students; a cross-sectional descriptive study. *Annals of Medicine and Surgery*, 83. <https://doi.org/10.1016/j.amsu.2022.104534>
- Febriyanto Poetra, J., Nur, R., & Bedu, S. (2023). Legal Analysis Regarding Organ Transplantation of Unidentified Corpses. *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)*, 7(3), 2271–2282. <https://doi.org/10.58258/jisip.v7i1.5>
- Gaitis, K. K. (2023). Representations of traffickers in official UK discourse: Examining the least known component of the human trafficking equation. *International Journal of Law, Crime and Justice*, 74. <https://doi.org/10.1016/J.IJLCJ.2023.100592>
- Green, C., Clark, S., Kioko, J., Mwai, E., Odhiambo, J., Rettie, N., & van der Weijde, K. (2023). The role of the transport sector in facilitating and preventing trafficking in persons along high volume transport corridors in sub-Saharan Africa. *Journal of Transport and Health*, 30. <https://doi.org/10.1016/J.JTH.2023.101607>
- Greiner-Weinstein, G., & Bacidore, V. (2023). Implementing a Human Trafficking Educational Module and Protocol in the Emergency Department. *Journal of Emergency Nursing*, 49(4), 534–538. <https://doi.org/10.1016/J.JEN.2023.01.006>
- Kemenkumham. (2023). *Perdagangan Organ Tubuh Manusia*. Sippn Menpan. <https://sippn.menpan.go.id/berita/65360/rumah-tahanan-negara-kelas-iib-pelaihari/perdagangan-organ-tubuh-manusia>
- Khan, F. S. (2023). Inside the dark world: Women's trade and prostitution in Patricia McCormick's *Sold* and Awais Khan's *No Honour*. *Women's Studies International Forum*, 100. <https://doi.org/10.1016/j.wsif.2023.102798>
- Kituuka, O., Ocan, M., Mbiine, R., Tayebwa, M., Ibingira, C., & Wayengera, M. (2023). A Cross-Sectional Study on Knowledge and Attitudes About Organ Donation and Transplantation in an Urban Population in a Low-Income Country. *Transplantation Proceedings*. <https://doi.org/10.1016/j.transproceed.2023.09.024>
- Konrad, R. A., Maass, K. L., Dimas, G. L., & Trapp, A. C. (2023). Perspectives on how to conduct responsible anti-human trafficking research in operations and analytics. *European Journal of Operational Research*, 309(1), 319–329. <https://doi.org/10.1016/J.EJOR.2022.12.028>
- Listanti, I., Musta, A. P., & Pratimaratri, U. (2020). Perspektif Hukum Islam Terhadap Tindak Pidana Jualbeli Organ Tubuh Manusia Di Indonesia. *Batusangkar International Conference*, 12–13, 173–182.
- Maksum, A. (2021). Indonesian post-migrant workers: A challenging problem for human security. *Social Sciences & Humanities Open*, 4(1), 100223. <https://doi.org/10.1016/J.SSAHO.2021.100223>
- Naibaho, N. (2023). Victim Protection and The Dynamic Situation of Human Trafficking: Indonesia Experience. *Indonesian Journal of International Law*, 20(4), 1–12.
- Nathalia, D., & Rusdiana, E. (2023). IMPLEMENTATION OF THE CRIMINAL ACT OF BUYING AND BUYING ORGANS AND/OR TISSUE OF THE HUMAN BODY REVIEWED FROM THE ASPECT OF CRIMINAL LAW. *E Journal UNESA*, 209–218.

- Perpem. (2021). Peraturan Pemerintah Republik Indonesia Nomor 53 Tahun 2021 Tentang Transplantasi Organ Dan Jaringan Tubuh. In *Perpem* (Issue 081788).
- Salat, M. (2022). Human trafficking in Spain: A quantitative case-law analysis. *International Journal of Law, Crime and Justice*, 71, 100561. <https://doi.org/10.1016/J.IJLCJ.2022.100561>
- Susanti, A. (2019). Policy Reformulation Regarding Human Kidney Organ Transplantation. *Jurnal Ilmiah Dunia Hukum*, 3(2), 25–36.
- UNODC. (2022). *Launch of New UNODC Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*.
- Yazici, T. (2022). A proposal for the usage of reconnaissance satellites to monitor international human and wildlife trafficking hotspots. *Acta Astronautica*, 195, 77–85. <https://doi.org/10.1016/J.ACTAASTRO.2022.02.012>
- Zhou, J., Li, G., Wang, J., Xu, T., Nie, Q., Gao, X., & Jin, A. (2023a). Exploring variations and influencing factors of illegal adoption: A comparison between child trafficking and informal adoption. *Child Abuse and Neglect*, 140. <https://doi.org/10.1016/j.chiabu.2023.106124>
- Zhou, J., Li, G., Wang, J., Xu, T., Nie, Q., Gao, X., & Jin, A. (2023b). Exploring variations and influencing factors of illegal adoption: A comparison between child trafficking and informal adoption. *Child Abuse and Neglect*, 140. <https://doi.org/10.1016/j.chiabu.2023.106124>

Copyright holder:

Hasudungan Sinaga (2023)

First publication rights:

International Journal of Social Service and Research (IJSSR)

This article is licensed under: