

Criminal Law Analysis On The Crime Of Human Organ Trafficking

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Abstract

The trade in human organs represents a criminal act that often exploits poverty and weak law enforcement. The prevalence of poverty contributes to the growth of the black market for organ sales. This crime is specifically regulated under Article 345 of Law Number 1 of 2023 concerning the Criminal Code, which governs the sale of human organs, body tissues, and blood. This study applies a normative juridical approach by analyzing legal norms and their implementation in real cases. Primary data were obtained through interviews with Criminal Law experts from Lampung University. The results show that Article 345 clearly defines the scope and elements of organ trafficking, facilitating its enforcement and providing stricter penalties, including imprisonment and fines. Compared to Law Number 21 of 2007 on Human Trafficking, Article 345 is more relevant for direct organ trade, while the latter applies to broader human exploitation. The study suggests government efforts to strengthen public awareness, develop detailed regulations, and regularly evaluate the implementation of the National Criminal Code to ensure effective law enforcement.

Keywords: Crime, Organ Trafficking, Law Number 1 of 2023.

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Introduction

Health is one of the basic human needs alongside clothing, food, and shelter (Wila Chandrawila Supriadi, 2001: 25). The rapid advancement of medical science has produced various methods and drugs to cure diseases. “Transplantation is the last resort to help patients with the failure of one of their vital organs” (M. Jusuf Hanafiah and Amri Amir, 2009: 126). Transplantation from a living donor is the transfer of tissues or organs from a living person to another individual or to another part of their own body without endangering the donor’s health. Organs or tissues that can be donated include skin, kidneys, blood (blood transfusion), and bone marrow (M. Jusuf Hanafiah and Amri Amir, 2009: 123). The first kidney transplant in Indonesia was carried out in 1977 (Melinda Veronica Simbolo, 2013: 138).

The author briefly explains organ transplantation in other countries such as China and the United States. Both countries have a national information system related to organ transplantation procedures. “Ministry of Health statistics suggest that up to 1.5 million patients in the PRC need organ transplants, yet only about 10,000 such operations can be conducted each year, limited by lack of donated organs” (Jiefu Huang, 2007: 193–196). Translated by the author: “According to Ministry of Health statistics, there are 1,500,000 patients in the People’s Republic of China (PRC) who require organ transplants, but only 10,000 operations can be performed each year due to the limited number of donors.” Based on data from the United Network for Organ Sharing (UNOS) website, nearly 84,000 cases in the United States are awaiting organ donors. In Indonesia, many cases of organ transplantation occur in relation to kidney failure and liver cancer.

However, there is still no national-scale information system or database related to the implementation of organ or tissue transplantation in Indonesia. Existing data are only sectoral in nature and are managed individually by certain hospitals or foundations engaged in organ donation (Martin Suryana, 2013: 2–3). This situation results in a lack of transparency regarding the number of available organs and donors. In addition, transplantation involves high costs while the demand for organs remains significant. The urgent need for organs has also led to cases of organ trafficking from living donors in January 2016, an incident occurred in Garut, West Java. Laws outside the Indonesian Criminal Code (hereinafter referred to as KUHP) regulate the sale of human organs, such as Law No. 36 of 2009 on Health and Law No. 21 of 2007 on the Eradication of Human Trafficking in cases where exploitation is proven, as well as Government Regulation No. 18 of 1981 concerning Clinical Autopsies, Anatomical Autopsies, and Transplantation of Human Organs or Tissues. However, this regulation does not set out procedures for transplantation or provide an information system regarding transplantation. As a result, the public remains unaware of the purposes and procedures of transplantation, leading to numerous cases of organ sales.

The Draft Government Regulation of the Republic of Indonesia on the Transplantation of Organs and/or Human Tissues stipulates procedures for transplantation, the rights and obligations of donors and recipients, the establishment of a transplantation information system, and a prohibition on the sale of human organs.

The sale of human organs for transplantation is not permitted under Indonesia’s positive law. Transplantation should be grounded in humanitarian principles without expectation of any form of compensation. Organ sales cannot involve direct removal of organs, as transplantation requires medical professionals and hospitals. Organ and/or tissue transplantation must meet several requirements: it may only be conducted for humanitarian purposes and is prohibited from being traded under any circumstances; it may only be carried out by qualified and authorized health professionals; it must be conducted in designated health facilities; and the removal of organs and/or tissues from a donor must take into account the donor’s health and obtain consent from the donor and/or their heirs or family (Soekidjo Notoatmodjo, 2010: 66).

Donor or family consent is also known as informed consent. “In essence, informed consent contains two essential elements: the information provided by the physician (information for consent) and the approval given by the patient (statement of informed consent)” (Hermien Hadiati Koeswadi, 1998: 74).

The author examines the issues arising from the above background, namely the modus operandi of selling human organs from living donors, as well as the criminal law regulations governing the sale of human organs for transplantation from living donors under Indonesian legislation.

Literature Review

2.1 General Overview of Criminal Law Policy

2.1.1 Definition of Criminal Law Policy

The term policy originates from the English word policy or the Dutch word politiek, which in general can be defined as a set of general principles that serve to guide the government (in a broad sense, including law enforcement authorities) in managing, regulating, or resolving public affairs, societal issues, or areas related to legislative drafting and the implementation of legal regulations. The general objective of policy is directed toward efforts to achieve the welfare or prosperity of society (citizens).

Criminal law policy can be understood as a state (government) policy, or a policy that utilizes criminal law as a means to achieve specific objectives, particularly in combating crime. One of the efforts to address crime is through criminal law policy, also referred to as criminal law politics.

2.1.2 Scope of Criminal Law Policy

The implementation of criminal law policy is carried out through stages of concretization/functionalization of criminal law, which consist of:

- a. Formulative/Legislative Policy, namely the formulation or drafting of criminal law (the legal stage);
- b. Applicative/Judicative Policy, namely the stage of applying criminal law;
- c. Administrative/Executive Policy, namely the stage of implementing criminal law.

2.2 General Overview of Criminal Acts

2.2.1 Definition of Criminal Acts

According to Simons, the definition of a criminal act is an action that violates criminal law, committed either intentionally or unintentionally, by a person who can be held accountable for such action, and which has been declared by the criminal law as an act subject to punishment.

2.2.2 Elements of a Criminal Act

The elements of a criminal act can be distinguished into two aspects, namely:

- a. Subjective elements, which refer to an act or conduct that results in consequences not desired by the law. This aspect emphasizes the perpetrator, whether an individual or several persons.
- b. Objective Element, This refers to an act or conduct that is against the law and disregards consequences prohibited by law under the threat of punishment, with greater emphasis placed on the act itself.

2.2.3 Types of Criminal Acts

- a. According to the Criminal Code (KUHP):

1. Crimes (Recht delicten): These are acts that contradict justice, regardless of whether such acts are punishable under a specific law or not. They are genuinely perceived by society as being contrary to justice. Examples include murder and theft. Such offenses are called crimes.
2. Violations (Wets delicten):
 - a. These are offenses considered lighter in nature compared to crimes.
 - b. According to the method of formulation, offenses are distinguished into formal offenses (delik formil) and material offenses (delik materil).
 - c. Based on the type of act, offenses are distinguished into acts of commission (delik comisi) and omission (delik omisi).
 - d. Based on the form of fault, offenses are distinguished into intentional offenses (delik dolus) and negligent offenses (delik culpa).
 - e. From the perspective of how many times the act must be committed to constitute a prohibition:
 - 1) Single offense (enkelvoudige delicten): an offense that is constituted by being committed only once.
 - 2) Continuous Offenses, namely offenses formulated in such a way that, in order to be considered complete and punishable, the perpetrator's actions must be repeated. For example, Article 481 of the Indonesian Criminal Code (KUHP), where the perpetrator buys, exchanges, accepts as collateral, keeps, or conceals such items.
 - f. Continuing offenses and completed offenses.
 - g. Based on complaint in prosecution, offenses are distinguished between complaint-based offenses and ordinary offenses, depending on whether a complaint is required for prosecution.
 - h. Simple offenses and offenses with aggravating or mitigating circumstances.

2.3 General Overview of Human Organ Trafficking

2.3.1 Definition of Human Organ Trafficking

It can be understood that there are no specific regulations or legal provisions governing the crime of organ trafficking. Human organ trafficking is the trade involving internal human organs (such as the heart, liver, kidneys, lungs, and others) for the purpose of transplantation. The low economic level in developing countries is reflected in the prevalence of the illegal trade of human organs. However, poverty is not the sole factor driving illegal organ trafficking, as the poorest countries in the world do not always have a black market for human organs. Legal regulations also serve as one of the contributing factors that encourage the existence of black markets for organs.

2.3.2 Regulation of Criminal Acts of Human Organ Trafficking

The prohibition of human organ trafficking is regulated under several laws, such as the Indonesian Penal Code (KUHP), Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking, and Law Number 36 of 2009 on Health, as stipulated in several articles, including Article 64 paragraphs (2) and (3), and Article 65. In addition, it is also regulated under Law Number 35 of 2014 on Child Protection, Law Number 17 of 2023 on Health, as well as Government Regulation Number 18 of 1981 on Clinical Autopsy and Anatomical Autopsy and the Transplantation of Human Organs or Tissues.

(See also: Isfandyarie, *Malpractice and Medical Risk in the Study of Criminal Law*, Prestasi Pustaka, Jakarta, 2006, p. 90).

Research Methodology

3.1 Type of Research

The type of research used in this study is normative juridical legal research, also referred to as doctrinal legal research. In this normative research, the author examines legal principles.

1. Sources of Data

The legal sources in normative research consist of secondary data. Secondary data in this study are divided into three (3) categories, namely:

- a. Primary Legal Materials, which are the main binding legal materials in the form of prevailing laws and regulations related to the issues discussed in this research.
- b. Secondary Legal Materials, which provide explanations of primary legal materials, such as draft laws, research findings, scholarly works from legal experts, and other relevant sources.
- c. Tertiary Legal Materials, which provide guidance or explanations of primary and secondary legal materials, such as dictionaries, encyclopedias, cumulative indexes, and others.

3.2 Data Collection Technique

The data collection method used is the literature review or documentary study. The data collected include both regulations and literature relevant to the issues being studied.

3.3 Data Analysis

In this research, data are analyzed qualitatively with the aim of understanding, interpreting, and describing a particular reality. The author then draws conclusions deductively, namely deriving specific conclusions from general statements.

Results

4.1 Regulation of the Criminal Act of Human Organ Trafficking in Indonesian Criminal Law

4.1.1 The Indonesian Penal Code (KUHP)

In the Penal Code (KUHP), the prohibition against human organ trafficking is not specifically regulated. However, perpetrators of organ trafficking can be charged under Article 204 paragraph (1) of the KUHP, which states:

“Anyone who sells, offers, delivers, or distributes goods known to be dangerous to human life or health, without informing about the dangerous nature of those goods, shall be subject to imprisonment of up to fifteen years.”

In this article, the acts of selling, offering, or delivering goods that endanger human life or health can be interpreted as organ trafficking. Organ trafficking is an act that endangers the health or life of the person whose organs are taken. Therefore, perpetrators of organ trafficking can be prosecuted under this article.

However, it should be noted that the article includes the phrase “without informing”, which in this context means that the perpetrator sells another person’s organ forcibly without the victim’s consent. This provision cannot be applied to cases where a person sells their own organ, since in such cases the individual consciously and deliberately sells their organ without coercion from another party.

4.1.2 Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking

In this law, the prohibition of organ trafficking is stipulated in Articles 3, 4, 5, and 7. The regulation regarding human organ trafficking is placed under the definition of exploitation contained in Article 1 point 7, which reads:

“Exploitation is an act with or without the consent of the victim which includes prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, utilization of the physical body, sexual exploitation, reproductive organs, or the unlawful transfer or transplantation of organs and/or body tissues, or the utilization of a person’s labor or abilities by another party to obtain material or immaterial benefits.”

4.1.3 Law Number 36 of 2009 concerning Health

The prohibition of organ trafficking is stipulated in Article 64 paragraph (3), which states that organs and/or body tissues are prohibited from being traded. The criminal sanction for perpetrators who engage in organ trafficking is provided in Article 192 of this law, which reads:

“Any person who deliberately trades organs or body tissues under any pretext as referred to in Article 64 paragraph (3) shall be punished with imprisonment of up to 10 (ten) years and a fine of up to Rp1,000,000,000.00 (one billion rupiah).”

This provision is a cumulative formulation of Article 64 paragraph (3), which regulates the prohibition of organ trade. However, upon closer examination, this law does not explicitly prohibit the sale of one’s own organs and does not distinguish between sanctions for trading one’s own organs and trading the organs of others. Since this law serves as the principal regulation in addressing the crime of human organ trafficking, it must be clear and firm in stipulating the acts that constitute this criminal offense.

4.1.4 Law Number 35 of 2014 concerning Child Protection

In this regulation, the prohibition is stipulated in Articles 47, 84, and 85. Article 47 of Law No. 35 of 2014 states that the state, government, society, family, and parents have the obligation to protect children from acts of organ and/or tissue removal without regard to the child’s health, organ trade, or—In this regulation, the prohibition is stipulated in Articles 47, 84, and 85. Article 47 of Law No. 35 of 2014 states that the state, government, society, family, and parents have the obligation to protect children from acts of organ and/or tissue removal without regard to the child’s health, organ trade, or

child tissue and health research involving children. The criminal penalties are contained in Articles 84 and 85.

4.1.5 Law Number 17 of 2023 on Health

This law is a new regulation replacing the previous health law, namely Law Number 36 of 2009. It was only enacted in July 2023 and is currently still in the stage of socialization and has not yet been fully implemented. In this law, the prohibition on organ trafficking is regulated in Article 124 paragraph (3), which states:

“Organs and/or body tissues as referred to in paragraph (1) are prohibited from being commercialized or traded under any circumstances.”

The wording of this article is not significantly different from the provision in the previous health law; however, the addition of the term “commercialized” emphasizes the prohibition of organ trafficking. This provision can therefore be interpreted as prohibiting two things: organ trafficking and the trading of human organs. Thus, the new law is considered an improvement over the previous regulation, even though it does not yet specifically elaborate on the detailed aspects of organ trafficking.

As for criminal sanctions, these are regulated under Article 432. The article distinguishes between sanctions for those who commercialize organs and those who trade human organs, imposing heavier penalties on individuals who engage in trading. However, it remains unclear whether the provision on organ commercialization refers to commercializing one’s own organ or commercializing another person’s organ without their consent.

4.1.6 Government Regulation Number 18 of 1981 on Clinical Autopsies, Anatomical Autopsies, and the Transplantation of Human Organs or Tissues

This government regulation addresses criminal acts and procedures concerning the transplantation of human organs and/or tissues, specifically regulating cases involving deceased donors or cadaver donors. These provisions are set out in Articles 10 to 20.

4.2 Policy on the Regulation of Criminal Acts of Human Organ Trafficking in Indonesian Criminal Law

4.2.1 Comparison of Regulations on Human Organ Trafficking in Several Countries

a. Singapore

Singapore is one of the countries that strictly prohibits human organ trafficking. Under Singaporean law, the legislation that criminalizes organ trafficking is the Human Organ Transplant Act (HOTA). HOTA criminalizes organ trafficking in four aspects, namely:

1. Agreeing to sell or supply one's own organ or blood (or that of another person) to others for economic or financial gain (Chapter IV, Article 13 paragraphs (1) and (2)).
2. Running a business or facilitating, arranging, and selling human organs or blood to others (Article 13 paragraph (3)).
3. Advertising the sale/purchase of organs or blood, or advertising the right to remove organs or blood from another person's body (Article 14).
4. Acting as a seller or supplier of processed derivatives of organs or blood obtained through the black market (Article 13 paragraph (6)).

In its regulation, Singapore distinguishes between several aspects and sanctions regarding crimes of human organ trafficking within a single law.

b. South Korea

Another country that prohibits human organ trafficking is South Korea. Under South Korean law, the regulation prohibiting human organ trafficking is contained in the Organ Transplant Act 2008. South Korea criminalizes organ trafficking in several aspects, including:

1. Giving any organ from another person to a third party, receiving any organ from another person to provide it to a third party, or promising to commit any of these acts (Article 6 paragraph (1) item 1).
2. Giving one's own organ to another person, receiving an organ from another person for transplantation into one's own body, or promising to commit any of these acts (Article 6 paragraph (1) item 2).
3. Conspiring with, or assisting others to commit any act included in paragraph (1) items 1 and 2 (Article 6 paragraph (1) item 3).

As for sanctions, they are stipulated in Chapter VI, Article 40 of the Act. Article 40 prescribes various penalties for violations of Article 6 for people who violate Article 6 (1) 1 and 3, and violate paragraph (3) of the same article, are threatened with a prison sentence of at least two years. While in paragraph (2) the punishment for people who violate Article 6 (1) 2, and/or any action included in paragraph (1) 1 and 2 of the same article, and who violate paragraph (2) of the same article are threatened with a prison sentence of a maximum of 10 years or a fine of up to 50 million won or can be punished with both.

4.2.2 Policy on the Regulation of Criminal Acts of Human Organ Trafficking in the Future

The purpose of law is justice for balance, certainty for accuracy, and benefit for happiness. When we examine the provision regarding the prohibition of human organ trade as regulated in Law Number 36 of 2009 on Health, Article 64 paragraph (3) stipulates that organs and/or body tissues are prohibited from being traded under any pretext. The author considers this provision to be less precise and clear. Ideally, the article should elaborate on the specific aspects of organ trade, since such trade can occur in various forms.

Furthermore, Article 192 of Law Number 36 of 2009, which regulates the sanctions for organ trafficking, states that any person who trades organs shall be subject to imprisonment for a maximum of ten years and a fine of up to one billion rupiah. In the author's view, this provision is inadequate. As previously discussed, organ trafficking can occur in multiple ways, such as intentionally selling one's own organ or conducting/facilitating the trade of organs taken from others. If both acts are subjected to the same penalty under Article 192, the author argues that such treatment would be unjust. There should be a distinction in the severity of sanctions, as it would not be fair if someone who sells their own organ receives the same punishment as someone who sells another person's organ.

Moreover, the law does not explicitly state that selling one's own organ constitutes a criminal act. Therefore, the author believes that a reformulation or re-regulation of criminal provisions concerning human organ trade is necessary, namely:

1. Elaborating on various aspects of the prohibition against organ trafficking, such as:
 - a. selling one's own organ to another person;
 - b. conducting or facilitating the trade of another person's organ;
 - c. advertising or promoting illegal organ trade.
2. Differentiating criminal sanctions for acts of organ trafficking, by distinguishing between those who sell their own organs and those who sell the organs of others, with heavier sanctions imposed on the latter people who trade in other people's organs. With this regulation, it is hoped that in the future Law Number 36 of 2009 concerning Health in the prohibition of the trade in human organs in Indonesia will be more efficient in overcoming this problem, and with this regulation there will be justice in society regarding sanctions for the trade in body organs in Indonesia.

Conclusion

1. The regulation of criminal sanctions against the crime of human organ trafficking has essentially been stipulated in Law Number 36 of 2009 concerning Health, specifically in Article 64 paragraph (3). Under the existing regulation, the government prohibits the trade of human organs for profit or commercial purposes. However, the regulation does not explicitly outline the various aspects of organ trafficking in Indonesia, considering the many ways in which such crimes can be carried out, nor does it provide differentiated sanctions.
2. Future policies on the regulation of criminal acts of human organ trafficking in Indonesia must involve reforms in the criminal law, particularly by revising Law Number 36 of 2009 concerning Health, which currently governs the prohibition of organ trafficking. This is important in order to align with comparative countries, such as Singapore and South Korea. The conclusion provides an answer to the problem raised in the introduction. In scientific articles on research results, what is meant by conclusion is a formulation or answer to a research question based on the results of the research presented in a concise

manner. The conclusion is presented in the form of paragraphs. In the scientific article of the study results, the conclusions are formulated based on the results of the problem-solving analysis. The conclusion is presented in the form of paragraphs. At the end of the conclusion, it is necessary to write the implications and development of the findings.

References

- [1] A. Chazawi, *Lessons on Criminal Law I*, Jakarta: PT Raja Grafindo, 2021.
- [2] D. Darmodiharjo and Shidarta, *Fundamentals of Legal Philosophy (What and How is Indonesian Legal Philosophy)*, Jakarta: PT Gramedia Pustaka Utama, 1995.
- [3] E. Erdianto, *Indonesian Criminal Law*, Pekanbaru: PT Refika Aditama, 2021.
- [4] I. Gunadi and J. Efendi, *Criminal Law*, Jakarta: Kencana, 2024.
- [5] T. Handayani, *Functionalization of Criminal Law on the Act of Human Organ Trafficking, Especially Kidneys for Transplantation Purposes*, Bandung: Mandar Maju, 2022.
- [6] F. Hasyim, *Commercial Law*, Jakarta: Sinar Grafika, 2017.
- [7] Z. Ali, *Legal Research Methods*, Jakarta: Sinar Grafika, 2018.
- [8] A. Yesenia, "The Crime of Human Organ Trafficking According to the Provisions of Indonesian Positive Law," *Lex et Societatis*, vol. 3, no. 9, Oct. 2015.
- [9] R. Saputra, "Criminal Liability for the Crime of Human Organ Trafficking for Organ Transplantation Purposes in Indonesian Criminal Law," Undergraduate Thesis, Specialization in Criminal Law, Faculty of Law, University of Riau, Pekanbaru, 2018.
- [10] S. R. Suminar, "Legal and Fiqh Aspects of Organ Transactions for Human Organ Transplantation," *Syiar Hukum*, vol. 12, no. 1, pp. 33–48, 2017.
- [11] T. A. Hidayat, "Reformulation of Corruption Crimes in Relation to the Low Realization of State Finances Due to Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption Crimes," *Journal of Legal Studies*, Faculty of Law, University of Riau, vol. 7, no. 1.
- [12] T. Aisyah, "Formulation Policy of Law in Granting Parole for Recidivist Prisoners," *Online Student Journal*, Faculty of Law, University of Riau, vol. 6, no. 1, Jan. 2019.
- [13] W. Edorita, "Creating an Effective Legal System Where It Must Begin," *Journal of Legal Studies*, Faculty of Law, University of Riau, ed. 1, no. 1, Aug. 2020.
- [14] *Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking*.
- [15] *Law Number 36 of 2009 on Health*.
- [16] *Law Number 35 of 2014 on Child Protection*.
- [17] *Law Number 17 of 2023 on Health*.
- [18] *Government Regulation Number 18 of 1981 on Clinical Autopsy, Anatomical Autopsy, and Transplantation of Human Organs and/or Tissues*.
- [19] *Human Organ Transplant Act 1987*.
- [20] *Organ Transplant Act 2008*.