



## POLICY ANALYSIS OF TRADE CRIMINAL ACTS HUMAN ORGANS IN A RENEWAL PERSPECTIVE CRIMINAL LAW

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### ABSTRACT

The perpetrators of the crime of human organ trafficking are not only criminal syndicates who want to get money through illegal means, but the perpetrators can also be individuals who sell their organs with the intention and goal of getting money. Criminal sanctions against perpetrators of this crime Selling and buying organs/body tissue is expressly stipulated in Article 192 of Law Number 36 of 2009 that anyone who intentionally sells organs or body tissue under any pretext as referred to in Article 64 paragraph (3) shall be punished with a maximum prison sentence of 10 years and a maximum fine of IDR 1 billion..Indonesian criminal law strictly prohibits all forms of human organ trafficking. Perpetrators of this crime can be prosecuted under several key laws and regulations, with severe criminal penalties

### 1. Introduction

Human organ trafficking is no longer a new phenomenon, with numerous advertisements in the media and online promoting it. Organ trafficking remains illegal in many countries, including Indonesia, leading to widespread black market organ sales. This high demand has fueled the thriving black market for human organs.

Generally, for the purposes of organ and tissue transplantation, recipients are obtained from close family members. As a potential organ donor, closeness, basic physical health, and health eligibility are considerations. Organ donation is generally carried out between family members with kinship ties, with the hope of having similar blood types and antibody/immune characteristics, as well as ethical and humanitarian concerns.

The methods used to commit human organ trafficking crimes are increasingly diverse and well-organized. Criminals, eager to gain quick profits or money, often justify any means, one of which is the sale of human organs.





The rise of human trafficking has also led to the trafficking of human organs. This trade is unavoidable, as it fulfills the demand from patients who desperately need healthy organs to replace their dysfunctional ones. The high price of human organs on the black market has led to more and more people taking advantage of this to make money.

The perpetrators of the crime of human organ trafficking are not only criminal syndicates who want to get money through illegal means, but the perpetrators can also be people themselves who sell their organs with the intention and goal of getting money.

The motives for selling their organs are generally economic factors or poverty, leading to the desire to obtain money quickly, easily, and instantly. They do so without considering the consequences of their actions. Those who sell their organs for quick and easy money often neglect the risks they face, including health problems such as fatigue and the inability to eat freely (with restrictions on food).

## 2. Research Method

This research is descriptive, because it only describes the object that is the main problem. Descriptive research leads to normative juridical research, namely "research that starts from problems by looking at the reality that occurs in the field, then connecting it with applicable laws and regulations." The type of research used in this study is normative juridical approach, namely to analyze laws and regulations related to the crime of human organ trafficking from the perspective of criminal law reform

## 3. Results And Discussion

Over time, various transnational crimes, such as human organ trafficking, have emerged that require collaborative multilateral action. While there is no agreed-upon concept or definition for some of these crimes, they generally endanger the safety of donors. The increasing diversity and prevalence of transnational organ trafficking has drawn attention and prompted countries worldwide to collaborate to combat these crimes at the bilateral, regional, and multilateral levels.

Regarding the legal norm regarding the prohibition on the sale of human organs, the Criminal Code has been strictly regulated. This can be seen in Article 204 of the Criminal Code which states: "Anyone who sells, delivers, or distributes goods that are known to endanger the life or health of another person, without





being informed of their dangerous nature, shall be subject to a maximum prison sentence of 15 years."

The most important element contained in Article 204 of the Criminal Code is that the person commits these acts, while he knows that the goods are dangerous to life or health, he does not say/explain about the dangerous nature of the goods. A person who sells goods that are dangerous to life and health, but frankly tells the buyer about their dangerous nature, cannot be charged with this article.

The considerations of Law Number 36 of 2009 clearly state that health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia. In addition, health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia.

*Protocols Thereto* explains that theft in the practice of human organ trafficking is another form of human exploitation that must be eradicated, so that in the effort to criminalize illegal human organ trafficking activities, it is necessary to make legal and jurisdictional breakthroughs against all attempts to commit human organ trafficking, expanding from the understanding of whether the act has been committed to other actions that are included in the attempt to commit or be involved as actors in human trafficking, to those who participate or provide convenience and facilities including allowing the phenomenon of illegal human organ trafficking, including for those who actually manage, organize and direct other actors to be able to commit illegal organ trafficking, regardless of the existence of the involvement of criminal organizations or not, within or between countries, with victims not only women and children but all humans.

Article 64 paragraph (3) of Law Number 36 of 2009 concerning Health states that organs and/or body tissues are prohibited from being traded under any pretext. Therefore, perpetrators of selling organs and/or body tissues are threatened with criminal penalties as regulated in Article 192 of Law Number 36 of 2009 concerning Health, namely: anyone who intentionally trades organs or body tissues under any pretext as referred to in Article 64 paragraph (3) shall be punished with a maximum prison sentence of 10 years and a maximum fine of IDR 1 billion.

Organs whose sale is prohibited include the heart, liver, kidneys, lungs, and others. Therefore, according to Andi Hamzah's division of general and special crimes, the sale of human organs is considered a special crime. This is because the Criminal Code does not contain provisions regarding the crime of selling human organs.



In relation to the criminal act of buying and selling human organs or body tissue. Article 192 stipulates that anyone who intentionally buys and sells organs or body tissue under any pretext as referred to in Article 64 paragraph (3) shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Based on the provisions above, it can be understood that in Law Number 36 of 2009 concerning Health, the sale of human organs is prohibited and for anyone proven guilty of buying and selling human organs, the perpetrator can be subject to criminal penalties.

Based on the Criminal Code and Law Number 36 of 2009 concerning Health, it can be understood that Law Number 36 of 2009 concerning Health strictly prohibits anyone from selling, handing over, or distributing their body organs to others because it is considered very dangerous to the life or health of the person concerned. The purpose of prohibiting the sale of human organs is none other than in the context of protecting humans themselves so that they do not easily sell their body organs for the sole purpose of getting money.

Regarding the criminal act of trading in human organ and/or tissue transplants, several articles prohibit the commercial and coercive trade or use of organs and/or tissue, which constitutes exploitation. These articles include:

1. Article 1 number 7 explains the definition of the types of actions that are classified as exploitation of the crime of human trafficking.
2. Article 2 explains the act of recruiting exploitation victims which can be linked to potential organ transplant victims.
3. Articles 3 and 4 explain the prohibition on bringing Indonesian citizens into and out of Indonesian territory for the purpose of exploitation.
4. Article 5 explains the prohibition on child adoption for the purpose of exploitation.
5. Article 6 regulates the bringing of children into and out of Indonesian territory for the purpose of exploitation.
6. Article 7 explains the criminal threats for these articles.
7. Government Regulation Number 18 of 1981 concerning Clinical and Anatomical Post-Case Surgery and Transplantation of Human Organs or Tissues

Government Regulation Number 18 of 1981 concerning Clinical and Anatomical Autopsies and Transplantation of Human Organs or Tissues regulates the criminal offenses and procedures for organ and/or tissue transplantation only for those involving deceased donors or cadaver donors. These regulations are contained in Articles 10-20. The contents of these articles are:

1. Article 10 explains the main procedures for carrying out a transplant, namely obtaining informed consent from the patient or family.



2. Article 11 explains the health workers appointed by law to carry out transplants.
3. Article 12 explains that the status of death during the transplant is determined by 2 (two) doctors who do not have a medical relationship with the person performing the transplant.
4. Article 13 explains the procedures for submitting informed consent, which must be signed by 2 (two) witnesses and written on stamped paper.
5. Article 14 explains that the removal of organs or tissue from donors who have died must have the consent of the donor's family.
6. Article 15 explains the doctor's obligations to provide explanations and information regarding the transplant procedure to be carried out.
7. Article 16 explains the prohibition on donors or donor families from receiving material compensation for the act of transplant donation.
8. Article 17 explains the prohibition on buying and selling body tissue.
9. Article 18 explains the prohibition on sending and receiving body parts or tissues from abroad.
10. Article 19 exceptions in scientific actions
11. Article 20 explains about sanctions.

The practice of organ trafficking is a lucrative and promising prospect, given the potential profits from the sale of organs. Demand for human organs is actually quite high, with some offering lucrative compensation, enticing poor people to sell their organs for the benefit of their families, regardless of the potential health, legal, or religious implications.

A thorough examination of human organ trafficking reveals fundamental issues. In reality, the rise in organ trafficking cases is not solely driven by legal issues; other factors contribute to the high prevalence of organ trafficking, one of which is the economic benefits for individual sellers (usually offering their kidneys) for sale through social media platforms like Facebook and Twitter. Furthermore, the high demand for organs has led to a surge in the black market for human organs.

Organ trafficking typically begins with advertisements or offers from patients or their families. These are usually advertised through newspapers or the internet, often seeking donors with contact information for interested individuals. Alternatively, offers come from potential donors willing to donate their organs to those in need in exchange for a fee. To avoid legal action, the method often involves creating a fake ID card to pretend the donor is a relative of the patient. Offers can also come from individuals seeking to sell their organs for financial gain.



It is difficult to prove that organ trafficking is a crime. According to Bambang Poernomo, simply because someone commits an unlawful act or commits an unlawful act or commits a crime does not necessarily mean they are immediately liable for criminal prosecution.

The sale of human organs is prohibited, both domestically and internationally. Receiving human organs or tissue in any form to or from abroad is also prohibited. Violations will result in penalties, including imprisonment and fines. Law Number 36 of 2009 concerning Health states that donors and their families are prohibited from receiving financial rewards. Article 64 paragraph (2) of Law Number 36 of 2009 concerning Health states that: Organ and/or body tissue transplantation as referred to in paragraph (1) is carried out only for humanitarian purposes and is prohibited from being commercialized. In written law in Indonesia, it is clearly seen that the sale or purchase of body organs is prohibited for any reason. In reality, we can find acts of buying and selling body organs, even many of which offer their body organs for sale with high rewards for economic reasons.

Article 64 paragraph (3) of Law Number 36 of 2009 concerning Health states that organs and/or body tissues are prohibited from being bought and sold under any pretext. This is then reaffirmed in Article 192 of Law Number 36 of 2009 concerning Health, which reads: "Any person who intentionally buys and sells organs or body tissues under any pretext as referred to in Article 64 paragraph (3) shall be punished with a maximum imprisonment of 10 years and a maximum fine of IDR 1 billion."

Based on the explanation of the above article, it is clear that the sale of human organs is strictly prohibited by law, and anyone found guilty of organ trafficking will be subject to criminal sanctions. The owner of the organ faces a high risk of losing one of their vital organs after removal.

The criminal system used to impose penalties on cases of organ trafficking syndicates is in accordance with Article 192 of Law No. 36 of 2009 concerning health, namely that anyone who intentionally trades in organs or body tissue under any pretext can be punished with a maximum prison sentence of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

#### 4. Conclusion

Regulations on criminal acts Trading in organs/body tissue in the Criminal Code does not clearly prohibit the act of trading in human organs, as does Law Number 21 of 2007 concerning the Eradication of Human Trafficking which includes trading in body organs as an act of exploitation of people, while Law





Number 36 of 2009 concerning Health clearly regulates that human organs are prohibited from being traded under any circumstances.

Criminal sanctions against perpetrators of crimes Selling and buying organs/body tissue is expressly stipulated in Article 192 of Law Number 36 of 2009 that anyone who intentionally sells organs or body tissue under any pretext as referred to in Article 64 paragraph (3) shall be punished with a maximum prison sentence of 10 years and a maximum fine of IDR 1 billion.

Criminal law policy towards criminal act buying and selling human organs/tissues in Indonesia strictly prohibits all forms of human organ trafficking. Perpetrators of this crime can be prosecuted under several key laws and face severe criminal penalties. Indonesia's criminal law policy focuses on preventing and firmly addressing the illegal practice of organ trafficking, using a strong legal basis to protect human dignity and health

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