

## **Trafficking in Persons for Organ Transplantation: A Legal Analysis of Criminal Liability and Enforcement Challenges**

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### **Abstract**

This study discusses the crime of human trafficking committed with the purpose of taking and transplanting victims' organs. This criminal act is a modern form of human exploitation that involves illegal networks between countries, taking advantage of economic inequality and the scarcity of legal organs. The research method used is normative (literature), with a statutory approach and a conceptual approach. Legal sources include international legal instruments such as the Palermo Protocol, the United Nations Convention against Transnational Organized Crime, as well as national regulations such as Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons and Law No. 36 of 2009 concerning Health (especially related to organ transplantation). The results of the study show that although normative laws and regulations have prohibited the practice of trafficking in persons for organ transplantation, there are still weaknesses in the coordination of law enforcement between agencies, difficulties in proving elements of exploitation, and regulatory gaps related to organ transplantation between countries that are not strictly supervised. The conclusion of this study emphasizes the need for harmonization between criminal law and health law, increasing international cooperation, and strengthening the organ transplant supervision system to effectively prevent and crack down on human trafficking for organ transplantation.

**Keywords:** *Human trafficking, Organ transplantation, Criminal acts.*

## Introduction

Indonesia is a country of law where all aspects in the territory of the Republic of Indonesia must be based on the law and all legal products and derivatives that exist in the territory of the Republic of Indonesia, on which this firmness is expressed in article 1 paragraph (3) of 1945 which is written "The State of Indonesia is a State of Law". The concept of the state of law or "*Rechtsstaat*" is that the people/citizens have an equal position regardless of power, "*the rule of the man*" where the government is the main and the law of the system is not related to individuals who are the driving force of the system that regulates it (law) but the law that regulates human behavior (Every action must be based on law).<sup>1</sup>

Human trafficking, or often known as human trafficking, is a serious crime that involves the exploitation of human beings for commercial purposes, such as forced labor, modern slavery, prostitution, or organ trafficking. This practice includes recruiting, transporting, moving, sheltering, or accepting people using threats, violence, fraud, or abuse of power to exploit them.

The development of human trafficking in human beings is often seen as a vulnerable state, including those who are victims, and is classified as a weak state. The number of cases of exploitation of women and children is due to the fact that women's status in the family is not on the budget committee (over the household manager) but on the grounds of finding difficulties, employment, poverty or economic problems, and human trafficking is still increasing.<sup>2</sup>

This organ trade is a form of complex and far-reaching transient abuse. One of the increasingly worrying human trafficking is the organ trade for organ transplantation. The high demand for organs and the limited number of legal donors have led to the emergence of a black market that trades human organs for the sake of illegality. This situation involves not only economic exploitation but also gross violations of physical integrity and human dignity. In the legal context in Indonesia, Law No. 21 of 2007 related to the Eradication of Trafficking in Persons has regulated the prohibition of human

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<sup>1</sup> Tri Andrisman. Criminal Law. University of Lampung. 2009. p.50.

<sup>2</sup> Rahmah Daniah and Fajar Apriani, "National Anti-Trafficking Policy on International Migration," *Politica* 8, no. 2. 2017.p. 138.

trafficking for various purposes of exploitation, including the taking of organs by force or in unlawful ways. The factors causing the organ trade include poverty, low legal awareness, weak supervision, and high demand for organs in the international market.<sup>3</sup>

Indonesia is a developing country with a large area and a large population, so it is a country of origin, transit, or destination for international human trafficking networks. Many victims come from vulnerable groups such as women, children, and the poor who are easily deceived by traffickers for the promise of a better job or life. This problem is exacerbated by the lack of public knowledge regarding the modus operandi of trafficking in persons and weak surveillance at the border and remote areas. Victims often experience severe physical and psychological trauma, while perpetrators of crimes are often difficult to prosecute because of their neat and hidden networks.

"An act, whether over one country or between countries, that carries out the recruitment, transportation, shelter, delivery, transfer, or reception of individuals by way of threats, violence, kidnapping, infiltration, forgery, fraud, abuse of power or vulnerable position, debt entrapment, or the provision of payments or benefits, in order to obtain the consent of the person who controls the other person in order to exploit or cause that person exploited." Under Indonesian law, trafficking in persons is a crime regulated under the Criminal Code (Criminal Code).<sup>4</sup>

Article 1 Number 4 of the UUPTPO, the perpetrator of trafficking is defined as each person (*natuurlijkepersoon/perpersonalheid*) or organization that carries out trafficking. When compared to the definition of perpetrator in the Criminal Code, this definition shows that the perpetrator in the context of TPPO (legal entity) has experienced an expansion of meaning. On Article 1 number 4 of the UUPTPO, perpetrators of trafficking (legal subjects) are grouped into four groups. The first group is people, which is defined as each person or group of people who act directly or indirectly to carry out trafficking. Second, an organized group is a structured group consisting of three or more people, whose existence is for a certain period of time and acts to carry out one or more TPPO for the

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<sup>3</sup> Nurhadi, A., Organ Trade in Indonesia: Legal and Human Rights Perspectives, *Journal of Law and Justice*, Vol. 10 No. 2, 2021, p. 135-150.

<sup>4</sup> Paul sinlaeloe. TPPO. Citra press. Malang.2017. p. 2.

purpose of obtaining material or financial benefits directly or indirectly (description of Article 16 of the UUPTPO).

The high demand for organs, such as kidneys, liver, and heart, in various countries, as well as the limited number of legal organ donors, are the main factors that encourage the emergence of the black market of organ trafficking<sup>5</sup>. In addition, the involvement of organized criminal syndicates further complicates law enforcement efforts. In addition, according to national law, Law No. 21 of 2007 related to the Eradication of Trafficking firmly prohibits all forms of exploitation, including illegal organ harvesting. Article 2 paragraph (1) of Law No. 21 of 2007 states that trafficking in persons includes the recruitment, transportation, shelter, delivery, transfer, or acceptance of individuals under threat of violence, kidnapping, fraud, abuse of power, or vulnerable positions for the purpose of exploitation.

Although regulations are in place, law enforcement on organ trafficking in Indonesia still faces various obstacles, including limited capacity of law enforcement officials, lack of coordination between institutions, and lack of public awareness of the dangers of organ trafficking.<sup>6</sup> Economic factors also play a major role in organ trafficking cases in Indonesia. Poverty, unemployment, and social inequality are the main drivers that make people vulnerable to being entangled in organ trafficking, both for victims and perpetrators.<sup>7</sup>

### **Research Methods**

Doctrinal law research, another name for normative law research, is the type of research that will be used for this research. This normative legal research is often understood as what is contained in laws and rules (law in books) or on guidelines or norms that are useful for acceptable standards of human behavior.<sup>8</sup> The problem approach to this study uses the statute *approach* and the *Conceptual approach*.

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<sup>5</sup> Budiman, A., Black Market Organ Trade: International Law Perspectives, Journal of International Law, Vol. 15 No. 1, 2022, p. 75-89.

<sup>6</sup> Suryana, I., The Effectiveness of Law Enforcement on Organ Trafficking in Indonesia, Journal of Criminology, Vol. 8 No. 3, 2021, p. 120-135.

<sup>7</sup> Yulianto, D., Poverty and Organ Trade in Indonesia: Socio-Legal Analysis, Journal of Social and Law, Vol. 12 No. 4, 2023, p. 210-225.

<sup>8</sup> Amirudin and A.Zainal Asikin. Legal research methods. Rajawali Press. Jakarta.2004.p. 118.

## **Research and Discussion Results**

### **1. Legal Sanctions for Perpetrators of Organ Transplantation**

Sanctions are punishments or strict actions given to individuals or groups for violating certain rules, norms, or provisions. Sanctions are useful for the tools of discipline enforcement and behavior control over one environment, be it society, organizations, or the state.<sup>9</sup>

Sanctions are usually used to coerce individuals to comply with the rules. The word "sanctie" in Dutch, which shows the threat of punishment, is the source of the word in Indonesian for sanctions. In its contemporary usage, the term "sanction" is not only synonymous with "fine," but also has a different meaning from criminal (straf), which is a sanction that is only used for criminal law.

Sanctions are defined on the punishment given by the courts to individuals who violate the relevant standards. Therefore, punishment is the natural result of an action taken. Legal consequences due to violating rules or conventions are known to be sanctioned. In addition to repressive instruments, sanctions can also be used for preventive instruments for the following reasons: First, punishment is a way to ensure that everyone complies with the law. Second, punishment is a legal punishment for breaking the law.

Article 10 of the Criminal Code regulates sanctions or punishments for the following criminal laws: First, the main penalty, which includes the death penalty, imprisonment, and fines. Second, additional crimes, which include disclosure of judges' decisions, confiscation of certain goods, and revocation of certain privileges. The purpose of criminalization or the application of penalties is not limited to causing suffering or degrading human dignity. This is mainly because the punishments given to the perpetrators of criminal acts often reflect the socio-cultural norms of one country.

The best instrument or method that we have to deal with serious and urgent violations or dangers, as well as the threat of danger, is criminal punishment. The main guarantee of human freedom is criminal punishment.

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<sup>9</sup> Koeswadji. Development of Various Crimes in the Context of Criminal Law Development. Image by Aditya Bhakti. Bandung, 1995. h, 70.

Criminal punishment is a threat when used recklessly and coercively, but it is a guarantee when used humanely and carefully.

In order to provide legal guarantees for victims of trafficking, Law Number 21 of 2007 related to the Eradication of Trafficking provides severe criminal sanctions for those who carry out trafficking. Article 2 to above Article 23 of Law Number 21 of 2007 related to the Eradication of Trafficking contains criminal provisions. one of the examples of Article 2 which regulates criminal matters for those who carry out trafficking in persons, either for unlawful or with the consent of the person responsible for another person for the purpose of exploiting that person.

definition of Trafficking in Persons (TPPO) Trafficking in persons, or in its legal term TPPO (TPPO), is one of the most serious forms of crime because it directly violates human rights, degrades human dignity, and often involves exploitation of forms of forced labor, modern slavery, sexual exploitation, and illegal organ harvesting.<sup>10</sup>

According to Article 1 number 1 of Law No. 21 of 2007 related to the Eradication of Trafficking, trafficking in persons is:

"Any act, whether over a country or between countries, involving the recruitment, transportation, shelter, delivery, transfer, or reception of an individual under threat or use of force, kidnapping, detention, forgery, fraud, abuse of power or vulnerable position, entrapment of debt, or the provision of payments or benefits, in order to obtain the consent of the person in control of another person, for the purpose of exploiting or causing an individual exploited."

One of the most serious violations of human dignity is human trafficking, which is a form of modern human slavery. The two demographic groups most often affected by human trafficking are women and children. Victims are trafficked for a variety of reasons, including forced labor or forced labor, slavery, or behaviors similar to slavery, in addition to prostitution or other sexual exploitation. People are recruited, transported, transferred, concealed, or recruited for human trafficking with the intent to trap, persuade, or use them for exploitative practices of all kinds. These practices may include threats of violence, actual use of force, kidnapping, forgery, fraud, abuse of power, or offering payment or benefits to obtain consent from the subject. In addition, countries have established conventions

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<sup>10</sup> Rahmah Daniah and Fajar Apriani, "National Anti-Trafficking Policy on International Migration," *Politica* 8, no. 2. 2017. p. 138.

related to human trafficking, which have been submitted to the UNTOC parliament.

UNTOC stands for *United Nations Convention against Transnational Organized Crime*. UNTOC (Palermo Convention) is an international convention adopted by the United Nations General Assembly in 2000 and came into existence in 2003. The Convention aims to eradicate transnational organized crime, such as drug trafficking, migrant smuggling, money laundering, and trafficking in persons. The Convention has three additional protocols, each of which regulates a specific form of crime. one of them is the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, which is known as the Palermo Protocol.

Criminal obligations for individuals who commit violations or commit criminal acts require criminal law norms. One of the criminal law norms is the legal guidelines *nullum delictum nulla poena sine pravia lege* or commonly known as the rules of validity. This guideline is a very unwritten basis of thought to impose a wrong act on an individual who has committed a criminal act and will not be rejected if the principle is that there is no mistake.

This foundation states that individuals are responsible for the actions they perform. This means that individuals can be held accountable for their mistakes or violations of the law.

The principle of legality states that if an act has not been previously decided on the law, then the act cannot be prohibited or punished for a criminal act. In criminal law<sup>11</sup>, the definition of legality is recognized and can be found at:

Article 1 paragraph (1) of the Criminal Code reads:

"No act can be punished except for the provisions of the existing law, before the act is carried out".

If the perpetrator meets the legal requirements and carries out a criminal act, he will be subject to criminal sanctions. Moeljatno underlined that internal attitudes towards fraud or criticism are needed in addition to criminal actions so that criminal responsibility can be held accountable. Offense (green straf without guilt, no trespassing).<sup>12</sup>

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<sup>11</sup> Come on, Dian, you're going to die. Principles of Restorative Justice for Criminalization of the Criminal Code in 2023. p. 570.

<sup>12</sup> Moeljatno. Principles of Criminal Law. Rineka Cipta. Jakarta. 1983. p. 3.

In line with Roeslan Saleh, punishment is an attempt to perpetuate the mistakes that can be made for a criminal act on the objective, as well as a subjective way to meet the conditions necessary for the rejection of the act.<sup>13</sup>

In terms of legal philosophy, responsibility, or the idea of accountability, is defined as "obligation" for situations where one may be perfectly legitimate and the other is legally under its power. exceptions.

## **2. Legal Guarantee for TPPO Victims for Organ Transplantation**

Legal guarantees can be defined from a combination of two definitions, namely "protection" and "law". KBBI defines protection for things or acts that protect. Furthermore, law can be defined on rules or customs that are officially known to be binding, which are confirmed by the ruler or the Government. Leading to this definition, legal guarantees can be defined for the efforts to protect the Government or the ruler on a number of existing rules. In short, legal guarantees are the function of the law itself; provide protection.<sup>14</sup>

Legal guarantees can be grouped into two main forms, namely preventive legal guarantees (before there is a violation) and repressive (after there is a violation).<sup>15</sup>

The following is the definition of protection under Law No. 31 of 2014 related to Amendments to Law No. 13 of 2006 related to the Protection of Witnesses and Victims under article 1 and 8 which is written as follows:

"Protection is all efforts to fulfill rights and provide assistance to provide a sense of security for Witnesses and/or Victims which must be carried out on LPSK or other institutions in accordance with the provisions of this Law."

If the Legal Dictionary continues from this simple definition, the Legal Dictionary defines legal guarantees for mandatory rules that determine human behavior towards the community environment. This rule is made on an official body and complaints arise if they violate this rule.

Legal guarantees can be grouped into two theories, namely preventive and repressive.

### **1. Preventive Legal Protections**

Preventive legal guarantees aim to prevent violations of the law or individual rights before there is a legal problem. Preventive legal

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<sup>13</sup> Roeslan Saleh over Hanafi Amrani and Mahrus Ali. Criminal Accountability System Development and Application, PT Rajawali Press, Jakarta, 2015. p. 21.

<sup>14</sup> A praise to Munroe. Juridical review of trafficking. Faculty of Law, Merdeka University of Malang, 2023.p. 65.

<sup>15</sup> Barda Nawawi Arif. A Bachelor of Criminal Law II. Faculty of Law, Undip. 1984. p. 37.

guarantees aim to prevent violations, while repressive legal guarantees are useful for resolving disputes that have arisen due to violations. Preventive efforts involve the prevention of criminal acts, while repressive efforts focus on handling and eradicating crime.

Here are some examples of preventive protection:

- a. Regulations that provide transparent and accountable procedures (e.g. clear licensing procedures).
- b. The right of the public to express their views or objections before a Government decision is determined.
- c. Legal counseling and socialization of legal rules.
- d. There is a supervisory institution (such as the Ombudsman) that can receive public complaints.

## 2. Repressive legal guarantees

Repressive legal guarantees are carried out after there has been a violation of rights or injustice, for the purpose of remedy, taking action, or resolving the problem. Here are some examples of repressive protections:

- a. Lawsuit to court for unlawful acts.
- b. The investigation and investigation process of law enforcement officials.
- c. Court decisions that impose sanctions or provide compensation.
- d. Complaints to Komnas HAM, Ombudsman, or other complaint institutions.

Protection for victims of trafficking (TPPO) is grouped into two main types: preventive protection and repressive protection. Here's the description:

### 1. Preventive Protection

are measures to prevent the existence of trafficking and protect individuals from becoming victims. The form includes increasing public awareness to hold campaigns, socialization, and education related to the dangers of trafficking and how to avoid it.

Education and training Providing access to education and skills training to reduce economic vulnerabilities that are often exploited by trafficking perpetrators. Supervision of labor agencies and informal recruiters in the way the Government tightens

licensing and supervision of institutions that have the potential to become a means of trafficking.

Implementing Law and Policy Strengthening: Establishing national and international regulations that protect vulnerable groups. Cross-border cooperation to prevent cross-border trade and strengthen legal migration controls.

## 2. Repressive Protection

is protection after victims experience trafficking. The goal is to provide justice and reparation for the victims. For example, physical and psychological recovery from rehabilitation, counseling, and medical services.

The existence of legal assistance for victims to obtain legal assistance to prosecute the perpetrator. Protection of witnesses and victims of legal proceedings, victims and witnesses are given protection from intimidation or threats. Social and economic reintegration of support so that victims can return to normal life in the community, such as job training or business assistance. Legal action against perpetrators is carried out Investigation, arrest, and prosecution of perpetrators of trafficking by law enforcement.

Protection for victims of trafficking for organ transplantation purposes includes various aspects, both legal, medical, social, and psychological. The following are the forms of protection:

### 1. Legal Guarantees

Restoration of the victim's legal status: The state guarantees that the victim is not convicted of his or her involvement in illegal activities resulting from trafficking. Access to the judicial process: The victim has the right to obtain legal assistance and information during the legal process against the perpetrator. Identification and non-criminalization of victims: Officers are obliged to identify victims and not treat them for criminals, such as illegal immigrants or organ smugglers.

### 2. Medical Coverage

Emergency and advanced health care: Victims of trafficking for organ transplantation, who usually suffer serious physical damage, have the right to medical services including surgery, rehabilitation, and nutritional support. Restoration of organs or body systems: if possible, long-term health monitoring of the condition of the affected organs is carried out.

### 3. Psychosocial Protection

Psychological assistance: Victims usually experience severe trauma due to organ exploitation, so intensive psychological support is needed. Social reintegration: from training, education, or employment programs to return victims to normal life. Safe temporary accommodation. Shelter or safe houses are provided during the recovery period.

### 4. Social and Economic Protection

Social rehabilitation: from social support programs, such as cash assistance, skills training, and work placement. Restitution and compensation: The victim has the right to receive compensation for the suffering and loss suffered, which can be imposed on the perpetrator upon a court decision.

### 5. International Protection (in case of Cross-Border Casualties)

Voluntary and safe repatriation: Victims from other countries can be repatriated on a safety guarantee. Cooperation between countries: in terms of law enforcement and protection of victims' rights at the international level.<sup>16</sup>

Legal guarantees for victims of criminal human trafficking can be achieved in the form of legal assistance. Legal aid is a form of support given for criminal offenses for the purpose of fulfilling the rights of witnesses and victims of criminal acts, which allows them to experience rights and justice.<sup>17</sup>

Legal aid can be provided to several parties, including lawyers, legal assistants, police, prosecutors, judges, witness and victim protection authorities, who provide other legal services who are witnesses or victims. Most victims have little legal awareness, so this legal support is bound to be given to the victim, regardless of whether they ask for it or not.

Forms of legal assistance for victims can take many forms. For criminal cases, victims can also undergo legal examinations in the form of assistance during the process to obtain a criminal decision on a permanent legal dispute and receive a refund. However, in reality, Indonesia's criminal

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<sup>16</sup> Eddy O.S. Hiarij. *Principles of Criminal Law*, Cahaya Atma Pustaka, Yogyakarta. 2014 p. 121.

<sup>17</sup> Gleen Ch. Legal Protection for Victims of Trafficking in Women. Palembang. Journal of the Faculty of Law, Sam Ratulangi University Manado. 2015. p. 138

justice system is rarely used.<sup>18</sup>

The form of protection includes temporary living expenses assistance until the protection deadline ends and obtaining assistance. The victim's testimony is expected to be the material truth, so the punishment that will be given to the perpetrator will be more aligned and achieve justice.

The elements of the criminal act of buying and selling human organs under several laws and regulations are various aspects of the law. First, Article 466 of the Criminal Code regulates the lack of related persecution. This exists in the case of buying and selling human organs, because victims often move organs of their own volition, and there is no element of persecution.

However, Article 492 of the Criminal Code, which regulates fraud, is more relevant to this case. This is because the perpetrators of human organ trafficking fraud often include false identities, fraud, and the use of many false words to achieve illegal benefits. Second, the Health Law, Article 124 of the Health Law states that organ transplantation can only be implemented for the purpose of restoring humanity and health and is not limited to trafficking. For several reasons, Article 432 of the Health Law prohibits the commercialization of human organs.

### **Conclusion**

Legal Sanctions for Perpetrators of Trafficking in Persons for Organ Transplantation can be punished under the provisions of Article 2 paragraph (1) of Law No. 25 of 2007 related to the Eradication of Trafficking. The perpetrator can be subject to a very short prison sentence of 3 years and a very long prison sentence of 15 years and a very small fine of Rp. 120,000,000.00 and a very large amount of Rp. 600,000,000.00.

Legal guarantees for victims of trafficking in the proceeds of organ transplantation are carried out based on the existence of laws or other laws. Meanwhile, for repression, law enforcement is carried out on imposing criminal sanctions on perpetrators from court decisions.

The need to establish more specific rules related to trafficking in persons for transplantation is because the author has not yet established specific rules

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<sup>18</sup> Syaafi, Ahmad.. legal guarantees for women and children victims of trafficking. Muwazah 3, 2013. p. 460

and implementations of the Law on the Eradication of Trafficking in Persons. Of course, the perpetrator not only receives criminal sanctions but also civil and moral sanctions so that the perpetrators can be more accountable for the criminal acts that have been carried out.

The state needs to provide access to free long-term psychological rehabilitation services for certified professionals, to help victims recover from trauma, and there needs to be a gender- and age-based approach to be more sensitive to the specific needs of victims. Develop a secure and anonymous official application or digital platform for reporting and tracking trafficking cases for transplantation.

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