



Organ Trafficking Crime in Indonesia: How is it Implemented and Regulated According to International Law?

*Nana Selviana; Fatma Muthia Kinanti; Budi H. Bangun; Arsensius
Fakultas Hukum, Universitas Tanjungpura*

**Corresponding author : nana59352@gmail.com*

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Abstract

This research discusses the implementation of the United Nations Convention against Transnational Organized Crime regarding organ trafficking in Indonesia by adopting a normative juridical approach to analyse international legal instruments, particularly UNTOC, and Indonesia's national legal regulations following the ratification of UNTOC by Indonesia, including the Indonesian Criminal Code, the Human Trafficking Law, and the Health Law. This research observes primary, secondary, and tertiary data sources. The research findings indicate that UNTOC is applicable to eradicate human organ trafficking in Indonesia. However, its implementation in Indonesia still faces challenges, particularly in the scope of law enforcement and public awareness. This study emphasises the importance of human rights protection, careful clinical evaluation, and transparency in reporting data related to organ transplantation. Moreover, this study suggests to increase international cooperation, strengthen law enforcement, victim protection, and to enhance public awareness to combat the wrongful act of organ trafficking. Also, national regulations and public education must be strengthened to improve the efforts against transnational organized crime.

Keywords: *international crime; international law; organ trafficking; UNTOC.*



Abstrak

Penelitian ini membahas implementasi Konvensi PBB Melawan Kejahatan Terorganisir lintas Batas terhadap tindak pidana perdagangan organ di Indonesia dengan menggunakan pendekatan yuridis normatif yang menganalisis regulasi hukum internasional, terutama UNTOC dan regulasi hukum nasional Indonesia setelah UNTOC diratifikasi oleh Indonesia, termasuk Kitab Undang-Undang Hukum Pidana, Undang-Undang Tindak Pidana Perdagangan Orang, dan Undang-Undang Kesehatan. Penelitian ini mengobservasi sumber data primer, sekunder, dan tersier. Hasil penelitian menunjukkan bahwa UNTOC dapat diterapkan dalam Upaya pengentasan tindak pidana perdagangan organ manusia. Bagaimanapun, implementasi UNTOC di Indonesia masih menghadapi tantangan, terutama terkait penegakan hukum dan kesadaran masyarakat. Penelitian ini menekankan pentingnya perlindungan hak asasi manusia, evaluasi klinis yang penuh kehati-hatian, transparansi dalam pelaporan data terkait transplantasi organ, menyarankan agar dilakukan peningkatan kerjasama internasional, penguatan penegakan hukum, perlindungan korban, dan peningkatan kesadaran masyarakat untuk memerangi tindak pidana perdagangan organ. Selain itu, regulasi nasional dan pendidikan publik perlu diperkuat untuk meningkatkan efektivitas upaya melawan kejahatan terorganisir lintas batas.

Kata Kunci: hukum internasional; kejahatan internasional; perdagangan organ; UNTOC.

A. Introduction

The increasing of crime of human organs trafficking is alarming. In 2022, around 12 thousand human organs were illegally traded with a total transaction value of US\$ 1.7 billion per year.¹ At the

¹ Monavia Ayu Rizaty, "12 Ribu Organ Manusia Diperdagangkan Ilegal Tiap Tahun, Berapa Harganya?" Databoks, February 24, 2022, diakses 26 Juni 2023,

international level, UN member states ratified the United Nations Convention on Transnational Organized Crime (UNTOC) in 2000, which is an international agreement established to combat transnational crimes, one of which is the crime of organ trafficking and serves as a basic guide for countries in efforts to combat transnational crime.² UNTOC was formed through a series of stages starting from the World Ministerial Conference on Organized Transnational Crime on November 21-23, 1994 in Naples, Italy, which gave birth to the idea of holding a UN Convention to tackle Transnational Organized Crime, as well as formulating a global action plan to combat TOC.³ In less than 3 years, UNTOC came into force on September 29, 2003,⁴ and effective upon approval by 40 countries, as required in Article 38 paragraph (1) of the UNTOC.⁵

Indonesia has consistently pushed for decisive measures against new transnational crimes through diplomacy in various international forums including

<https://databoks.katadata.co.id/datapublish/2022/02/24/12-ribu-organ-manusia-diperdagangkan-ilegal-tiap-tahun-berapa-harganya>.

² Kementerian Luar Negeri Republik Indonesia, Portal. "Kejahatan Lintas Negara." Kemlu. Last modified April 7, 2019. Diakses Juni 2023.

https://www.kemlu.go.id/portal/id/read/89/halaman_list_lainnya/kejahatan-lintas-negara.

³ "Report of the World Ministerial Conference on Organized Transnational Crime." IMOLIN. Diakses 26 Juni 2023. <https://www.imolin.org/imolin/naples.html?print=yes>.

⁴ Erisamdy Prayatna, "Latar Belakang dan Tujuan Pembentukan UNTOC 2000," diakses 26 Juni 2023, <https://www.erisamdyprayatna.com/2022/03/latar-belakang-dan-tujuan-pembentukan.html>.

⁵ International Law Marking, "United Nation Convention Against Transnational Organized Crime," *Indonesian Journal of International Law*, Vol. 1, No. 4 (2004): 813.

efforts to strengthen cybersecurity, protect objects and cultural heritage from illegal trade, tackle fisheries and forestry crimes, and wildlife trafficking.⁶ This effort is necessary because transnational crimes still receive less attention from the international community and do not have a clear definitions or sanctions. Therefore, international cooperation in tackling transnational crime needs to be strengthened,⁷ considering that Indonesia has a great interest in regulating transnational crime comprehensively due to its detrimental impact, including through international cooperation to improve law enforcement capabilities and information exchange.⁸

One type of transnational crime that often occurs in Indonesia is the crime of human organs trafficking,⁹ such as heart, liver, kidney, lung, and others intended for transplantation.¹⁰ The poverty

⁶ Rudi Candra, Aprilia Restuning Tunggal, dan Ida Susilowati. 2022. *Mengenal Hubungan Internasional*. UNIDA Gontor Press.

⁷ Valentina Lusia Sinta Herindrasti, "Drug-free ASEAN 2025: Tantangan Indonesia dalam Penanggulangan Penyalahgunaan Narkoba," *Jurnal Hubungan Internasional* 7, no. 1 (2018): 19-33, <https://journal.umy.ac.id/index.php/jhi/article/view/3944>.

⁸ Portal Kementerian Luar Negeri Republik Indonesia, "Kejahatan Lintas Negara," Kemlu, tanggal dipublikasikan 7 April 2019, diakses 26 Juni 2023, https://www.kemlu.go.id/portal/id/read/89/halaman_list_lainnya/kejahatan-lintas-negara

⁹ Astuti Nur Fadillah dan Abbas Mahmud, "Perdagangan Organ Tubuh Manusia Sebagai Kejahatan Lintas Negara," *BALOBELAW Journal* 3, no. 2 (Oktober 2023): 55-62, https://www.researchgate.net/publication/375633763_Perdagangan_n_Organ_Tubuh_Manusia_Sebagai_Kejahatan_Lintas_Negara.

¹⁰ Ahmad, Solehah. HUKUM WASIAT DONOR ORGAN TUBUH MANUSIA DAN PELAKSANAANNYA MENURUT HUKUM ISLAM DAN

factor is characterized by the large black market for human organs that are trafficked,¹¹ the existence of loopholes in the law, limited job opportunities, social conflicts, low education and health, domestic violence, and supported by technological developments that make it easier to transplant organs also contribute to the occurrence of organ trafficking crimes.¹²

Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime article 3 (a) says that,

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;”

AKTA 130 TISU MANUSIA TAHUN 1974 UNDANG-UNDANG MALAYSIA. Palembang: Uin Raden Fatah, 2018.

¹¹ Anny Isfandyarie, *Malpraktek dan Resiko Medik dalam Kajian Hukum Pidana* (Jakarta: Prestasi Pustaka, 2005), hal. XIII.

¹² Dana Budiman dan Hesri Mintawati, "HUMAN TRAFFICKING: PRAKTIK JUAL BELI ORGAN," *Seniman Transactions* 2, no. 1 (2020). <https://seniman.nusaputra.ac.id/index.php/seniman/article/view/34/14>.

As a country that has ratified UNTOC through Law No. 5 of 2009 concerning the Ratification of the United Nations Convention Against Transnational Organized Crime, Indonesia attempts to enforce UNTOC and punishment for trafficking in persons, especially women and children, as well as to enforce protocols against migrant smuggling by land, sea, and air. Not only that, Indonesia also signed the Protocol to Prevent Trafficking in Persons in 2009 with a reservation to Article 5 paragraph (2) letter c related to the use of the word "organizing", with the consideration that the implementation of these provisions will be adjusted to the national criminal law and special attention to the principles of sovereignty and territorial integrity of a country and implementing the requirements for Article 15 paragraph (2) of the Protocol.

In 2023, Indonesia passed Law Number 17 of 2023 concerning Health, but there was no significant difference in the substance of the Law after the ratification of UNTOC by Indonesia. Therefore, the loophole to commit organ crimes still exists, regardless of the existence of the Health Law,¹³ as proven by Press Release No. 6/HM/KOMINFO/01/2023 by the Ministry of Communication and Information regarding the discovery of seven online sites and five social media

¹³ Undang-Undang Republik Indonesia Nomor 5 Tahun 2009 Tentang Pengesahan Protokol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime (Protokol Untuk Mencegah, Menindak, Dan Menghukum Perdagangan Orang, Terutama Perempuan Dan Anak-Anak, Melengkapi Konvensi Perserikatan Bangsa-Bangsa Menentang Tindak Pidana Transnasional Yang Terorganisasi)

groups that hold transactions to buy and sell human organs.¹⁴ In addition, the case of the kidnapping and murder of an 11-year-old boy in Makassar by two teenagers because they were tempted by Rp1.2 billion offer to sell kidneys on social media,¹⁵ and the discovery of an international network for the sale of human organs in Tarumajaya District, Bekasi, West Java also added to the list of evidence.¹⁶

The studies mentioned above show different approaches are used to understand and address the problem of human organ trafficking and human trafficking in general. Problems that include administration, criminal liability, implementation of international law, and law enforcement efforts are some of the aspects that are the focus of this research. Therefore, a holistic understanding and a multidisciplinary approach to dealing with complex issues such as human trafficking is essential. Thus, this study is interested in discussing the application of UNTOC to the organ trafficking crime in Indonesia, considering that there has been no legal research related to the application of UNTOC in a positive legal

¹⁴ Kementerian Komunikasi dan Informatika, "Kementerian Komunikasi dan Informatika," 13 Januari 2023, diakses 26 Juni 2023, <https://www.kominfo.go.id/content/detail/46864/siaran-pers-no-6hmkominfo012023-tentang-kominfo-putus-akses-tujuh-situs-dan-lima-grup-medsos-berisi-jual-beli-organ-tubuh/>.

¹⁵ Muhammad Aidil, "Penculikan anak di Makassar untuk dijual ginjalnya, mengapa tawaran jual-beli organ tubuh masih beredar di media sosial?," BBC, 13 Januari 2023, <https://www.bbc.com/indonesia/articles/cgl3z52mln4o> (diakses 26 Juni 2023).

¹⁶ Ika Suryani Syarief, "Polisi Selidiki Kasus Jual Organ Tubuh Manusia di Bekasi," *Suara Surabaya*, 23 Juni 2023, diakses 26 Juni 2023, <https://www.suarasurabaya.net/kelanakota/2023/polisi-selidiki-kasus-jual-organ-tubuh-manusia-di-bekasi/>

framework in Indonesia, especially in the crime of organ trafficking.

B. Discussion

1. Implementation of UNTOC in Organ Trafficking Crime

a. UNTOC Review in Eradicating Human Organs Trafficking

UNTOC provides a strong legal framework for the eradication of organized crime in Indonesia through the strengthening of laws and regulations related to organized crime, including human trafficking, drug trafficking, money laundering, and so on.¹⁷ Therefore, Indonesia strengthens its positive law in several aspects, especially related to the crime of human organs trafficking based on UNTOC¹⁸ and strengthening international cooperation through information exchange, extradition of organized crime perpetrators, and participation in international organizations focused on law enforcement.¹⁹

¹⁷ United Nations Office on Drugs and Crime, "Text of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime," United Nations, 2021, https://www.unodc.org/roseap/uploads/documents/Publications/2021/SOM_Protocol_Indonesian.pdf.

¹⁸ Portal Kementerian Luar Negeri Republik Indonesia, "Kejahatan Lintas Negara," Kemlu, tanggal dipublikasikan 7 April 2019, diakses 26 Juni 2023, https://www.kemlu.go.id/portal/id/read/89/halaman_list_lainnya/kejahatan-lintas-negara

¹⁹ Badan Pembinaan Hukum Nasional, "Laporan Akhir Kompendium Hukum tentang Kerjasama Internasional di Bidang Penegakan Hukum," Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2012.

UNTOC also emphasizes the importance of protecting the rights and interests of victims of organized crime and encourages member states to take action to recognize assets derived from transnational organized crime, where Indonesia realizes victim protection efforts through support programs for victims to overcome the social and psychological impacts caused by organized crime through rehabilitation²⁰ and the confiscation of legitimized assets, the renewal of laws and regulations, and cooperation with international institutions to eliminate economic incentives for organized crime perpetrators.²¹

b. Analysis of the Application of UNTOC in the Crime of Human organs trafficking

Strengthening international cooperation in combating transnational organized crime involves the exchange of information, mutual legal assistance, cooperation with international institutions such as UNODC (United Nations Office on Drugs and Crime), and the procurement of bilateral and multilateral agreements, especially the Palermo Protocol which encourage international cooperation in the prevention, investigation and prosecution of trafficking in persons and smuggling of persons.

²⁰ Maidina Rahmawati dkk., *Peluang dan Tantangan Penerapan Restorative Justice dalam Sistem Peradilan Pidana di Indonesia* (Jakarta: Institute for Criminal Justice Reform, 2022).

²¹ "Indian Govt Ratifies Two UN Conventions," United Nations Office on Drugs and Crime - South Asia, May 2011, Diakses 18 Juni 2024, <https://www.unodc.org/southasia/en/frontpage/2011/may/indian-govt-ratifies-two-un-conventions.html>.

The Palermo Protocol states that human organ trafficking includes the harvesting of organs for the purpose of exploitation, so the crime of human organs trafficking is categorized as trafficking in persons²² which typically involves recruiters, smugglers, doctors, and organ recipients as the main perpetrators of human organ trafficking, where they exploit legal loopholes for the practice of illegal organ transplantation for financial gain.²³

The crime of human organs trafficking is closely related to the exploitation of individuals using threats, violence, fraud, or abuse of power that leads to illegal transplants.²⁴ Law enforcement against organ trafficking includes not only the protection of individual victims, but also the fight against organized crime as a whole by involving cross-border investigations, international cooperation, and the protection of victims' rights, as stipulated in international treaties such as Article 3 of the Palermo Protocol,²⁵ considering that human organs

²² Universal Instrument, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (Adopted 15 November 2000, by General Assembly resolution 55/25).

²³ Natalia Kristin dkk., "Tinjauan Yuridis Tindak Pidana Perdagangan Organ Tubuh Manusia untuk Transplantasi," *Bhirawa Law Journal* 3, no. 1 (Mei 2022): hal. Diakses melalui <http://jurnal.unmer.ac.id/index.php/blj/>.

²⁴ Magister Ilmu Hukum Pascasarjana Universitas Medan Area, "Pahami Apa Itu Tindak Pidana Perdagangan Orang." Terakhir diubah 24 Juli 2023. <https://mh.uma.ac.id/pahami-apa-itu-tindak-pidana-perdagangan-orang/>

²⁵ Teguh Suhendro, Anita Dewayani, Agus Tri Hartono, Jaya Siahaan, dan Juwita Kayana, *Panduan Penanganan Tindak Pidana*

trafficking is classified as a transnational organized crime that has a clear organizational structure with defined roles and duties, from recruiting victims to selling organs to buyers.²⁶

2. UNTOC's Perspective on Indonesia's Positive Law

a. Regulation on the Crime of Human Organ Trafficking in Indonesia

Indonesian national law regulates the criminal prosecution of human organs trafficking through the following provisions:

1) Constitution of the Republic of Indonesia 1945

Article 28H of the 1945 Constitution states that every individual has the right to live and maintain his health, relevant to the issue of organ trafficking. Article 28H of the 1945 Constitution emphasizes respect for the right to life of individuals and regulates the health of the community.

2) Law Number 21 of 2007 concerning Human Trafficking

The Law on Human Trafficking stipulates several articles related to the crime of human organs trafficking, starting from Article 1 number 7 and Article 2 of the Human Trafficking Law which define and

Perdagangan Orang (Jakarta: International Organization for Migration (IOM) Indonesia, 2021).

²⁶ United Nations Office on Drugs and Crime (UNODC), "Global Report on Trafficking in Persons 2020," United Nations Office on Drugs and Crime, 15 Januari 2021, https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf.

describe the steps to recruit victims of exploitation, Articles 3 and 4 which prohibits acts of exploitation by Indonesian citizens, Articles 5 and 6 provide for the protection of children from acts of exploitation, and Article 7 prohibits criminal threats for violations of these provisions. This entire article provides a comprehensive legal framework to combat organ trafficking and exploitation of the human body.

3) Regulation of the Minister of Health of the Republic of Indonesia No. 38 of 2016 concerning the Receipt and Provision of Human Body Organs

Article 4 of the Regulation of the Minister of Health of the Republic of Indonesia No. 38 of 2016 regulates the requirements for permission from the Minister of Health before organ transplant procedures are carried out by emphasizing supervision and control over the practice. Written consent from donors and clinical assessments of prospective donors are governed by Article 5 and Article 10 to ensure the sustainability of safe and ethical practices.

Article 15 stipulates the criteria for selecting organ recipients by taking into account medical and ethical considerations and Article 16 requires health facilities to report data related to organ transplants to the Minister of Health for strengthening supervision. This regulation aims to maintain organ transplant practices in Indonesia in accordance with high health

and ethical standards and provide adequate legal protection.

4) Law Number 1 of 2023 concerning the Criminal Code

The Criminal Code basically does not contain articles that specifically regulate the crime of trafficking in organs and/or tissues. However, Articles 345-346 stipulate that acts with commercial purposes in the implementation of organ or tissue transplantation, including in the form of blood transfusions, can be subject to a maximum of 5 years in prison and a number of category IV fines.

5) Law Number 17 of 2023 concerning Health Law Number 17 of 2023 concerning Health through Article 4 stipulates that organ and/or body tissue transplantation is the act of transplanting organs and/or body tissues from a donor to a recipient in accordance with medical needs. Some of the points include questions about donor age limits, family consent for brain-dead donors, and donor paradigms (*opt-ins* that require someone to register as a donor and *opt-outs* that assume everyone agrees to become donors unless they state otherwise), as well as discussion on the relevance of opt-in options in minimizing organ trafficking crimes and whether opt-out can be applied in Indonesia.

Regarding the organizational structure, questions arise regarding whether the transplant committee is ad-hoc, as well as how the duties and responsibilities of the transplant committee

are divided and regulated and whether there will be any overlap between the transplant committee and the Minister of Health. Article 124 of the Health Law explains that,

“Organ and/or tissue transplantation is performed for the purpose of healing diseases and restoring health and only for humanitarian purposes. Transplantation of organs and/or body tissues as referred to in paragraph (1) is the act of transplanting organs and/or body tissues from a donor to a recipient in accordance with medical needs. Organs and/or body tissues as referred to in paragraph (1) are prohibited from being commercialized or traded for any reason.”

Moreover, the organ transplant process must also consider the principles of fairness, medical benefits, suitability of organs and/or tissues with recipients in need, priority order based on the recipient's medical needs and/or family relationships, the right time for organ and/or tissue transplantation, the characteristics of organs and/or tissues; and the health of the donor in the case of a living donor. Related further supervision, Article 131 of the Health Law stipulates that,

“minister is authorized to manage organ and/or tissue transplant services” In other words, the minister has the authority to establish an organ and/or tissue transplant information system that is integrated with the National Health Information System, socialization and increase community participation as organ and/or tissue donors for the benefit of humanity and health recovery, management of data on organ donors and recipients and/or body tissues; and education and research that support organ and/or tissue transplant service activities.”

This law also regulates criminal sanctions in Article 432 which states, *“every person who commercializes the organ or body tissue transplantation as referred to in Article 124 paragraph (3) shall be sentenced to imprisonment for a maximum of 5 (five) years or a maximum fine of Rp500,000,000.00 (five hundred million rupiah),”* and Article 124 paragraph (4) which reads, *“Every person who trades organs or body tissues for any reason referred to in Article 24L paragraph (3) shall be sentenced to imprisonment for a maximum of 7 (seven) years or a maximum fine of Rp2,000,000,000.00 (two billion rupiah)”*.

Furthermore, Law Number 36 of 2009 concerning Health, which is the predecessor of Law Number 17 of 2023 concerning Health, explains that the trade in

human organ and/or tissue transplants is prohibited and this is regulated in more detail in the Health Law of 2009. Several Articles related to this criminal act, including:

- Article 64 which describes transplantation, implantation of drugs and/or medical devices, plastic surgery, reconstruction, the use of stem cells only for health rehabilitation, and prohibits the sale and purchase of organs or tissues without a valid reason;
- Article 65 concerning competency requirements for health workers in carrying out organ transplants and the importance of obtaining information approval from the parties concerned in the implementation of organ transplants;
- Article 66 which explains that transplantation should only be performed if its safety and benefits are proven;
- Article 67 regarding the competence of certain health facilities and health workers in carrying out organ transplants in accordance with laws and regulations; and
- Article 192 which stipulates criminal sanctions for the crime of human organs trafficking . This article states that anyone who deliberately sells or buys organs or tissues of the human body for any reason as described in Article 64 paragraph (3) can be punished with

imprisonment for up to 10 years and a maximum fine of one billion rupiah.

Article 192 contains elements of subjective consisting of malicious intent or intentional and Objective, that is, involving illegal activities in the form of buying and selling human organs. Basically, Article 192 of the Health Law covers unlawful acts by taking or giving human organs or human tissues intentionally, either of one's own will or with pressure for the purpose of profit. The crime of human organs trafficking and/or human tissues is considered human trafficking because it involves exploitation aimed at profit, one of which is through the harvesting and transplantation of human organs and/or tissues.

b. Application of Law in the Case of Human Organ Trafficking in Indonesia

Decision Number 587/Pid.B/2019/PN. JKT. PST is a decision issued by the Central Jakarta District Court in 2019 regarding the case of human organ trafficking, where this case is categorized as a crime of human trafficking according to Law Number 21 of 2007, supported by the conclusion of expert witness Dr. H. Dian Adriawan, S.H., M.H. This statement stated that the defendants were proven guilty of committing the crime of trafficking in organs or body tissues and sentenced the defendants to 2 years and 6 months in prison respectively.

This case also revealed the practice of organ trafficking involving international syndicates, such as the case of organ sales to Cambodia involving elements of fraud and coercion against

potential donors and the syndicate's modus operandi includes social media, especially Facebook, to recruit potential donors with the involvement of officers to the police and immigration that obstructs investigations and abuses authority.

In law enforcement, the National Police conducted a series of investigations involving coordination between relevant agencies and agencies, including international cooperation with the Cambodian police to monitor and identify actors involved in Cambodia as the final destination country. This cross-border collaboration is important to ensure that trafficking syndicates cannot evade law enforcement in any region. In the whole process, thorough law enforcement efforts, victim protection, public education, and transparent supervision are key in efforts to eradicate organ trafficking and protect community welfare.²⁷

c. The Urgency of the Implementation of UNTOC in Organ Crime in Indonesia

After ratifying UNTOC in 2015, Indonesia is known to have not updated all legal norms in the prosecution of organ trafficking cases until the 2019 case as described above. Several facts have been found that Indonesia still lacks special regulations that regulate the crime of human organs trafficking.

²⁷ Detik News, "Polisi Ungkap Sindikat TPPO Jual Beli Ginjal di Kamboja," KRIMINALITASINDONESIA, 21 Juli 2023, <https://www.detik.com/kriminalitasindonesia/polisi-ungkap-sindikata-tp-po-jual-beli-ginjal-di-kamboja>.

Currently, the crime of organ trafficking is often resolved using the Health Law and not a special law that regulates the crime of human organs trafficking. The absence of this special law hinders law enforcement and reduces the effectiveness of handling the crime of human organs trafficking, which ultimately results in unclear application of related laws.²⁸ The solution to this weakness is to create a specific law that details and explicitly regulates organ trafficking that provides a clear definition of organ trafficking, establishes strict sanctions, and gives stronger authority to law enforcement officials to handle such cases.²⁹ Although there is a Health Law that can be used to crack down on perpetrators of organ trafficking, the need for special laws is more urgent when faced with crimes against organs that are not regulated in the Health Law.

The existence of a special law will fill the legal void and provide legal certainty for all cases of organ trafficking, as well as increase the efficiency and accuracy of law enforcement, and criminals can be faced with punishments that are in accordance with the actions of the brand.³⁰ The government may also consider

²⁸ Astuti Nur Fadillah dan Abbas Mahmud, "Perdagangan Organ Tubuh Manusia Sebagai Kejahatan Lintas Negara," *BALOB Law Journal* 3, no. 2 (Oktober 2023): 55–62, https://www.researchgate.net/publication/375633763_Perdagangan_Organ_Tubuh_Manusia_Sebagai_Kejahatan_Lintas_Negara.

²⁹ Eppes, Martha. "Gambaran Umum Penyakit pada Anak di Indonesia." *Jurnal Kesehatan Masyarakat* 10, no. 2 (2019): 45-57. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6411225/>.

³⁰ Astuti Nur Fadillah dan Abbas Mahmud, "Perdagangan Organ Tubuh Manusia Sebagai Kejahatan Lintas Negara," *BALOB Law*

revising or creating new laws that specifically regulate penalties for human organ trafficking, so as to improve the ability of investigation, justice, and the effectiveness of law enforcement in this area.³¹

Some of the impacts of the absence of special regulations on the crime of human organs trafficking, including:

1) Inadequacy of Strict Sanctions

The punishment for perpetrators of organ trafficking in Indonesia is in the form of a prison sentence of 5 (five) years as stipulated in article 432 of the Health Law which reads, "*every person who commercializes the implementation of organ or body tissue transplantation as referred to in Article 124 paragraph (3) shall be sentenced to a maximum of 5 (five) years in prison or a maximum fine of Rp500,000,000, 00 (five hundred million rupiah).*" This provision is not considered strict enough to prevent criminal acts of organ trafficking. Heavier sanctions are expected to be more effective. Currently, the punishment for the crime of organ trafficking is considered a light punishment, which is not proportional to the serious impact it has on victims and society.³²

Journal 3, no. 2 (Oktober 2023): 55-62,
<https://www.researchgate.net/publication/375633763> *Perdagangan Organ Tubuh Manusia Sebagai Kejahatan Lintas Negara*.

³¹ Eppes, Martha. "Overview of Diseases in Children in Indonesia." *Journal of Public Health* 10, no. 2 (2019): 45-57.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6411225/>.

³² Undang-Undang Republik Indonesia No. 23 Tahun 1992 tentang Kesehatan, "Pelayanan Kesehatan Organ Transplantasi."

Appropriate punitive sanctions for organ trafficking crimes are required to provide assurance that convicted offenders receive serious sanctions that include long-term imprisonment and significant fines.³³ In addition, the application of additional sanctions can strengthen the preventive effect, including the recognition of the perpetrator's assets obtained from illegal organ trafficking activities and administrative sanctions, such as revocation of health licenses or civil sanctions, can also be effective measures to provide a greater deterrent effect.³⁴

Based on decision Number 587/Pid.B/2019/PN.Jkt.Pst, the risk of crimes that can threaten life is only sentenced to 2 (two) years and 6 (six) months in prison. This punishment is difficult to provide a deterrent effect, especially for organ trafficking syndicates.³⁵ This shows the importance of creating punishments that are proportional to the level of crime and its social impact in order to provide effective effects and provide justice to victims. By

³³ Muhammad Zen Abdullah and Fatriansyah Fatriansyah, "Juridical Analysis Related to the Crime of Buying and Selling Organs," *Indonesian Law Journal* 14, no. 1 (2022): p. 23.

³⁴ Ira Novianti, "Pentingnya Peran Notaris dalam Transaksi Perjanjian Jual Beli Tanah di Kota Medan," *Notarius: Jurnal Ilmu Hukum* 8, no. 1 (2021): 23-32, <https://jurnal.umsu.ac.id/index.php/notarius/article/view/15899>.

³⁵ Ariella Gitta Sari, "Kejahatan Perdagangan Organ Manusia Ditinjau Dari Hukum Positif," *Transparansi Hukum* 4, no. 2 (2021): halaman 44-66, DOI: <https://doi.org/10.30737/transparansi.v4i2.2484>.

affirming appropriate punitive sanctions, Indonesia is also strengthening its legal framework in combating organ trafficking, creating a fairer and more efficient legal system to protect human rights and the welfare of society as a whole.³⁶

2) Ineffective Supervision

Supervision of organ transplant practices and the health institutions involved is still not effective enough. Stricter oversight is needed to prevent possible misuse and irregularities in medical practice.³⁷ There are several factors that affect the quality and effectiveness of supervision in the sector, namely:³⁸ lack of infrastructure and human resources in the system,³⁹ the fragility of the rules and regulations governing transplant practices,⁴⁰ coordination between supervisory institutions and organ transplant organizers has not been optimal, as evidenced by the limited synergy and communication

³⁶ *Ibid*

³⁷ Peraturan Menteri Kesehatan Republik Indonesia No. 13 Tahun 2017 tentang Pelayanan Kesehatan Organ Transplantasi.

³⁸ Raffaello A. Mandagi, "Prospek Formulasi Hukum Pidana dalam Pelarangan Jual Beli Organ Tubuh Manusia untuk Kesehatan Demi Kelangsungan Hidup," *Lex Crimen* vol. 10, no. 6 (2021).

³⁹ Abdullah, Muhammad Zen and Fatriansyah Fatriansyah. "Analisis Yuridis Terkait Tindak Pidana Jual Beli Organ Tubuh." *Legalitas: Jurnal Hukum* (2022): n. pag.

⁴⁰ Ruslan Abdul Gani dan Yudi Armansyah, "Penegakan Hukum Kasus Jual Beli Organ Tubuh di Indonesia: Model Integratif Dengan Pendekatan Hukum Islam dan UU Kesehatan," *IAIN SulthanThaha Saifuddin Jambi, FENOMENA* 8, no. 2 (2016): <https://download.garuda.kemdikbud.go.id/article.php?article=1221414&val=11090&title=Penegakan%20Hukum%20Kasus%20Jual%20Beli%20Organ%20Tubuh%20di%20Indonesia>.

between institutions,⁴¹ and public awareness and understanding of the importance of reporting violations or suspicious activity in organ transplant practices that need to be improved.⁴²

Increasing the effectiveness of supervision includes improvement measures in infrastructure and human resources, regulations regulating human organ trafficking, coordination between related institutions, and public campaigns to increase public awareness. With these measures, it is hoped that supervision of organ transplant practices can become more effective, prevent abuse of authority, and maintain integrity in the medical world.⁴³

3) Lack of Protection for Victims

Adequate protection for victims of organ trafficking is still a serious problem. Victims of organ trafficking are often vulnerable and marginalized individuals, and they need greater help, protection, and psychosocial support.⁴⁴ Adequate protection efforts must also involve cooperation between governments, non-governmental agencies, and international organizations. This

⁴¹ Abdullah, Muhammad Zen and Fatriansyah Fatriansyah. "Analisis Yuridis Terkait Tindak Pidana Jual Beli Organ Tubuh." *Legalitas: Jurnal Hukum* (2022): n. pag

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ United Nations Office on Drugs and Crime, *Handbook on Effective Prosecution Responses to Trafficking in Persons* (Vienna, Austria: United Nations Publications, 2018), https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf.

includes the provision of safe havens, medical assistance, psychosocial counseling, as well as efforts to provide skills and support that can help victims of organ trafficking to regain their independence. Additionally, it is important to provide legal protection and identify mechanisms that allow victims to testify without fear of repression.⁴⁵

If adequate protection is provided, the community can help break the chain of organ trafficking, protect human rights, and provide hope for victims to start their lives better after going through traumatic experiences involving organ trafficking.⁴⁶

Based on the explanation above, the increase in measures to prevent the crime of organ trafficking not only establishes public opinion and stronger social norms against this crime but also strengthens the existing legal framework. This provides a more solid legal basis to involve all parties, including the community, in more effective prevention and enforcement efforts.⁴⁷

⁴⁵ Ariella Gitta Sari, Harry Murty, dan Hery Sulistyono. "Tindak Pidana Perdagangan Manusia Ditinjau dari Hukum Nasional dan Hukum Internasional." *Jurnal Transparansi Hukum* 4, no. 1 (Januari 2021).

⁴⁶ Falen Oktavionita dan Ahmad Riyadh, "Legal Protection for Victims of Trafficking in Persons From a Human Rights Perspective" [Perlindungan Hukum bagi Korban Tindak Pidana Perdagangan Orang Ditinjau dari Perspektif Hak Asasi Manusia], *Indonesian Journal of Law and Economics Review* 16, no. 1 (2022), DOI: <https://doi.org/10.21070/ijler.v15i0.764>.

⁴⁷ D A Budiani-Saberi dan F L Delmonico, "Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities," *Am J*

In overcoming these weaknesses, steps need to be taken to improve Indonesia's legal system against the crime of organ trafficking. This includes debating and drafting stricter laws to create special laws that contain increased law enforcement, strengthening international cooperation, increasing public awareness, educating legal actors, and stronger prevention efforts. With these measures, it is hoped that it can reduce and prevent the crime of organ trafficking in Indonesia.⁴⁸

In response to the above, Indonesia is encouraged to increase its law enforcement capacity in dealing with increasingly sophisticated organized crime, including by providing training for law enforcement officers, providing technical equipment, and allocating sufficient resources by utilizing cooperation with international institutions such as UNODC to enhance the capacity of law enforcement.⁴⁹ Any such efforts made by Indonesia are required to report to the United Nations Committee on Transnational Organized Crime the steps that have been taken to implement this convention and the results achieved.⁵⁰

Transplant 8, no. 5 (Mei 2008): 925-929, <https://doi.org/10.1111/j.1600-6143.2008.02200.x>.

⁴⁸ Peter John, *Understanding the Policy Process, Second Edition* (Bristol University Press, 2020), <https://policy.bristoluniversitypress.co.uk/understanding-the-policy-process-second-edition>.

⁴⁹ Maringka, Jan S. *Reformasi Kejaksaan dalam Sistem Hukum Nasional*. Jakarta: Sinar Grafika, 2022.

⁵⁰ Maringka, Jan S. *Ekstradisi Dalam Sistem Peradilan Pidana*. Jakarta: Sinar Grafika, 2022.

C. Conclusion

The crime of trafficking in human organs involves the acquisition, sale, or movement of human organs without legal consent, contrary to human rights and humanitarian principles. Law enforcement in this case involves measures to identify, prosecute, and punish the perpetrators, taking into account the provisions of the penal, human rights, and human trafficking. The application of UNTOC in the case of human organ trafficking in Indonesia is reflected in various regulations and legal frameworks that inspire the Indonesian government to strengthen international cooperation to protect the rights of victims. Law Number 21 of 2007 concerning the Crime of Trafficking in Persons, Regulation of the Minister of Health of the Republic of Indonesia No. 38 of 2016, and Law Number 17 of 2023 concerning Health affirm the prohibition of human organs trafficking and establish criminal sanctions for violators.

Cooperation between government agencies, such as the Ministry of Foreign Affairs, Police, Immigration, and BP2MI, as well as international cooperation is the key in handling the crime of organ trafficking with each institution as well as international coordination in terms of investigation, border surveillance, and victim protection and rehabilitation. The establishment of a new law that demonstrates the government's commitment to address organ transplant-related issues and follow-up efforts to ensure effective implementation and close monitoring to maintain the conformity of organ transplant practices with ethical and moral values, as well as protect all parties involved are also encouraged by Indonesia.

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