



**HUMAN ORGAN TRAFFICKING AS A HEALTH CRIME: AN ANALYSIS OF
INDONESIAN CRIMINAL LAW**

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ABSTRACT

Human organ trafficking has emerged as a serious challenge at the intersection of health law, criminal law, and human rights in Indonesia. Despite the prohibition of organ commercialization under national legislation, the illicit trade in human organs continues to occur, indicating limitations in the existing legal framework and enforcement mechanisms. Aims: This study aims to analyze human organ trafficking as a health-related crime within the Indonesian criminal law system and to critically assess the adequacy of current legal regulations in addressing its complex medical, ethical, and human rights dimensions. The research employs an analytical–critical normative juridical approach. Relevant statutory provisions, including health law, criminal law, and human trafficking legislation, are examined through statutory, conceptual, and limited comparative approaches. The study relies on primary legal materials, scholarly literature, and international legal instruments, which are analyzed using qualitative legal analysis. The findings reveal that Indonesian law addresses organ trafficking through a fragmented regulatory framework, resulting in legal ambiguity and inconsistent enforcement. The absence of a distinct criminal offense for organ trafficking complicates the determination of criminal liability and often leads to disproportionate punishment of vulnerable donors while inadequately targeting organized networks and professional actors. Additionally, victim protection mechanisms, particularly in terms of medical aftercare and legal support, remain insufficient. The study concludes that comprehensive criminal policy reform is necessary to effectively address human organ trafficking in Indonesia. Explicit recognition of organ trafficking as a distinct health-related crime, integration of health law safeguards, and adoption of a victim-centered approach are essential to ensure legal certainty, proportional justice, and alignment with international human rights standards.

Keywords: criminal law; health crime; Indonesia; organ trafficking; victim protection

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INTRODUCTION

The illicit trade in human organs represents one of the most pressing challenges at the intersection of health law, criminal justice, and human rights in contemporary Indonesia. While advances in medical technology have significantly improved the feasibility of organ transplantation to save lives, they have also contributed to a parallel underground market where vulnerable individuals are exploited for financial gain. As a result, organ trafficking has emerged not only as a public health concern but also as a serious criminal offense that triggers complex legal and ethical dilemmas (Basri, 2024).

Despite being prohibited under Indonesian law, the trade in human organs continues to occur in practice. The legal framework in Indonesia addresses this problem through a combination of criminal and health-related statutes, including the Criminal Code (KUHP), the Health Law (Law No. 36 of 2009), and the Human Trafficking Law (Law No. 21 of 2007). These legal instruments collectively aim to criminalize the trafficking and commercialization of human organs, protect public health, and uphold human dignity (Novita, 2025; Shevchenko & Yogantara, 2025).

Under the Health Law, the commodification of human organs is explicitly prohibited to prevent exploitation and ensure that transplantation activities remain focused on therapeutic needs rather than monetary profit. However, the absence of a specialized, comprehensive statute that directly and exclusively governs organ trade creates statutory ambiguity, particularly in distinguishing legitimate medical transplantation from illicit commercial transactions (Novita, 2025). This gap poses significant enforcement challenges for law enforcement agencies and judicial authorities, resulting in inconsistent application of sanctions and difficulties in prosecuting offenders effectively.

Furthermore, although the Human Trafficking Law criminalizes trafficking in persons for exploitative purposes — which includes organ trading — scholars argue that the current legislation lacks specificity and is not fully adapted to the unique characteristics of organ trafficking. Consequently, the policy framework may fail to address the full spectrum of criminal activity associated with the organ black market and the exploitation of impoverished or marginalized communities (Harahap & Mukhsin, 2024).

In practice, organ trafficking often unfolds in complex ways that extend beyond conventional trafficking in persons. For example, socioeconomic disparities can coerce individuals into selling organs out of financial desperation, thereby blurring the lines between voluntary donation and coercive exploitation. Social media platforms further exacerbate the situation by providing a covert channel for advertising organs for sale, bypassing formal regulatory and medical oversight (Amashya & Prihatmini, 2025). These developments demand a multifaceted legal approach that not only penalizes offenders but also safeguards vulnerable populations and strengthens preventive mechanisms.

Legal scholars and policymakers have increasingly called for reform to enhance the criminal policy framework in Indonesia. Some advocate for revising existing laws to include organ trafficking as a distinct criminal offense with clearly defined elements and appropriate sanctions tailored to the nuanced nature of the crime (Wisnuwardhana, 2023). Such reform efforts aim to close gaps in current legislation, improve prosecutorial effectiveness, and promote a more consistent application of legal standards across jurisdictions.

In addition to national legal reform, there is a growing recognition of the importance of aligning domestic law with international legal instruments. Indonesia's ratification of the United Nations Convention against Transnational Organized Crime (UNTOC) highlights the global dimension of organ trafficking and the necessity for cooperation among states to prevent and combat cross-border criminal networks (Selviana et al., 2024). This alignment underscores the dual imperative of protecting public health while reinforcing compliance with international norms against human exploitation.

Moreover, discussions about organ trafficking in Indonesia cannot be disentangled from fundamental issues of human dignity and bodily autonomy. Scholars emphasize that legislative measures must balance criminal sanctions with respect for individual rights, ensuring that anti-trafficking policies do not inadvertently criminalize legitimate medical practices or discourage voluntary organ donation (Wibisono, 2025).

In sum, the illicit trade in human organs poses a significant threat to public health and human rights in Indonesia. While existing legal frameworks attempt to address this challenge through a combination of criminal and health regulations, persistent enforcement gaps and ambiguities necessitate a comprehensive reform of criminal policy and stronger alignment with international standards. Addressing these issues is crucial to ensuring that organ transplantation remains a life-saving medical intervention, rather than a conduit for exploitation and criminal profit. The study aims to analysis of indonesian criminal law about human organ trafficking as a health crime.

METHOD

This study employs an analytical–critical legal research approach to examine the phenomenon of human organ trafficking as a health-related crime within the framework of Indonesian criminal law. The research is designed as normative juridical research, focusing on the analysis of legal norms, doctrines, and principles governing organ transplantation and criminal liability in Indonesia. Normative legal research is particularly suitable for studies that seek to evaluate the coherence, adequacy, and effectiveness of legal norms in addressing complex social and health-related crimes (Hutchinson & Duncan, 2012; McCrudden, 2017).

The analytical dimension of the research is aimed at systematically examining existing statutory provisions related to organ trafficking, particularly those contained in Law No. 36 of 2009 on Health, Law No. 21 of 2007 on the Eradication of the Crime of Human Trafficking, the Indonesian Criminal Code (KUHP), and the New Criminal Code (Law No. 1 of 2023). These legal instruments are analyzed to identify the scope of criminalization, constituent elements of offenses, forms of criminal responsibility, and the sanctions imposed on perpetrators involved in the illegal trade of human organs. Doctrinal legal analysis is used to assess whether these norms sufficiently conceptualize organ trafficking as a distinct health-related crime, as suggested in comparative criminal law scholarship (Farrell & de Vries, 2020; Shimazono, 2017).

The critical dimension of this research focuses on evaluating the adequacy, consistency, and effectiveness of the existing legal framework in responding to the multifaceted nature of organ trafficking. This includes a critical assessment of normative gaps, overlaps between health law and criminal law provisions, and interpretative ambiguities that may impede law enforcement and judicial practice. Previous studies in high-impact journals emphasize that fragmented regulatory frameworks often weaken the deterrent function of criminal law in addressing organ trafficking and related medical exploitation (Budiani-Saberi & Delmonico, 2019; Rothman et al., 2017).

Furthermore, this study critically examines whether current regulations provide sufficient protection for vulnerable individuals who are at risk of exploitation due to economic or social pressure, while at the same time ensuring legal certainty for legitimate medical practices such as organ transplantation conducted for therapeutic purposes. This balance between criminal repression and health protection is widely recognized as a key challenge in regulating organ transplantation globally (Capron et al., 2018; Yea, 2022).

To support the analysis, this research adopts a statutory approach, a conceptual approach, and a limited comparative approach. The statutory approach is employed to analyze national legislation and subordinate regulations, while the conceptual approach draws upon doctrines of criminal law, health law theory, and human rights principles, particularly those concerning bodily autonomy, informed consent, and human dignity (Ashcroft et al., 2020). A limited comparative perspective is incorporated by referring to international legal instruments and selected foreign regulatory models to identify normative standards and best practices in addressing organ trafficking as a transnational and health-related crime (Council of Europe, 2015; United Nations Office on Drugs and Crime [UNODC], 2020).

The legal materials used in this research consist of primary, secondary, and tertiary legal sources. Primary legal materials include statutory laws, government regulations, judicial decisions, and international conventions relevant to organ trafficking and health-related crimes. Secondary legal materials comprise peer-reviewed journal articles (Q1–Q4), academic books, legal commentaries, and research reports published between 2015 and 2025 addressing criminal law policy, health law regulation, and human rights protection in the context of organ trade. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to clarify legal terminology and enhance conceptual precision.

Data collection is conducted through a documentary study, involving the systematic identification, classification, and examination of relevant legal materials. The collected materials are then analyzed using qualitative legal analysis, emphasizing legal interpretation, logical reasoning, and normative evaluation. This method allows the study to critically assess how legal norms operate in theory and how they should ideally function in addressing organ trafficking as a health crime (Creswell & Poth, 2018). Finally, the results of the analysis are presented descriptively and critically, with the objective of formulating normative recommendations for strengthening criminal policy in Indonesia. These recommendations are intended to contribute to the development of a more coherent, effective, and human rights-oriented legal framework for combating human organ trafficking within the broader context of health law and criminal justice.

RESULT

Legal Status of Organ Trafficking under Indonesian Law

The normative analysis indicates that human organ trafficking is implicitly criminalized in Indonesian law through multiple legal instruments rather than a single, dedicated statute. Law No. 36 of 2009 on Health (Health Law) expressly prohibits commercialization of organs and tissues, underscoring that organ donation must be voluntary and based on therapeutic needs (Republik Indonesia, 2009). Although this provision articulates the normative basis for prohibiting illicit organ trade, it does not constitute a specific criminal offense with detailed elements and sanctions unique to organ trafficking.

Instead, punitive measures are drawn from multiple sources: 1) Law No. 21 of 2007 on the Eradication of the Crime of Human Trafficking criminalizes trafficking of persons for exploitation, which may include organ removal (Republik Indonesia, 2007). 2) The Indonesian Criminal Code (KUHP) and the New Criminal Code (Law No. 1 of 2023) provide general provisions on crimes against persons, but lack specific formulation for organ trade (Republik Indonesia, 2023). This fragmented legal structure creates uncertainty in how organ trafficking is classified and prosecuted, as evidenced by inconsistent law enforcement outcomes in reported cases (Amashya & Prihatmini, 2025).

Criminal Liability and Sanctions

The analysis shows that criminal liability for organ trafficking varies depending on how the unlawful act is framed. Because Indonesian law does not define “organ trafficking” as a standalone offense, prosecutors frequently rely on related provisions such as human trafficking, illegal medical practice, or general bodily harm statutes (Basri, 2024; Novita, 2025). As a result, sanctions imposed on perpetrators can differ widely, revealing inconsistencies in legal application.

Victim Protection Gaps

The normative framework in Indonesia does not sufficiently integrate victim protection measures for individuals exploited in organ trade. Human trafficking legislation provides some victim rights, yet it primarily emphasizes coercion and deception. This overlooks cases where poverty and economic vulnerability drive individuals to sell organs, leaving important protective aspects, such as medical aftercare and social support, under-regulated (Harahap & Mukhsin, 2024; Wibisono, 2025).

DISCUSSION

Fragmentation of the Legal Framework

The findings of this study reveal that the fragmented structure of Indonesian regulations on organ trafficking significantly undermines legal clarity and consistency. At present, organ trafficking is regulated indirectly through multiple legal regimes, including health law, criminal law, and human trafficking law, without being explicitly defined as a distinct criminal offense. From a normative standpoint, a coherent legal framework should clearly articulate organ trafficking as an independent

offense, complete with specific elements and proportional sanctions, to ensure legal certainty and effective enforcement (Selviana et al., 2024).

The absence of such specificity complicates judicial interpretation and contributes to inconsistent enforcement across jurisdictions. Courts and prosecutors are often required to rely on analogical reasoning or broad interpretations of existing statutes, which may result in divergent legal outcomes for similar cases. Comparative studies in other jurisdictions demonstrate that fragmented legal frameworks tend to weaken deterrence and reduce prosecutorial effectiveness in combating organ trafficking (Farrell & de Vries, 2020; Shimazono, 2017).

From a doctrinal perspective, this fragmentation reflects a structural misalignment between the preventive orientation of health law and the repressive orientation of criminal law. Health law emphasizes ethical standards, patient safety, and non-commercialization of the human body, while criminal law focuses on punishment and deterrence. Scholars argue that organ trafficking represents a hybrid phenomenon that simultaneously threatens public health, violates human dignity, and constitutes organized criminal activity (Budiani-Saberi & Delmonico, 2019; Capron et al., 2018). Consequently, treating organ trafficking solely through either a health or criminal law lens fails to capture its multidimensional nature.

Criminal Liability: The Need for Normative Clarification

The current legal approach in Indonesia allows for prosecutorial flexibility but generates significant normative ambiguity regarding criminal liability. Organ trafficking typically involves multiple actors, including donors, recipients, brokers, medical professionals, and facilitators. However, existing regulations do not clearly differentiate the degrees of culpability among these actors, resulting in potential disproportionality in punishment. Normative criminal law theory emphasizes that liability must be based on both the level of intent and the degree of participation in the criminal conduct (Ashworth & Horder, 2013). Medical professionals who knowingly participate in illicit organ transplantation schemes occupy a fundamentally different normative position from economically coerced donors or recipients acting out of medical necessity. Empirical and doctrinal studies indicate that failure to distinguish between these roles often leads to the criminalization of vulnerable individuals while allowing organized criminal networks to evade proportionate accountability (Rothman et al., 2017; Novita, 2025).

International literature further highlights that the involvement of healthcare professionals in organ trafficking presents unique regulatory challenges, as medical authority and technical expertise may legitimize illicit practices (Yea, 2022). Without explicit provisions addressing professional liability, Indonesian law risks creating regulatory blind spots that undermine both medical ethics and criminal justice objectives (Shevchenko & Yogantara, 2025).

Protection of Vulnerable Donors and Victim-Centered Justice

A critical weakness identified in this study is the limited protection afforded to vulnerable individuals involved in organ trafficking. While Indonesian human trafficking law recognizes exploitation as a core element of the offense, it largely conceptualizes exploitation in terms of coercion, deception, or physical force. This framework inadequately addresses cases in which individuals consent to organ removal under severe economic pressure. Contemporary human rights scholarship argues that consent obtained under conditions of structural inequality and extreme poverty cannot be considered fully autonomous (Yea, 2022; Capron et al., 2018). From a health law perspective, individuals who sell organs due to economic desperation should be recognized as victims of systemic exploitation rather than offenders. However, the lack of explicit victim-oriented provisions in Indonesian health and criminal law limits access to post-operative care, psychological support, and legal assistance for these individuals (Wibisono, 2025).

Legal scholars increasingly advocate for a victim-centered approach that integrates health law protections into criminal policy. Such an approach emphasizes informed consent standards, long-term medical monitoring, and social rehabilitation as essential components of justice (Harahap & Mukhsin, 2024; Wisnuwardhana, 2023). Without these measures, criminal enforcement risks perpetuating secondary victimization and undermining the preventive objectives of health law.

Alignment with Human Rights and International Norms

Indonesia's commitment to international instruments addressing transnational organized crime and human trafficking provides a normative foundation for combating organ trafficking. International standards emphasize the protection of bodily integrity, the right to health, and respect for human dignity as core principles in regulating organ transplantation (UNODC, 2004; Council of Europe, 2015). While these principles are reflected implicitly in Indonesian law, their operationalization within domestic criminal sanctions remains limited.

Comparative legal studies suggest that effective regulation of organ trafficking requires explicit incorporation of human rights principles into criminal law formulations, particularly regarding consent, autonomy, and victim protection (Farrell & de Vries, 2020; Capron et al., 2018). The absence of such explicit integration in Indonesian law weakens normative coherence and may hinder compliance with international obligations. Moreover, international experience demonstrates that harmonization between domestic law and global standards enhances cross-border cooperation and strengthens enforcement against transnational organ trafficking networks (Budiani-Saberi & Delmonico, 2019). This is particularly relevant given the increasingly transnational nature of organ trade facilitated by digital platforms and medical tourism.

Implications for Criminal Policy Reform

The analytical–critical assessment of Indonesia's legal framework suggests that comprehensive criminal policy reform is necessary to address organ trafficking effectively. First, organ trafficking should be explicitly defined as a distinct criminal offense that reflects its health-related, ethical, and human rights dimensions. Second, criminal provisions should incorporate health law safeguards, including informed consent, patient safety, and professional accountability. Third, victim protection must be strengthened through guaranteed access to medical care, rehabilitation, and legal remedies. Finally, liability should be clearly differentiated among perpetrators to ensure proportionality and fairness. Such reform would contribute to a more coherent, effective, and human rights–oriented criminal justice response, reinforcing the role of criminal law not merely as a punitive instrument but as a mechanism for protecting public health and human dignity.

CONCLUSION

This study concludes that Indonesian criminal law has not yet fully and coherently regulated human organ trafficking as a distinct health-related crime. Although the commercialization of human organs is expressly prohibited, the existing legal framework remains fragmented across health law, criminal law, and human trafficking regulations, resulting in legal uncertainty and inconsistent enforcement. The absence of a specific criminal offense for organ trafficking creates ambiguity in criminal liability and limits the law's capacity to effectively address organized networks while adequately protecting vulnerable donors. Furthermore, insufficient victim protection mechanisms undermine public health objectives and fundamental human rights. Therefore, this study affirms the need for comprehensive criminal law reform that explicitly recognizes human organ trafficking as a health crime, clarifies criminal responsibility, and integrates health law safeguards and victim-centered protections in accordance with international human rights standards.

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