

COMPARISON OF CRIMINAL LAW RELATED TO THE TRAFFICKING OF HUMAN BODY ORGANS IN INDONESIA AND THE PHILIPPINES

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Abstract

The purpose of the research in this paper is to analyze the actions that can be taken to prevent and eradicate the sale and purchase of human organs in Indonesia and to compare the enforcement of legal provisions on the trade in human organs in Indonesia and the Philippines. This scientific article uses normative legal research or library legal research, namely research conducted by examining library materials or secondary data, and the type of research in this writing is normative juridical research, which is studied with a statutory approach, meaning that a problem will be seen from the legal aspect by reviewing the laws and regulations. The results of the study show that the law in Indonesia still needs to be completed to find solutions for people who need organs and for donors with good ethics, regulations must be made. An important conclusion from this study is in the formation of laws to tackle and take action against trafficking in organs. It's good, but comparative studies from other countries are needed to make better laws and regulations.

Keywords: Criminal Law, Human Organ Trafficking, Comparative Criminal Law, Constitution.

Abstrak

Tujuan penelitian dalam tulisan ini adalah untuk menganalisis tindakan-tindakan yang dapat dilakukan untuk mencegah dan memberantas jual beli organ manusia di Indonesia dan membandingkan penegakan ketentuan hukum perdagangan organ manusia di Indonesia dan Filipina. Artikel ilmiah ini menggunakan penelitian hukum normatif atau penelitian hukum kepustakaan, yaitu penelitian yang dilakukan dengan meneliti bahan pustaka atau data sekunder, dan jenis penelitian dalam penulisan ini adalah penelitian yuridis normatif, yang dikaji dengan pendekatan perundang-undangan, artinya suatu masalah akan dilihat dari aspek hukum dengan meninjau peraturan perundang-undangan. Hasil kajian menunjukkan bahwa hukum di Indonesia masih perlu dilengkapi untuk mencari solusi bagi masyarakat yang membutuhkan organ tubuh dan bagi pendonor yang beretika baik harus dibuatkan regulasi. Kesimpulan penting dari penelitian ini adalah pembentukan undang-undang untuk menangani dan mengambil tindakan terhadap perdagangan organ. Itu bagus, tapi studi banding dari negara lain diperlukan untuk membuat undang-undang dan peraturan yang lebih baik.

Kata Kunci: Hukum Pidana, Perdagangan Organ Manusia, Perbandingan Hukum Pidana, Konstitusi

INTRODUCTION

The trade in human organs in Indonesia is currently rampant and has become a topic of conversation among the public because the act of trafficking in human organs threatens the security of all strata of society, with the rampant trafficking of human organs when someone is

walking or using a passing vehicle. They are afraid of being kidnapped, murdered and fear that their organs will be harvested. This excessive worry also has a good impact on the child caregivers so as not to leave the child or his care without anyone watching him, so that he can care for and care for the child more carefully and more attentively, but on the other hand, there will be excessive worry. From the many news related to the kidnapping, killing, and harvesting of human organs, Indonesia has previously made legal breakthroughs related to legal provisions including criminal acts, especially against the crime of trafficking in human organs. The legal provisions of Law Number 36 of 2009 concerning health have been ratified.¹ This law was made to stop and get rid of the human organ trafficking mafia.

This is because there has been a high demand for human organs, which has caused the price of these organs to skyrocket and become quite expensive. This has also put the safety and security of citizens at risk. The view of international law on the issue of trafficking in human organs is shown in research which was adopted by Indonesia showing the results obtained, namely that arrangements regarding human trafficking are contained in international instruments such as the Palermo Protocol while the national regulations are contained in Law number 21 of 2007 concerning Eradication Crime Indonesians do not allow trading in human organs, but if these organs can be used to save other human lives, for example by carrying out a transplant, then there will be more legal provisions governing the transplantation of human organs.²

The transfer of human organs can be carried out by transplantation, cloning, and genetic treatment technology.³ Health experiments on human organs can also be carried out by transferring the tissues of human body parts. The perpetrators of trafficking in human organs are not only individuals, but their activities are carried out in groups. From one group to another, sometimes groups join together to facilitate the implementation of the trade in human organs. The parties involved in the trafficking of human organs in Indonesia have involved medical personnel, laboratories, and the general public. In practice, they have divided roles, namely for medical personnel to act as executors of organ surgery operations, there are those who play a role in finding donors or looking for human organs either correctly or deviantly, and there are those who play a role in finding donor recipients, or recipients of human organs, or called recipients.⁴

¹ Trini, Handayani. "Fungsionalisasi Hukum Pidana terhadap Perbuatan Perdagangan Organ Tubuh Manusia." *Cetakan Ke-1. CV. Mandar Maju, Bandung* (2012).

² Sari, Ariella Gitta, Harry Murty, and Hery Sulistyo. "Tindak Pidana Perdagangan Manusia Ditinjau dari Hukum Nasional dan Hukum Internasional." *Transparansi Hukum* 4.1 (2021).

³ Bintoro, Ady. "Memahami Nilai Etika dan Moral Donasi Organ." *Jurnal Orientasi Baru* 25.1 (2016).

⁴ Aziz, M. F., J. Witjaksono, and H. I. Rasjidi. "Panduan Pelayanan Medik: Model Interdisiplin Penatalaksanaan Kanker Serviks dengan Gangguan Ginjal." *Jakarta: EGC* (2008): 50.

The occurrence of trafficking in human organs can be done by means of transplantation. This is influenced by the development of science, including in the field of health sciences, and is also influenced by the high changes in human life patterns that result in many diseases that they suffer. Every day, new types of diseases will always appear, so the world of health must also follow it by increasing the knowledge of health possessed by medical personnel.⁵ Human organ transplants were originally only human heart organs, but over time they have developed into transplants in the form of liver, kidney, eye, and other organ transplants, including human body tissues such as human skin, muscle, and nerve tissue.⁶ To carry out a human organ transplant from a donor to a recipient or recipient, the implementation requires medical personnel who have certain specializations because the way of handling it uses medical measures through organ and tissue transplantation between the donor and recipient and requires modern equipment.⁷

In relation to organ transplantation and related to the sale and purchase of organ parts, it is prohibited to trade for any reason contained in the provisions of Article 64 and clarified in Article 65 of the Health Law. The trade in human organs is heavily influenced by the high number of people asking for human organs from organ recipients. On the other hand, there are not enough donors. At first, the donor was a large family member of the donor recipient or recipient, so that the donor and recipient already knew each other, knew about the health of the organ owner, and also knew what the organ donor had given to his family. In its development, the donor is no longer a person in the same family, but over time, the owner is another person, whether the goods in the form of organs are given by the owner because of economic factors that require material as compensation or compensation, but there are also goods in the form of human organs.⁸

The origin of the goods whose origin is not known may be the result of a criminal act or crime. The person who will give the organs should be in a healthy condition and mentally strong so that in giving parts of their organs to other parties they can get a match with the recipient and, after taking the organ, the person who has given the organ should be in a stable condition.⁹ The more the blood type is the same between the owner of the body part and the recipient of the body part that has similarities with the patient, the better. Thus, the donor of the organ is not harmed too

⁵ Moore, John Allphin, and Jerry Pubantz. *The New United Nations: International Organization in the Twenty-First Century*. Routledge, 2017.

⁶ Mosa, Ansella Rambu. *Jual/beli Organ Tubuh Manusia Menurut Perspektif Kejahatan Lintas Negara (Konsistensi United Nations Convention against Transnational Organized Crime dengan Hukum Pidana Positif Indonesia)*. Diss. Brawijaya University, 2015.

⁷ Mandagi, Raffaello A. "Prospek Formulasi Hukum Pidana dalam Pelarangan Jual Beli Organ Tubuh Manusia untuk Kesehatan Demi Kelangsungan Hidup." *Lex Crimen* 10.6 (2021).

⁸ Moore, John Allphin, and Jerry Pubantz. *The New United Nations: International Organization in the Twenty-First Century*. Routledge, 2017.

⁹ Nugroho, Okky Chahyo. "Tanggung Jawab Negara dalam Penanganan Tindak Pidana Perdagangan Orang." *Jurnal Penelitian Hukum De Jure* 18.4 (2018): 543.

much because after the organ has been removed and transferred, the organ of the person has been reduced and will affect the health of their body.¹⁰

The number of donors of body organs to humans is limited. While the number of people who need these organ parts is increasing, the demand and supply are not balanced, causing deviant behavior from certain people or groups who take advantage of this condition.¹¹ There are owners of body parts who are willing to give to someone in need of their own body parts or with their own desire to sell their own organs for a certain fee. This is due to the economic problem of the owner of that organ part. Due to the absence of parts of the body's organs, the demand for prices from the organ part owners is certainly quite high. There are also not many people who want to give part of the organ. This is used by people or parties to get a fairly high amount of money. These parties can get a part of the organ by deceiving someone to give up part of their organ to be given to another party at a high price, but in reality they are only paid cheaply.

There are also those who steal the organs of a deceased person, especially people found but not found by their families or victims of accidents that are severe enough so that if part of their organs are taken it will not be visible, because when they were handed over to their families they were already put in a corpse box and the family was not allowed to open it. Even to get a part of the organ, someone has the heart to kill their victim in order to take part of their organs. There are also those who carry out kidnappings, then some are taken from their organs alive, and there are also those who kill them to take part of their organs, which are then sold to other people. We need that part of the body. According to the Central Bureau of Statistics (BPS) in 2022, the poverty line in March 2022 was IDR 505,469,00/capita/month, with the Food Poverty Line of IDR 374,455.00 (74.08 percent) and the Non-Food Poverty Line of IDR 131.014.00 (26.92 percent) comprising the poverty line (25.92 percent). In March 2022, the average Indonesian poor household had 4.74 individuals. Therefore, the average size of the poverty threshold per poor household is IDR 2,395,923.00 per month.

A person is willing to have a part of his organ taken because at this time part of the organ can be taken in the condition that the donor of the organ is alive. After taking part of the organ, it also does not affect the body's health too much, so for people who need financial help for their

¹⁰ Pawestri, Orysa Ayu. "Analisis Kebijakan Hukum Pidana Terkait Perbandingan Organ Tubuh Ginjal dalam Komparasi Hukum Kesehatan di Indonesia dan Filipina." *Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 4.2: 167-174.

¹¹ Pawestri, Orysa Ayu. "Analisis Kebijakan Hukum Pidana Terkait Perbandingan Organ Tubuh Ginjal dalam Komparasi Hukum Kesehatan di Indonesia dan Filipina." *Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 4.2: 167-174.

family, selling against that part of the organ is done.¹² Trafficking of body parts in several cases has involved medical and laboratory workers who in practice have legal and correct permits, but are often misused. Doctors who have surgical and neurosurgery specialists who are often involved in performing the removal of a part of an organ and attaching that part of the organ to the recipient of that part of the organ.¹³ These transfers are frequently carried out in well-known and reputable hospitals, but they are also frequently used by unscrupulous individuals seeking additional income. Legally, Indonesia and other countries oppose organ trafficking (sale of human organs), commercialization of transplants (organ treatment as a commodity) and transplant tourism (tourism in the context of providing organs for patients from other countries), but the only thing that has criminal sanctions is the act of organ transplantation carried out commercially. In the field, this rule is also difficult to enforce because there are no clear boundaries between commercial and non-commercial.¹⁴

People who have parts of organs in this case feel that they benefit because they get financial for their daily needs, while on the other hand, they feel benefited because they get the parts of organs they need that have not been able to function properly, so that mutual benefit can affect and make it difficult for the community to know of these irregularities and the police to take legal action. There are several news reports related to the practice of trafficking in human organs.¹⁵ Since the 2000s, it has often been revealed that the practice of selling parts of organs is even carried out in several hospitals that have high reputations and credibility and are recognized by the public. The public was shocked by the news because this place is the last resort if someone has a serious illness, and the hospital is also often sent by criminals who have been executed by law enforcement and have died, and there are also accident victims.¹⁶ Thus, it is possible that, apart from giving the organs, it is also possible to have a portion of the organs taken from the victims.

The Health Law regulates the prohibition of trading in human organs for any reason. The sale/purchase of human organs is categorized as a transnational crime by the United Nations. UNTOC as an international legal instrument against transnational crime does not clearly regulate the prohibition of the practice of selling/buying human organs, but UNTOC regulates efforts that

¹² Sulistyawati, Saras. "Analisis Perbandingan Putusan Pemidanaan terhadap Pelaku Tindak Pidana Perdagangan Orang (TPPO)(Studi Putusan Nomor 632 K/PID. SUS/2016 dan Putusan Nomor 1447K/PID. SUS/2016)." *Jurnal Ilmiah Dinamika Hukum* 19.2 (2018): 43-60.

¹³ Sukatma, Susandhi. "Perlindungan Hukum Korban Tindak Pidana Perdagangan Manusia (Human Trafficking) dalam Perspektif Penegakan Hukum." *National Journal of Law* 6.1 (2022): 758-773.

¹⁴ Simbolon, Melinda. "Transplantasi Organ Tubuh Terpidana Mati." *Lex et Societatis* 1.1 (2013).

¹⁵ Susanti, Heni, Syafrinaldi Syafrinaldi, and Wira Atma Hajri. "Perbandingan Aturan Hukum tentang Tindak Pidana Perdagangan Orang di Indonesia dan Malaysia." *Kodifikasi* 4.1 (2022): 91-108.

¹⁶ Tumundo, Edwin. "Penyidikan Tindak Pidana Perdagangan Orang pada Tingkat Kepolisian dalam Perspektif Hak Asasi Manusia." *Lex Et Societatis* 6.4 (2018).

can be made by state parties if their territory becomes an area where transnational crimes occur. For the application of the law related to the circulation of the practice, the government has ratified several relevant laws and regulations, namely:

- a. Law Number 23 of 2002 concerning Child Protection
- b. Law Number 21; 2007 on the Eradication of Trafficking in Persons
- c. Law number 11 of 2008 is a law that regulates information and electronic transactions,
- d. Law Number 36; 2009 on Health
- e. Law Number 8. Year 2010 concerning Prevention and Eradication of the Crime of Money Laundering

For example, the first successful transfer or transplant is related to the kidney transplant that was carried out in 1954, with this success encouraging the transfer or transplantation of organs, especially kidneys. In terms of religion, especially Islam, trading parts of body organs is prohibited. However, religious organizations, namely the MUI in 1950, have supported transplanting parts of organs in the form of a fatwa, which states that organ transplantation of body parts is not prohibited. What is expected is trade in organs if there are parties who need organs. If the body is not made into a business, it is better if the implementation is regulated by the state in order to anticipate the perpetrators of the crime of trafficking in organs. The perpetrators of buying and selling parts of human organs, especially the kidneys, have been handled and processed by the police.¹⁷ From the legal process carried out, it was revealed that some of these acts were carried out individually or individually. There were also groups consisting of various groups. In terms of the pricing of human body parts, organs in Indonesia are less valuable than in other nations. The International Criminal Court is the world's first permanent international criminal court with the authority to prosecute those responsible for the gravest violations of international law, including genocide, crimes against humanity, war crimes, and crimes of aggression.¹⁸

Successes related to organ transplants or transplants that have been performed for the first time are:

- a. 1954: First successful kidney transplant by Joseph Murray (Boston);
- b. 1966: successful pancreas transplant by Richard Lillehei and William Kelly (Minnesota);

¹⁷ Mandagi, Raffaello A. "Prospek Formulasi Hukum Pidana dalam Pelarangan Jual Beli Organ Tubuh Manusia untuk Kesehatan Demi Kelangsungan Hidup." *Lex Crimen* 10.6 (2021).

¹⁸ Effendi, Ches. "Penarikan Diri Negara Pihak Statuta Roma 1998 untuk Menghapuskan Kewenangan ICC terhadap Kejahatan Internasional yang Dilakukan Sebelum Penarikan Diri: Kasus Burundi dan Filipina." (2019).

- c. 1967: First successful liver transplant by Thomas Starzl (Denver.);
- d. 1967: First successful heart transplant by Christiaan Barnard (Cape Town, South Africa.);
- e. 1970: successful monkey head transplant by Robert White (Cleveland, USA);
- f. 1981: First successful heart/lung lobe transplant by Bruce Reitz (Stanford);
- g. 1983: First successful lung lobe transplant by Joel Cooper (Toronto);
- h. 1987: successful double-lung transplant (Ann Harrison.) by Joel Cooper (Toronto);
- i. 1987: First successful whole lung transplant by Joel Cooper (St. Louis)
- j. 1995: successful laparoscopic liver-donor nephrectomy by Lloyd Ratner and Louis Kavoussi (Baltimore.);
- k. 1998: successful live-donor partial pancreas transplant by David Sutherland (Minnesota);
- l. 1998: First successful hand transplant (France);
- m. 2005: First successful partial face transplant (France);
- n. 2006: First successful penis transplant (China).

In cyberspace, buying and selling human organs, especially kidneys, can be easily found, even if the practice is carried out openly. The search engine quickly returns a slew of directories that offer buying and selling kidney services. Due to the need for more and more parts of the human body, it has developed into free buying and selling in the market, both of which will be used for consumption by domestic enthusiasts and can even be sent abroad. Details of the price range of organ parts sold:

- a. Organs of hands and forearms USD 385 worth IDR. 1,377,385;
- b. Blood is sold at a price of USD 25 to USD 337 worth IDR. 4,640,490;
- c. A pair of eyeballs USD 1,525 or IDR. 20,999,250;
- d. A full eye transplant is possible in the near future.
- e. Coronary artery USD 1,525 or IDR. 20,999,250;
- f. Small intestine USD 2,519 or IDR. 34,686,630;
- g. Heart 119,000 or IDR. 1,638,630,000;
- h. Kidney USD 262,000 or IDR. 3,607,740,000;
- i. USD 10 body skin per square inch (per inch) IDR. 137,700;
- j. Bone marrow per gram is worth USD 23,000 worth IDR. 316,710,000;
- k. Bone marrow transplants treat leukemia and aplastic anemia.
- l. Heart USD 157,000 or IDR. 2,100,000,000;
- m. Lung USD 310,000 or IDR. 4,100,000,000.

As a form of codification of material criminal law in Indonesia, the Criminal Code (hereinafter referred to as the Criminal Code) does not regulate the sale and purchase of human organs, but is specifically regulated through statutory regulations outside the Criminal Code, namely through the Law RI Number 36 of 2009 concerning Health (hereinafter referred to as the Health Law) and the Law RI Number 23 of 2002 (Law N° 23) concerning Organ Transplantation (hereinafter referred to as the Organ Transplant (hereinafter referred to as the Child Protection Law). This criminal provision is a new breakthrough in efforts to eradicate the organ trafficking mafia human body. Regulations are required, as are government legal policies to prevent and eradicate trafficking in human beings and human body parts for legal purposes, namely the prevention and eradication of trafficking. by providing sanctions that are not light for those who do it, and comparisons with other countries are needed to provide input in the formation of regulations in Indonesia.

RESEARCH METHOD

Comparative Scientific Articles of Criminal Law Regarding the Trafficking of Human Organs in Indonesia and the Philippines by the use of normative legal research or library law research, i.e. research undertaken by reviewing library resources or secondary data. At the time of this writing, the sort of study being conducted is normative juridical research, which uses a statutory method to examine a topic from a legal perspective by examining legislation and data collection techniques. In this study, primary, secondary, and tertiary legal materials are gathered based on the issue of the problem that is formulated and studied based on the classification of problems according to the source of the hierarchy in a coherent manner pertaining to organ trafficking.¹⁹ This study's analysis of data/legal materials involved library research, namely library research. It is conducted utilizing literature (library) in the form of books, notes, and reports of past research results and statutory regulations that explain and link such that they are systematically put in writing to answer questions.²⁰

RESULT AND DISCUSSION

The decrease in trafficking of human organs in Indonesia is presented in the following figure, the data was taken from 2003 to 2011 in various regions of Indonesia:

¹⁹ Soerjono, Soekanto, and Sri Mamudji. "Penelitian Hukum Normatif suatu tinjauan singkat." (1995): 13-14.

²⁰ Hasan, Iqbal. "Analisis Data Penelitian dengan Statistik, Jakarta: PT." *Bumi aksara* (2006).

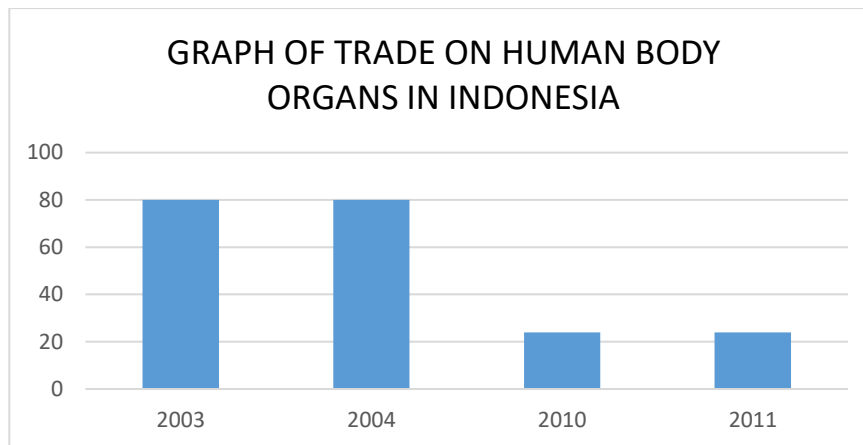


Figure 1. Graph of Trade on Human Body Organs in Indonesia

The data above shows the dynamics of trafficking in human organs in 2003, 2004, 2010, and 2011 in Indonesia. Overall, the number of people trafficking in human organs in Indonesia has experienced dynamic changes. For several years, there has been no change, and has gradually decreased in recent years, namely in 2010 and 2011. In 2003 and 2004, the number of people trafficking in human organs reached the tens of thousands. 80 cases, but in the following year it decreased by more than 80% in the following year. There is no change in the number of 24 cases in 2010 and 2011. The author has not found newer data or data for 2012–2022.

The decline in trafficking in human organs shows that the laws and regulations governing it are adequate, law enforcement officers who dare to enforce the law, both the police to conduct investigations, prosecutors to conduct prosecutions and judges to conduct trials, and correctional institutions for the placement of prisoners in Indonesia.²¹ This shows that the level of government awareness in dealing with trafficking in human organs is very influential on the high or low level of trafficking in human organs.

Things that Can be Done to Stop and Get Rid of the Sale and Purchase of Human Body Parts in Indonesia

Regarding organ trafficking in Indonesia The restriction on organ trading is governed by Law Number 23 of 2002 about Health, as revised by Law Number 36 of 2009 and Government Regulation Number 53 of 2021 regarding organ and tissue transplantation. Organs and/or bodily tissues cannot be traded under any circumstances, as stated in Article 64, paragraph 3, of Law No. 36 of 2009, which prohibits such transactions. Organ transplantation is a noteworthy and

²¹ Mahasena, Adhyaksa. "Pertanggungjawaban Pidana bagi Pelaku Tindak Pidana Jual Beli Organ Tubuh Manusia." *Jurnal Magister Hukum Udayana* 7.1 (2018).

honorable act in which the donor donates a portion of his or her body or organs to assist patients with organ failure. Organ transplantation can only be performed with the consent of the donor, taking into account the donor's risk, the effectiveness of organ donation, and the likelihood of success for the receiver; there is no aspect of buying and selling or commercialization involved. The low number of family donors (Living Related Donors = LRD) and organ donors is another challenge. Previously, in Law Number 23 of 2002, Article 33 paragraph (2) only mentioned the prohibition of organ/tissue transplantation for commercial purposes. The use of the phrase "trading" has a broader meaning than "transplantation is prohibited for commercial purposes." Criminal arrangements are related to actions that constitute a violation of these provisions.

Article 80 paragraph 3 of Law Number 23 of 2002 states: Whoever intentionally commits an act with a commercial purpose in the implementation of transplantation of body organs or body tissues or blood transfusion as specified in Article 33 paragraph 2 shall be punished with imprisonment for a maximum of 15 years and a maximum fine of IDR 300,000,000.00. (three hundred million rupiah). In Article 192 of Law Number 36 of 2009, the criminal provisions relating to the prohibition on trading organs and tissues are reiterated: Anyone who intentionally trades organs or body tissues under any pretext, as described in Article 64 paragraph (3), shall be punished with a maximum prison term of ten years and a maximum fine of one billion Indonesian rupiah (one billion rupiah). Alternatively, if the act broken is human trafficking for the purpose of harvesting human organs, the legal provisions for this crime and the offender are outlined in Law No. 21 of 2007, which corresponds to the definition of human trafficking mentioned in Article 1 point 1 and Number 7 of the law.

In the United States, organ trafficking is regulated differently than in the Philippines. Organ trafficking is a crime in both the Philippines and Indonesia, however the Philippines' organ transplant law is the only one to contain criminal penalties pertaining to organ trafficking. One of the Philippines' organ transplant regulations is the Republic of the Philippines Department of Health Revised National Policy on Living Non-Related Organ Donor and Transplantation and its Implementing Structure. A Bill to Establish Police to Prohibit Commercial Transactions in Human Organs, Tissue, and/or Parts, With Penalties for Violators, and for Other Purposes. This is because the background of the complex formation of human organ transplants in the Philippines is the massive practice of organ trafficking within the Philippines. In the statutory provisions in the Philippines, strict rules are applied regarding the implementation of organ transplants. The aim is none other than to overcome the organ trafficking that occurs within the Philippines as a result of medical tourism policies in Asia and to prevent the amount of trafficking in organs produced or

carried out with the mode of organ transplantation.²² Under the regulations in the Philippines, organ transplantation is only allowed if the donor and recipient have close kinship relations and both the donor and recipient are citizens of the Philippines.

In Indonesia, organ transplantation can be performed on dead donors (cadaveric) and living donors, where prior approval from the donor or guardian must be obtained. The consent system adopted by Indonesia is an "opt-in" system in which donor consent is given in the form of informed consent. Informed consent is only validly given by a patient if it meets at least three (3) elements as follows: 1) Sufficient disclosure of information provided by the doctor; 2) the patient's competence in giving consent; 3) voluntary (without coercion or pressure) in giving consent; and 4) informed consent can be requested from other authorized parties, namely as follows: a) the guardian or curator; b) the husband/wife; c) the party who has been given a power of attorney; d) father/mother; e) his grown son; and f) Brother/sister who has grown up.²³

Whereas in India, consent must be given in writing by the donor before his death. The consent in question is informed consent. However, if a person until he dies does not make a statement that he agrees or refuses to have his organs removed, then it is declared as if he agrees to take organs from his body for therapeutic transplantation. As a result, it can be concluded that the system used in India is a hybrid of "opt-in" and "opt-out." Meanwhile, according to Islam, as expressed by Prof. K.H. Ibrahim Hosen, organ transplantation from corpses is permissible based on Q.S. Al-Maidah verse 2, "And help you in righteousness and piety and do not help in sin and transgression." In addition, according to him, in Islam there is also a rule which states that the interests of the living take precedence over the interests of the dead. However, the law of organ transplantation in Indonesia cannot run well because this cultural component is not supported by the existence of a supporting substance and structural component. The law in Indonesia only regulates the conditions for transplantation and the prohibition. Regulations regarding transplantation in Indonesia are still normative because there are no provisions that regulate the overall technical implementation of transplants. Although so far, Indonesia has based organ transplants on Government Regulation Number 53 of 2021 and Regulation of the Minister of Health of the Republic of Indonesia Number 38 of 2016 concerning Organ Transplantation. The provision regulates the formation of a National Transplant Committee consisting of elements of religious or community leaders, related medical professions, psychologists or psychiatrists, medical or legal ethicists, social workers, and the Ministry of Health, but the regulation does not

²² Prisilla, Josephine Cindy. "Kriminalisasi Pengguna Jasa Perempuan yang Dilacurkan (Pedila) Sebagai Pelaku Tindak Pidana Perdagangan Orang." *Jurnal Hukum Magnum Opus* 3.2 (2020): 137-149.

²³ Mahasena, Adhyaksa. "Pertanggungjawaban Pidana bagi Pelaku Tindak Pidana Jual Beli Organ Tubuh Manusia." *Jurnal Magister Hukum Udayana* 7.1 (2018).

actually regulate in detail the steps to be taken. There are nine implementation steps from the donation process to the occurrence of a transplant.

The use of Government Regulation Number 53 of 2021 as a legal basis for transplantation is inappropriate because the current health law is Law Number 36 of 2009 concerning Health, which in its provisions states that the implementation of transplants is further regulated in government regulations. As stated in the transitional provisions of Law Number 36, Year 2009, "Legislation as the implementation of this Law is stipulated no later than 1 (one) year from the date of promulgation of this Law. The obligation to issue a government regulation on this law, as regulated in Article 12 of Law Number 12 of 2011, is that "the content of the government regulation contains material to carry out the Act properly" and its preparation is carried out in a program for the preparation of government regulations for a period of one year. The absence of written regulations regarding organ transplantation techniques also has an impact on institutions or committees or competent parties' ability to carry out and supervise the implementation of organ transplants so as not to deviate from legal provisions.

In addition, in Indonesia, there are only a few hospitals that meet the criteria for organ transplantation. For now, the only hospitals that are allowed to carry out organ transplants are RSCM Jakarta and hospitals in Surabaya. Thus, referring to Friedman's legal system theory, the transplant law in Indonesia cannot be implemented because there is no interaction between the components of structure, substance, and culture. As previously stated, the World Medical Authority (WMA) in its statement, GA Plenary, argues that "any compensation for organ donation can be coercive, and should absolutely be prohibited." Meanwhile, the provisions of the WHO Guiding Principles on Human Cell, Tissue, and Organ Transplantation itself are expressly stated regarding the prohibition of providing payments in the donation process between donors and recipients: Cells, tissues, and organs should only be donated without monetary compensation or other monetary rewards. The purchase or offer to acquire cells, tissues, or organs for transplantation, as well as their sale by living individuals or the next of kin of deceased individuals, should be prohibited.

As mentioned above, Indonesia and the Philippines both have the same view on this matter as outlined in the provisions of their respective laws in their respective countries. Such as the provisions in Article 64 paragraph (2) of Law Number 36 of 2009, which states that "transplantation of organs and/or body tissues is carried out only for humanitarian purposes and is prohibited from being commercialized." The difference is that in Indonesian law, the criminal act of trafficking in human organs is regulated in general, while in the Philippines, the crime of trafficking in human organs is made into detailed specifications regarding the duties and functions of each perpetrator. This is what makes the regulation against organ trafficking in the Philippines

unique. It places the crime of trafficking in human organs as an organized crime, considering the actors involved in the regulation are very complex.

Human organ commercialization is prohibited by Health Law, which includes provisions, procedures, and prohibitions. Second, Government Regulation of the Republic of Indonesia Number 53 of 2021 concerning Transplantation of Organs and Body Tissues, which regulates technical procedures for procedural human organ transplantation. In the Philippines, regulation of kidney organ transplant procedures is more specifically regulated in regulations issued by senators and executive agencies. Administrative arrangements for human organs are contained in the Administrative Order of the Republic of the Philippines Department of Health Revised National Policy on Living Non-Related Organ Donor and Transplantation and its Implementing Structure, which provides administrative arrangements for the process and stages of organ donation to be transplanted as well as the basic rules for the work of health institutions providing kidney organs. The subject of the criminal act of buying and selling kidney organs is everyone.²⁴ The element of each person refers to the subjective element of the perpetrators of the criminal act of commercializing kidney organs. The subjectivity of a person committing a crime begins with the intention of making a sale or purchase. Then it develops in the act of selling or buying kidney organs, which is done intentionally. The main purpose of selling kidney organs is to get material compensation. This is expressly prohibited in the Health Act. Government Regulation Number 18 of 1981 concerning Clinical Corpse Surgery and Anatomical Corpse Surgery and Transplantation of Human Organs or Devices. Article 17 states that: "It is forbidden to trade in tools and/or human body tissues." In the event of a sale and purchase of tools and or human body tissue, a criminal witness will be imposed as contained in Article 20 paragraph (1), which states that "Violations of the provisions in Chapter II, Chapter III, Chapter V, Chapter VI, Chapter VII, and Chapter VIII are threatened with imprisonment for a maximum of 3 (three) months or a maximum fine of IDR. 7,500 (seven thousand five hundred rupiah)."

The subjective element in Article 20 (1) is the intentional sale and purchase of human body organs and tissues. Whereas in the Philippines, the subject of criminal acts is based on An Act To Institute Police To Prohibit Commercial Dealings In Human Organs, Tissue, And/Or Parts, Providing Penalties Therefore For Its Violations, And For Other Purposes in Article 4, which includes any person who commits an act intentionally or unintentionally due to the person's lack of caution, where the person's actions have been proven to have an internal intention to offer the sale of human organs, tissues, and/or other body parts. It does not stop at the intention of

²⁴ Abdullah, Muhammad Zen, and Fatriansyah Fatriansyah. "Analisis Yuridis Terkait Tindak Pidana Jual Beli Organ Tubuh." *Legalitas: Jurnal Hukum* 14.1 (2022): 156-165.

someone who will take action to sell kidney organs, but that purpose has been realized in real terms, and the existence of actions encouraging and facilitating sales, exchanging, or other transactions involving body organs, tissues, and/or other body parts not only on the part of the bidder and motivator broker transactions for human organs, tissues, and/or parts of the human body.²⁵

The element of trading organs or body tissues under any pretext contained in Article 64 paragraph (3) of the Health Law is seen from someone's intentional buying and selling of kidney organs, which refers to material benefits, is expressly prohibited in the Health Law because it will have an impact that is bad for the recipient. Meanwhile, in the Philippines, actions against the commercialization of kidney organs are regulated more specifically in An Act to Institute Police to Prohibit Commercial Dealings in Human Organs, Tissues, and/or Parts, Providing Penalties Therefor for its Violations, and for Other Purposes. The first in article 4 paragraph (1) and paragraph (2) is the act of promoting human organs. The intended promotion is conveying information to the public or the public, both formally, which can be done using print media through newspapers, magazines, brochures, or pamphlets. The two acts of persuading someone to commercialize body organs and tissues or body organs are contained in Article 4 paragraphs (3), (13), and (14). Third, trading in organs or other body tissues Trading activities are related to the existing supply and demand. The orientation of material gain towards trafficking in body organs and other tissues is prohibited as contained in Article 4 paragraph (4), (5),(6),(7),(8),(9),(10),(11),(12). The four actions help or facilitate the commercialization of human organs and/or other parts. Article 5 paragraph 1 says that transplanting organs from one person to another requires cooperation between health workers, the community as donors, and patients as recipients of donor organs.

The punishment for buying and selling organs in Indonesia is contained in Article 192 of the Health Law. Everyone who buys and sells human organs is punished with jail as a criminal consequence. Article 12 paragraph 2 of the Criminal Code describes the application of imprisonment in Indonesia. This article specifies that the lowest length of a temporary prison sentence is one day and the maximum length is fifteen years. A day consists of twenty-four hours (Article 97 of the Criminal Code). The general maximum of 15 (fifteen) years may be surpassed for a maximum of 20 (twenty) years, which, according to the judge, may be sentenced to the death penalty, life imprisonment, or imprisonment, namely to receive a minimum of one day and a maximum of life. In Indonesia, the maximum penalty for the illegal purchase and sale of human

²⁵ Ardiansyah, Muhammad Dwi, Kanti Rahayu, and Imam Asmarudin. *Pengaturan Pemberian Royalti atas Hak Cipta Aransemen Lagu di Indonesia dan Amerika Serikat*. Penerbit NEM, 2021.

organs is ten (10) years in prison and a fine of IDR 10,000,000.00 (ten million rupiah). The penalty for the illegal purchase and sale of human organs differs slightly from that stipulated by Law No. 11 of 2008, which imposes a punishment of IDR 1 billion (one billion rupiah). In contrast to Indonesia, where the provision of criminal sanctions is based on An Act to Establish Police to Prohibit Commercial Dealings in Human Organs, Tissues, and/or Parts, Providing Penalties for Its Violations and for Other Purposes, the United States does not have a similar statute, the Philippines classifies the provision of criminal sanctions, namely in Article 9 paragraph (1), Everyone who is proven to have commercialized kidney organs is subject to a criminal sanction of imprisonment for 20 (twenty) years and a fine P5,000,000,000.00 (five billion pesos), Article 9 paragraph (4): companies, corporations, associations, or associations that are proven to have commercialized kidney organs are subject to sanctions for revocation of permits. Article 9 paragraph (4): directors, owners, partners, and managers who are proven to be involved in the commercialization of kidney organs are banned from business licenses.

The Philippines specifically regulates the fulfillment of kidney organs. This is contained in the Administrative Order of the Republic of the Philippines Department of Health Revised National Policy on Living Non-Related Organ Donation and Transplantation and its Implementing Structure. In this regulation there are 9 (nine) chapters covering: understanding, principles, institutions, general policies, organizational structures, funding, warnings and sanctions.²⁶ The following institutions are related to kidney organ transplantation in the Philippines: (1) PBODT (Philippine Board for Organ Donation and Transplantation). This institution has the function of monitoring and ratifying policies that support the kidney organ transplant program in terms of quantity, technicality, access, and accountability as well as legalizing standard certificates for kidney organ transplant facilities; (2) PODTP (Philippine Organ and Transplantation Program). This institution has the function of managing the registration of donor data. After the prospective donor registers administratively with the Philippine donation and translation agency, During the PODTP screening and selection practice, it will be supervised by the national transplant committee, namely the National Transplant Ethisc (NTEC). (3) NTEC (National Transplant Ethisc Committee). This institution has the function of supervising the planning and implementation of the registration and donor selection stages for kidney organ transplants; (4) PHILNOS (Philippone Network for Organ Sharing). This institution has an implementation function in administrative registration for prospective donors who will donate kidney organs. Health is part of human rights and is the responsibility of all parties. As

²⁶ Bintoro, Ady. "Memahami Nilai Etika dan Moral Donasi Organ." *Jurnal Orientasi Baru* 25.1 (2016).

stated in the preamble of the 1945 Constitution of the Unitary State of the Republic of Indonesia, the national goals of the Indonesian nation include promoting general welfare, educating the nation's life, and participating in the implementation of a world order based on social justice. Comprehensive and sustainable national development is required to reach this objective. One of them is development in the health sector, which can strive to raise everyone's awareness, willingness, and capacity to live a healthy lifestyle.

To protect the interests of the community as a result of actions that threaten or even harm them, whether they come from individuals or groups. A regulation is needed that regulates the implementation of health management in Indonesia for this person. In this case, it will analyze the regulation of the criminal act of trafficking in organs for the benefit of kidney organ transplants in the laws and regulations in Indonesia, which are sourced from the 1945 Constitution of the Unitary State of the Republic of Indonesia and are specifically regulated which are divided into three, namely:-Buying transplants is in the health law; in addition, if the victim is a child, then it is also regulated in the child protection law; and if the sale and purchase has an element of violence or exploitation then it is regulated in Law Number 21 of 2007 concerning the eradication of acts of trafficking in persons.

Comparison of the Enforcement of Legal Provisions for Trafficking in Human Organ Parts in Indonesia and the Philippines

The Philippines has an area known as Baseco Island. In that area, there is a tradition of adult male residents giving up their kidneys to meet their daily needs. Under these conditions, the fulfillment of organs, especially kidneys, in the Philippines tends to be greater. In the Philippines, there are regulations, namely the Republic Act, related to procedures and procedures for transplanting parts of human organs, and an official institution has been established that manages the sale and purchase of body parts, which in practice are directly integrated with the Ministry of Health of the Philippines. What distinguishes and shares similarities with Indonesian Health Law Number 36 Year-2009 and the Administrative Order of the Republic of the Philippines, namely:

Table 1. Similarities between Law Number 36 Year-2009 concerning Health in Indonesia and the Administrative Order of the Republic of the Philippines

Indicator	Indonesia	Philippina
Administrative Sanctions for health	Article 4 Government Regulation	Chapter XII on Warnings and Administrative

workers	No. 53 of 2010 concerning Employee Discipline	Sanctions of the Ministry of Health
	Article 64 of Law No. 36 of 2009 concerning Health	
	Article 2 of Law number 21 of 2007 concerning the Crime of Trafficking in Persons	
Sentencing	Prison and Fines	Prison and Fines

Table 2. Differences between Law Number 36 Year-2009 concerning Health in Indonesia and the Administrative Order of the Republic of the Philippines

No	Indicator	Indonesia	Philippina
1	Regulation	Law Number 36 Year 2009 concerning Health	In the Philippines there are policy rules in the trade of organs and transplants.
		Government Regulation of the Republic of Indonesia Number 53 of 2021 concerning Organ and Tissue Transplantation.	There are also statutory provisions related to the prohibition of commercialization and trade in human organs. Executive Order 34: An Act Regulating Living Non Related Organ Donation.
2	Subject	Each person	Facilitators, corporations, workers, associations
3	Elements of a crime	Commercialization or buying and selling of human organs	Offered and advertised, in the form of liaison between donors and recipients and collectors
4	Funding	Imprisonment: maximum 10 years. Fine: maximum IDR. 10 Billion.	Promote and trade Imprisonment: 20 years, fine: 1/one billion pesos and not more than two billion pesos.
			Facilitator. Imprisonment: 15 years. Fines: two

No	Indicator	Indonesia	Philipina
			billion pesos-not more than five billion pesos.
5.	Institutions related to the sale and purchase of kidney organs	There are only 2 special institutions	There are special institutions.
		Network Bank	Philippine Board For Organ Donation And Transplantation (PBODT);
		Currency Bank	Philippine Organ and Transplantation Program (PODTP).
			National Transplant Ethisc Committee (NTEC).
			Bureau Of Health Facilities and service (BHFS)

Table 3. Other regulatory differences

Indonesia	Philipina
There are no specific regulations governing donor transplants from living people; only legal regulations for donors from dead people through government regulations related to clinical post-mortem as well as post-mortem as well as transplants in the form of tools and body tissues.	The Philippines towards more complete regulations, especially regarding transplants that regulate donors from living people who are not related.

Organizations related to organ transplantation in the Philippines:

- 1) PBODT whose function is to monitor and ratify policies that support programs related to organ transplantation;
- 2) PODTP which has the function to take care of the registration of the data from the donor party, after being registered will be supervised by NTEC. 26
- 3) NTEC is an institution that functions to supervise and plan the implementation of the registration of organ transplants;
- 4) PHILNOS is an institution that functions in the registration and administration of prospective organ donors.

In the Philippines, it has provided in-depth regulations regarding actions and sanctions for trafficking in body parts, can provide certainty in law enforcement related to the crime of commercializing body parts, in Indonesia it is not entirely regulated, so that in law enforcement

there are still multiple interpretations and differences of opinion occur. In day-to-day implementation, organ transplantation in Indonesia is carried out starting from the preparation stage for transplantation to the end of the transplant, although there are obstacles in the need for these parts of the human body.

CONCLUSION

Based on the results of the research above, it can be concluded that there must be Efforts that can be made to stop and get rid of the trafficking of human organs in Indonesia by issuing legal regulations, giving the public information, and spreading news about the law and how well law enforcement is following the law. There are similarities as well as differences between the regulation of the Enforcement of Legal Provisions on the Trade in Human Organ Parts between Indonesia and the Philippines. The similarity of regulations applied in Indonesia and the Philippines is the existence of administrative sanctions for health workers and the similarity of punishment in the form of imprisonment and fines. The most significant difference is in the subject: the legal subject in Indonesia is everyone, whereas in the Philippines it is only limited to facilitators, corporations, workers, associations, and elements of criminal acts. The elements of criminal acts in Indonesia are only limited to commercialization or buying and selling human body organs, whereas in the Philippines it is only limited to facilitators, corporations, workers, associations, and elements of criminal acts. There are only two institutions in Indonesia, namely network banks and eye banks, whereas the Philippines has more comprehensive institutions for buying and selling organs. So that in the Comparison of Criminal Laws Related to Trafficking in Human Organs in Indonesia and the Philippines, it is clear from the regulation of enforcement regulations for the trade in human organ parts where in the Philippines there are in-depth regulations that regulate, while in Indonesia it has not been fully regulated so that in law enforcement there are still multiple interpretations and differences opinion.

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