



# Strengthening Legal Enforcement Against Human Organ Trafficking in Indonesia: An International Law Perspective

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**Abstract.** Human organ trafficking represents a critical violation of human rights and poses significant challenges to both national and international legal frameworks. This paper examines the strengthening of legal enforcement against human organ trafficking in Indonesia, focusing on the role of international law. The analysis highlights the obligations imposed by international legal instruments, such as the Palermo Protocol and the Council of Europe Convention against Trafficking in Human Organs, which mandate state parties to prevent and criminalize such acts. The paper further explores Indonesia's responsibility under international law to combat organ trafficking within its borders. By analyzing state obligations, enforcement mechanisms, and potential legal reforms, this study argues for the need to enhance Indonesia's legal and institutional capacity to address human organ trafficking effectively. The findings underscore the importance of international cooperation and the implementation of robust legal frameworks to protect vulnerable populations from exploitation. This paper contributes to the broader discourse on human rights and international law by providing actionable recommendations for strengthening legal measures in Indonesia.

**Keywords:** Hate Speech, Digital Rights, Internet Intermediary.

## 1 INTRODUCTION

Sudirman Kartohadiprodjo, in his book entitled "Indonesian Legal System" explains the meaning of the law as a thought or form of a people's opinion about whether it is a fair or unfair connection between people.[1] The law is considered to be an arranged connection between people and others. In law, the fundamental human right is interpreted as an inherent right to self that must fought for in a way. That goes continuously, understanding the basic human right. The same is true in various layers and places. Understanding the concept of human rights formerly tended to have a theological nature, influenced by philosophical, ideological, or moralistic factors. However, with the passage of time and the progress of the nation and state, the concept

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of human rights tends to be juristic and political because human rights instruments are developed as a comprehensive part of international law, both written and unwritten.[2]

Understanding the draft fundamental human rights is customized to each country; in Indonesia, understanding the fundamental human rights is based on Pancasila and on the Constitution Base Country Republic Indonesia 1945 (from now on called the 1945 Constitution of the Republic of Indonesia). Human organ trafficking is an illegal act, often followed by threats and violence, which automatically inflicts torture on the victim; not only torture, but the act of human organ trafficking can also take the life of another person.

Human organ trafficking is a transnational crime issue that occurs a lot in the world; based on a report from Transnational Crime and the Developing World issued by Global Financial Integrity (now referred to as GFI), based on the report every year there are approximately 12 thousand human organs illegally traded throughout the world. GFI assesses that the crime of human organ trafficking is a transnational crime, which is generally carried out by involving professional networks. Human organs that are sold mostly come from countries with low economies and education, ranging from kidneys, livers, hearts, lungs, and pancreas, ranging from prices of \$50,000 to US\$290,000.[3]

Human organ trafficking has become a fast-growing crime worldwide.[4] The rapid growth of human organ trafficking crimes makes clear evidence of the high demand for organs in the world, to become an illegal business that is rampant in countries around the world, high demand while limited organ availability is also a problem that needs to be addressed.

The rules regarding illegal trade in human organs in Indonesia are regulated in Law Number 17 of 2023 concerning Health (from now on referred to as the Health Law), Law Number 21 of 2007 concerning Eradication of Trafficking in Persons, in these regulations when donating organs for transplantation legally and giving them voluntarily is allowed, but if the organ is given in the form of sales or business with illegal, then it is prohibited to do so. This regulation regarding human organ trafficking provides a limitation that organ donation can be made legally if it is without coercion and voluntary. However, it turns illegal if it becomes a business transaction for trade and involves an element of coercion.

International law governs rules and principles of connection or problems between countries across national borders.[5] In international law, the United Nations (next called the UN) states that human organ trafficking is organized crime. The United Nations established the United Nations Convention (next called UNTOC), ratified in Indonesia through the Constitution Republic of Indonesia No.5 of 2009 concerning Ratification of UNTOC (Convention et al. Against Act Criminal Organized Transnational), also known as UNTOC. This shows that Indonesia has its own rules - rules for preventing the selling of body organs to humans, all at once showing interest in countries to eradicate crime wrong transnational the only one is the act of buying and selling human body organs. Based on the above problems, there is a problem formulation that will be further discussed, namely regarding the rule in international law to prevent human organ trafficking and related forms of state responsibility for human organ trafficking that occurred in Indonesia.

## **2 RESEARCH METHOD**

This research uses a micro approach that compares Indonesian legal norms with International Law legal norms regarding human body parts trafficking. This article use a normative legal research method with a functional approach to see how practical issues in resolving conflicts of interest are handled relation between International Law and how it applicated in Indonesia. Although the legal norms regulated in Indonesia not as much as Indonesia, in terms of the purpose of the human body parts trafficking in Indonesia norms, both regulations solve human body parts trafficking legal problem similarity.

## **3 FINDINGS AND DISCUSSION**

### **3.1 Rules in International Law in Preventing Action Trade in Human Organs**

In interpreting the validity of law according to the opinion of Prof. Meuwissen, who requires validity in legal norms, if it meets the conditions starting from social or factual validity of how the law is accepted and applies in society. Juridical enforceability is achieved by looking at the rules applied, referring to the correct procedure, and not contradicting other existing rules. Moral enforceability is by seeing that the rules made do not conflict with moral values and do not violate human rights.[6] Everyone has an understanding that he and his limbs are an integral part of his ownership in the world, this is supported by the Universal Declaration of Human Rights (UDHR), where the right to the body is considered to exist within the scope of human rights as part of society.[7] Article 8 of the UDHR emphasizes the rights of each individual: “everyone has the right to life, liberty, and security of person.” The meaning of this article when talking about individual security is the same as the security of organs owned by individuals. Prof. Peter Mahmud Marzuki has a different view that rights are inherent to humans by nature, and it is necessary to maintain the continuity of rights in social life.[8]

The most significant factor in human organ trafficking is the deep poverty in the country. In Indonesia, prosperity was generally mandated in the opening of the 1945 NRI Constitution in paragraph four. Twelve people were caught trapped in a syndicate selling kidneys from Indonesia in Cambodia in 2023, showing that crime organ trafficking has become a crime across the country. Even involving the apparatus country shows that this crime was already organized previously (BBC News Indonesia, 2023). It is miserable that lawmakers make laws and regulations in society.[9]

The rule about human organ trafficking has already been striving to be fulfilled since the first, as the fulfilment of fundamental rights always becomes a topic of actual problems.[2] One of the rules about human trafficking is arranged in The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008 edition). The Declaration of Istanbul contained therein explains that organ trafficking violates the principles of equality, principle of justice, and respect for human dignity. That must be prohibited, and the country is responsible for the prevention of organ trafficking. This

shows that countries in this world were aware of and considered organ trafficking as a matter essential to protect.

Council of Europe Convention Against Trafficking in Human Organs (from now on called Council of European Convention), ratified by ten countries: Albania, Croatia, Malta, Norway, Latvia, Moldova, Montenegro, Portugal, and Switzerland. Article 1 aims The Council of Europe Convention to regulate the prevention and eradication of human organ trafficking, protect the rights of victims, and facilitate cooperation to fight human organ trafficking.

In Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2003 (from now on called Palermo Protocol 2003) on Article 3 (a), *“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, using 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 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.”* This article explains that organ trafficking is not possibly separated from trading humans, organ trafficking, or removal of internal organs protocol Palermo is deed illegal. The transfer of human body organs through organ transplantation, cloning, genetics, and treatment.[10] In The Palermo Protocol, Article 5 explains that the ratifying country of this convention must implement the Palermo Protocol and ensure its implementation.

Previously, case organ transplantation occurred in the state of Pennsylvania; namely, McFall suffered from disease and needed organs, then forced his uncle to donate the organ. That matter was rejected by the Supreme Court, with Justice Brennan arguing, *“...to force somebody to give his or her body to someone else would infringe on individual privacy and autonomy.”* In Judge Brennan’s view, forcing others to give the organ violates the constitutionality of that person.[7] This can be interpreted as the fact that in other countries, the right to body and organs is considered essential to look after and protect by law.

World Health Organization Guiding Principles on Human Cell, Tissue and Organ Transplantation (from now on called WHO Guiding Principles) explains that there are 11 principle guide countries in the implementation of humans organ transplantation, starting from prohibiting payment of money in return, organ donation is carried out with on-base voluntary, ensuring no profit financial, prohibits the process of acquired donors through exploit, recommend organ donation arranged in regulation legislation and comes from people who have it connection in a way genetic, legal, or emotional with the recipient.

UN Resolution 71/322 regulates reinforcement and promotion steps effectively and works equally internationally in donation organ transplantation to prevent trading humans from harvesting organs and trading in human organs. In the resolution, the urge for countries to prevent organ trafficking is appropriate with obligation based on international law, including the judge and punishing organ trafficking, ratifying the

Palermo Protocol, adopting rules related to suitable organ transplant with Principle WHO guidelines, developing ways to protect victim of purpose organ harvesting, and if a way to overcome and protect is needed individuals who are vulnerable to being controlled in regulation each statutory law country. According to the United Nations Global Initiative to Fight Human Trafficking, human organ trafficking is an organized crime.

In international law regarding the right over body organs protected by various rules, the only one in The 2003 Palermo Protocol governs that organ trading is part of human trafficking, the state that became state parties implement regulation existing laws and regulations in his country. Besides that, a number of states also regulate the fulfilment and protection of the rights of the human body, such as the Istanbul Convention. Previously, a judge in Pennsylvania explained that the right to body was a constitutional possession by somebody. According to the United Nations Office on Drugs and Crimes, that lack of organs becomes a forerunner to human organ trafficking.[11]

Organ trafficking is a problem globally undetectable and delivers significant advantages for group crime. In a society that is susceptible to experiencing human organ trafficking, it is primarily people that poor or vulnerable communities and countries develop, and the lack of organs also becomes a factor in meaningful action in human organ trafficking now. Although arranged like that appearance in international law, the crime of human organ trafficking still keeps going until at the moment.

### **3.2 State Responsibility on Action of Humans Organ Trafficking That Occurred in Indonesia**

State responsibility has been arranged in Article 1, Responsibility of States for Internationally Wrongful Acts 2001, which states, “Every internationally wrongful act of a State entails the international responsibility of that State” It confirms that not quite enough answer state (state responsibility) is a principle in international law it regulates about emergence accountability a country to other countries. Hence, the country has a responsibility in the international world. According to the Dictionary of Law, a responsible country is “the Obligation of a state to make reparation arising from a failure to comply with a legal obligation under international law”. [12] The content of the formulation explains that a country’s responsibility is understood as an obligation to carry out reparations that exist and arise when a country makes a mistake to comply with existing legal obligations based on international law so that improvements continue to be made by a country.

Referring to the theory of John Rawls, ‘Justice as fairness’ brings the principle of equal freedom between individuals to have equal rights to freedom basis for making it happen liberty for all, strength on theory justice emphasized equation to get prospect life better for all parties who aim to be able to increase life equality of simple and lesser people lucky to be able to reach equality.[13] In this is interpreted, equality needs to be upheld between inhabitant countries to get justice so that it does not become victims of human organ trafficking. In Rawls’s view, it would be to give legal certainty so that justice can be fulfilled for every individual and fragile community.[14] Rawls’s view

is consistent with providing justice for the entire community, especially vulnerable communities who become victims of human organ trafficking.

Organ trafficking occurs in Indonesia with various modes of fraud inside, starting from luring with money, fraud, and murder to obtain human body organs; even in crime, human organ trafficking involves Indonesian citizens as victims or perpetrators. An example is Arnold Putra, a famous Indonesian designer. In April 2020, it was revealed in the New York Post that Arnold got their bone back for his work from the laboratory at Amazonas State University (UEA), which was sent to Singapore suspected addressed to Arnold Putra, triggered anger among the public because UAE based laboratory Arnold's paraphraser sells specimen human when there is an excess (Master of Laws in Medan, 2022). This shows that the high demand for human organs is the reason for the illegal trade in human organs.

Based on published information from the US Department of Justice, Indonesia became the source country for trafficked persons; the victims generally traded in the country objective, starting from Malaysia, Taiwan, Singapore, Brunei, South Korea, Japan, Australia, etc. The government has not yet succeeded in a way that entirely makes efforts to prevent human trafficking, although it is already more noticeable.[15] Association of South East Asian Nations (from now on called ASEAN) has a role critical to each other to collaborate to develop security areas and cooperation between countries and its members.[16] Indonesia has ratified the UNTOC, which aims to improve cooperation more internationally effective in action prevention and eradicate criminals in an organized transnational in fact, explicit organ trafficking is considered a crime across the country.

Regulations in Indonesia on protection organ sales are protected in the Health Law, which states that, in Article 124 paragraph (3), "Organs and network body as intended on paragraph (1) is prohibited commercialized or traded with reason whatever.". Following with load existing sanctions, Article 432 of the Health Law regulates provision criminal for perpetrator human organ trafficking, which reads, "Everyone who trades in organs or network body with reason whatever as intended in Article 124 paragraph (3) carries a maximum sentence of 7 (seven) years or convicted a maximum fine of Rp. 2000,000,000.00 (two billion rupiah)." This article confirms that organ transplants are not intended for sale but not to be traded in a way that is illegal and free to obtain, the Health Law explains that Organ transplantation is possible just for humanity.

It is not only arranged in the Health Law but is also regulated in Law No.35 of 2014 concerning the Amendment to Law Number 23 of 2002 concerning Child Protection regulations. Protection of children's organs are mandatorily protected by the government, government region, community, family, and parents; this rule also prohibits removing a child's organs without paying attention to children's health and emphasizes the prohibition of buying and selling organs from children.[17] With exists this instrument delivers proof that Indonesia has tried to organize organ transplants only for reasons of humanity, and the depth of its implementation can only done by health workers who have the expertise and authority to do so.

Human organ trafficking is also prohibited in Article 345 of the Law of the Republic of Indonesia No.1 of 2023 on the Criminal Code (from now on called KUHP), which

stipulates the prohibition of trafficking in human organs or body tissues with a maximum imprisonment of seven years, while trafficking in human blood is punishable by up to three years and a fine. Article 346 regulates the commercialization of organ or body tissue transplantation, or human blood transfusion can be sentenced to a maximum of five years; organ transplants can only be done for humanitarian purposes. In practice, investigators can impose multiple articles if they do not fulfill the elements of a criminal offense, this can increase the possibility of the perpetrator not being able to run away from his criminal act but can also apply the principle of *lex specialis derogat legi generali* which means that the specificity in the Health Law can override the Criminal Code.[18] Human organ trafficking is included as a transnational crime in Law Number 1 of 1979 concerning Extradition (from now on referred to as the Extradition Law), which explains that extradition is a form of preventive effort to hand over a person who has committed a criminal offence by a country to another country. Indonesia has an extradition agreement with other countries in ASEAN, namely Malaysia, Thailand, and the Philippines. In UNTOC, extradition has been regulated for parties that have become part of this convention and have ratified this convention with the UNTOC Ratification Law.

Indonesia has regulations to protect overcoming the crime of human organ trafficking, which are scattered from the Criminal Code, Health Law, UNTOC Ratification Law, and Child Protection Law to take steps to prevent human organ sales transactions that are carried out in an organized manner to obtain material benefits for some people. Legal efforts have been made by cooperating with other countries through conventions and extradition agreements made in ASEAN countries and surrounding countries.

## 4 CONCLUSION

The crime of human organ trafficking is a problem faced globally that is almost undetectable because it is carried out in an organized and involves many parties in it, poor people and low education are vulnerable to becoming victims of human organ trafficking crimes. This is due to the high demand and need for organs, but the number of organs available cannot accommodate them. Voluntary organ donation without coercion is allowed and legal. However, if there is an element of buying or selling or coercion, even violence, to eliminate life, it is prohibited in law. Indonesia has a variety of legal rules to ensnare perpetrators of human organ trafficking. However, because the rules are scattered in various instruments, codification is essential to ensure there is no overlap between one rule and another. Legal efforts and cooperation between countries continue to be tried by developing countries that are prone to being victims of human organ trafficking.

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