

Understanding Human Organ Trading: Ethical Perspective and Indonesia's Legal Framework

Dedy Indriyanto¹, Liliana Tedjosaputro², Totok Tumangkar³, Afif Noor⁴

¹Law Study Programme, Doctoral Programme, Universitas 17 Agustus 1945 Semarang, Indonesia

²Faculty of Law, Universitas 17 Agustus 1945, Semarang, Indonesia

³Faculty of Law, Universitas 17 Agustus 1945 Semarang, Indonesia

⁴Universitas Islam Negeri Walisongo, Semarang, Indonesia (Corresponding Author)

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Abstract— Human organ trading has become an increasingly complex and controversial issue in the era of globalization. This article aims to explore an in-depth understanding of human organ trading through ethical perspectives and in the context of Indonesia's legal framework. By combining ethical and legal studies, this article summarizes ethical views on human organ trading and analyzes the relevance of Indonesia's legal framework in addressing the challenges of such trading. In the process, it considers the implications of moral and religious values for human organ trading. Through an interdisciplinary approach, the article seeks to compile the contributions of ethics and law in forming a comprehensive view of this complex issue. It is hoped that a deeper understanding of ethical perspectives and legal frameworks will provide richer insights into human organ trading and encourage constructive debate to address the issue.

Keywords— Human organ trading, ethics, Islam, Christianity, Hinduism, Buddhism, Indonesian law.

1. INTRODUCTION

Organ trading is an illegal way to fulfill transplant shortages where the owner of the organ does not consent to the removal of the organ, or the consent is obtained through fraud and coercion, which harms the individual selling the organ as well as those receiving the organ [1]. Based on the Transnational Crime and the Developing World report released by Global Financial Integrity (GFI), every year, around twelve thousand human organs are illegally traded in various parts of the world, where the most traded organs are kidneys, which reach 7,995. The total number of illegal organ transactions is estimated to range from US\$840 million to US\$1.7 billion per year [2]. The Global Observatory on Donation and Transplantation (GODT) in 2014 also mentioned that there are around one hundred and twenty thousand organ transplants (legal and illegal) worldwide [3]. In 2021, it increased to one hundred and forty-four thousand [4].

GFI estimates that around 10 percent of all organ transplants, including lung, heart, and liver transplants, are performed using illegally trafficked organs. However, the most commonly traded organ type in this illegal practice is the kidney, with reports from the World Health Organization (WHO) estimating that around 10,000 kidneys are traded on the global black market every year, or more than one kidney every hour [5].

Each kidney traded varies in value from US\$50,000 to US\$120,000 per organ, depending on the quality of the kidney. Human livers ranked second in illegal trade, with around 2,615 livers trafficked each year. Prices range from US\$99,000 to US\$145,000 per organ. Human hearts are also part of the trade, with an estimated 654 hearts traded each year. Prices are in the range of

US\$130,000 to US\$290,000 per organ. Human lungs are sold on the black market at prices ranging from US\$150,000 to US\$290,000 per organ. The volume of trade is estimated at around 469 lungs per year. Meanwhile, the human pancreas has a price value of US\$110,000 to US\$140,000 per organ, with a trade volume of around 233 per year [6]. This fact makes organ trading a business activity that ranks second in profits after the arms trade. The revenue generated from organ trading exceeds that from drug trafficking and prostitution [7].

Indonesia, a country where 10% of the population is classified as poor, is very vulnerable to human organ trading [8]. This is evidenced by the kidney trading attempt made by 122 Indonesians to Cambodia in July 2023. They are peoples who have lost their jobs due to the pandemic and have given consent to sell their organs for \$9000 in Cambodia. This organ sale was coordinated by a group of people who have been trafficking human organs since 2019 and managed to obtain \$1.6 million [9]. In August 2010, there were three cases of organ trafficking, two of which involved a 10-year-old boy who was abducted and released with no organs and a gagged mouth, while the other case involved a child found without a kidney and heart [10]. During 2014-2015, the Ministry of Women's Empowerment and Child Protection noted that 15 children were victims of kidney organ trafficking or transplantation in Bandung, West Java [11].

This data shows that disparities in welfare, medical needs, and crime are factors that drive the organ trade [12]. In developed countries, the demand for organs is increasing due to lifestyles that pay less attention to the importance of health [13]. Meanwhile, in developing countries, economic incentives mean that individuals are willing to sell their organs without considering the impact on their health [14]. However, ethically, the trade of human organs and the exploitation of the poor are forms of bioviolence [15]. Bioviolence refers to a mechanism that includes processes and tools used to turn the human body, whether alive or dead, either partially or wholly, into an object of exploitation through the use of the latest medical technology. This practice falls under the category of exploitation of the body to achieve goals, which ultimately compromises human rights [16].

Organ trading is a bioviolence that is categorized as an unlawful act in many jurisdictions around the world. It violates human rights principles, medical ethics, and health regulations [17]. Many countries have laws and regulations that strictly govern organ transplants to ensure that the process is conducted with integrity and without exploitation of vulnerable individuals [18].

Organ trading is an illegal way to fulfill transplant shortages where the owner of the organ does not consent to the removal of the organ, or the consent is obtained through fraud and coercion, which harms the individual selling the organ as well as those receiving the organ [19]. Due to the detrimental and unethical nature of this practice, many laws and regulations have been put in place to protect the rights, welfare of individuals and to prevent organ trading.

Based on this explanation, the main objective of this study is to analyze the practice of human organ trading from an ethical perspective. In addition, it also aims to evaluate the extent to which existing legal frameworks can address the challenges of human organ trading in the Indonesian context.

2. BACKGROUND THEORY

Ethics is the systematic investigation of human behavior to discover the rules that should guide human action and identify good values in human life [20]. Ethicists seek to answer fundamental questions such as "What is right or wrong?" and "What is good or bad?" However, ethics is not a simple matter. Sometimes, determining what is right can be a dilemma, such as in situations where one must choose between telling the truth or protecting the lives of others. Ethics is not always about absolute right or absolute wrong [21]; it involves situational considerations, the determination of what is better in a particular context, or the balance between good actions and potential bad consequences.

There are several theories related to ethics, including deontology, utilitarianism, and value-based ethical theories. The deontology theory was proposed by Immanuel Kant, who argued that humans are ethically obliged to act by a set of principles or rules regardless of the outcome, where the

deontological rules stem from human reason [22]. Whereas utilitarian theory holds that an action should be morally evaluated solely based on its contribution to overall utility, which is determined by the happiness accumulated among all people, In the utilitarian view, happiness or pleasure is inherently valuable; discomfort or pain has a negative value, so anything that has a positive value is a positive thing, using the benchmark that it causes happiness or prevents suffering [23].

Meanwhile, value-based ethical theory is a theory that uses several value systems that have an order of ethical priority and ideological values attached to individuals or societies. Ethical values determine what is right or wrong, while ideological values refer to broader biases such as religious, social, and economic. Value systems should have consistency, but in practice, this is not always the case. Values are generally used to set actual or ideal standards for assessing various options as well as to determine what is considered right (whether economically, ethically or in other contexts) based on experience. In an ethical context, values help determine what individuals and organizations consider right or wrong. Acting ethically means acting by what is considered good or moral [24].

3. LITERATURE REVIEW

Human organ trading is a complex and dilemmatic global issue with serious implications for health systems, legal structures, and fundamental principles of human dignity and justice. According to Greenberg [25], the phenomenon of organ transplantation is common in many countries, but its nature varies from location to location. In recent years, under the growing influence of globalization, a permanent shortage of organ donations has driven First World citizens to Third World countries in search of organs by illegal means. The emergence of an international market for organ trafficking requires appropriate policies that can be adopted at national and international levels.

Mor and Boas [26] also argue that human organ trading is a global issue that requires immediate and urgent action. In an unregulated global economic environment and the tremendous demand for human organs, brokers can easily find a protected niche in developing countries. Therefore, the World Health Organization should make a vigorous statement to ban human organ trafficking and encourage countries to impose penalties for violators while developing alternative local solutions that are on the ethics and norms of different societies.

Ethically, Budiani-Saberi and Delmonico [27] argue that human organ trading is a form of exploitation of individuals who are particularly vulnerable to poverty. Donors or sellers from poor backgrounds are coerced and manipulated into selling their organs. Meanwhile, according to Koplin [28], the trade in human organs creates a tension between commodification, which makes organs an object of a commodity that has economic value, and altruism, which wants the welfare or health of others by donating their organs. This tension has led to a group of people who argue that financial incentives can compromise the principle of human organ donation based on altruism.

The high demand for human organs has given rise to a global organ trading network that crosses national borders making it a cross-border crime involving organ brokers, illegal clinics, and intermediaries who utilize regulatory loopholes in various countries. For this reason, Indonesia needs a set of regulations that can anticipate and overcome this trade in human organs. Indonesia has passed Law No. 36/2009 on Health, which prohibits the sale and purchase of organs for commercial purposes. This law emphasizes voluntary and altruistic donation as the basis for organ transplantation [29]. This regulation was followed up with the Organ Transplant Regulation by issuing Minister of Health Regulation No. 47/2016 on National Standards for Organ Transplantation. This regulation sets out guidelines for organ transplantation and establishes ethical principles and criteria for organ donors and recipients [30].

4. DISCUSSION

4.1. Human Organ Trading from an Ethical Perspective

Ethically, the trade in human organs is debatable. Utilitarians who hold the view that an action is morally right if it produces good for all those affected argue that organ trading is justifiable, due to the legalization of the trade [31]. Organ trade can be an option for patients in need. As for the poor, selling organs can improve their quality of life and reduce social inequality. Meanwhile, from the

perspective of deontological ethics, of which Immanuel Kant is one of the figures, the trading of human organs is wrong because humans have inherent dignity that must be respected and should not be considered as tools or objects for other purposes [32]. He developed a principle of moral obligation known as the "kingdom of ends principle" [33]. This principle states that humans should be treated as ends in themselves, not just as tools to achieve other ends. According to Kant, humans have rational and moral capabilities that distinguish them from objects or animals. Therefore, treating human organs as commodities to be traded ignores the inherent dignity of human beings. Human organs are an indispensable part of the individual, and treating them as traded goods shows a disregard for moral values and human dignity.

Indonesia is a country that makes religion one of the benchmarks in the life of the state and nation, as stated in the Pancasila State Foundation, especially the first principle. This is proven by the research conducted by the Pew Research Center, which places Indonesia at the top of the ranking as a religious country. As many as 96% of Indonesian respondents think one must believe in God to be moral, and 98% consider religion important in their lives [34]. This data shows that the majority of Indonesians feel that religious beliefs have a significant impact on shaping moral values and providing direction in their lives. This finding illustrates how strong the influence of religion is in Indonesian culture. Based on religious views, Islam, as the religion of the majority of Indonesians, believes that human organ trafficking is against the teachings of Islam. The essence of Islamic teachings is the perfection of ethical behavior in a human being. According to Islamic belief, every individual has a soul and a body. The human condition depends on the eternal soul. All humans are equal in terms of their spiritual perfection. Allah gave humans the basic knowledge of "good" and "bad". In Islamic law, organ donation is considered a form of continuous charity and is permitted to save lives. The Qur'an states, "And whoever gives life to one soul, it is as if he has given life to all mankind" (5:32). However, the concept of *maslahah* (a fundamental principle in Islamic jurisprudence and legal philosophy) cannot justify the premature termination of human life (selling of human organs) for profit, as this contradicts Allah's words "and do not bring yourselves to destruction" (2:195).

In Christianity, the buying and selling of human organs is also prohibited. The Bibel states "Do you not know that just as we do not want to live in a house that is broken, let alone one that is broken, so the Holy Spirit does not want to dwell in a body that is broken or broken" (Corinthians 6:19). If there are individuals who donate their organs to help others. This act is done out of the belief that God desires restoration for those in need and not for the financial reward of organ sales. In this case, the act of organ donation should be based on a complete willingness, to relieve the suffering of another individual by God's will [35]. If rescue efforts fail, the donor may feel the need to ask God for forgiveness for the sin of having inflicted damage on his or her body.

In Hinduism, there is the concept of Panca sraddha, namely believing in the existence of atman (God's holy light), believing in the law of karma, believing in punarbhawa (rebirth), and believing in moksa (reuniting with God by not being reborn) [36]. Therefore, organ donation must be satvika, or noble, in nature and must benefit both the donor and the recipient. Hinduism also includes Dharma (moral and religious responsibility or right living) and asserts that one's actions determine their fate at various stages of life. The belief in reincarnation is also central to Hinduism, with the understanding that while the physical body may perish, the spirit remains imperishable and eternal. As love and compassion (karuna, self-compassion) are core values in Hinduism, everyone is encouraged to alleviate the suffering of others [37]. However, human organs should not be traded or encouraged for financial or economic motives.

The trading of human organs is also prohibited by Buddhism. Buddhism teaches the importance of love, compassion, and not harming living beings. Buddhism also emphasizes the concept of self and body ownership. The body is considered a temporary residence of the soul that needs to be preserved and respected [38]. Therefore, selling or trading human organs can be considered contrary to the principles of respect for the body and integrity of the self. Buying and selling human organs for financial or personal gain may be considered inconsistent with Buddhist teachings.

In short, it is ethically and morally indefensible to trade in human organs. Some of the ethical grounds that prohibit human organ trading are: Firstly, organ trading significantly dehumanizes people by reducing life and health to commodities for financial gain. Organ trading has given rise to the human organ economy, which features the commodification of the human body. This commodification devalues the intrinsic value of the individual. Secondly, this trade can exploit vulnerable groups as wealthier individuals can afford the required organs, while the poor face barriers, potentially forcing them to sell organs due to financial hardship. This leads to stark disparities in access to organ transplants, which exacerbates social inequality. Finally, organ trading encourages illegal and criminal activities, with lucrative profits enticing criminals to exploit and harm others for organ harvesting.

4.2. Legal Framework to Address Human Organ Trading in Indonesia

In countering human organ trading within Indonesia, one of the indispensable tools is legislation, complemented by law enforcement institutions and the legal culture of the community [39]. Legislation is one of the main elements in realizing the protection of citizens. As highlighted in the fourth of the Preamble and Article 27 paragraph 1 of the 1945 Constitution, every citizen is entitled to legal safeguarding. In the pursuit of maintaining order, legal security, and human rights for citizens, the Indonesian government has established a legal framework for the prohibition of trading human organs in several laws and regulations aimed at preventing, educating the public, providing law enforcement instruments, and protecting victims of organ trading. An act that qualifies as a criminal offense and is defined by the legal framework is considered by lawmakers as an act that poses a risk to legal interests [40]. Prohibiting certain activities must be accompanied by the imposition of threats or punitive measures for individuals who violate the prohibition. Thus, the law has established a form of legal protection for crucial legal interests.

To realize legal protection for the community, the government has enacted laws that regulate the prohibition of human organ trading. While not explicitly stipulated within the Criminal Code, the prescription of trading human organs finds its place in specific legal frameworks, notably in the following instances:

1. Law No. 23/2002 on Child Protection outlines that Article 47 paragraph 2 obliges the state, government, family, and parents to protect children from unlawful acts, such as (a) the removal of children's organs and or tissues without regard to the child's health and (b) the buying and selling of children's organs and or tissues without regard to the child's health. Criminal sanctions for violating the prohibition are stipulated in Article 84, which states that anyone who intentionally transplants a child's organs and or tissues for personal or other people's unlawful benefit will be subject to imprisonment for up to 10 years and or a fine of up to IDR 200,000,000 (two hundred million rupiah). On the other hand, Article 85 of Law No. 23/2002 on child protection stipulates the following: (1) Persons who are illegally involved in the trade of children's organs and or tissues will be subject to a maximum imprisonment of 15 years and or a fine of up to IDR 300,000,000 (three hundred million rupiah). The elements in this article include subjective elements such as committing an unlawful act, while the objective elements involve trafficking in children's organs and or tissues or harvesting of children's organs and or tissues. Criminal sanctions in the form of imprisonment for a maximum of 15 years and a fine of up to IDR 300,000,000 are aimed at perpetrators of human organ trading. On the other hand, those who harvest children's organs will be sentenced to a maximum imprisonment of 10 years and a fine of up to IDR 200,000,000.

2. Law No. 36/2009 on Health. The prohibition of buying and selling human organs in this law is expressly contained in Article 64, Paragraph 3, which states that human organs and tissues are prohibited from being traded under any pretext. Criminal sanctions for violations of the provisions of Article 64 paragraph 3 are listed in Article 192, which states that every person who intentionally trades organs or body tissues under any pretext shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

In the mentioned article, the individual responsible for the criminal act of trading human organs, referred to as "any person," is held liable for the offense. However, the article lacks a specific

definition for the term "any person." Consequently, in a broader context, the term "any person" pertains to "individuals." Nonetheless, Article 201 of the Health Law acknowledges corporations as a separate entity subject to the criminal act of trafficking human organs, along with its corresponding penalties. The articulation of the criminal act of trafficking children's body organs within the Child Protection Law is found in Chapter XII, detailing Criminal Provisions, specifically in Article 85 paragraph (1). This section states that anyone involved in the purchase and sale of a child's body organ and or tissue will face a maximum prison sentence of 15 (fifteen) years and or a fine of up to IDR 300,000,000.00 (three hundred million Rupiah). Likewise, within the aforementioned article, the term "any person" is also employed to denote the perpetrator of the criminal act of human organ trafficking. In contrast to the Health Law's wording, Article 1 number 16 of the Child Protection Law explicitly defines "any person" as either an individual or a corporation. Consequently, considering the provided description and supplemented by legal clauses relating to organ and or tissue transplantation trade, Law No. 36/2009 concerning health has been incorporated into these criminal stipulations [41].

Under both laws, individuals involved in human organ trading are liable to imprisonment and fines. The inclusion of imprisonment and fines in human organ trading cases aims to prevent such illegal acts, provide strict sanctions, and uphold the principles of justice and human rights. A law that plays a role in protecting human interests in its implementation must consider three fundamental elements of law: legal certainty, expediency, and justice [42]. Therefore, the imposition of criminal sanctions in the form of imprisonment and fines for human organ trading is expected to have a deterrent effect on the perpetrators, serve as a lesson for others, and fulfill the demands of justice and legal certainty in society.

5. CONCLUSION

The ever-increasing trade in human organs is ethically contradictory because it commodifies the human body, has the potential to lead to exploitation of the vulnerable, and conflicts with altruism. Human organ trafficking challenges the teachings of Christianity, Islam, Hinduism, and Buddhism. In Indonesia, the government has a vigorous legal framework to address human organ trading by prioritizing prohibitions, sanctions, and penalties as preventive measures as stipulated in the Child Protection Law and the Health Law. The alignment between ethical considerations and legal measures demonstrates the need for a balanced approach that not only protects human dignity and well-being but also aligns with Indonesia's commitment to ethical healthcare practices.

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