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JURIDICAL ANALYSIS OF CRIMINAL LAW ENFORCEMENT IN THE CRIME OF ORGAN TRAFFICKING

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KEYWORDS

Law, Crime, Trafficking, Organ.

ABSTRACT

This study aims to analyze criminal law enforcement related to organ trafficking cases. This research includes examining the conformity between existing legal regulations and practices in the field, identifying obstacles in law enforcement, and evaluating the effectiveness of measures that have been taken to deal with organ trafficking. The research method used is empirical. The results show that the main obstacles in handling this case include recovery and rehabilitation services for victims from health and social aspects that are appropriate to the needs of victims. This research concludes that legal regulations related to Organ Trafficking Crime are still incomplete. In addition, handling victims is not only the responsibility of the Police but also the Government and community institutions. It is suggested that the prevention and handling of Organ Trafficking should be optimized and integrated through synergistic cooperation between the community, Government, and community institutions in combating this crime.

INTRODUCTION

The trade of human organs has become a crucial issue in criminal law enforcement in many countries, including Indonesia. The rapid development of human organ transplantation has posed significant challenges in preventing and prosecuting the commercialization of human organs. As a country that upholds humanitarian values, Indonesia strictly prohibits the buying and selling of human organs, as stipulated in various laws and regulations, such as Law No. 36 of 2009 on Health and Law No. 21 of 2007 on the Eradication of Human Trafficking. However, despite these legal prohibitions, the illegal trade of human organs continues to occur. This phenomenon presents a significant challenge for law enforcement, especially in addressing the increasingly sophisticated methods of operation used by perpetrators driven by advances in information technology. This crime involves domestic actors and transnational networks that exploit legal loopholes and weak enforcement in various countries (Abdullah & Fatriansyah, 2022)(SYAMAIDZAR F, 2024).

Globally, the trade of human organs is a rising transnational crime. The World Health Organization (WHO) estimates that only 10% of the global demand for organ transplants is legally met, with the remaining needs being supplied through the black market (Ruslan & Yudiarmansyah, 2016). The high demand for organs, particularly kidneys and livers, has created a highly profitable black market with relatively low risks for those involved in the illegal trade. One of the primary driving factors behind organ trafficking is the economic disparity between developed and developing countries, often pushing individuals from poorer nations to sell their organs(Wibisono, 2020). Organ trafficking often occurs in the context of "poverty traps," where individuals living in extreme poverty are compelled to sell their organs for survival(Wibisono, 2020)(Wahyu, 2020). Beyond economic factors, weak law enforcement in many developing countries also contributes to the rampant trade in

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human organs. In many cases, Government officials are either directly or indirectly involved in organ trafficking networks, either by providing protection or by facilitating illegal activities(SYAMAIDZAR F, 2024)(Dheva, 2022).

As a developing country, Indonesia is not immune to the problem of organ trafficking. The illegal organ trade in Indonesia often exploits the economic vulnerability of the Population, the lack of legal awareness, and weak enforcement mechanisms. Several high-profile cases, such as the kidney-selling scandal in Bekasi, have demonstrated how deeply embedded the illegal organ trade is in society, involving various actors(Basuki et al., 2024). While Indonesia has legal frameworks that prohibit the sale of human organs, the enforcement of these laws has been far from adequate. One major issue is the lack of stringent measures from law enforcement agencies and the presence of legal loopholes. For example, although Law No. 36 of 2009 on Health strictly forbids the commercialization of organs, no specific regulations address the issue of organ trafficking, particularly regarding the methods used by perpetrators (Abdullah & Fatriansyah, 2022)(Wibisono, 2020).

Several studies have highlighted the challenges faced by law enforcement in addressing organ trafficking. Research by M. Zen Abdullah and Fatriansyah (2022) found that the legal enforcement of organ trade offenses has yet to meet expectations, as neither the Indonesian Penal Code nor the Health Law contains clear articles defining organ trade offenses. Another study by Ruslan Abdul Gani (2016) emphasized the need for legal reform in addressing organ trafficking by integrating Islamic law and health law. Although both Islamic law and health law strictly prohibit organ trade, the practice continues due to weak enforcement and insufficient oversight.

This research is critical for providing an in-depth analysis of criminal law enforcement in cases of organ trafficking. The study aims to identify legal loopholes and offer recommendations to ensure the implementation of existing laws more effectively. The urgency of this research is further highlighted by the fact that organ trafficking involves both domestic and international actors, making it a challenging crime to combat. This study offers a novel approach by combining the perspectives of criminal law and criminology in analyzing organ trafficking. Additionally, it will examine the role of Government and society in preventing and handling organ trade cases while proposing more comprehensive legal reforms.

This study aims to Analyze the enforcement of criminal law concerning organ trafficking in Indonesia, Identify legal gaps in existing regulations related to organ trafficking, and Provide recommendations to improve policies and law enforcement regarding organ trafficking in Indonesia. This research is expected to contribute significantly to efforts in preventing and addressing organ trafficking cases in Indonesia. The findings are intended to assist law enforcement officers, policymakers, and the public better understand the issue and how to combat it. Additionally, the study is expected to serve as a basis for more effective legal reforms addressing organ trafficking(Agustina, n.d.).

This research has broad implications for legal, social, and economic contexts. Legally, it is hoped that the study will encourage legislative reforms related to organ trafficking. Socially, it is expected to raise public awareness about the dangers of organ trafficking and the importance of reporting such cases. Economically, the research aims to provide solutions for individuals trapped in poverty so that they do not resort to selling their organs for survival.

METHOD RESEARCH

This research adopts the empirical method to analyze criminal law enforcement in organ trafficking cases. Empirical methods in legal research involve observation and data collection from the public/informants to answer research questions (Ibrahim et al., 2023; Tan, 2021). This approach differs from normative or doctrinal methods that emphasize analysis of legal theories, regulations, and legal literature. Using empirical methods allows researchers to obtain concrete and relevant data directly from the field through observation, interviews, and the collection of relevant legal documents. Thus, the data collected reflects the reality and practices in the field. The location of this research is in Cirebon Regency. The first stage in this research method is the collection of primary and secondary data. Primary data will be collected through in-depth interviews with law enforcement officials willing to provide information. In addition, field observations will be conducted to directly observe the law enforcement process and practices that occur in the related environment. Secondary data will be obtained from official documents, such as laws and regulations, court decisions, and relevant academic literature.

Furthermore, the collected data will be analyzed using a qualitative approach. Qualitative analysis allows researchers to understand the phenomenon under study deeply. The results of this analysis will provide deep insight into criminal law enforcement in dealing with organ trafficking cases.

RESULTS AND DISCUSSION

The Juridical Basis of the Crime of Organ Trafficking

Criminal law regulations in Indonesia regarding organ trafficking are regulated through several laws and regulations that aim to protect human rights and public health. One of the primary laws is Law No. 17/2023 on Health. This is emphasized in Article 345 of Law 1/2023 which regulates the criminal act of buying and selling human organs, tissues, and blood, which reads in full: "Any person who for any reason trades in human organs or body tissues, shall be punished with imprisonment of 7 (seven) years or a maximum fine of category VI, namely IDR 2 billion or human blood, shall be punished with imprisonment of 3 years or a maximum fine of category IV, namely IDR 200 million" (Agustina, 2015.). In addition, Article 346 of Law 1/2023 stipulates:

- 1. "Any person who commits commercialization in the implementation of human organ or tissue transplantation or human blood transfusion shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of category V, namely Rp500 million."
- 2. "Transplantation of human organs or human tissues or transfusion of human blood as referred to in paragraph (1) may only be carried out for humanitarian purposes."

Furthermore, the prohibition of organ sales is regulated in the current Health Law, which is emphasized in Article 124 paragraph (3), which reads: "Organs and body tissues as referred to in paragraph (1) are prohibited from being commercialized or traded for any reason." The concept of selling human organs according to the elements in the Health Law includes unlawful acts involving the deliberate removal and provision of human organs or tissues, either voluntarily or through coercion, to obtain profit. In this context, the buying and selling of human organs or tissues falls under human trafficking due to the purpose of exploitation for profit, such as through human organ or tissue transplantation. Organ or tissue transplants are only performed to cure disease and restore health and for humanitarian purposes. It involves the transfer of organs or tissues from a donor to a recipient patient based on medical needs.

Perpetrators of organ and tissue sales are punishable under Article 432 of the following Health Law:

- 1. "Any person who commercializes the implementation of organ or tissue transplantation as referred to in Article 124 paragraph (3) shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp500 million."
- 2. "Any person who trades in organs or body tissues for any reason as referred to in Article 124 paragraph (3) shall be punished with a maximum imprisonment of 7 (seven) years or a maximum fine of Rp2 billion."

Based on the criminal provisions in Article 345 letter a of Law 1/2023 and Article 432 paragraph (2) of the Health Law, the principle of lex specialis derogat legi generali can be applied, which means

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that special laws (Health Law) override general laws (Criminal Code or Law 1/2023) (Agustina, 2015.). However, in practice, investigators can apply multiple articles to a criminal offense involving selling and purchasing human organs or tissues. In other words, if the elements of the criminal offense are met, investigators can apply various relevant articles. In addition, Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons also regulates the criminal aspects of organ trafficking. This law classifies organ trafficking as part of the crime of trafficking in persons, which includes recruitment, transportation, harboring or receipt of a person by threat or use of force, abduction, fraud, or abuse of power for exploitation, including exploitation of organs. Criminal sanctions for these offenses include heavy prison sentences and significant fines (Abdullah & Fatriansyah, 2022). In addition to these two primary laws, various implementing regulations and regulations from the Ministry of Health also provide technical and procedural guidelines regarding organ transplantation and supervision of medical practices to prevent organ trafficking. An analysis of these regulations shows that Indonesia has a relatively comprehensive legal framework, but its enforcement and implementation still require further improvement and strengthening to combat organ trafficking effectively.

In responding to various modes of T.P.P.O., the Government emphasized its commitment through Law No. 17 of 2023 on T.P.P.O. Eradication, which was strengthened by issuing various derivative regulations for its implementation in the field. The Government has also established the T.P.P.O. Prevention and Handling Task Force (GT PP TPPO) at the central and regional levels, which is implemented through action plans and the issuance of various standard operating procedures related to the prevention and handling of T.P.P.O. (KemenPPPA, 2023). The fundamental difference in the resolution of Organ Trafficking cases compared to other criminal cases lies in the treatment of victims. By the mandate of Article 28 of the Law, the procedural process from investigation, prosecution, to examination in court must follow the criminal procedural law unless there are other arrangements in the T.P.P.O. Eradication Law. In protecting victims of criminal acts, two aspects are essential to understand: first, legal protection to prevent a person from becoming a victim of a criminal act, which reflects the protection of human rights. Second, protection to ensure that victims of criminal acts receive guarantees or compensation for the suffering or losses they experience. This form of compensation can be in the form of rehabilitation to restore the original condition, apology to restore inner balance, provision of compensation, restitution, financial compensation, guarantees, and social assistance for the welfare of victims.

In T.P.P.O., the focus is not only on law enforcement against perpetrators but also on comprehensive victim protection. This includes efforts to identify victims, provide medical and psychological assistance, and return their lives to better conditions through rehabilitation and reintegration programs. This approach is different from other criminal cases where the treatment of victims is often not as comprehensive in terms of rehabilitation and social welfare guarantees. Therefore, the handling of T.P.P.O. focuses on the holistic recovery of victims and compensating for their needs, which aligns with human rights principles and victim protection in criminal law. The forms of protection for victims of T.P.P.O., according to Law Number 21 Year 2007, include the following:

- 1. The right to legal assistance, as stipulated in Article 35, confirms that during the investigation, prosecution, and examination in court, witnesses and victims have the right to be accompanied by an advocate or other necessary companion. This article underscores the importance of protection and recognition of the role of advocates in ensuring that the rights of witnesses and victims are protected and respected throughout the legal process. With this right, witnesses and victims can obtain the legal assistance necessary to understand the legal process, provide appropriate testimony, and ensure that their interests are considered relatively and transparently within the justice system.
- 2. The provision of unique service spaces in the Police, as stipulated in Article 45 paragraph (1), confirms the existence of facilities designed to facilitate various activities related to public and police services. These facilities include guest rooms for public complaints or reporting, counseling and examination rooms for private case handling, control rooms for security and supervision, and restrooms for officers on duty. The provision of these spaces aims to improve the effectiveness and efficiency of public services and ensure privacy and security for both the reporting public and officers on duty in handling legal cases. This reflects a commitment to providing an environment that supports a fair, transparent, and responsive law enforcement process to the community's needs.

- 3. Establishing the Integrated Service Center for Women and Children Empowerment (P2TP2A), as stipulated in Article 46 paragraph (1), is an initiative to protect better witnesses and victims of criminal acts, especially women and children. P2TP2A is designed as an integrated service center providing various assistance and support forms, including counseling, medical, legal, and social rehabilitation services. The main objective is to increase accessibility to protection and strengthening services for victims, ensure that their rights are recognized, and assist in the post-traumatic recovery process. The establishment of P2TP2A also aims to integrate a holistic approach in handling cases of violence against women and children, as well as improve coordination between agencies in efforts to prevent and enforce the law against such crimes.
- 4. The provision of legal protection, as stipulated in Article 47, confirms that witnesses, victims, and their families have the right to obtain protection from the Indonesian National Police in the face of threats to their safety, life, or property. This protection includes preventive and responsive measures to secure their safety during the legal process, both before, during, and after court. The Police are responsible for providing escorts, security, or other necessary measures to ensure the safety and well-being of victims and their families during the judicial process. This demonstrates a commitment to protecting the fundamental rights of individuals and preventing intimidation or repression of those involved in the legal process as witnesses or victims of crime.
- 5. The right to restitution for witnesses and victims, as stipulated in Article 48 paragraph (1), indicates that victims of human trafficking crimes or their heirs have the right to restitution. This restitution is a form of financial compensation given to the victim as a substitute for the losses from the criminal offense. The determination of restitution aims to restore the victim financially as well as provide recognition for the suffering they have endured. This represents a systematic effort to ensure that victims receive justice not only in the legal process but also in recovering from the negative impacts arising from the crime of human trafficking.
- 6. The provision of health rehabilitation, social rehabilitation, repatriation, and social reintegration for victims of criminal acts, as stipulated in Article 52 paragraph (1), paragraph (2), and paragraph (3), emphasizes the commitment to restore victims as a whole. Health rehabilitation includes medical and psychological services to support victims' physical and mental recovery. Meanwhile, social rehabilitation aims to help victims reintegrate into society by providing social support, skills training, and access to reintegration programs. Repatriation is associated with the process of returning victims to their home environment or a safe place after experiencing violence or exploitation. This article aims to ensure that victims receive comprehensive assistance to restore their lives after experiencing the severe impact of criminal acts, with the ultimate goal of ensuring they can live independently and self-sufficiently in society.
- 7. Protection abroad, as stipulated in Article 54, paragraphs (1) and (2), emphasizes the responsibility of the Government of the Republic of Indonesia to protect and repatriate victims of criminal acts who are abroad. Through its representatives in foreign countries, the Government is committed to providing the necessary protection to victims, including consular services and assistance in their repatriation efforts to Indonesia, financed by the state. For victims who are foreign nationals, the Government also tries to coordinate their protection and repatriation to their home countries with the help of foreign representatives in Indonesia. This shows the Government's concrete efforts to ensure that victims of criminal acts who are abroad continue to receive protection and support by the principles of humanity and international justice.

Position and Role of Law Enforcement Officers

The Women and Children Service Unit (P.P.A. Unit) is a specialized unit within the police force tasked with providing protection services to women and children who are victims of crime, including organ trafficking. This unit provides a safe and supportive environment for victims to report incidents. In addition, the P.P.A. Unit also provides legal assistance, counseling, and rehabilitation to help victims recover from the physical and psychological trauma caused by the crime. In doing so, the P.P.A. Unit ensures that victims' rights are protected and receive the necessary support to recover and move on with their lives. In its efforts to protect women and children from organ trafficking, the P.P.A. Unit also initiated various prevention and community empowerment programs. These programs aim to raise

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public awareness about the dangers of organ trafficking and the importance of protecting vulnerable groups. The P.P.A. Unit works with communities to organize educational campaigns that teach how to identify and report signs of organ trafficking. In addition, the P.P.A. Unit also provides training to other law enforcement officers to ensure they have the necessary skills and knowledge to handle cases involving organ trafficking, resulting in a more effective response.

Flow of Handling Mechanism for Victims of Crime

Law enforcement procedures in organ trafficking cases involve a series of essential steps to ensure the fairness and effectiveness of law enforcement. Regulation of the Chief of the National Police of the Republic of Indonesia Number 3 of 2008 concerning Special Service Room and Procedures for Witness and Victim Examination of Human Trafficking Crimes explains that the process of receiving reports of T.P.P.O. victims involves several stages:

- 1. the Women and Children Protection Unit personnel receive the victim;
- 2. followed by an interview, observation, and assessment of the victim's situation by the investigator or officer:
- 3. if the victim is traumatized, they will be taken to the Integrated Service Center (PPT) at Bhayangkara Hospital for medical-psychological treatment and monitoring;
- 4. if rest is needed, the victim is escorted to a restroom or safe place;
- 5. if the victim is in good condition, the investigator may interview to make a police report; the Women and Children Unit officer is responsible for making the report and may visit the scene of the crime to search for and collect evidence:
- 6. the report number is registered at the Integrated Police Service Center (S.P.K.T.);
- 7. officers will escort victims who need to be referred to PPT or other places with a clear explanation;
- 8. if a visa is required, the victim will be taken to PPT for medical examination and visa.
- 9. Cases not meeting the criminal elements will be assisted with counseling and psychological approaches.

As the recipient of the complaint, the Women and Child Protection Unit can conduct an initial evaluation of the information received before investigating the Organ Trafficking Crime in detail. This initial evaluation is also helpful in identifying safety risks that the victim may face. Based on the results of research at the office of Subdit IV Renakta Ditreskrimum Polres Cirebon, there are several standard procedures for taking information and testimony of victims of human trafficking crimes carried out by investigators, among others:

- 1. The collection of information or testimony must focus on fulfilling the elements of the applicable article and be carried out by investigators who have special knowledge and have been trained to handle cases of trafficking in persons, including conducting interviews.
- 2. If the victim requests, the investigator taking the statement must be the same gender as the victim.
- 3. The statements or testimony should be taken in a professional environment or atmosphere that is non-confrontational and non-intimidating to the victim. If the victim wishes to have her statement heard outside the police station, the request should be honored unless the interests of the investigation require otherwise.
- 4. The request should be approved if the victim requests to be accompanied by a friend, social worker, or officer from a non-governmental organization during the examination process. However, the victim must be explained that the companion is only present to support handling the case, not as a witness.
- 5. Victims are allowed to leave the examination room at their own pace during each session, which should not last longer than two hours if possible.
- 6. Questions asked, and examination techniques should be conducted in a manner that does not victimize the victim. Investigators should not ask questions that cast doubt on the victim's integrity or blame the victim for the crime directly.

Investigators in the Office of Subdit IV Renakta Ditreskrimum Polres Cirebon conduct evidence in cases of human trafficking to describe the chronology of events based on the results of investigations

that have been carried out. They present all information collected systematically, including valid evidence and evidence related to the perpetrator, victim, time, and place of the incident. A clear link between these evidences is established to describe the sequence of events that explains the occurrence of the organ trafficking crime. The case involved individuals who were considered legal adults and suspected of committing the crime of selling organs, which is a punishable offense regardless of gender, age, or other background. One of the main focuses was to prove that the suspect sold the victim's organs based on post-mortem evidence, other evidence, as well as the suspect's confession. The concept of exploitation, in this case, encompasses a wide range of acts that can involve victims by force or without consent, including prostitution, forced labor, slavery, and other oppression, as well as the illegality of transplanting organs or tissues for material or immaterial gain.

Investigators of Sub-Directorate IV Ditreskrimum Polrebon often face challenges in providing rehabilitation services for victims of human trafficking, especially in restoring their physical and mental health conditions. By the provisions of Article 51 paragraph (1) of Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons, health rehabilitation should aim to return victims to their original condition, both physically and psychologically, by providing safe, protected facilities, and appropriate medical support. In addition, social rehabilitation is also essential to help victims overcome mental trauma and restore their role in the family and community through services such as spiritual guidance and counseling. Police investigators have primary responsibility for law enforcement against human trafficking crimes, including ensuring the provision of effective rehabilitation for victims as part of efforts to restore social justice and protect victims' rights. Protection of organ trafficking victims involves a series of efforts aimed at protecting the rights of victims and facilitating the recovery process after being victimized by the crime. Protection efforts include providing access to physical and mental health services, legal aid, safe shelter, and social and economic assistance to help victims restart their lives. In addition, victim recovery involves psychological rehabilitation, social support, and reintegration into society. This review of protection and recovery efforts is essential to evaluate the effectiveness of the victim protection system, identify unmet needs, and direct future steps to improve support for organ trafficking victims.

CONCLUSION

Based on the results of the research, it was found that the main obstacles in handling organ trafficking cases include challenges in providing recovery and rehabilitation services for victims that suit their health and social needs. The research identified that legal regulations related to organ trafficking crimes still have shortcomings that need to be improved. In addition, handling victims is not only the responsibility of the Police but also requires the active involvement of Government and community institutions. In conclusion, it is recommended that the prevention and handling of organ trafficking crimes be optimized through synergistic cooperation between the community, Government, and community institutions to strengthen joint efforts in combating this harmful crime.

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