

ILLEGAL ORGAN TRANSPLANTATION AS A MODUS OPERANDI OF TRAFFICKING IN PERSONS: A LEGAL AND HUMAN RIGHTS ANALYSIS OF VICTIM PROTECTION

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Abstract

This study aims to first analyze the juridical construction of illegal organ transplantation as a modus operandi of human trafficking in the Indonesian positive legal system; and second, to examine the form and effectiveness of legal protection for victims of illegal organ transplantation within the framework of health law and the Law on the Eradication of Trafficking in Persons. The method used in this paper is a normative juridical method, with a legislative approach. The results of this study are that the construction of criminal law regulations against illegal organ transplantation in Indonesia has not been built as a complete and independent legal regime, but is spread across various sectoral laws and regulations and the effectiveness of legal protection for victims of illegal organ transplantation in Indonesia is still normative-symbolic, not yet transformational. The state has banned its acts, but has not adequately guaranteed the recovery of victims and the breaking of the cycle of exploitation. This condition shows the urgency of reforming criminal law policies that not only place illegal organ transplantation as a serious crime, but also integrate a comprehensive approach to victim protection through strengthening victim identification, restitution, rehabilitation, and cross-sectoral and cross-country cooperation.

Keywords: *Illegal Organ Transplantation; Trafficking In Persons; Human Rights;*

INTRODUCTION

Human beings are seen as dignified subjects who have the right to bodily integrity, a sense of security, and protection from all forms of violence and exploitation. The guarantee of these rights is affirmed directly in the 1945 Constitution of the Republic of Indonesia, especially Article 28G paragraph (1) which states that everyone has the right to personal personal

protection, honor, dignity, and the right to a sense of security from the threat of fear, and Article 28I paragraph (4) which affirms that the protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government.¹ The practice of illegal organ transplantation thus not only reduces the human body to an object of economic transactions, but is also a serious violation

¹ Moody Rizqy Syailendra, "Personal Data Protection Law in Indonesia: Challenges and

Opportunities," *Indonesia Law Review* 14, no. 2 (2024), <https://doi.org/10.15742/ilrev.v14n2.4>.

of citizens' constitutional rights to a sense of security and self-protection. The placement of illegal organ transplants as a violation in the health sector ignores the constitutional dimension and human rights, so an approach is needed that positions it as a form of human exploitation that reflects the state's failure to fulfill its constitutional obligations.²

The realization of the state's constitutional obligation to protect human dignity and the right to a sense of security is reflected in the criminal law regulation regarding the crime of trafficking in persons. Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons constructs trafficking as a series of acts of recruitment, transportation, shelter, delivery, transfer, or acceptance of a person carried out through violence, threats of violence, fraud, abuse of power or vulnerable positions, as well as the provision of benefits, both nationally and cross-nationally, for the purpose of exploitation. The formulation emphasizes that the essence of the crime of trafficking in persons lies in the exploitation of human beings as dignified subjects, so that this crime is not only a violation of criminal law,

but also a violation of human rights that is contrary to human values as guaranteed in Pancasila and the Constitution of the Republic of Indonesia in 1945. In practice, trafficking in persons develops as an organized crime involving national and international networks, with the aim of gaining economic gain and power through systematic criminal activities.³

The development of human trafficking crimes shows a transformation of modus operandi that is increasingly complex and adaptive to social, economic, and technological dynamics. If in the beginning human trafficking was more associated with sexual exploitation and forced labor, today the practice has evolved into more covert forms of exploitation, one of which is the exploitation of the human body for the purpose of illegal organ transplantation. This modus operandi takes advantage of the structural inequality between the high demand for organs for medical needs and the limited availability of legitimate donors, thus opening up space for the practice of human exploitation

² Leli Tibaka and Rosdian Rosdian, "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia," *FIAT JUSTISIA: Journal of Legal Science* 11, no. 3 (2018): 266, <https://doi.org/10.25041/fiatjustisia.v11no3.1141>.

³ Brian Septiadi Daud and Eko Sopoyono, "The Application of Criminal Sanctions on Human Trafficking in Indonesia," *Indonesian Journal of Legal Development* 1, no. 3 (September 24, 2019): 352–65, <https://doi.org/10.14710/jphi.v1i3.352-365>.

disguised as humanitarian action or medical necessity.⁴

In practice, illegal organ trafficking is carried out through a systematic recruitment pattern by taking advantage of vulnerable victims' conditions, such as poverty, unemployment, low levels of education, and a lack of understanding of medical risks and legal implications.⁵ Perpetrators often use personal approaches or digital platforms to promise jobs, financial assistance, or certain compensation, which in reality leads to the removal of the victim's organs without free and adequately informed consent. This pattern shows that illegal organ transplantation is not a stand-alone event, but rather an integral part of the crime of trafficking in persons that makes the human body an object of economic exploitation.⁶

Based on various global reports and studies, it is estimated that the illegal organ

trade generates huge profits and involves thousands of unauthorized transplants every year. For example, some estimates suggest that about 10% of all organ transplants in the world involve illegally obtained organs, and it is estimated that these transactions generate between \$600 million and \$1.2 billion in revenue per year.

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This phenomenon is also reflected at the national level, as revealed in an investigation into an organ trafficking network in Chandrapur, India, where police arrested a number of perpetrators who allegedly recruited donors from poor communities who were then transported to Cambodia for illegal kidney transplants.⁸ Similar cases have also spread across countries, with one "kingpin" of the organ trafficking network being arrested after returning from Iran to India in the 2024–2025 investigation.

⁴ Jennifer Lewis and Dale Gardiner, "Ethical and Legal Issues Associated with Organ Donation and Transplantation," *Surgery (Oxford)* 41, no. 9 (September 2023): 552–58, <https://doi.org/10.1016/j.mpsur.2023.06.010>.

⁵ Elmi Muller, Beatriz Dominguez-Gil, and Dominique Martin, "The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018 Edition) Introduction," *Transplantation* 103, no. 2 (February 2019): 217–217, <https://doi.org/10.1097/TP.0000000000002541>.

⁶ UNODC, "Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal," *United Nations Office on Drugs and Crime*, no. September (2015): 149, [https://www.unodc.org/documents/human-](https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf)

[trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf](https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf).

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"https://www.unodc.org/unodc/frontpage/2024/June/Explainer_-_Understanding-Human-Trafficking-for-Organ-Removal.Html," n.d., [https://www.unodc.org/unodc/frontpage/2024/June/explainer_-_understanding-human-trafficking-for-organ-removal.html?utm_source=chatgpt.comhttps://www.unodc.org/unodc/frontpage/2024/June/explainer_-_understanding-human-trafficking-for-organ-removal.html?](https://www.unodc.org/unodc/frontpage/2024/June/explainer_-_understanding-human-trafficking-for-organ-removal.html?utm_source=chatgpt.comhttps://www.unodc.org/unodc/frontpage/2024/June/explainer_-_understanding-human-trafficking-for-organ-removal.html?utm_source=chatgpt.com)

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"https://www.unodc.org/unodc/frontpage/2024/June/Explainer_-_Understanding-Human-Trafficking-for-Organ-Removal.Html."

In the Indonesian context, a trafficking syndicate for the purpose of organ transplantation was also revealed when the Metro Jaya Police arrested 12 suspects involved in the kidneys trade to Cambodia, using recruitment methods through social media and involving a number of officials and immigration agents. This case shows that legal protection for victims of organ trafficking in Indonesia is still not optimal, especially in terms of cross-sector supervision and handling.⁹

Illegal organ trading is also rampant in various other regions. For example, in the United Kingdom, the case of former Nigerian senator, Ike Ekweremadu, received international attention for bringing a young man from Africa for an illegal kidney transplant. Similar practices have also been reported in Kenya, as well as in conflicts and fragile situations in some African countries, where criminal groups exploit vulnerable citizens for organ purposes.

The growth of the illegal organ trade is also driven by the increased use of social media as a donor recruitment tool, where perpetrators promise financial rewards that are not proportional to the medical and legal risks faced by victims. However, law enforcement against these crimes in many

countries, including Indonesia, still faces various structural obstacles, such as the complexity of the perpetrator network, the lack of legitimate evidence, and ineffective inter-agency coordination. Strict criminal proof principles are often a challenge in effectively ensnaring perpetrators.

Indonesia already has legal instruments that prohibit the practice of commercialization of human organs and regulate the eradication of human trafficking, existing normative arrangements are not fully able to provide legal certainty and effective protection for victims of illegal organ transplantation. One of the fundamental problems lies in the ambiguity of norms in Law Number 17 of 2023 concerning Health, especially related to the boundaries between organ transplantation for humanitarian purposes and the practice of buying and selling human organs. The unclarity of this normative boundary poses difficulties in law enforcement practice, especially in determining the appropriate qualification of criminal acts.

Law Number 17 of 2023 concerning Health expressly prohibits the commercialization of human organs and/or tissues. Article 124 paragraph (3) states that organs and body tissues are prohibited from

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"<https://www.metrotvnews.com/read/KWDC08E>

z-3-Pegawai-Imigrasi-Bali-Jadi-Tersangka-Penjualan-Ginjal-Ke-Kamboja?utm_source," n.d.

being commercialized or traded for any reason, which is strengthened by the provisions of criminal sanctions in Article 432 paragraph (2). However, the law also opens up space for organ transplants for humanitarian purposes. The problem is that this law does not provide clear and measurable criteria for what is meant by "humanitarian purposes", thus opening up a wide space for interpretation and potential abuse. The explanation of the article stating that the provision is "quite clear" actually emphasizes the vagueness of norms in organ transplant arrangements.

The ambiguity of these norms has a direct impact on the difficulty of law enforcement officials in qualifying the practice of illegal organ transplantation, whether positioned as a crime in the health sector or as part of a criminal act of trafficking in persons. In practice, law enforcement often tends to use a health law approach alone, focusing on administrative or criminal violations related to organ commercialization. This approach ignores the inherent dimension of human exploitation in the practice of illegal organ transplantation, especially when the donor recruitment process is carried out through fraud, abuse of vulnerable positions, or economic pressure, which is the main element of the crime of trafficking in

persons as formulated in Law Number 21 of 2007.

The problem of legal qualifications has serious implications for the position and protection of victims. When illegal organ transplantation is only understood as a violation of health law, the victim is not positioned as a victim of human trafficking, but simply as a party involved in illegal transactions. As a result, victims lose rights that should be guaranteed in the regime to eradicate trafficking, such as the right to rehabilitation, restitution, psychosocial rehabilitation, and protection from rehabilitation. This condition shows that the ambiguity of norms not only causes legal uncertainty, but also has a direct impact on the neglect of victims' human rights.

Furthermore, the fragmentation of the arrangement between the Health Law and the Law on the Eradication of Trafficking in Persons shows that an integrated legal approach to dealing with illegal organ transplants has not been developed. The lack of synchronization of law enforcement norms and guidelines causes law enforcement officials to face a dilemma in determining the legal regime to be used, especially in the context of organized and transnational crimes. As a result, although the practice of illegal organ transplantation continues to increase, law enforcement

against perpetrators and protection of victims has not been running optimally.

Legal protection for victims is a fundamental element in countering the crime of trafficking in persons, including in the context of illegal organ transplantation. From a human rights perspective, victims should not be positioned solely as evidence in the criminal justice process, but rather as legal subjects who have the right to protection, restoration, and justice. This principle is in line with the constitutional obligation of the state to guarantee the right to a sense of security, self-protection, and restoration for everyone who is a victim of a serious crime.

However, in law enforcement practice in Indonesia, victims of illegal organ transplants are often not treated as victims of human trafficking. When the practice of illegal organ transplantation is qualified only as a violation of health law, the victim is likely to be seen as a party who "participates" or "consents" to the act, even if the consent is obtained through fraud, abuse of a vulnerable position, or economic pressure. This approach ignores the reality of the unequal power relationship between perpetrator and victim, and contradicts the principle of *informed consent* which requires free, conscious, and non-coercive consent.

Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons has actually provided a relatively comprehensive protection framework for victims of trafficking, including the right to medical and social rehabilitation, restitution, and protection during the judicial process. However, in the case of illegal organ transplantation, the protection framework is often not applied optimally due to the doubts of law enforcement officials in qualifying the perpetrator's actions as a crime of human trafficking. As a result, victims lose access to the recovery mechanisms that are supposed to be guaranteed by law.

The absence of adequate legal protection also has an impact on the victimization. In addition to incurring long-term medical risks from organ harvesting, victims often face social stigma, psychological distress, and legal uncertainty regarding their status in the judicial process. In many cases, victims are positioned as mere witnesses without obtaining a guarantee of comprehensive recovery, both physically, psychologically, and socio-economically.

Therefore, legal protection for victims of illegal organ transplantation must be placed within the framework of eradicating trafficking in persons with a *victim-centered approach*. This approach

requires an explicit recognition that illegal organ transplantation is a form of human exploitation, so that victims are entitled to all rights of protection as stipulated in the human trafficking legal regime. Without a victim-oriented approach, law enforcement not only fails to provide substantive justice, but also potentially perpetuates the practice of exploitation of the human body.

Although the issue of human trafficking and illegal organ transplantation has been discussed in various legal studies, existing studies generally still position illegal organ transplantation as a health crime or a mere violation of medical ethics. The study tends to focus on normative prohibitions and criminal sanctions, without comprehensively constructing illegal organ transplantation as part of the *modus operandi* of human trafficking-oriented criminal acts. As a result, the dimensions of human rights and victim protection are often marginalized in existing juridical analyses.

A number of studies in the past decade have examined illegal organ transplantation from the perspective of criminal law and trafficking in persons. Sinaga (2023) in his research on illegal organ trafficking as a form of human trafficking, concluded that the practice of buying and selling human organs juridically has fulfilled the element of

exploitation as formulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. The results of this study confirm that the recruitment of donors through fraud and the exploitation of vulnerable economic conditions cannot be seen as legitimate consent, but rather as a form of abuse of vulnerable positions. However, the research still focuses on the construction of criminal elements and has not elaborated in depth on its implications for legal protection and victim recovery.

Furthermore, Fadillah and Mahmud (2023) examined human organ trafficking as a cross-border crime and concluded that the practice was carried out through an organized network involving many actors, including intermediaries and medical parties, by taking advantage of differences in legal systems between countries. The results of this study show that the transnational character of illegal organ trafficking causes weak national law enforcement and makes it difficult for perpetrators to be held criminally accountable. Although this study succeeded in confirming the dimensions of organized and transnational crime, the focus of the study still focused on the aspects of crime

and perpetrators, without placing the victim as the main subject of legal protection.¹⁰

Another study by Christiani and Yoga (2024) examined illegal organ transplantation from an ethical and legal perspective, with research results showing that the practice is contrary to humanitarian principles, medical ethics, and the right to the integrity of the human body. This study confirms that donor consent obtained under conditions of economic pressure cannot be categorized as *valid informed consent*. However, the ethical approach used in the study has not been fully integrated with the juridical analysis regarding the qualification of illegal organ transplantation as the *modus operandi* of human trafficking and its implications for the victim protection regime.¹¹

At the international level, Yu and Zhai (2023) through their study on organ trafficking and *transplant tourism* concluded that organ trafficking is a form of *human trafficking for organ removal* that is developing globally due to the inequality between organ demand and the availability of legitimate donors. The results of this

study emphasize that organ trafficking cannot be seen as a purely medical problem, but rather as a serious crime against human rights that demands a cross-jurisdictional legal and policy response. However, this study does not specifically discuss how the construction of national law, particularly in Indonesia, should integrate the health law regime with the regime to eradicate trafficking in persons to ensure legal protection for victims.¹²

Based on these previous studies, it can be seen that studies on illegal organ transplantation are still partial and fragmented. Some studies emphasize the normative aspects of human trafficking, others highlight the dimension of transnational crime or medical ethics, but there has been no study that comprehensively constructs illegal organ transplantation as the *modus operandi* of human trafficking while placing the legal protection of victims as the main focus of the analysis. In addition, there has not been much research that critically examines the ambiguity of norms in the Health Act regarding the boundaries between organ

¹⁰ and A. Mahmud Fadillah, A., "Human Organ Trafficking as a Transnational Crime.", " *Balobe Law Journal Faculty of Law, Pattimura University*. 3, no. 2 (2023): 132–148.

¹¹ Mishel Angie Christiani and I Gede Perdana Yoga, "ETHICS OF ORGAN TRANSPLANTATION AND ITS IMPLICATIONS FOR THE CRIME OF ORGAN

TRAFFICKING," *Kertha Village Journal*, 12, no. 11 (2024): 4885–94.

¹² Lanyi Yu and Xiaomei Zhai, "Ethical and Policy Considerations for Organ Trafficking and Transplant Tourism: Based on the UK's First International Case of Human Trafficking for the Purpose of Organ Removal," *Health Care Science* 2, no. 5 (2023): 339–44, <https://doi.org/10.1002/hcs2.70>.

transplantation for humanitarian purposes and the practice of buying and selling organs, as well as its implications for the failure to protect victims. This analysis gap is the basis and urgency of this research.

Based on this description, illegal organ transplantation cannot be understood solely as a violation in the health sector, but as a form of human exploitation that is closely related to the crime of human trafficking. This practice shows the ambiguity of norms in legal settings, especially regarding the boundary between organ transplantation for humanitarian purposes and the practice of organ buying and selling, which has an impact on the problem of legal qualification and weak protection for victims. Previous studies have indeed discussed the normative, ethical, and transnational character aspects of organ trafficking, but have not comprehensively integrated illegal organ transplantation as a *modus operandi* of human trafficking in the context of positive Indonesian law with a victim-oriented approach. Therefore, a more in-depth study is needed to analyze the juridical construction of illegal organ transplantation as part of the crime of trafficking in persons and its implications for legal protection for victims in the Indonesian legal system. This

study aims to first analyze the juridical construction of illegal organ transplantation as a *modus operandi* of human trafficking in the Indonesian positive legal system; and second, to examine the form and effectiveness of legal protection for victims of illegal organ transplantation within the framework of health law and the Law on the Eradication of Trafficking in Persons.

PROBLEM IDENTIFICATION

The problems in this study are as follows:

1. What is the juridical construction of illegal organ transplantation as a *modus operandi* of the crime of human trafficking in the Indonesian positive legal system?
2. How to examine the form and effectiveness of legal protection for victims of illegal organ transplantation within the framework of health law and the Law on the Eradication of Trafficking Crimes?

METHOD

The method used in this paper is the normative juridical method,¹³ which is an approach that views law as a system of norms that is logically and systematically arranged. This method focuses on the study of laws and regulations and other written legal documents as a basis for answering

¹³ Mr. Zainuddin, *Understanding of legal research methods (definition, paradigm, and*

structure of formation). (Yogyakarta: CV.Istana Agency, 2019).

the legal issues being studied.¹⁴ The issue of organ trading practices in Indonesia shows that there is no legal rule that specifically regulates the act, thus creating a vacuum of norms in the national legal system. To examine this, the author applies three main approaches, namely: the legislative approach, which examines the content and structure of norms in applicable regulations; conceptual approaches, which examine legal ideas and relevant principles; and case approach, which analyzes legal practices through concrete case studies. The legal sources used in this study consist of primary legal materials,¹⁵ in the form of Law No. 1 of 1946 concerning the Criminal Code, Law Number 36 of 2009 concerning Health, Law Number 11 of 2008 concerning Information and Electronic Transactions, and Government Regulation Number 18 of 1981 concerning Clinical and Anatomical Corpse Surgery and Human Organ Transplantation. In addition, Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, as well as Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons as a relevant national legal framework for the issue of organ trafficking, was also analyzed. To enrich the

analysis, the author also refers to secondary legal materials, in the form of scientific literature such as textbooks and relevant legal journals, as well as tertiary legal materials such as legal dictionaries and *the Great Dictionary of the Indonesian Language (KBBI)*.

RESULT AND DISCUSSION

1. Construction of criminal law arrangements against illegal organ transplantation in perspective of human trafficking in Indonesia

The organizational structure of human organ trafficking has often occurred in various countries such as Yemen and Egypt. Related to the existence of organ trafficking organizations or in other languages referred to as illegal organ transplantation does not stand alone, the existence of this organization tends to be very flexible and adaptive like the existence of other organizations. In general, these organizational connections have an informal structure that is different from the structure of legal companies in general which is rigid and formal. The communication pattern built by such an organization is much more relaxed and friendly by prioritizing personal

¹⁴ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Printing, 2005).

¹⁵ and Ani Yumarni Martin Roestamy, Endeh Suhartini, *Methods of Research, Reports and*

Writing of Legal Scientific Papers at the Faculty of Law (Bogor: Law Study Program, Faculty of Law, Djuanda University, 2020).

relationships, trust, and loose hierarchies. The main actors in these networks are often individuals or small groups who have strong connections in the health sector, government, and the criminal world. They act as the brains of the operation, organizing the entire network and determining strategies. Under the main actors, there are several levels in the organization. The first level is recruiters who are tasked with finding potential donors, usually from the poor or vulnerable.

Organ trading networks often operate in fragmented structures, where no single large organization controls the entire market, as is the case in countries such as Yemen and Egypt. These small groups function independently, yet remain interconnected, making them very difficult for law enforcement officials to track and dismantle. In addition, this syndicate often has synergistic relationships with other forms of organized crime, such as human smuggling networks and drug trafficking, and involves various parties ranging from smugglers who organize organ transportation, medical personnel who perform transplants illegally, and funders from both legal and illegal sources.¹⁶

Characteristics of illegal organ networks in Egypt using *a social network analysis approach*. In a study conducted by Williams et al. in *Crime, Law and Social Change*, it was analyzed that network structures are decentralized, consisting of small subgroups with specific roles, so eradication actions require collaborative efforts across sectors and jurisdictions to close the coordination gap between syndicates and affiliated criminal plotters.¹⁷ Thus, it means that we can understand that the organizations or communities involved in illegal organ transplantation already have a complete structure from the level in the field to the highest level, namely those who occupy the head of the center or as the chairman. The existence of organizations like this, in addition to being neatly structured, also has synergy between parts neatly so that the goal can continue to be achieved to carry out illegal organ transplantation in various modes, even though today the modes of illegal organ transplantation are diverse, some stand at the same time as the crime of human trafficking, then the transplantation of illegal organs is the modus operandi. The members of organizations that have been established in this illegal organ transplant

¹⁶ Jasmine Nur Salsabila, "Rhetoric Rhetoric," *Journal of Communication, Social, and Political Science* 1, no. 7 (2024): 1–6.

¹⁷ Frederike Ambagtsheer and Roos Bugter, "The Organization of the Human Organ Trade: A

Comparative Crime Script Analysis," *Crime, Law and Social Change* 80, no. 1 (August 29, 2023): 1–32, <https://doi.org/10.1007/s10611-022-10068-5>.

organization must have done various cunning ways to gain profit. In fact, when we look further, this illegal organ transplant is in the realm of the media world that not just anyone can do for organ transplantation.

Organ transplantation is a medical procedure in the form of transplanting organs or body tissues from a donor who may be alive or have died in the body of a recipient, with the aim of replacing damaged or failed organ function. The main goal of this procedure is to save lives and improve the patient's quality of life. In addition, humanistic principles are emphasized in its implementation; These actions are only legally carried out for humanitarian purposes and are prohibited for trafficking.¹⁸ Further regarding the procedure for organ transplantation is as follows Organ transplantation, e.g. in this case kidney organ transplant, is carried out through a series of medical stages that begin with an evaluation of the health of the donor and recipient, including blood tests, HLA match, blood type, and infection-free. After being declared suitable, an organ transplant surgery is performed that is connected to the recipient's blood vessels

and urinary tract.¹⁹ Post-operatively, patients are required to undergo lifelong immunosuppressive therapy to prevent organ rejection as well as regular monitoring of organ function. This procedure has been technically regulated in the Regulation of the Minister of Health No. 38 of 2016.

Organ transplantation is regulated in various regulations, the first of which is regulated in Law No. 36 of 2009 concerning Health. Namely in the provisions of Article 64

"(1) Disease curing and health restoration can be carried out through organ and/or tissue transplantation, drug and/or medical device implants, plastic surgery and reconstruction, and the use of stem cells.

(2) Transplantation of organs and/or body tissues as intended in paragraph (1) is carried out only for humanitarian purposes and is prohibited from being commercialized. (3) Organs and/or body tissues are prohibited from being traded under any pretext".

Article 65

¹⁸ Fauziah Rachmawati, "LEGAL CERTAINTY OF ORGAN TRANSPLANTATION THAT REFLECTS HUMAN VALUES," *BHAKTI MEDIA LAW JOURNAL* 3, no. 1 (February 27, 2020), <https://doi.org/10.32501/jhmb.v3i1.34>.

¹⁹ Juni Kurniawaty, "Post-Anesthesia Care in Kidney Transplant Recipients," *Journal of Anesthesia Complications* 8, no. 1 (November 1, 2021): 39–52, <https://doi.org/10.22146/jka.v8i1.7489>.

"Organ and/or body tissue transplantation can only be carried out by health workers who have the expertise and authority for it and are carried out in certain health service facilities. The removal of organs and/or body tissues from a donor must take into account the health of the donor concerned and have the consent of the donor and/or his or her heirs or family. Provisions regarding the terms and procedures for the implementation of organ and/or body tissue transplantation as referred to in paragraph (1) and paragraph (2) are stipulated by the Regulation".

Article 66

"Every organ collection and transplant must be carried out based on ethical standards and the medical profession".

Article 67

Collection and delivery of specimens or body organ parts can only be carried out by health workers who have expertise and authority and are carried out at certain health service facilities. Provisions regarding the terms and procedures for taking and delivering specimens or body organs as

intended in paragraph (1) shall be implemented in accordance with the provisions of laws and regulations".

So based on the explanation and provisions of the health law, we can understand that organ transplantation is clearly regulated in the Health Law, both in terms of objectives, procedures, donor requirements, medical implements, and commercialization prohibitions. Even in the provisions of article 64, it is emphasized that organ transplantation can only be carried out based on humanitarian reasons, and must not be traded/commercialized.

Furthermore, in the previous discussion, it has been described about the definition of organ transplantation, then the procedures and regulations that regulate organ transplantation. The focus of discussion in this article is illegal organ transplantation. Referring to the definition of organ transplantation in the medical world, organ transplantation is a medical procedure in the form of transplanting organs or body tissues from a donor, either living or dead, into the body of a recipient, with the aim of replacing the function of organs that are damaged or have failed. The main goal of this procedure is to save lives and improve the patient's quality of life. In addition, humanistic principles are emphasized in its implementation; These actions are only legally carried out for

humanitarian purposes and are prohibited for trafficking. From this definition if we conclude that illegal organ transplantation is the transfer of organs or tissues of the human body from a donor to a recipient that is carried out outside of the provisions of law, ethics, and legitimate medical procedures, including without valid consent, without proper medical due diligence, or carried out with commercial or exploitative motives. Illegal transplants generally involve: a. Donors who are forcibly recruited, defrauded, or trafficked, including victims of human trafficking, b. Implementation without official permission, carried out by an unauthorized medical party or in an unaccredited facility, and c. Financial rewards to donors, which violate altruistic principles in medical ethics.

Illegal organ transplantation is the practice of transplanting human organs outside the official legal and ethical framework, often involving the commercialization of organs, the recruitment of donors through coercion or fraud, and the manipulation of medical processes for financial gain. The Istanbul Declaration (2008) stipulates that such transactions targeting vulnerable people

and strengthening the practice of transplant tourism can lead to donor exploitation and undermine the integrity of the global transplant system and human rights.²⁰ According to the WHO and the Declaration of Istanbul (2008), such practices fall into the category of "transplant commercialism", i.e. the trafficking of organs for financial or material gain, which is considered to violate human rights, medical ethics, and national and international law.

Illegal organ transplantation is a form of crime that is not simple, but it has entered the realm of transnational crime involving many parties. Law enforcement from the crime of illegal organ transplantation must be taken seriously. In terms of criminal law enforcement, it is inseparable from material criminal law and formal criminal law. In terms of material criminal law, related to illegal organ transplantation is regulated in many regulations.

The first is related to the prohibition of illegal organ transplantation regulated in the provisions of Article 192 it is said, "Any person who deliberately trades organs or body tissues under any pretext as referred to in Article 64 paragraph (3) shall be sentenced to a maximum of 10 (ten) years

²⁰ Abboud OAbbud-Filho dkk A, "The Declaration of Istanbul on Organ Trafficking and Transplant Tourism," *Clinical Journal of the*

American Society of Nephrology 3, no. 5 (September 2008): 1227–31, <https://doi.org/10.2215/CJN.03320708>.

in prison and a maximum fine of Rp1,000,000,000.00 (one billion rupiah)".

Another rule is the prohibition for transplantation procedures regulated in Article 1 number 7 and Articles 2 to 7 of Law Number. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, which discusses the prohibition with the intention of organ transactions that have rules.

Article 1 number 7 states:

"Exploitation is an act with or without the consent of the victim which includes but is not limited to prostitution, forced labor or service, slavery or similar practices of slavery, oppression, extortion, physical, sexual, reproductive organ exploitation, or unlawfully moving or transplanting organs and/or body tissues or utilizing a person's power or ability by another party to gain both material and immaterial benefits".

The sale of human organs can now be done online through internet sites and other digital platforms. Although there is no specific provision in Law Number 1 of 2024 concerning the Second Amendment to

the ITE Law that explicitly regulates the buying and selling of organs, Article 27 paragraph (1) still regulates the prohibition of distributing, transmitting, and/or making accessible electronic information that violates the norms of decency, law, or public security.²¹ The term *distributing* includes the dissemination of illegal content through electronic means, while *making accessible* means allowing information that is supposed to be private to be known to the public. Therefore, the dissemination or promotion of the purchase and sale of organs through electronic media has the potential to violate this provision. On the other hand, Health Law Number 17 of 2023, especially in Articles 284 to 289, expressly prohibits the practice of transplanting human organs and/or tissues for commercial purposes. Violation of this provision may be subject to criminal sanctions as stipulated in the criminal provisions section of the Law. Thus, the practice of buying and selling organs through the internet, although not specifically mentioned in the ITE Law, can still be charged based on the connection between the ITE rules and the explicit prohibition in the latest Health Law.

²¹ Mishel Angie Christiani and I Gede Perdana Yoga, "The Ethics of Organ Transplantation

and Its Implications for the Crime of Organ Trafficking," *Kertha Village Journal* 12, no. 11 (2024): 4885–94.

Illegal organ transplantation, in addition to being regulated in various regulations, is also regulated in the provisions of the Criminal Code or commonly abbreviated as the Criminal Code, namely Referring to Article 204 of the Criminal Code,²² it is explained that actions such as selling, offering, handing, or distributing dangerous goods are included in the form of formal offenses, namely offenses that focus on the act itself without the need to wait for consequences. Delik in general is a form of criminal act that focuses on actions that are prohibited by law. If the act results in the death of a person, it is categorized as a material offense, which is a type of offense that pays attention to the consequences caused and can be subject to criminal sanctions if the consequences actually occur. In this case, the elements of the offense include subjective elements such as the intentionality or forgetfulness of the perpetrator, as well as objective elements consisting of unlawful acts and the existence of conditions that allow the criminal act to occur. In accordance with Article 204 paragraph (2) of the Criminal Code, if the act results in death, the

perpetrator can be subject to the threat of imprisonment for a maximum of 20 years.

The elements in it are: a. Subjective element: someone who makes a mistake. b. Objective elements: 1) Whose goods; 2) Offering, selling, delivering and/or delivering dangerous goods; 3) Causing people to die; 4) Can be threatened with a maximum prison sentence or a maximum of 20 (twenty) years.

In addition, illegal organ transplantation is also regulated in the provisions of Law No. 1 of 2023 concerning the Criminal Code, although if we search in terms of the redaction about illegal organ transplantation is not found, but for acts that fall into the category of illegal transplantation, especially if: Without the donor's consent, Contains elements of violence, persecution, or exploitation, Is carried out by an organized corporation or syndicate, and Resulting in serious injury or death.

In the new Criminal Code (KUHP), namely Law No. 1 of 2023, there is indeed no provision that explicitly mentions the term "illegal organ transplantation". However, such acts can still be charged through a number of related articles. For example, Articles 467 to 468 regulate

²² Jufri Febriyanto Poetra, "Legal Analysis Related to Organ Transplantation of Corpses

Without Identity," *JISIP (Journal of Social Sciences and Education)* 7, no. 3 (July 6, 2023): 2271, <https://doi.org/10.58258/jisip.v7i3.5317>.

criminal acts against the body, especially severe persecution that results in serious injury or death. This provision can be used against perpetrators who perform organ transplants without permission or forcibly to cause serious physical harm to the victim. Furthermore, Articles 598 to 600 regulate crimes against humanity and the crime of trafficking in persons (TPPO), where the forcible taking of organs in the context of human trafficking is included in the category of exploitation. Perpetrators can be criminally threatened with a maximum of 15 years in prison or more, especially if they involve children, organized networks, or cause death. In addition, Articles 604 to 607 regulate corporate criminal acts, which can be imposed on legal entities such as hospitals, foundations, or other institutions that knowingly facilitate or engage in illegal organ trafficking. In this case, the corporate management can be subject to imprisonment, and the corporation itself can be sentenced to a large fine.

It can be concluded that although Indonesia already has a number of regulations that regulate organ transplantation, such as in Health Law No. 17 of 2023, TPPO Law No. 21 of 2007, and ITE Law No. 1 of 2024, there is not yet a single provision that comprehensively and specifically regulates the prohibition and

enforcement of illegal organ transplant practices. The criminal provisions in the New Criminal Code (Law No. 1 of 2023) also do not explicitly mention organ transplantation as a separate criminal act, but can only be charged through general articles such as severe persecution, exploitation, or human trafficking. This shows that there is still a void of norms (*rechtsvacuum*) that can be exploited by perpetrators, so that more specific, integrative, and responsive legal reform is needed to the development of human organ trafficking crimes.

Based on the description, it can be understood that the construction of criminal law regulations against illegal organ transplantation in Indonesia has not been built as a complete and independent legal regime, but is spread across various sectoral laws and regulations. Illegal organ transplantation is normatively prohibited in the Health Law, in particular through the principle of prohibiting the commercialization of organs and the obligation to carry out transplants solely for humanitarian purposes. However, the ban places more emphasis on ethical and medical aspects, and does not fully reflect the character of illegal organ transplantation as a complex and systemic organized crime.

From a criminal law perspective, illegal organ transplantation cannot be separated from the construction of the crime of human trafficking. This can be seen from the provisions in Law Number 21 of 2007 which expressly includes the illegal taking and/or transplantation of organs as a form of exploitation. Thus, juridically, illegal organ transplantation can be understood as the *modus operandi* of trafficking, especially when it involves the recruitment of donors through fraud, coercion, abuse of vulnerable positions, and the provision of financial rewards that are contrary to altruistic principles in the medical world.

Such a construction of criminal law shows that the state has not positioned illegal organ transplantation as a special offense (*lex specialis*), but still places it as part of common offenses such as human trafficking, severe persecution, or violations of health provisions. As a result, law enforcement against the practice of illegal organ transplantation is highly dependent on the ability of law enforcement officials to qualify the act into available articles, which are often partial and do not fully represent the complexity of the crime that occurred.

In addition, in the context of transnational crime, illegal organ transplantation has a cross-border

character, is organized, and involves various actors, ranging from recruiters, intermediaries, medical personnel, to funders. However, Indonesia's national criminal law construction has not optimally accommodated the transnational organized crime approach, both in terms of the formulation of delinquency and collective criminal accountability mechanisms, including corporate accountability.

Thus, it can be concluded that the construction of criminal law regulations on illegal organ transplantation from the perspective of trafficking in Indonesia **is still fragmentary and reactive**, not yet integrative and comprehensive. This condition opens up space for the existence of a vacuum of norms (*rechtsvacuum*) and ineffectiveness of law enforcement, so it is necessary to reform the criminal law policy that expressly regulates illegal organ transplantation as a special crime, with an approach oriented towards victim protection, eradication of organized crime networks, and strengthening criminal responsibility of individuals and corporations.

2. The form and effectiveness of legal protection for victims of illegal organ transplantation carried out in an organized manner

Human organ trafficking is a very serious and complex form of crime. In Indonesia, this practice often occurs due to the high need for organ transplants that are not proportional to the availability of donors. This imbalance is used by criminals to exploit individuals who are in vulnerable conditions, both socially and economically. Organ trafficking not only violates positive laws, but also harms humanitarian principles as well as ethics in the practice of medicine.²³ Therefore, it is important to examine criminal liability against organ trafficking perpetrators in the context of transplantation. In general, organ trade can be interpreted as a transaction of buying and selling human organs, both from living and deceased donors, with the aim of transplantation. The Indonesian Constitution, namely the 1945 Constitution of the Republic of Indonesia (1945 Constitution), is the highest legal basis that animates all laws and regulations, and guarantees the constitutional rights of every citizen. In the framework of human rights, the 1945 Constitution affirms the protection of human dignity and integrity, including the right to health which is the legal basis for regulating various aspects of health services, including organ transplant

procedures. Article 28A of the 1945 Constitution states that everyone has the right to live and maintain their life and health, which means that the state is obliged to guarantee the protection of these rights. In the context of the crime of trafficking in human organs or tissues, this protection is crucial because it concerns the right to life and safety of citizens. Therefore, more specific, detailed and strict regulations are needed to ensure that every individual is protected from unlawful organ transplant practices that endanger public health.²⁴

The state provides protection guarantees for victims and witnesses in cases of organ sales, as stipulated in Article 5 of Law of the Republic of Indonesia Number 31 of 2014 concerning the Protection of Witnesses and Victims. Legal protection for victims of organ trafficking is basically no different from the protection provided to victims of other crimes. The forms of protection that can be provided include various services such as counseling, legal assistance, compensation or restitution, medical services, and access to information about ongoing legal proceedings. In its implementation, the provision of protection requires active

²³ Dien Fahrur, "HUMAN ORGAN TRAFFICKING: HUMANITARIAN INJUSTICE AND ITS SOCIAL IMPACT," *Journal of Police Science* 17, no. 3 (December 28, 2023): 17, <https://doi.org/10.35879/jik.v17i3.431>.

²⁴ Christiani and Yoga, "The Ethics of Organ Transplantation and Its Implications for the Crime of Organ Trafficking."

involvement from both the state and the community, including in terms of determining who is prioritized to receive protection. Generally, victims from economically weak circles or those who have physical limitations due to the actions of others are a group that urgently needs maximum legal protection.²⁵

Legal protection efforts for the Indonesian people can only be achieved optimally if accompanied by effective and coordinated law enforcement. This protection has similarities with law enforcement mechanisms against human *trafficking*. In the context of countering human trafficking in Indonesia, the forms of legal sanctions applied include imprisonment, fines, imprisonment, and restitution to victims. However, at the implementation level, the provision of restitution by perpetrators in human organ trafficking cases is still rarely applied in the criminal justice system in Indonesia.

The crime of selling human organs can be qualified as a form of persecution if the act does not cause death to the victim. Based on the provisions of Article 351 paragraph (4) of the old Criminal Code (Wetboek van Strafrecht/Stbl. 1946), any act that deliberately causes disturbance to the health of others is included in the

category of persecution. Furthermore, if the persecution is carried out with elements of planning and causes serious injury, then the perpetrator can be sanctioned based on Article 355 of the old Criminal Code which regulates severe persecution carried out with a plan in advance. In the context of illegal organ transplantation, this crime is usually not committed by a single perpetrator, but involves a number of people with different roles. For example, the doctor who performs the transplant acts alongside other parties such as recruiters or intermediaries looking for victims. This collective involvement can be classified as a form of participation as stipulated in Articles 55 and 56 of the old Criminal Code, which states that anyone who participates in committing, ordering to commit, or assisting in the occurrence of a criminal act, can be convicted as a perpetrator. The sanctions are regulated in Article 57 of the old Criminal Code.

Along with the passage of the new Criminal Code, namely Law No. 1 of 2023, provisions regarding persecution that cause health disturbances are regulated in Article 470 paragraph (4) of the 2023 Criminal Code, while severe persecution carried out with planning is contained in Article 472 of the 2023 Criminal Code. In addition, the

²⁵ Ni Putu Renanda Apriliani Dewati and I Dewa Made Suartha, "Legal Protection for Victims of

Human Organ Trafficking in Indonesia," *Kertha Negara Journal* 8, no. 5 (2022): 12–22.

concept of participation or involvement of more than one perpetrator is re-explained in Articles 45 and 46 of the 2023 Criminal Code, which mention direct perpetrators, helpers, and enablers. Criminal sanctions against perpetrators based on the level of involvement are regulated in Article 47 of the 2023 Criminal Code. Thus, both the old Criminal Code and the new Criminal Code can be used as a basis for ensnaring illegal organ transplant perpetrators, depending on the time and context of the event, as long as they are not entirely applied exclusively.

Stephen Schafer argues that there are several ways in which the system provides compensation and compensation to victims of organ sales, as follows: 1. Compensation (Damage) can be given by going through a civil process. This method is a separation of compensation demanded by the victim through the criminal process. 2. Compensation that has a criminal nature that is then mixed with a civil nature is given through criminal processing. The form of compensation according to this method is a fine of indemnity or compensation. The fine is in the form of cash imposed on the convict as a form of compensation that must be given to the victim.²⁶ 3. Compensation for victims or

commonly referred to as compensation is given with support from several sources of state income. It should be noted that although compensation is given for a criminal act, the compensation in question is not included in the criminal aspect because the State is considered to have failed to prevent the occurrence of a criminal act.

One of the real forms of legal protection for victims is through rehabilitation, both socially, medically, and psychologically, including the return of the victim to his or her home environment. The state has an obligation to implement this, especially for victims who experience physical suffering, psychological trauma, and social disintegration due to the crime of trafficking in persons. Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons has stipulated that efforts to prevent and handle victims are a shared responsibility between the government and the community. In order to realize these measures systematically, this law also mandates the establishment of a special task force (task force) to carry out countermeasures and prevention procedures.²⁷

²⁶ Dewati and Suartha.

²⁷ Indra Suryadi Pane and Junifer Dame Panjaitan, "The Problem of Prevention and

Handling of Human Trafficking Law No. 21 of 2007," *COMSERVA : Journal of Research and Community Service* 3, no. 08 (2023): 2936–45, <https://doi.org/10.59141/comserva.v3i08.1093>.

The trafficking of human organs has serious impacts, such as human rights violations, damage to victims' lives, and the emergence of organ theft syndicates. This crime is classified as transnational according to the United Nations, because it involves cross-border networks and involves organs from the living and the dead. Health workers who trade organs without the permission of their owners can be subject to criminal sanctions based on Law Number 36 of 2009 concerning Health. Article 64 paragraph (3) expressly prohibits the buying and selling of organs for any reason, and Article 192 regulates the criminal threat of up to 10 years in prison and a maximum fine of Rp1 billion. Because it is a special criminal act, the regulation is also outside the Criminal Code.

Victims who also act as witnesses in legal proceedings have a number of rights as stated in Article 5 of Law Number 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims. These rights include protection for the safety of oneself, family, and property; the right to choose a form of protection; free from pressure during legal proceedings; the right to a translator; free from cornering questions; as

well as get information related to the development of cases and court decisions. In addition, victims also have the right to maintain identity confidentiality, obtain a new identity, temporary or permanent residence, accommodation assistance, legal advice, living allowance for a certain period of time, and companionship during the protection period.

In addition, Articles 43 to 53 in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons also provide a guarantee of protection for victims. The victim's statements are used as a basis in handling cases, because their testimony is considered one of the main sources of evidence that can help the judge make a fair verdict against the perpetrator.²⁸

Legal protection for victims of illegal organ transplantation includes physical, psychological, social, and recovery protection through rehabilitation and repatriation. This protection is guaranteed by various laws and regulations, such as Law No. 31 of 2014 concerning the Protection of Witnesses and Victims and Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, which affirms that the state has an obligation to provide assistance, legal

²⁸ Dewati and Suartha, "Legal Protection of Victims of Human Organ Trafficking in Indonesia."

assistance, security guarantees, and access to victims' rights in all legal processes.

Although Indonesia already has various legal instruments regulating the prohibition of illegal organ transplantation, the effectiveness of legal protection for victims of such crimes still faces various structural and normative obstacles. The protection of victims of illegal organ transplants has not been placed as a primary focus in law enforcement regimes, but rather remains in the shadow of a repressive, perpetrator-oriented approach.

In the Health Act, victim protection is more implicitly articulated through the prohibition of the commercialization of organs and the regulation of strict medical procedures. However, this law does not specifically regulate the rights of victims of illegal transplants, such as the right to health restoration, psychological rehabilitation, restitution, and compensation for losses experienced. As a result, victims are often positioned solely as part of an administrative or medical ethical offense, rather than as legal subjects in need of comprehensive protection.

A more progressive approach is actually contained in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. In this law, victims are recognized as exploited parties

and are entitled to protection, including medical and social rehabilitation, restitution, and security guarantees. But in practice, victims of illegal organ transplants are often not identified as victims of trafficking, especially when the transplant is performed under the pretext of "consent" or "voluntariness", despite the fact that such consent is born out of unequal economic conditions, fraud, or abuse of vulnerable positions.

This condition shows that legal protection for victims of illegal organ transplantation has not been substantively effective, because it is still trapped in a formalistic approach to the element of consent. This approach fails to understand that in organized crime, the victim's consent is often illusory, so it cannot be used as a basis for eliminating the unlawful nature of the perpetrator's actions. In this context, Indonesian criminal law has not fully adopted the victim-centered approach perspective as recommended in international instruments such as the Declaration of Istanbul and WHO standards.

In addition, the character of illegal organ transplantation as an organized and transnational crime further weakens the effectiveness of victim protection. Fragmented crime networks, involving actors across sectors and across countries,

put victims in a particularly vulnerable position to be exploited, intimidated, or criminalized again. In many cases, victims are reluctant to report for fear of being convicted, stigmatized, or not receiving adequate protection guarantees from the state.

In the context of national criminal law, both the old Criminal Code and the new Criminal Code (Law No. 1 of 2023) have not paid special attention to the position of victims of illegal organ transplantation. Existing arrangements are still oriented towards deeds and consequences, such as severe persecution or trafficking in persons, without explicitly placing the victim as a subject who has a right to recovery. Although the new Criminal Code has opened up the space for corporate criminal liability, the victim recovery mechanism remains not regulated in detail and operationally.

Thus, the effectiveness of legal protection for victims of illegal organ transplantation in Indonesia is still normative-symbolic, not yet transformational. The state has banned its acts, but has not adequately guaranteed the recovery of victims and the breaking of the cycle of exploitation. This condition shows the urgency of reforming criminal law policies that not only place illegal organ transplantation as a serious crime, but also

integrate a comprehensive approach to victim protection through strengthening victim identification, restitution, rehabilitation, and cross-sectoral and cross-country cooperation.

CONCLUSION

Regulations related to illegal organ transplantation in Indonesia have been regulated in various legal instruments, such as Law Number 36 of 2009 concerning Health, Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, and Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. However, even though there is a legal basis, the regulation is still partial and has not specifically regulated the crime of organ trafficking as a separate crime. On the other hand, forms of legal protection for victims of illegal organ transplants have included medical, psychological, repatriation, and security guarantees during legal proceedings, although their implementation still faces technical and structural challenges. Therefore, legal reform is needed in the form of the establishment of a special law regarding the illegal transplantation of human organs and tissues, so that law enforcement can run more effectively, integrated, and in favor of the victim to the maximum.

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