

# REFORMULATING ORGAN TRANSPLANTATION POLICIES THROUGH COMPARATIVE PERSPECTIVES ON HUMAN TRAFFICKING LAWS IN INDONESIA AND THE PHILIPPINES

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## Abstract

*With the help of new technologies, the healthcare industry has made significant progress in addressing various diseases, including organ transplantation as a medical innovation to overcome organ failure. However, Indonesia continues to face an imbalance between organ demand and available donors, resulting in illicit practices and potential human organ trafficking. Using a normative juridical and comparative approach, this study analyses the legal frameworks in Indonesia and the Philippines regarding the prevention and punishment of organ trafficking. The findings show that Indonesia's legal system lacks a coherent structure to regulate organ transplantation, leaving loopholes that allow exploitation under kinship-based donations, while the Philippines enforces a more detailed regulatory and institutional mechanism. Consequently, this study concludes that a reformulation of Indonesia's criminal policy on organ transplantation is essential to integrate human trafficking perspectives, strengthen enforcement mechanisms, and align national regulations with international bioethical and legal standards.*

**Keywords:** organised crime; organ trafficking; policy reformulation.

## Abstrak

Kemajuan teknologi dalam bidang kesehatan telah memberikan kontribusi besar terhadap penanganan berbagai penyakit, termasuk melalui transplantasi organ sebagai inovasi medis untuk mengatasi gagal organ. Namun demikian, Indonesia masih menghadapi ketidakseimbangan antara tingginya permintaan organ dan ketersediaan donor, yang pada akhirnya memicu praktik ilegal dan potensi terjadinya perdagangan organ manusia. Dengan menggunakan pendekatan yuridis normatif dan komparatif, penelitian ini menganalisis kerangka hukum di Indonesia dan Filipina dalam pencegahan serta penegakan hukum terhadap kejahatan perdagangan organ. Hasil penelitian menunjukkan bahwa sistem hukum Indonesia belum memiliki struktur yang terpadu untuk mengatur transplantasi organ, sehingga masih terdapat celah hukum yang memungkinkan eksloitasi melalui donasi berbasis hubungan kekerabatan. Sebaliknya, Filipina telah menerapkan mekanisme regulasi dan kelembagaan yang lebih rinci. Oleh karena itu, penelitian ini menyimpulkan bahwa perlu dilakukan reformulasi kebijakan pidana dalam pengaturan transplantasi organ di Indonesia dengan mengintegrasikan perspektif perdagangan manusia, memperkuat mekanisme penegakan hukum, serta menyelaraskan peraturan nasional dengan standar hukum dan bioetika internasional.

**Kata kunci:** kejahatan terorganisir; perdagangan organ; reformulasi kebijakan.

## Introduction

The trade in human organs represents one of the most severe forms of transnational organized crime in the modern era, encompassing a wide range of illicit activities that exploit human vulnerability under the guise of medical necessity. The United Nations Convention against Transnational Organized Crime (UNTOC, 2000) classifies such activities as organized crime, defining it as “a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit.” Within this context, organ trafficking clearly falls within the definition of organized crime due to the existence of structured criminal networks that include recruiters, brokers, intermediaries, and medical personnel who operate across borders. The act of removing, transferring, and selling organs is not merely a health-related violation but also a grave criminal offense involving economic exploitation, corruption, and human rights abuses.

Globally, the imbalance between organ supply and demand has created a thriving underground market estimated to generate billions of dollars annually. According to the World Health Organization (WHO, 2010), only about 10 percent of the world’s organ transplant needs are met through legal donation systems, leaving the majority of patients in developing countries—such as Indonesia—vulnerable to exploitation. In Indonesia, socio-economic disparities and inadequate legal mechanisms have contributed to the emergence of illegal organ transactions.<sup>1</sup> These practices often involve the poor who are coerced or deceived into selling their organs to wealthier recipients, blurring the line between voluntary donation and human trafficking.

Indonesia’s current legal framework, particularly Law No. 36 of 2009 on Health and Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes, provides general prohibitions against the sale of human organs. However, these regulations remain fragmented and lack coherence in implementation. There are no comprehensive provisions governing living donor transplants, kinship-based donations, or the financing mechanisms of transplantation. This legal gap allows individuals and even medical practitioners to exploit ambiguities within the law, making enforcement difficult. Hence, there is an urgent need to reevaluate existing policy designations to ensure that national legislation can effectively address the intersection between health law, criminal law, and bioethics.<sup>2</sup> The policy reevaluation also aims to harmonize Indonesia’s national legal system with international legal standards and human rights principles concerning the protection of human dignity and bodily integrity.<sup>3</sup>

<sup>1</sup> P Terasaki, "Directory of Worldwide Transplant Centers," *Clinical Transplant* 1991 579 (1992).

<sup>2</sup> Kartono, Muhammad. "Medical Technology and Its Challenges to Bioethics." Jakarta: Gramedia Pustaka Utama, 1992.

<sup>3</sup> Perdana, Putra, and Purbayu Budi Santosa. "The Effectiveness of Bureaucratic Institutions and the Level of Investment Corruption in Six ASEAN Countries" (Philippines, Indonesia, Malaysia,

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The urgency of this reevaluation becomes even more apparent when viewed through the lens of international cooperation. The global community, through the Declaration of Istanbul (2008) and the WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation (2010), emphasizes that organ donation must be a voluntary and altruistic act free from commercial influence. These principles aim to protect both donors and recipients from coercion, fraud, and exploitation. Indonesia, as a member of the international community, bears an ethical and legal responsibility to align its national regulations with these principles. However, in practice, Indonesia has yet to develop a comprehensive institutional structure that integrates medical, ethical, and criminal dimensions in regulating transplantation.<sup>6</sup>

In contrast, the Philippines provides an important comparative model. As a fellow Southeast Asian nation, it faces similar social, cultural, and economic conditions, yet it has developed a more robust legal framework for organ transplantation. The Act to Institutionalise the Policy to Prohibit Commercial Transactions in Human Organs, Tissues and/or Parts and the Revised National Policy on Unrelated Living Organ Donation and Transplantation establish clear institutional mechanisms, ethical oversight, and strict criminal sanctions for violations.<sup>7</sup> The Philippine experience illustrates how comprehensive policy formulation supported by administrative regulation can mitigate organ trafficking effectively.<sup>8</sup>

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<sup>4</sup> Myanmar, Singapore, and Thailand) in 2004-2010." *Diponegoro Economic Journal* 1, no. 1 (2012): 251–61.

<sup>5</sup> Rahardjo, Satjipto. *Legal Studies*. Citra Aditya Bakti, 2012.

<sup>6</sup> Medical Record of General Ahmad Yani Metro Hospital. (2021). *10 Biggest Diseases at General Ahmad Yani Hospital, Metro City in 2021*.

<sup>7</sup> Trini Handaani, *Functionalization of Criminal Law Against Human Organ Trafficking*, I (Bandung: Mandar Maju, 2012).

<sup>8</sup> Mubarrioh, Niswatin. "Transplantation in Islamic Studies." *Al Amin: Journal of Islamic Science and Cultural Studies* 4, no. 02 (2021): 214–28.

<sup>8</sup> Charisma, R. A., & Ibrahim, A. L. (2023). *Comparison of Criminal Law Related to the Trafficking of Human Body Organs in Indonesia and the Philippines*. *Al Qalam: Jurnal Ilmiah Keagamaan dan*

Comparing Indonesia with the Philippines thus offers valuable insights into how national legal systems in the same regional context may differ in addressing organized crime related to organ transplantation. This comparative legal approach allows for the identification of both structural deficiencies and potential policy innovations that can inform Indonesia's ongoing criminal law reform. Furthermore, it bridges the conceptual gap between health regulation and organized crime policy by emphasizing the need for interdisciplinary integration of legal norms, ethical considerations, and criminal enforcement.

Therefore, this study aims to conduct a comparative analysis of human trafficking laws in Indonesia and the Philippines as they relate to organ transplantation and to formulate recommendations for policy reformulation. By integrating normative juridical analysis with comparative law perspectives, this research contributes to the broader discourse on how developing countries can strengthen their legal frameworks to combat transnational organized crime while upholding international human rights and bioethical standards.

## Methods

This research employs a normative juridical and comparative legal approach, focusing on the analysis of statutory regulations, legal doctrines, and policy frameworks related to human organ transplantation and human trafficking. The normative juridical method is used to interpret and evaluate legal norms that govern organ transplantation in Indonesia and the Philippines, while the comparative legal approach seeks to identify similarities and differences between both legal systems as a basis for policy reformulation.

The study utilizes both primary and secondary legal materials. Primary legal materials include national laws and regulations such as Law No. 36 of 2009 on Health, Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes, Law No. 35 of 2014 on Child Protection, Presidential Regulation No. 90 of 2015 on the National Committee for Organ Transplantation, as well as the Criminal Code (KUHP) and relevant ministerial decrees. In the case of the Philippines, the analysis covers Republic Act No. 7170 on Organ Donation, Republic Act No. 9208 on the Anti-Trafficking in Persons Act of 2003, Republic Act No. 10364 (Expanded Anti-Trafficking in Persons Act of 2012), and the Revised National Policy on Unrelated Living Organ Donation and Transplantation.

Secondary legal materials include academic publications, international conventions, and institutional documents, particularly the United Nations Convention against Transnational Organized Crime (UNTOC, 2000), the World Health Organization (WHO) Guiding Principles on Human Cell, Tissue and Organ Transplantation (2010), and the Declaration of Istanbul (2008).<sup>9</sup> These

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Kemasyarakatan, 17(1), 1-21.

<sup>9</sup> Muller, Elmi, Beatriz Dominguez-Gil, and Dominique Martin. "Istanbul Declaration on Organ Trade and Transplant Tourism (2018 Edition) Introduction." *Transplant* 103, no. 2 (2019): 217.

materials provide theoretical and international perspectives on the criminalisation of organ trade and the bioethical framework surrounding transplantation.<sup>10</sup>

The data were analyzed using qualitative descriptive and prescriptive techniques, which involved interpreting statutory provisions, comparing the substantive contents of laws, and evaluating their alignment with international legal standards. The analytical process aimed to identify gaps and inconsistencies in Indonesia's legal framework and to formulate recommendations for the reformulation of organ transplantation policies to better address organized crime and human rights protection.

## Results and Discussion

### Examining Indonesia's Laws Against the Sale of Human Organs

Indonesia's legal framework concerning the prohibition of human organ trade is anchored in the intersection of health law, criminal law, and human rights protection. The primary statutory foundation is Law No. 36 of 2009 on Health, which declares human organs as objects that cannot be commercialized. Article 64 of this law explicitly prohibits the trade of organs, tissues, or body parts for any purpose, while Article 192 provides criminal sanctions of imprisonment and fines for any party engaging in such transactions. The legislative intent behind these provisions is to protect human dignity and ensure that organ transplantation remains a humanitarian medical procedure rather than an avenue for economic exploitation.<sup>11</sup>

However, the legal formulation within Law No. 36 of 2009 remains general and lacks operational clarity. It does not specifically regulate procedures for donor verification, the supervision of transplant practices, or mechanisms to prevent the commercialization of organ donation. As a result, various practices have emerged in Indonesia that blur the distinction between altruistic donation and commercial transaction. Reports from several regions indicate the existence of brokers who exploit the desperation of economically vulnerable individuals by offering financial compensation disguised as "voluntary donations." These gaps demonstrate the limited deterrent effect of existing legislation, which tends to be punitive rather than preventive in nature.

The Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes further reinforces the prohibition of organ trade by incorporating organ removal as a form of exploitation within the legal definition of human trafficking.<sup>12</sup> Article 1 paragraph (1) defines trafficking in persons as any act of recruitment,

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<sup>10</sup> Alfatih, Muhammad Hadziq, Hermini Susiatiningsih, and Marten Hanura. "5. Cooperation between Indonesia and Unicef in Handling Child Trafficking Cases in Indonesia for the 2009-2014 Period." *Journal of International Relations* 3, no. 3 (2017): 38-47.

<sup>11</sup> Alnour, Hind, Ajay Sharma, Ahmed Halawa, and Fakhriya Alalawi. "*Global Practices and Policies of Organ Transplantation and Organ Trade.*" *Experimental and Clinical Transplantation*, 2021.

<sup>12</sup> Dien, Riliya Aprodita. "*Criminal sanctions against corporations that trade in human organs or tissues are in accordance with Law Number 36 of 2009 concerning Health.*" *Lex Crimen* 7, no. 8 (2018).

transportation, transfer, or receipt of persons by means of threat, coercion, abduction, fraud, deception, abuse of power, or a position of vulnerability for the purpose of exploitation. This legal construction aligns with the Palermo Protocol (2000), to which Indonesia is a signatory, thereby demonstrating the country's formal commitment to combating transnational organized crime. The inclusion of organ removal in this definition extends the scope of trafficking law to cover cases where victims are deceived or coerced into surrendering their organs.

Nevertheless, the enforcement of Law No. 21 of 2007 in cases involving organ trafficking has been limited. Most prosecutions focus on sexual or labor exploitation, with very few cases addressing organ removal explicitly. The absence of specific implementing regulations connecting the Health Law and the Anti-Trafficking Law has resulted in institutional ambiguity. Law enforcement agencies often face difficulties in categorizing cases that involve organ sale—whether they should be prosecuted under health regulations, general criminal provisions, or human trafficking statutes.<sup>13</sup> This overlap of authority between the Ministry of Health, the National Police, and the Ministry of Women Empowerment and Child Protection has created coordination problems in investigation and prosecution.<sup>14</sup>

Another significant challenge lies in the Criminal Code (KUHP), which provides general prohibitions on bodily harm (Articles 351–355) and unlawful acts but does not address the distinct criminal structure of organ trafficking.<sup>15</sup> The KUHP was designed within the context of traditional criminal acts and has not evolved to encompass complex, transnational, and organized criminal phenomena. This legal gap allows perpetrators to exploit jurisdictional ambiguities, especially in cases involving cross-border organ transactions or medical tourism.<sup>16</sup>

In terms of institutional policy, the Indonesian government issued Presidential Regulation No. 90 of 2015 on the National Committee for Organ Transplantation (Komnas Transplantasi Organ).<sup>17</sup> The regulation mandates the committee to oversee organ procurement and transplantation ethics, develop policy recommendations, and coordinate among hospitals. However, this body has limited authority and lacks enforcement power.<sup>18</sup> serves primarily as an advisory mechanism without independent investigative capacity. Consequently, while ethical

<sup>13</sup> Kamaruddin, N. S., & Zin, N. M. (2021). *Combating Child Trafficking: Is the Convention on the Rights of the Child (CRC) and Existing Laws in Malaysia Adequate?*. IIUMLJ, 29, 55.

<sup>14</sup> Yea, S. (2015). Masculinity under the knife: Filipino men, trafficking and the black organ market in Manila, the Philippines. *Gender, Place & Culture*, 22(1), 123-142.

<sup>15</sup> Castro, Leonardo D de. "Istanbul Declaration in the Philippines: Success with Foreigners but Ongoing Challenges for Local Transplant Tourism." *Medicine, Health Care and Philosophy* 16, no. 4 (2013): 929–32. <https://doi.org/10.1007/s11019-013-9474-4>.

<sup>16</sup> Pendang, M. (2020). Forced Labor, Human Trafficking, and the Plight of the Filipina Migrant. *W. Mich. U. Cooley J. Prac. & Clinical L.*, 21, 77.

<sup>17</sup> Calabresi, Guido. "Do We Have Our Bodies?", Bernard M. Dickens, (ed.). Dartmouth, Sydney: Medicine and Law, 1993.

<sup>18</sup> Gross, S. (2017). *Human trafficking in the Philippines: Victim acquisition and exit strategies* (Master's thesis, Middle Tennessee State University).

and procedural standards have been drafted, they remain insufficient to prevent illegal practices or to harmonize the existing laws under a unified national transplantation policy.<sup>19</sup>

The weakness of Indonesia's current legal architecture can be analyzed from two dimensions. First, the normative dimension, where existing laws provide general prohibitions but fail to articulate technical and administrative guidelines for implementation. This results in inconsistencies between criminal sanctions and administrative oversight. Second, the structural dimension, where multiple agencies have overlapping jurisdictions but unclear coordination, resulting in fragmented enforcement. These weaknesses collectively hinder Indonesia's ability to address the issue of organ trafficking as a form of organized crime effectively.

Empirical data also suggest that law enforcement agencies face substantial evidentiary challenges in proving the commercial intent behind organ transactions. Most illegal organ transfers occur informally and without medical documentation, making it difficult to establish the elements of coercion or exploitation required under Law No. 21 of 2007. Furthermore, there is a lack of standardized national database systems to track donors, recipients, and transplant centers, thereby limiting the government's ability to detect irregularities in transplantation practices.

From a policy perspective, Indonesia's legal framework still operates in a reactive mode, responding to individual cases rather than addressing systemic vulnerabilities. The regulatory philosophy remains centered on punishment rather than prevention. There is little integration between legal, ethical, and medical governance mechanisms. This disjunction has created a significant gap between the normative prohibition of organ trade and its practical enforcement. The result is a paradoxical situation in which the legal system recognizes the criminality of organ trade but lacks the institutional tools to eradicate it.

Therefore, while Indonesia's existing laws formally prohibit the sale of human organs and acknowledge organ removal as an element of human trafficking, the implementation remains fragmented and inconsistent. The lack of harmonization between Law No. 36 of 2009, Law No. 21 of 2007, and related administrative regulations reveals the need for a coherent reformulation of national criminal policy. Such reformulation should integrate medical ethics, human rights obligations, and organized crime prevention mechanisms into a single comprehensive framework. Strengthening institutional coordination, establishing a national organ registry, and creating explicit legal guidelines for living donor transplants are essential measures to ensure that Indonesia's policy not only prohibits but effectively prevents and prosecutes organ trafficking.

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<sup>19</sup> Law on the Formation of Laws and Regulations, Law No. 12 of 2011, LN No. 82 of 2011, TLN. No. 5234 (2011).

## **Reassessing the Framework Surrounding the Classification of Human Organ Trade as Organised Crime in Indonesia.**

*The policy concerning humanitarian objectives delineates transplantation as a means of rehabilitating organ health.*

The comparative analysis between Indonesia and the Philippines on the regulation of human organ transplantation and the classification of organ trade as organised crime reveals two distinct yet interrelated trajectories of legal development.<sup>20</sup> Both countries share similar socio-economic and cultural contexts within Southeast Asia, yet their legal responses to organ trafficking demonstrate significant institutional divergence. The comparison provides insight into how differing levels of legislative precision, enforcement capacity, and ethical governance determine the effectiveness of anti-organ trafficking policies.

In Indonesia, the regulation of organ transplantation is primarily contained within Law No. 36 of 2009 on Health and Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes. These laws establish a prohibitive framework against the commercialization of human organs, yet they lack operational mechanisms that translate normative prohibitions into administrative and criminal control systems. The Indonesian approach is primarily prohibitory and declarative, focusing on criminalizing the act of selling organs rather than establishing comprehensive prevention and monitoring systems. The legislative structure reflects a normative idealism that prioritizes moral restraint but falls short in enforcement pragmatism.

Conversely, the Philippines has adopted a more institutional and preventive approach. The legal foundation for transplantation is set out in Republic Act No. 7170 (Organ Donation Act of 1991), which institutionalises voluntary organ donation as part of national health policy. More importantly, the Philippines explicitly prohibits the commercialisation of human organs under Republic Act No. 9208 (Anti-Trafficking in Persons Act of 2003), amended by Republic Act No. 10364 (Expanded Anti-Trafficking in Persons Act of 2012). These statutes do not merely prohibit organ sales; they establish clear administrative procedures, inter-agency coordination, and sanctions for medical institutions or personnel found complicit in trafficking-related transplants.

The Philippines has also implemented the Revised National Policy on Unrelated Living Organ Donation and Transplantation (2008), which serves as a detailed regulatory framework for transplant ethics, donor-recipient verification, and hospital accreditation. This policy operationalises humanitarian principles through enforceable procedures, mandating medical screening, donor counseling, psychological evaluation, and the involvement of ethics committees before any transplantation is approved. The existence of such procedural safeguards exemplifies a form of preventive legality—where legal mechanisms proactively eliminate opportunities for exploitation before crimes occur.

<sup>20</sup> Abdulrochim, I. P. (1992). *Transplantasi Ginjal dan Prospek Pengembangannya Di Indonesia.*

In contrast, Indonesia's Komite Nasional Transplantasi Organ (Komnas Transplantasi Organ), established through Presidential Regulation No. 90 of 2015, functions more as a coordination and advisory body without investigative or sanctioning powers. Its inability to supervise transplantation activities in hospitals or detect illicit transactions in real time significantly weakens Indonesia's capacity for early prevention. The absence of a national donor registry and real-time monitoring system further contributes to opacity and potential abuse.

From a doctrinal standpoint, the Philippine model demonstrates a functional integration between health law, criminal law, and administrative regulation, while Indonesia's approach remains compartmentalised. In the Philippines, the classification of organ trafficking as a form of organised crime is embedded within the anti-trafficking framework, allowing authorities to apply extended criminal procedures such as asset forfeiture, witness protection, and cross-border cooperation. This integration reflects the practical adoption of the UNTOC principles into national law. Indonesia, on the other hand, has ratified UNTOC but has yet to incorporate its organised crime typology into domestic legislation. As a result, organ trafficking cases in Indonesia are still prosecuted under fragmented provisions—either as health violations or as general acts of exploitation—without recognising their systemic, organised nature.

Institutional coordination also marks a clear distinction between both countries. The Philippines established the National Transplant Ethics Committee (NTEC) and the National Kidney and Transplant Institute (NKKI) as centralised bodies that oversee transplantation ethics and maintain a national registry of donors and recipients. These institutions operate under direct supervision of the Department of Health, enabling strong administrative oversight and transparency. In Indonesia, however, transplantation activities are dispersed across hospitals with limited coordination and oversight. This decentralised system creates gaps in accountability, particularly regarding verification of donor consent and detection of commercial transactions.

A crucial element of divergence also lies in the integration of criminal investigation and medical regulation. In the Philippines, the Department of Justice and Department of Health jointly handle investigations into potential trafficking cases involving organ transplantation. The inter-agency coordination facilitates rapid exchange of medical and legal information, enabling early intervention and prosecution. In Indonesia, such integration is absent; law enforcement agencies often lack technical understanding of medical ethics, while health authorities are hesitant to share patient data due to confidentiality concerns. This separation hinders the development of an integrated enforcement model.

Another major comparative point concerns the legal treatment of humanitarian and ethical principles.<sup>21</sup> Both countries formally recognise transplantation

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<sup>21</sup> World Health Organization. (2010b). *WHO guiding principles on human cell, tissue and organ transplantation*. Retrieved from <http://www.who.int/transplantation/en/>

as a humanitarian act aimed at saving lives, yet the Philippine legal framework embeds these principles within enforceable legal mechanisms. The Philippine model ensures that the concept of humanitarianism does not remain abstract but becomes a legally operational principle manifested through verification, ethics review, and transparency. Indonesia's humanitarian principles, in contrast, are largely declarative, resting on moral norms without corresponding procedural instruments. As a result, while both countries espouse humanitarian ideals, only the Philippines has translated these ideals into structured legal and institutional frameworks.<sup>22</sup>

The difference between Indonesia and the Philippines also reflects their respective approaches to criminal policy. The Philippine model adopts a preventive-criminal hybrid strategy, which combines regulatory supervision with penal sanctions.<sup>23</sup> This integrated approach enhances deterrence while maintaining ethical governance. Indonesia's criminal policy remains primarily punitive and reactive, addressing crimes after they occur.<sup>24</sup> This reactivity stems from the absence of inter-ministerial coordination and the lack of a unified policy on organ donation, trafficking, and transplantation oversight.<sup>25</sup>

First, instead of providing financial "benefits" to organ donors, the New York Times, like the DICG, favors removing the ancillary costs of donating—such as lost wages and travel and housing expenses to undergo donor screening and the surgery itself—from the shoulders of organ donors. The need to pay such costs, which may average as high as \$6000<sup>26</sup>, is a disincentive that lowers the rate of donation, especially among people of limited means.<sup>27</sup> NOTA actually permits reimbursing such costs, leaving organ donation a financially neutral act, but adequate mechanisms are not in place to make sure this occurs. Potential living organ donors—and the next of kin of deceased donors—should neither be motivated by financial rewards nor deterred by financial burdens.<sup>28</sup>

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<sup>22</sup> *Ibid.*

<sup>23</sup> Matas, A. J., Hippen, B., & Satel, S. (2008). *In defense of a regulated system of compensation for living donation*. *Current Opinion in Organ Transplantation*, 13, 379–385.

<sup>24</sup> Satel S. (2014, August 28). *Test incentives for organ donations—There's no reason not to*. New York Times. Retrieved from <http://www.nytimes.com/roomfordebate/2014/08/21/how-much-for-a-kidney/test-incentives-for-organ-donations-theres-no-reason-not-to>

<sup>25</sup> Delmonico, F. L., Domínguez-Gil, B., Matesanz, R., & Noel, L. (2011). *A call for government accountability to achieve national self-sufficiency in organ donation and transplantation*. *Lancet*, 378, 1414–1448.

<sup>26</sup> Warren, P. H., Gifford, K. A., Hong, B. A., Merion, R. M., & Ojo, A. O. (2014). *Development of the National Living Donor Assistance Center: Reducing financial disincentives to living organ donation*. *Progress in Transplantation*, 24, 76–81.

<sup>27</sup> Gill, J., Dong, J., & Gill, J. (2014). *Population income and longitudinal trends in living kidney donation in the United States*. *Journal of the American Society Nephrology*, 26, 1–7.

<sup>28</sup> Delmonico, F., Chapman, J., Fung, J., Danovitch, G., Levin, A., Capron, A., ... O'Connell, P. (2014). Open letter to Xi Jinping, president of the People's Republic of China: China's fight against corruption in organ transplantation. *Transplantation*, 97, 795–796.

The comparative analysis thus underscores that Indonesia's current policy framework requires structural reform to achieve the same level of coherence and integration as the Philippines. Reformulation should begin with revising Law No. 36 of 2009 to include detailed provisions on donor verification, hospital licensing, and transplantation ethics, complemented by amendments to Law No. 21 of 2007 to explicitly classify organ trafficking as a form of organised crime.<sup>29</sup> The establishment of a centralised National Transplant Authority with investigative powers and a national donor-recipient database would further enhance governance and transparency.<sup>30</sup>

Ultimately, the comparative perspective between Indonesia and the Philippines illustrates that effective prevention of organ trafficking depends not only on strict prohibition but also on regulatory coherence and institutional capacity.<sup>31</sup> Indonesia can draw valuable lessons from the Philippine experience in harmonising medical ethics with criminal enforcement. The path forward requires Indonesia to transform its fragmented legal structure into a unified policy system—one that integrates health law, criminal policy, and human rights protection to ensure that organ transplantation remains a humanitarian act rather than a commercial or exploitative practice.

#### *Analysis of Deficiencies within Indonesian Legal Frameworks Concerning the Prevention and Prosecution of Human Organ Trafficking Offences, Derived from a Comparative Legal Perspective.*

When examined through a comparative legal lens, Indonesia's regulatory framework on organ transplantation and organ trafficking reveals a dual character: it demonstrates progress in criminal prohibition but remains deficient in preventive and institutional coherence. Compared to the Philippines, Indonesia's approach leans heavily on penal provisions, relying on punishment rather than prevention and governance mechanisms. While this reflects a strong moral condemnation of organ trafficking, it does not effectively address the structural conditions that allow such crimes to persist.

#### *Legal Strengths of the Indonesian Framework.*

Indonesia's principal advantage lies in the comprehensiveness of its criminal sanctions. Law No. 36 of 2009 on Health criminalizes organ trading through Article 192, prescribing imprisonment and fines for those involved in the sale or purchase of organs for profit. Moreover, Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes includes organ removal as a form of exploitation,

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<sup>29</sup> Capron, A. M., Danovitch, G. M., & Delmonico, F. L. (2014). Organ markets: Problems beyond harms to vendors. *American Journal of Bioethics*, 14(10), 23–25.

<sup>30</sup> Capron, A. M. (2014). Six decades of organ donation and the challenges that shifting the United States to a market system would create around the world. *Law & Contemporary Problems*, 77, 25–69.

<sup>31</sup> Euphrates, Asif. "Professional Socialization and International Norms: Doctors Fight Organ Trafficking." *Journal of European International Relations* 21, no. 3 (2015): 647–71.

thereby allowing prosecutors to charge offenders under the trafficking statute, which carries heavier penalties and broader definitions of complicity. These overlapping statutes give Indonesia a strong punitive foundation for prosecuting offenders, including intermediaries and facilitators.

Another notable strength is Indonesia's explicit recognition of the patient's rights and medical accountability within the health law. Article 5 of the Health Law affirms the right of every citizen to equal access to healthcare, while Article 66 and Article 68 emphasize professional responsibility and patient consent. These provisions theoretically safeguard donors and recipients from unethical medical practices and uphold humanitarian values in transplantation procedures. In this respect, Indonesia shows a stronger commitment to individual patient protection compared to the Philippines, which focuses more on administrative and institutional control.

#### *Deficiencies in the Legal Framework.*

Despite these normative strengths, Indonesia's system suffers from substantive and structural deficiencies. First, there is a regulatory fragmentation between health law, criminal law, and administrative oversight. While the Philippines has unified these domains under a single coordinated system—through the National Transplant Ethics Committee (NTEC) and National Kidney and Transplant Institute (NHTI)—Indonesia's Komnas Transplantasi Organ operates only as a coordinating body without investigative or enforcement powers. This creates an institutional gap where no agency has clear authority to monitor, investigate, or sanction hospitals involved in illegal transplants.<sup>32</sup>

Second, the preventive dimension of the law is underdeveloped. The Philippines employs a structured donor verification process, psychological assessments, and ethics committee approvals before transplantation. Indonesia, by contrast, lacks a national database of donors and recipients, leaving verification to hospital-level discretion. This decentralised model not only undermines transparency but also facilitates the falsification of consent documents—a common pattern in organ trafficking cases.<sup>33</sup>

Third, Indonesia's laws do not explicitly classify organ trafficking as organised crime, even though it involves coordinated criminal networks. The absence of such classification limits the application of advanced investigative tools, asset tracing, and international cooperation mechanisms. By contrast, the Philippines explicitly integrates organ trafficking within its anti-trafficking and organised crime frameworks, allowing the use of Mutual Legal Assistance (MLA) and extradition treaties for transnational investigations. Indonesia's legal omission thus restricts its capacity to dismantle the financial and structural networks that sustain the trade.<sup>34</sup>

<sup>32</sup> C.S.T. Kansil, *Introduction to Indonesian Law and Government* (Jakarta: Balai Pustaka, 1989).

<sup>33</sup> Handayani, *Functionalization of Criminal Law Against Human Organ Trafficking.*

<sup>34</sup> Handayani.

Fourth, the ethical and humanitarian safeguards in Indonesia remain declarative rather than operational. The law upholds humanitarian principles but provides no mandatory mechanisms for ethics review, hospital accreditation, or donor counseling.<sup>35</sup> In practice, this creates a vacuum between moral obligation and legal enforcement, where violations may occur without administrative accountability. The Philippine system, by contrast, converts humanitarian values into enforceable duties—requiring institutional audits and ethical clearances for every transplant procedure.

#### *Comparative Policy Implications*

From the comparative perspective, the Philippine model demonstrates that the effectiveness of anti-trafficking regulation depends not solely on criminal sanctions but on regulatory integration and administrative vigilance. Indonesia's future policy reform should therefore focus on embedding preventive and institutional mechanisms within its penal framework. This includes establishing a centralized National Transplant Authority with independent powers of inspection, donor verification, and hospital licensing.

Furthermore, legal amendments should explicitly categorize organ trafficking as an organised crime, enabling law enforcement to apply the full range of tools available under UNTOC and Law No. 5 of 2009 on the Ratification of the UNTOC. This would strengthen Indonesia's capacity to cooperate with other jurisdictions and trace the financial flows connected to organ trafficking networks.

Finally, policy reform must restore coherence between criminal law and health governance. The law should not only punish offenders but also prevent commodification of human organs by creating transparent donation systems, ethics boards, and nationwide data monitoring. Such reform would elevate Indonesia's regulatory system from a punitive paradigm to a preventive and restorative model, aligning national law with international human rights and bioethical standards.

Positive law writers in the Philippines assert that it provides comprehensive regulations and classifications of criminal acts against the commercialization of human organs. These classifications are intended to facilitate law enforcement and provide clarity concerning a variety of criminal activities that involve the commercialization of kidney organs. In addition to a separate institution that is directly accountable to the Minister of Health, organ fulfillment must also be accomplished legally and procedurally. This institution is responsible for meeting the needs of kidney organs. Nevertheless, the health budget exceeds P20 billion pesos annually, which is a concern. Nevertheless, the budget must account for the expenses associated with the current kidney organ supply facility.

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<sup>35</sup> Mandiana, Sari. "Medicolegal Aspects in the Implementation of Article 14 of Government Regulation Number 18 of 1981 (LNRI Number 23 of 1981, Supplement to LNRI Number 3195) concerning Clinical Cadaver Surgery and Anatomical Cadaver Operations and Transplantation of Human Body Tools and or Tissues: A Case Study in the City of Surabaya." Thesis, (1990).

In contrast to the Philippines, kidney transplants in Indonesia have been conducted according to procedures that commence in the pre-transplant stage and continue through the post-transplant stage. The growing demand for kidneys in Indonesia is not being met by the availability of kidney organs. The current restrictions only impose a burden on individuals who are experiencing renal failure, as no institution explicitly donates kidney organs. Simultaneously, unscrupulous individuals may exploit lengthy procedures and waiting lists.

Protection of potential donors and transplant recipients requires a comprehensive process of consent. The law should require that consent for donation or transplantation be informed, free, specific, and explicit, and be provided either in writing or before an official body.

The health professional who obtains consent for donation (someone not involved in the care of the potential transplant recipient) should ensure that the person responsible for making a decision about donation (eg, living donor or family of a potential deceased donor) is free from deception, coercion, or undue influence. Assessing the validity of consent in nonresident donors may be particularly challenging due to language barriers, differences in documentation, for example, of identity, between countries, and differences in cultural norms, thus necessitating additional efforts during evaluation.

To promote voluntariness, regulations may prescribe that donors and recipients have access to independent advice by experienced health professionals with knowledge of donation and transplantation who are not involved in their donation or transplantation.<sup>36</sup> Care should be taken to ensure that the independence of such “donor advocates” is not undermined by conflicts of interest, for example the potential financial interests of a healthcare institution in performing transplants. In the case of potential nonresident living donors or recipients, information about the donation or transplantation procedure should be provided in a manner able to be fully understood by the potential donor or recipient, relying on interpreters and culturally competent advocates where required, to ensure that any outstanding issue or concern is thoroughly addressed. Should an interpreter be required, the services should not be provided or arranged by the donor, the recipient, or anyone in their entourage.<sup>37</sup>

Living donors should be assured that at any time prior to the commencement of the recipient's surgery they may withdraw consent, in absolute confidentiality and without indication of reasons.<sup>38</sup> Children and adults who lack the capacity

<sup>36</sup> Pascalev A, Van Assche K, Sándor J, et al. *Protection of human beings trafficked for the purpose of organ removal: recommendations*. Transplant Direct. 2016;2:e59.

<sup>37</sup> Widodo, Heri Sugeng. "Legalization of Compensation to Donors in Human Organ Transplantation in Indonesia." Untag 1945 Surabaya, (2020).

<sup>38</sup> Council of Europe. Resolution CM/Res (2017)1 on principles for the selection, evaluation, donation and follow-up of the non-resident living organ donors, 2017. Available at [https://www.edqm.eu/sites/default/files/cmres\\_2017\\_1-on\\_principles\\_for\\_selection\\_eval\\_donation\\_and\\_follow\\_up\\_of\\_nrld.pdf](https://www.edqm.eu/sites/default/files/cmres_2017_1-on_principles_for_selection_eval_donation_and_follow_up_of_nrld.pdf). Accessed

to consent, or who are otherwise especially vulnerable, should not be considered as living donors, except in exceptional circumstances allowed under law and subject to comprehensive additional safeguards.<sup>39</sup>

Mechanisms for obtaining informed consent from prospective recipients and living donors should incorporate provisions for evaluating their medical and psychosocial suitability. Likewise, their understanding of the nature and purpose of all interventions, from screening to surgery and follow-up, and the potential consequences and risks of such interventions should be assessed. They should always be informed of the availability of alternatives to donation or transplantation. Finally, candidates for transplantation or donation should be made aware of the clinical and legal risks, and the ethical concerns associated with trafficking activities. Legislation governing the recovery of organs for transplantation should specify that organs may be removed from the body of a deceased person only if either the person before death freely agreed to be a donor or, where the law presumes consent, there is no reason to believe that the deceased person objected to it.<sup>40</sup> In the absence of registration of consent or objection, the deceased person's wishes should be ascertained in the way provided for by law (such as consultation of the next of kin). From a deceased person who has not had the capacity to consent, organs may be removed only if authorization required by law has been obtained. Appropriate measures should be taken to inform the general public on the applicable consent regime and on how to register consent or objection to organ donation after death.<sup>41</sup>

Urgent positive legal reforms are required in the healthcare sector. This is necessary to comprehend the criminal laws and regulations in order to adhere to them in the present (*ius continuum*) and the future (*ius continuendum*). Lawrence M. Friedman, on the other hand, believes that the legal system is divided into three sections: legal structure, legal substance, and legal culture. A legal form is a component or organ that is responsible for the creation and execution of regulations within a system. Legal substance is generated by legal structures, formal structural methods used to establish rules, and regulations that are derived from habit.<sup>42</sup>

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December 6, 2018

<sup>39</sup> Sixty-Third World Health Assembly. WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation, endorsed in resolution WHA63. 22, 21 May 2010. Available at <https://www.who.int/transplantation/>

Guiding\_PrinciplesTransplantation\_WHA63.22en.pdf. Accessed December 6, 2018

<sup>40</sup> Away, Calliope. "Body Ownership", *Shaun McVeigh and Sally Wheeler (Ed.)*. Dartmouth, Sydney: Law, Health & Regulation, 1992.

<sup>41</sup> Council of Europe. Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (ETS no. 186), Strasbourg, 24 Jan. 2002. Available at <https://rm.coe.int/1680081562>. Accessed December 6, 2018

<sup>42</sup> Orysa Ayu Pawestri, "Analysis of Criminal Law Policies Related to the Comparison of Kidney Organs in the Comparison of Health Law in Indonesia and the Philippines," *Journal of*

Conversely, legal culture pertains to the social norms, beliefs, and standards that regulate the social interactions of society. The level of health equity in the community is a factor that must be taken into account when fulfilling the requirements of public health. The foundation for satisfying health requirements is established by the enforcement and implementation of pertinent and beneficial laws. All actions taken to satisfy the demands of the present day are based on positive laws in the health sector. It is crucial to enhance the pre-transplant stage of kidney organ fulfillment by closely monitoring and rigorously screening prospective kidney organ donors, a process that necessitates institutional oversight, such as the one found in the Philippines, when examining the structure of kidney organ fulfillment.

It is evident that the category of crimes involving renal organs has not been categorized by positive legislation when the legal system is analyzed in its entirety. The categories of offenses against the kidney organ trade are restricted to the sale and purchase of kidney organs in order to exempt brokers and facilitators involved in the purchase and sale of human organs from criminal penalties. Consequently, it is imperative to restructure the current Health Law by establishing subject classifications for the crime of buying and selling human organs, which encompass legal entities, associations, and assemblies in addition to each individual. Additionally, the classification of increasingly intricate criminal objects involving human organs, such as the act of promoting, facilitating, offering, and renting out locations to study the crime of buying and selling human organs, is necessary.<sup>43</sup> The classification of individuals and objects demonstrates that the severity of the punishment for an offense can fluctuate. Conversely, it is crucial to establish a legal foundation for kidney donors who are both blood relatives and unrelated. The purpose of both of these live donor distributions is to facilitate exceptional reciprocal interaction between donors and recipients, contingent upon their respective needs.<sup>44</sup>

It is structurally crucial to establish a renal organ provider agent in Indonesia to address the demand for kidney organs.<sup>45</sup> The Regulation of the Minister of Health must be followed by institutions that provide kidney organs and have administrative responsibilities. In order to facilitate the selection of donor organs by recipients, this kidney organ provider institution must be capable of administratively registering and distinguishing between living donors who are blood relatives of recipients and living donors who are not blood relatives of recipients. This will enable recipients to more seamlessly utilize the database

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Criminal Law and Crime Prevention 4, no. 2 (2017): 167–74.

<sup>43</sup> General Assembly Plenary. *Background Guide to Topic Three: Human Organ Trafficking and Medical Tourism.*

<sup>44</sup> Pendang, M. (2020). *Forced Labor, Human Trafficking, and the Plight of the Filipina Migrant.* W. Mich. U. Cooley J. Prac. & Clinical L., 21, 77.

<sup>45</sup> Iqbal, Muhamad. "Crime Developments in Criminal Law Enforcement Efforts: Fighting the Crime of Human Organ Trafficking Professionally." *Leading Pamulang University* 2, no. 1 (2017).

system of prospective donors. In order to prevent individuals from neglecting the kidney organ, it is crucial to establish a supervisory body that functions as a party that evaluates the efficacy of fulfilling its requirements, in addition to the administrative component. Providers and supervisory organizations are directly accountable to the health ministry. In addition to surveillance and evaluation by supervisory agencies, the number of illegal kidney sales must be reduced through collaboration among police forces. In the interim, it is imperative to enlighten the environment regarding cultural matters. This education is provided to the public in order to enable the community to procedurally satisfy the needs of kidney organs through affiliated medical facilities.

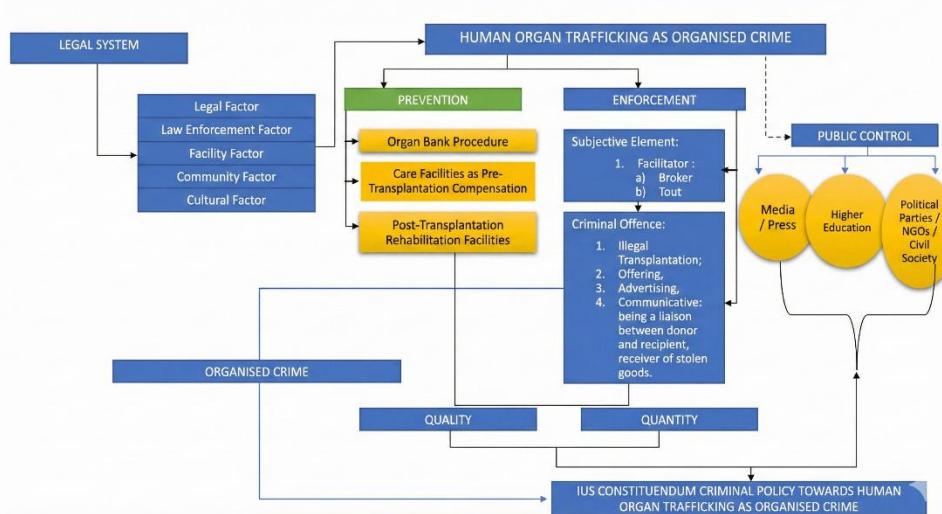


Figure 2: Reconstruction of policies regulating human organ trafficking as an organized crime from Muhamad Iqbal Dissertation.

## Conclusion

The study concludes that Indonesia's current legal framework concerning organ transplantation and the prohibition of organ trade demonstrates strong moral and punitive foundations but remains insufficiently integrated to prevent and prosecute organised forms of organ trafficking. The fragmented nature of Indonesia's health, criminal, and administrative laws results in weak coordination and limited institutional capacity, leaving significant legal and procedural gaps that enable exploitation. While Law No. 36 of 2009 on Health and Law No. 21 of 2007 on Human Trafficking provide a normative basis, neither has yet translated humanitarian ideals into effective legal mechanisms capable of early detection, ethical supervision, and inter-agency enforcement.

The comparative analysis with the Philippines reveals that a coherent and preventive framework—anchored in inter-ministerial coordination, national donor registries, and ethics committees—produces stronger legal control and public accountability. Unlike Indonesia, the Philippines explicitly integrates organ

trafficking within the framework of organised crime, thereby enabling international cooperation and the application of advanced investigative tools such as asset tracing and cross-border prosecution.

Therefore, the reclassification of human organ trade as an organised crime in Indonesia is both conceptually and practically necessary. Such reclassification would permit a network-based enforcement model that recognises the systemic nature of the offence. Reformulation should focus on three dimensions: (1) normative reform, through legislative amendments that explicitly recognise organ trafficking as organised crime and impose corporate criminal liability; (2) institutional reform, through the creation of a National Transplant Authority equipped with investigative and supervisory powers; and (3) operational reform, through the establishment of national donor registries, ethical oversight, and inter-agency cooperation protocols.

In conclusion, addressing organ trafficking as an organised crime represents not merely a legal adjustment but a paradigm shift in Indonesian criminal policy from a reactive punitive stance toward a preventive, human-rights-oriented framework. Such reform would align Indonesia's domestic law with international standards, enhance legal certainty and accountability, and ultimately safeguard human dignity as mandated by the Constitution.

## **Suggestion**

The findings of this study affirm that Indonesia's legal framework on organ transplantation and the prohibition of organ trade has established a normative foundation through the Health Law and the Anti-Trafficking Law. However, these frameworks remain fragmented and insufficient to address the organised and transnational character of human organ trafficking. The absence of explicit classification of organ trafficking as an organised crime, coupled with the lack of institutional integration and preventive mechanisms, has resulted in weak enforcement, limited coordination, and a reactive criminal policy.

The comparative analysis with the Philippines demonstrates that effective prevention and prosecution depend not only on the existence of prohibitive norms but also on the presence of coherent governance, ethics oversight, and inter-agency collaboration. The Philippine model, which integrates medical ethics, administrative regulation, and criminal enforcement, offers a practical reference for strengthening Indonesia's system.

Therefore, it is concluded that Indonesia must reformulate its criminal policy by recognising organ trafficking as a form of organised crime and establishing a national institutional framework that bridges health regulation and law enforcement. Legislative reform should explicitly regulate donor verification, corporate criminal liability, and the authority of a National Transplant Institution. At the same time, preventive and ethical mechanisms such as a national donor registry, medical ethics boards, and cross-agency information sharing must be institutionalised to ensure transparency and accountability.

In this regard, the reclassification of human organ trade as an organised crime is not merely a terminological reform but a paradigm shift in Indonesia's criminal justice policy. Such reform would transform the state's approach from moral prohibition to preventive governance, harmonise domestic law with international instruments such as the UNTOC and the WHO Guiding Principles on Organ Transplantation, and fulfil Indonesia's constitutional duty to protect human dignity.

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