

THE CRIME OF TRAFFICKING IN HUMAN ORGANS AND TISSUES IN ARTICLE 124 PARAGRAPH (3) JO. ARTICLE 432 OF LAW NUMBER 17 OF 2023 ISLAMIC CRIMINAL LAW PERSPECTIVE

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ABSTRACT

This study examines normatively the elements of trafficking in human organs and tissues as stipulated in Article 124 paragraph (3) jo. Article 432 of Law Number 17 of 2023 concerning Health, with the perspective of Islamic criminal law to fill the gap in studies that are still limited between positive regulations and fiqh jinayat. The background is that the progress of organ transplantation actually gives rise to exploitative crimes that degrade human dignity, so it requires an analysis of the alignment of sharia values. The method used is normative legal research with a legislative approach to the norms of the Health Law, conceptual for the concept of body integrity, and comparative between positive offenses and Islamic jarimah. Primary materials include related laws, the Qur'an, and Hadith; secondary such as criminal books and journals; tertiary in the form of a legal dictionary. The analysis was carried out descriptive-analytically through a literature study. The results showed that the elements of the offense included the subject of "everyone," commercialization/trade, intentional mens rea, and absolute unlawfulness, with a prison sentence of 5-7 years plus a multi-level fine of Rp500 million-Rp2 billion. From the point of view of Islamic criminal law, this act is jarimah ta'zîr because it violates hifz al-nafs and karâmat al-insân (QS Al-Isra:70; Al-Ma'idah:32; Al-Baqarah:195), positive sanctions are in line with maslahah but less strict on corporations and the restoration of victims. The discussion underlined the effectiveness of regulations to prevent the exploitation of vulnerable donors, although it is necessary to revise legal entity sanctions, criminal minimums, and harmonize MUI fatwa. Conclusion: the substantive arrangement of ihyâ' maqâsid syarî'ah; recommendations for altruistic donor campaigns, the integration of Islamic repentance in rehabilitation, and empirical research on enforcement.

Keywords: *Trafficking in Organs, Health Law 2023, Islamic Criminal Law, Ta'Zîr, Maqâsid Syarî'Ah*

INTRODUCTION

The development of science and technology in the field of medicine has opened a new chapter in the effort to save lives through the transplantation of human organs and tissues, which was initially expected to be a manifestation of the progress of civilization that benefited humanity at large (Isnanda et al., 2023). Ironically, however, these advances have been the catalyst for the emergence of an increasingly complex and covert form of modern crime, in which the human body that is supposed to be a protected and respected subject is reduced to an object of economic exploitation through the practice of illegal trafficking in organs and body tissues. This phenomenon not only violates the positive legal provisions that apply in various jurisdictions, but is also fundamentally contrary to universal human values, the ethics of the medical profession that upholds the principle of do no harm, and the dignity of human beings as God's created beings who have the right to unshakable physical and spiritual integrity. In a contemporary society characterized by globalization and economic inequality, the trafficking of human organs is increasingly prevalent as one of the most lucrative transnational crimes, exploiting the vulnerabilities of marginalized groups such as the urban poor, victims of social conflict, or illegal migrants who are often forced to source organs for minimal financial rewards that are

disproportionate to the permanent health risks they bear (Pramana Sukma, 2025).

Globally, trafficking in human organs and tissues has long been identified as a serious threat to social stability and public health (Wulandari et al., 2024), with reports from the World Health Organization (WHO) and independent research institutions estimating that the value of these black market transactions reaches billions of US dollars each year, although the exact figure is difficult to verify due to its clandestine operation and involving international criminal syndicate networks (databoks.katadata.co.id, 2022). The imbalance between the increasing demand for transplanted organs due to the increasing cases of kidney, liver, or other multi-organ failures and the limited supply of legal organs from voluntary donors creates a golden opportunity for criminals who use advanced medical technology to carry out illegal surgeries in underground clinics, fictitious hospitals, or even poorly supervised conflict areas. This practice often involves forced recruitment from developing countries in South Asia, East Africa, and Eastern Europe, where victims are recruited through false promises of employment or debt pressure, then their organs are extracted and sold to wealthy buyers from developed countries such as the Middle East or Western Europe, thus deepening the global injustice gap and creating secondary health epidemics of nosocomial infections and post-operative complications in victims. In Indonesia it self, although documented cases are still sporadic, the potential exploitation of poor rural residents or migrant workers is a serious concern, given the limited health surveillance infrastructure and weak coordination across law enforcement agencies.

In essence, transplantation of human organs and tissues is a medical practice that is in principle justified and even recommended within the framework of contemporary ethics, as long as it is carried out on the basis of free and informed consent, without elements of commercialization, and in compliance with international medical standards as stipulated in the Istanbul Declaration on Trade in Human Organs (Putri et al., 2023). This practice allows the saving of thousands of lives each year through living or deceased donors, thus becoming a symbol of human solidarity in the midst of limited biological resources. However, the line between noble medical acts and criminal irregularities becomes increasingly blurred when economic profit motives permeate entire supply chains, from donor recruitment, organ extraction, to distribution to transplant recipients, where the human body is treated as a mere commodity with no regard for ethical consequences, long-term health, or the victim's right to fair compensation. The State, as the bearer of the primary responsibility in protecting its citizens from such forms of exploitation, is obliged to draft strict criminal regulations to safeguard the integrity of the human body as a non-negotiable human right, as recognized in the constitution and international human rights instruments.

In the context of Indonesian national law, Law Number 17 of 2023 concerning Health represents a progressive legislative response to the threat of trafficking in human organs and tissues, with Article 124 paragraph (3) expressly prohibiting any form of commercialization or trafficking in organs and/or body tissues for any reason, thus emphasizing that organs are not an economic commodity but biological assets protected by the state (Susanto et al., 2025). This provision is clarified through Article 432 which regulates criminal sanctions for perpetrators who commercialize transplants or trade organs/body tissues, with a maximum penalty of 12 years in prison and a fine of up to Rp5 billion, making it a special criminal offense that targets serious violations of public health and human dignity. This arrangement not only continues the spirit of the prohibition in previous health laws, but also strengthens it with a more operational formulation,

although interpretive challenges remain regarding the scope of "organs and tissues of the body", the form of "commercialization", as well as the terms of intentional intent of the perpetrator. An in-depth analysis of these elements of the offense is essential to ensure that law enforcement is on target, distinguishing legal medical practice from organized crime, and preventing potential overcriminalization that harms health workers acting bona fide.

A number of previous studies have discussed the issue of human trafficking and trafficking in human organs from the perspective of Islamic law and modern criminological approaches. The research conducted by Rashdi (2024) entitled *Islamic Law and Human Trafficking: The Ethical and Legal Frameworks examines* how the ethical framework and norms of Islamic law can be used to tackle human trafficking practices, including the exploitation of organs. The research focuses on moral values in sharia that prohibit all forms of exploitation of human beings and emphasizes that the principles of Islamic law have the potential to become a normative foundation in efforts to prevent human trafficking. The results of this study show that Islamic law not only emphasizes the prohibition against human exploitation, but also provides a strong ethical basis for the protection of human dignity that is in line with international legal standards in combating human trafficking (Rashdi, 2024). Another study was conducted by Qosim, Muhammed, Ftayh, and Kabrch (2025) with the title *Examining Legislation and Enforcement Mechanisms to Combat International Human Trafficking from an Islamic Criminal Law Perspective*. This study examines the mechanisms of legislation and law enforcement in dealing with human trafficking using the Islamic criminal law approach, especially the concept of *fasād fī al-arḍ* which is understood as a form of social damage that must be prevented by the state. The results of the study recommend a hybrid legal model that integrates Islamic criminal law principles with international legal standards to improve the effectiveness of victim protection and strengthen law enforcement systems against transnational human trafficking networks (Nameer Hashim Qasim et al., 2025). Furthermore, a study conducted by Nielsen, Siddique, Li, and Koizumi (2023) entitled *Social Network Analysis of Illicit Organ Trading Networks: The Medicus Case* uses a criminological approach with a social network analysis method to understand the structure of illegal organ trading networks based on the Medicus case in Kosovo. The study found that organ trafficking involves a complex network consisting of medical personnel, brokers, and health facilities that act as liaisons in these illegal activities. The findings of this study show that organ trafficking is not just an individual criminal act, but part of an organized crime network that requires a more systematic law enforcement strategy (Nielsen et al., 2023). Another research was conducted by Amilang, Ilyas, Halim, and Baxadirovna (2025) through an article entitled *The Crime of Trafficking in Persons in Indonesia: Applying Islamic Criminal Law to Develop a Victim Rehabilitation Framework*. This study focuses on the importance of the rehabilitation approach of trafficking victims using the perspective of Islamic criminal law based on the principles of *maqāṣid al-syarī'ah*. The results of the study show that victim recovery must include physical, psychological, and social aspects so that victims can return to function normally in society and avoid ongoing trauma due to the exploitation experienced (Ilyas et al., 2025).

Although these studies make important contributions to understanding human trafficking and organ trafficking from the perspective of Islamic law, most studies still focus on the ethical aspects, prevention, crime networks, and rehabilitation of victims in general. There have not been many studies that have specifically analyzed the provisions of criminal sanctions against trafficking in human organs and tissues in Indonesia's positive law, especially as stipulated in Article 124

paragraph (3) jo. Article 432 of Law Number 17 of 2023 concerning Health, from the perspective of Islamic criminal law. Therefore, this study seeks to fill this gap by conducting a more in-depth analysis of the construction of criminal sanctions against trafficking in human organs in Indonesian laws and regulations and assessing its conformity with the principles of Islamic criminal law, especially related to the concept of ta'zīr, the protection of the soul (*ḥifẓ al-nafs*), as well as the protection of human dignity within the framework of maqāṣid al-syarī'ah. Thus, this research is expected to make an academic contribution in enriching the study of Islamic criminal law as well as providing a normative perspective on strengthening regulations in an effort to prevent the practice of trafficking in human organs.

This research is focused on three interrelated problem formulations. First, what are the elements of the criminal act of trafficking in human organs and tissues in Article 124 paragraph (3) juncto Article 432 of Law Number 17 of 2023 concerning Health, including legal subjects, criminal acts, delicacies, and mens rea. Second, how to review Islamic criminal law on these elements through the rules of ushul fiqh, maqashid al-shari'ah, and jarimah classification. Third, what is the perspective of Islamic criminal law on criminal sanctions in Article 432, especially its proportionality with the principles of 'is, ta'zir, and maslahah. Thus, this research contributes to the development of an inclusive criminal law discourse in Indonesia.

METHODS

This research is normative in nature that directs the main attention to the study of legal norms regarding the criminal act of trafficking in human organs and tissues as stipulated in Law Number 17 of 2023 concerning Health, especially Article 124 paragraph (3) which prohibits all forms of commercialization of organs and body tissues and Article 432 which establishes criminal sanctions (Juliardi et al., 2023). This normative approach was chosen because its essence lies in the analysis of the juridical construction of the elements of criminal offenses such as subjects, acts, objects, and errors as well as the evaluation of their relevance to the principles of Islamic criminal law, thus allowing an in-depth study of the alignment between Indonesian positive law and sharia values without relying on empirical data in the field. For this reason, the research applies three main approaches that complement each other: first, the statute approach to examine the hierarchy, systematics, and legume ratio of the provisions of the 2023 Health Law; Second, a conceptual approach to explore the concept of protecting the integrity of the human body in the doctrine of general criminal law and fiqh jinayat; and third, a comparative approach in comparing the formulation of criminal elements and the mechanism of criminal sanctions in positive law with the category of jarimah ta'zir and the principle of ta'dib in Islamic criminal law.

The legal materials collected include primary materials in the form of related laws and regulations such as Law Number 17 of 2023 concerning Health and the main sources of Islamic law, namely the Qur'an and Hadith, secondary materials including criminal law textbooks, health law literature, as well as journal articles on the trade in human organs, and tertiary materials such as legal dictionaries and juridical encyclopedias that support the explanation of key terminology (Rizkia & Fardiansyah, 2023). The collection of legal materials is carried out thoroughly through library research by searching university libraries, journal databases, and trusted digital sources. The analysis of the collected legal materials is then carried out through a qualitative method with a descriptive-analytical pattern, namely describing the applicable legal norms systematically,

interpreting their meaning through grammatical, teleological, and systematic interpretations, and then criticizing their conformity with sharia maqashid such as hifz al-nafs and hifz al-'irdh, thus producing normative recommendations that are contextual and applicable for the development of criminal policies.

RESULT AND DISCUSSION

Elements of the Criminal Crime of Human Body Organ and Tissue Trafficking in Article 124 Paragraph (3) Jo. Article 432 of Law Number 17 of 2023

In criminal law theory, criminal acts are defined as acts that are prohibited and threatened with criminal offense by lawmakers, thus meeting certain conditions that constitute criminal offenses in their entirety (Tomalili, 2019). The doctrine of classical criminal law, as put forward by experts such as Moeljatno and R. Soesilo, emphasizes that an act can only be qualified as a criminal act if it meets objective elements, namely real and provable external acts and subjective elements in the form of intentional fault (*dolus*) or negligence (*culpa*) (Kholik & Zulfaidah, 2026). The objective element includes the subject of the law, the act (*actus reus*), the circumstances (*circumstantie*), and the consequences (*gevolg*), while the subjective element highlights the intention or knowledge of the perpetrator of his violation of the legal norm (Hakim & Rozikin, 2025). This approach is relevant in interpreting criminal norms in sectoral legislation such as health law, where lawmakers often design specific offenses to protect the public interest from deviations in medical practice, thus requiring careful interpretation so as not to give rise to an expansion or narrowing of meanings that are not intended.

Law Number 17 of 2023 on Health, which was passed in place of the previous regulation, introduces comprehensive regulations regarding the transplantation of human organs and tissues as part of humanely-oriented health services (Siregar, 2023). Article 124 paragraph (1) emphasizes that the transplant may only be carried out for the purpose of curing diseases and restoring health, without commercial elements, while paragraph (3) explicitly states that "organs and/or body tissues as referred to in paragraph (1) are prohibited from being commercialized or traded for any reason". This absolute ban targets all forms of transactions that make organs an economic object, either directly or indirectly through medical intermediaries, thus reflecting the state's commitment to preserving transplantation as an altruistic practice. The prohibition norm is functionally linked to Article 432, which formalizes criminal sanctions, paragraph (1) threatens imprisonment for a maximum of 5 years or a fine of IDR 500 million for those who commercialize the implementation of organ/tissue transplantation, while paragraph (2) imposes a maximum prison sentence of 7 years or a fine of IDR 2 billion for those who trade organs/body tissues for any reason. The construction of *jo.* (*juncto*) between Article 124 paragraph (3) and Article 432 makes this norm a special criminal offense (*lex specialis*) in the realm of health law, which replaces or complements the general provisions in the Criminal Code.

Analysis of the elements of the crime in Article 124 paragraph (3) *jo.* Article 432 requires a systematic breakdown to reveal how the lawmakers designed it to be operational in judicial practice. First, the subject element of the law includes "every person" as formulated in general in Article 432, which juridically means to include both natural individuals and legal entities involved in the organ trafficking chain, including medical personnel, organ brokers, health facilities, or criminal syndicates. This wide range of subjects reflects the reality of organ trafficking crimes that often involve collusion between medical professionals and non-medical parties, thus allowing

prosecution of doctors who commercialize transplant procedures or hospitals that become illegal facilitators. Second, the element of the act (*actus reus*) lies in "commercializing the implementation of transplantation" (Article 432 paragraph (1)) and "trading organs or body tissues for any reason" (paragraph (2) jo. Article 124 paragraph (3)), where "commercialized" is defined as any attempt to monetize the transplant process outside the regular health service scheme, while "traded" refers to the direct buying and selling of organs or tissues. This act is formal, that is, it is enough to prove the existence of the act without requiring specific consequences such as the death of the victim, although in practice it is often accompanied by the exploitation of living donors.

Third, the element of error (*mens rea*) is implied in the formulation "for any reason" which requires evidence of intentionality (*dolus directus* or *eventualis*) from the perpetrator, where he is aware and wants the act of commercialization or trafficking of organs as a violation of absolute prohibition. The absence of the explicit formulation "deliberately" does not eliminate the need to prove intent, as is the general principle of criminal law that requires subjective error to distinguish criminal offenses from administrative negligence (Zulfaidah et al., 2026). Fourth, the unlawful element is inherent in acts that are contrary to the norms of Article 124 paragraph (3), which serves as the basis for the legality of the violation, where any justification such as "emergency medical needs" or "donor consent" is nullified due to an absolute prohibition "for any reason". This construction makes this offense a hybrid formal-material offense: formal because it is a sufficient act of commercialization, material because it protects the interests of public health and the dignity of the human body.

In the Indonesian criminal law system, the regulation of Article 124 paragraph (3) jo. Article 432 establishes a coherent criminal norm structure, where the norm of the prohibition blank is filled by concrete sanctions, thus facilitating enforcement through the Criminal Code with transcendental proof. This norm not only complements Article 345 of the Criminal Code on the sale and purchase of organs (which is more common), but also specifically targets the health context, with a proportionate gradation of sanctions, which are lighter for the commercialization of procedures (5 years) than direct transactions (7 years). The implications for the protection of the human body are very significant, because it establishes the body as a non-commercial asset protected by the 1945 Constitution Article 28G paragraph (1) and the Human Rights Law, preventing the reduction of human beings into commodities as in the case of the global organ trade (HAM, 2019). This arrangement is in line with the principles of the human right to health and physical integrity, while encouraging a culture of voluntary donor without compensation.

However, critical analysis reveals several weaknesses in the construction of these norms that have the potential to cause legal uncertainty. First, the definition of "organs and or tissues of the body" referring to paragraph (1) of Article 124 has not been elaborated in detail, so it requires interpretation through derivative PP to distinguish vital organs (kidneys, liver) from non-vital tissues (skin, hair), avoiding overreach to legal medical practices. Second, the phrase "commercialized" is semi-open, which, although broad, is vulnerable to subjective interpretation by judges if it is not supported by prosecutorial guidelines, for example, does the cost of a covert "donation" include commercialization? Third, the absence of special provisions on corporations as subjects weakens the handling of illegal hospital syndicates, while the gradation of sanctions does not fully reflect the severity of the social impact of transnational organ trafficking. Overall, although

progressive compared to the previous law, this norm requires strengthening through Supreme Court jurisprudence to increase the certainty and effectiveness of enforcement.

From the above description, it can be assessed that the construction of the elements of the criminal act in Article 124 paragraph (3) jo. Article 432 of Law Number 17 of 2023 concerning Health has succeeded in establishing a strong criminal framework to protect the integrity of the human body from commercial exploitation, with an emphasis on absolute prohibition that reflects the human values of the Indonesian state of law. However, to optimize its function in the criminal system, lawmakers should clarify key terminology through general explanations or PPs, as well as integrate corporate criminal mechanisms to reach organized crime networks. Thus, this norm not only functions as a repressive, but also preventive in preventing the degradation of human dignity in the modern medical era, as well as opening up a space for dialogue with the perspective of Islamic criminal law that emphasizes *hurmah al-nafs* as a basic principle.

Review of Islamic Criminal Law on the Elements of Trafficking in Human Organs and Tissues

The human body in Islamic teachings is not just a biological entity that can be treated arbitrarily, but a holy mandate from Allah SWT which reflects the majesty of His creation, as He says in Surah At-Tin verse 4:

لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ ؕ (التين/95: 4)

Translation of the Ministry of Religion 2019

4. Indeed, We have indeed created man in the best form. (At-Tin/95:4) (Quran NU Online, n.d.).

This concept gives birth to *karāmat al-insān* or human glory that transcends the material dimension, where the principle of *hifz al-nafs* protection of the soul as one of the main pillars of *maqāṣid al-syar'i'ah* requires the *ummah* to maintain physical and spiritual integrity from all forms of exploitation that degrade them. Ash-Syatibi in his monumental work *Al-Muwāfaqāt* emphasized that this *maqāṣid* is *daruriyyah*, meaning essential for the survival of the *ummah*, so that the practice of trading human organs that transform the body into an economic commodity directly collides with the purpose of the *shari'a* to realize *maslaḥah* (benefit) and ward off *mafsadah* (damage) (Azis et al., 2024). Contemporary reflection on verses such as Qur'an Al-Isra verse 70, which promises special dignity for the son of Adam, further reinforces that the body as a container of the spirit should not be commercialized, as it not only violates individual rights but also weakens the foundations of Islamic civilization built on the basis of justice and piety.

Islamic *fiqh* historically and consistently positions the human body as a trust of God that cannot be absolutely owned by its owner, but must be maintained until the return to the Creator, as is the classic rule "*al-ajsad muḥtaramah lā yajūzu taḥrīṣuhā bi ghairi ḥājah syar'iyyah*" which emphasizes the honor (*hurmah*) of the body from dismemberment or transaction without *shari'i* urgency. Scholars of the Shafi'i madhhab, such as Imam Ash-Shafi'i in *Al-Umm*, forbid the buying and selling of organs or body parts because they are separated from life (ARIVAN, 2021), The organ is punished with *najis ghariz ma'nawiiyyah*

equivalent to a carcass that is haram to be used (QS Al-Baqarah verse 173), while the Hanafi school in Al-Marghinani's Al-Hidayah adds that such a contract is void because its object is not worth the benefit of shari'i (lā yuṭlab). Ibn Qudamah of the Hanbali school in Al-Mughni expands on this argument by stating that the trade in blood or limbs is close to jarḥ (physical offense) that is punishable by ta'zīr (Sutrisno et al., 2025). The contemporary view is no less firm, the fatwa of the Indonesian Ulema Council (MUI) Number 12 of 2019 states that organs are not individual haqq dzātiyyah, so commercialization is haram, even though emergency transplants are allowed with qiyas in treatment. Similarly, the National Fatwa Council of Malaysia and Majma' al-Fiqh al-Islami affirmed the absolute prohibition of organ trafficking for the sake of hifẓ al-karāmah, making the concept of hurmat al-jasad a normative bulwark against body capitalization in the modern medical era.

The element of the act of "commercializing or trading organs and/or body tissues" as formulated in Article 124 paragraph (3) of Law Number 17 of 2023 concerning Health, juridical-religious is in line with the prohibition of the mu'āmalah fasid contract in fiqh muamalah, where the object of a transaction that is unclean or damages the trust of the body invalidates the validity of ijab-qabul. In the realm of Islamic criminal law (fiqh jinayat), this act is categorized as jarīmah ta'zīr rather than specific hudud such as qatl or jarḥ because of its general nature and a violation of bodily honor for which the sanction is handed over to the qadli based on the rule of "*ta'zīr al-ḥākim 'alā mā ra'ā min al-mafāsīd wa al-mudharāt*". The practice of organ trafficking is not only civil null and void because of illat najis, but also jinayat because of systemic mudharat, poor donors are exploited to the point of death, contrary to Qur'an Al-Maidah verse 32 which equates the destruction of one soul with the whole of humanity (Kholik et al., 2026). The hadith of the Prophet PBUH about the prohibition of exchanging perishable food properly (*ḥadīth la yu'tā al-ḥummah bi al-ṣa'idah*) becomes a strong qiyas that the organs of the body, as a sacred part, should not be exchanged for worldly ones, so that the elements of positive norms reproduce the spirit of fiqh which prohibits haram objects in criminal muamalah.

The approach of maqāsid al-syarī'ah provides further analytical depth, where organ trafficking damages al-ḍarūriyyāt al-khams with the dominance of hifẓ al-naḥs, because organ extraction is susceptible to permanent harm to the donor such as chronic infection or secondary organ failure, while hifẓ al-'irdh is violated because humans are reduced to a mere source of trade wealth (mall) (Nuraeni, 2025). Ash-Shatibi argues that maslaḥah muṭlaqah requires the prohibition of actions whose mafsadah exceeds the benefits, so that even though organ trafficking saves the recipient of souls, it opens the door to mass exploitation which is contrary to Qur'an Adz-Dzariyat verse 56 about worship for good not destruction. This principle also interferes with hifẓ al-mal, paradoxically, the profits of haram perpetrators damage the economy of the ummah through injustice and hifẓ an-nasl due to moral degradation across generations. Al-Ghazali in Ihya' 'Ulūm ad-Dīn emphasizes the priority of daruriyyat, so that the element of delicacy Article 124 paragraph (3) acts as

waliyy al-amr (ruler) in upholding maqāṣid 'āmmah, preventing the collective mudharat of the rampant illicit organ syndicates in Muslim countries.

Contemporary scholars enrich the discourse with a sharp distinction between authorized medical transplantation and illegal commercial trade. Shaykh Yusuf Al-Qardhawi in Al-Fatāwā al-Mu'āṣirah allows the donation of living organs for shari'iyah darurah such as non-vital kidneys, without permanent mudharat, informed consent, and free based on QS Al-Baqarah verse 195 "do not fall into destruction" (Pinem, 2020). The 2019 MUI fatwa extends to deceased donors with the permission of the heirs for the sake of the recipient's hifẓ al-naḥs, but prohibits payment because of la dharar wa la dharrar. Majma' al-Fiqh al-Islami (Amman resolution 1986 and Mecca 1402 H) was similar, while Sheikh Muhammad Sayyid Tantawi had allowed compensation for medical expenses but was opposed by the majority such as Wahbah Az-Zuhaili whose analysis in Al-Fiqh al-Islāmī was equivalent to selling modern slaves. Indonesian scholars such as Buya Yahya and KH Said Aqil Siradj emphasized that altruistic transplantation is a jariyah almsgiving, but the trade is haram because of efforts and exploitation, especially the case of kidneys in Iran which although regulated is still controversial.

The absolute prohibition of Article 124 paragraph (3) has a profound resonance with the fiqh jinayat which protects al-mustad'afin from exploitation (QS An-Nisa verse 75), where the state applies concrete ta'zīr through imprisonment-fines for the violation of hurmat al-jasad. This positive norm is the concretization of maqāṣid in Indonesia based on Pancasila, encouraging the culture of voluntary donations as pious deeds while preventing haram practices that damage the social order of the ummah, in line with the rule of "al-ḥurriyah lā tata'addā ḥudūd al-syarī'ah".

Reflectively, the researcher argues that the elements of Article 124 paragraph (3) of the 2023 Health Law are not only synchronous but inspired by the karāmat al-insān and hifẓ al-naḥs Islam, with the prohibition of "any reason" echoing the absolute dharar of the sharia, making it a modern effective ta'zīr. However, strengthening through the integrated ulema fatwa in enforcement is needed so that the education of the voluntary donor maslaḥah develops, so that the national crime transforms the tool of ihya' maqāṣid syar'iyah in the midst of medical advances full of capitalist temptations.

Review of Islamic Criminal Law on Sanctions for Trafficking in Human Organs and Tissues in Article 432 of Law Number 17 of 2023

Islamic criminal law, which in fiqh literature is known as *fiqh al-jināyah*, establishes a system of sanctions that is not solely oriented towards retribution against the perpetrators of crimes, but also towards the protection of the fundamental values of human life. The sanction system is known as *al-'uqūbāt*, which is basically designed to maintain social order, uphold justice, and protect the interests of society at large. Within this framework, Islamic criminal law recognizes four main categories of sanctions, namely *hudūd*, *qisās*, *diyāt*, and *ta'zīr* (Kholik et al., 2025). The four categories have different characteristics, but overall they function as instruments to prevent violations of sharia principles while maintaining a balance of social life.

Hudūd is a type of sanction that has been expressly determined in the Qur'an and Hadith for certain types of crimes such as adultery, theft, hirabah, and qazf, so that its nature is fixed and cannot be changed by judges or rulers because it is seen as the Prophet (peace and blessings of Allaah be upon him) which is directly related to the public interest. For example, the Qur'an in QS. An-Nur verse 2 stipulates the punishment of one hundred lashes for unmarried adulterers, while QS. Al-Mā'idah verse 38 stipulates the punishment of cutting off the hands of the perpetrators of theft with certain conditions. In contrast to hudūd, the category of qīṣāṣ is related to crimes against the human soul or limbs which is based on the principle of just retribution as affirmed in QS. Al-Baqarah verse 178 on the concept of "soul is reciprocated with soul" (Brahim et al., 2025). However, Islamic criminal law does not rule out the possibility of reconciliation, because the victim's family has the right to forgive the perpetrator so that the implementation of qīṣāṣ can be replaced by the payment of diyāt as a form of financial compensation. Diyāt itself is basically compensation given to the victim or his family for losses incurred as a result of a criminal act that causes injury or death, whether intentional or unintentional, and in practice can be paid by the perpetrator or by the perpetrator's family known as al-'āqilah (Sari Yulis et al., 2022). This mechanism shows that Islamic criminal law is not only oriented towards revenge, but also pays attention to the recovery of victims' losses and maintains social stability in society. The last category is ta'zīr, which is a type of sanction that is not explicitly specified in the Qur'an or Hadith so that the determination of the form and severity of the punishment is left to the authority of the judge or ruler by taking into account the level of danger of the act and the benefit of the community (Kholik, 2026). The forms of punishment of ta'zīr can be very diverse, ranging from reprimands, fines, imprisonment, to exile, thus providing flexibility for the state to adjust the type of sanctions to the development of forms of crime that arise in society.

In the context of contemporary crimes such as trafficking in human organs and tissues, the category of ta'zīr is the most relevant approach in the perspective of Islamic criminal law. This is because the practice does not fall under the category of crimes that have been explicitly defined in hudūd or qīṣāṣ. However, the practice can still be seen as an act that damages the welfare of society and degrades human dignity, so that the ruler has the authority to impose sanctions that are considered appropriate to prevent social damage.

Regulations regarding sanctions against trafficking in human organs and tissues in the Indonesian positive legal system can be found in Article 432 of Law Number 17 of 2023 concerning Health (BPK RI, 2023). This provision is part of the state's efforts to tackle the growing practice of organ trafficking in line with the increasing need for organ transplantation in the medical world. The article expressly stipulates that any person who commercializes the implementation of organ and tissue transplantation of the human body can be subject to imprisonment for a maximum of five years and/or a maximum fine of five hundred million rupiah. In addition, the provision also aggravates the criminal threat for anyone who directly trades in human organs or tissues, with a maximum penalty of seven years in prison and/or a maximum fine of two billion rupiah.

From the perspective of criminal law, the provision shows that the lawmakers use the approach of imprisonment and fines as the main instruments to tackle the crime of trafficking in human organs. Prison sentences serve to limit the freedom of the perpetrator and prevent the perpetrator from re-engaging in the illegal organ trafficking network. Meanwhile, criminal fines

function as an economic mechanism to eliminate the financial gains obtained from the practice of organ trafficking.

The purpose of criminalization in these provisions is not only repressive, but also has preventive and protective dimensions. From the repressive side, criminal sanctions are intended to provide punishment to perpetrators who have violated legal norms and degraded human dignity. From the preventive side, criminal threats are expected to provide a deterrent effect for individuals and groups who intend to practice organ trafficking. Meanwhile, from the protective side, the existence of criminal sanctions aims to protect the public from health risks arising from illegal organ transplants that do not go through legal medical procedures (Romadhoni et al., 2025).

When compared to the concept of sanctions in Islamic criminal law, the provisions of Article 432 are basically in accordance with the principle of *ta'zīr*. Within the framework of *ta'zīr*, the ruler has the authority to determine the form of sanction that is considered most effective in preventing the occurrence of crimes that can damage the social order (Lestari, 2024). The form of imprisonment provided for in Article 432 can be understood as a modern adaptation of the concept of detention or exile that was once applied in the practice of classical Islamic government. Similarly, the penalty of fines regulated in these provisions has similarities to the concept of *gharāmah* in Islamic law, which is the obligation to pay a certain amount of property as a consequence of a violation of the law.

A comparison between the two legal systems shows that although the forms of sanctions are different, they have the same goal, which is to protect people from practices that degrade their dignity. In Islamic law, the human body is seen as a mandate that must be maintained in its honor. The Qur'an in Surah Al-Isra verse 70 :

﴿ وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَهُمْ فِي الْوَحْشِ وَابْرَأْنَاهُم مِّنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا ۝ ٧٠ ﴾
الاسراء/17:70

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70. Indeed, We have glorified the descendants of Adam and carried them on land and in the sea. We have bestowed upon them sustenance from the good, and We have made them superior to many creatures whom We have created with perfect advantages. (Al-Isra'/17:70)

This verse confirms that God has glorified Adam's children and given them a special status over other creatures. This principle affirms that the human body should not be treated as an object of economic commodities that can be traded.

In addition, Surah Al-Mā'idah verse 32 emphasizes that safeguarding human life is one of the fundamental values in Islamic teachings. The verse states that whoever kills a single soul for no justifiable reason seems to have killed the whole of humanity. Although organ trafficking does not necessarily lead to death directly, the practice still has the potential to endanger the safety of both organ donors and recipients. Therefore, the practice of exploitation of individuals who sell their organs can be seen as an act contrary to the principle of *hifz al-nafs*, i.e. the protection of the human soul.

Another relevant verse is Surah Al-Baqarah verse 195 which prohibits humans from throwing themselves into destruction. In the context of organ trading, this verse can be understood as a prohibition against practices that encourage a person to risk the safety of his body for economic interests. When human organs are treated as a tradeable commodity, the human body is

no longer seen as a trust that must be maintained, but rather as an object of transaction that can be exploited.

From the perspective of *maqāṣid al-syarī'ah*, the prohibition of trafficking in human organs is also closely related to efforts to protect the welfare of society. Scholars such as Imam Ash-Syatibi explained that the main purpose of sharia is to protect the five main elements of human life, namely religion, soul, intellect, descent, and property. The practice of organ trafficking has the potential to damage at least two of these elements, namely the protection of the soul and the protection of human dignity. Therefore, the sanctioning of such practices is part of efforts to prevent wider social damage.

Nevertheless, a critical analysis of the provisions of Article 432 shows that there are still several aspects that can be strengthened. One of the issues that can be debated is the proportionality of criminal sanctions regulated in the article. The threat of imprisonment for a maximum of seven years for organ trafficking perpetrators in some cases can be seen as not fully proportional to the social impact caused by the practice. In international practice, organ trafficking often involves organized criminal networks that exploit the economic vulnerability of the poor. Therefore, relatively light criminal sanctions have the potential to not provide a strong enough deterrent effect for perpetrators.

In addition, the provision also does not explicitly regulate criminal liability for corporations or institutions involved in organ trafficking practices. In many cases, the practice does not only involve individuals, but can also involve medical institutions or networks of organizations that act as facilitators of illegal transactions. If legal norms do not expressly regulate criminal liability against legal entities, then law enforcement has the potential to face difficulties in reaching the actors behind the practice of organ trafficking.

In the perspective of Islamic criminal law, the imposition of sanctions is not only aimed at punishing the perpetrator, but also to prevent future crimes from occurring. Therefore, a preventive approach is an important part of the law enforcement system. The state not only plays the role of the punitive party, but also has the responsibility to create social conditions that can prevent the practice of exploitation of the human body.

Based on this analysis, it can be concluded that the sanctions regulated in Article 432 of Law Number 17 of 2023 basically have a value alignment with the principles of Islamic criminal law, especially in the framework of *ta'zīr* which aims to protect the interests of society and protect human dignity. The prohibition of trafficking in human organs is not only a state legal policy, but also reflects moral values that are in line with the principles of the protection of the soul and human honor in Islamic teachings. Reflectively, the researcher argues that the sanction arrangement in Article 432 can be understood as a form of adaptation of *the principle of ta'zīr* in the modern criminal law system. Although formulated within a secular framework of national law, the substance of the norm is still in line with the purpose of the sharia (*maqāṣid al-syarī'ah*) which emphasizes the importance of safeguarding human dignity. Therefore, strengthening regulations on the trade in human organs is important not only from a positive legal perspective, but also from the perspective of Islamic legal ethics that places human dignity as a value that must be maintained from all forms of exploitation.

CONCLUSION

This study concludes that the elements of the criminal act of trafficking in human organs and tissues in Article 124 paragraph (3) jo. Article 432 of Law Number 17 of 2023 concerning Health has been formulated in a comprehensive normative manner, covering the subject of "everyone," commercialization/buying and selling, intentional mens rea, and absolute unlawfulness, with multi-level sanctions of 5-7 years in prison plus a proportionate fine of up to IDR 2 billion for deterrence and protection of human dignity. The study of Islamic criminal law emphasizes the deep harmony of values, the act falls into the category of jarīmah ta'zīr because it violates hifz al-nafs and karāmat al-insān (QS Al-Isra: 70; Al-Ma'idah: 32; Al-Baqarah: 195), with positive sanctions reflecting the flexibility of ta'zīr for the sake of maslaḥah, even though it is secular. Critical analysis reveals the power of regulation in preventing the exploitation of vulnerable donors, but weaknesses such as the absence of corporate sanctions, criminal minimums, and restorative justice need to be addressed in order to be optimally effective. Indonesia's positive law, in Pancasila, is substantive ihya' maqāṣid syarī'ah through an absolute prohibition that prevents economic-bodily harm, encouraging altruistic donors as jariyah alms. Recommendations: (1) Revision of Article 432 to add sanctions for legal entities, minimum imprisonment, mandatory victim funds, (2) Harmonization of MUI fatwa in the enforcement of the Criminal Code, (3) Campaign for fiqh-based voluntary donor maslaḥah; (4) Empirical follow-up research on the effectiveness of sanctions. Thus, this regulation strengthens the protection of bodily integrity as a divine mandate in the Indonesian Muslim community.

BIBLIOGRAPHY

- ARIVAN, K. (2021). *TINJAUAN HUKUM ISLAM TENTANG JUAL BELI KADAVER* [Undergraduate, UNIVERSITAS ISLAM NEGERI RADEN INTAN LAMPUNG]. <https://repository.radenintan.ac.id/13717/>
- Azis, M. I., Eril, E., Bn, A. M. T., Salam, A., & Arief, A. (2024). MAQĀṢID AL-SHARĪ'AH THEORY BY IMAM AL-SYĀṬIBĪ. *ANAYASA: Journal of Legal Studies*, 2(1), 17–34. <https://doi.org/10.61397/ay.v2i1.191>
- BPK RI. (2023). *UU No. 17 Tahun 2023*. Database Peraturan | JDIH BPK. <http://peraturan.bpk.go.id/details/258028/uu-no-17-tahun-2023>
- Brahim, Z. S., Karimullah, S. S., Assaad, A. I., Septiani, R., & Okur, H. (2025). Integration of Maqāṣid al-Sharī'ah in the Criminal Law Reform to Achieve Justice and Human Dignity. *Jurnal Hukum Islam*, 23(1), 105–144. <https://doi.org/10.28918/jhi.v23i1.04>
- databoks.katadata.co.id. (2022). *12 Ribu Organ Manusia Diperdagangkan Ilegal Tiap Tahun, Berapa Harganya?* | Pusat Data Ekonomi dan Bisnis Indonesia | Databoks. <https://databoks.katadata.co.id/demografi/statistik/8b4a59cf88ea3f0/12-ribu-organ-manusia-diperdagangkan-ilegal-tiap-tahun-berapa-harganya>
- Hakim, S. M. F., & Rozikin, O. (2025). PERBANDINGAN PENGATURAN DELIK PEMBUNUHAN ANTARA KUHP INDONESIA DAN KUHP ITALIA: UNSUR, SANKSI, DAN ASAS PERTANGGUNGJAWABAN. *Jurnal Media Akademik (JMA)*, 3(12). <https://doi.org/10.62281/skpa1c21>
- HAM, K. (2019). *Kajian Pemenuhan Hak atas Kesehatan Bagi Kelompok Rentan di Indonesia*. Komnas HAM.
- Ilyas, A., Halim, H., & Baxadirovna, B. D. (2025). The Crime of Trafficking in Persons in Indonesia: Applying Islamic Criminal Law to Develop a Victim Rehabilitation Framework. *Jurnal Ilmiah*

- Mizani, 12(2), 637–651. Scopus. <https://doi.org/10.29300/mzn.v12i2.8443>
- Isnanda, J. S., Ilhami, M. A. N., & Mulia. (2023). Memaknai Perkembangan Ilmu Biologi Dalam Hal Transplantasi Menurut Pandangan Islam Yang Bersumber Dari Alquran dan Hadist. *Islamic Education*, 1(4), 150–161. <http://maryamsejahtera.com/index.php/Education/article/view/657>
- Juliardi, B., Runtunuwu, Y. B., Musthofa, M. H., TL, A. D., Asriyani, A., Hazmi, R. M., Syahril, M. A. F., Saputra, T. E., Arman, Z., A.Rauf, M., & Samara, M. R. (2023). *Metode Penelitian Hukum*. CV. Gita Lentera.
- Kholik, M. A. (2026). Peran Hati Nurani Hakim dalam Pemidanaan: Studi Normatif Hukum Pidana Indonesia dan Hukum Islam. *Postmodernism: Indonesian Journal of Multidisciplinary Islamic Studies*, 3(1), 67–81. <https://lptnunganjuk.com/ojs/index.php/postmodernism/article/view/606>
- Kholik, M. A., Azazy, Y., & Najmudin, D. (2025). Analisis Sanksi Tindak Pidana Pembunuhan Berencana Dalam Putusan Nomor:305/PID.B/2024/PN RBI Perspektif Hukum Pidana Islam. *Kartika: Jurnal Studi Keislaman*, 5(1), 66–79. <https://doi.org/10.59240/kjsk.v5i1.142>
- Kholik, M. A., Syifa, D. M., & Zulfaidah, R. (2026). Perlindungan Konsumen Digital: Hubungan Hukum Ekonomi, Sanksi Pidana, dan Kewenangan Negara dalam Era Digital. *Al-Zayn : Jurnal Ilmu Sosial & Hukum*, 4(2), 5071–5084. <https://doi.org/10.61104/alz.v4i2.4978>
- Kholik, M. A., & Zulfaidah, R. (2026). Asas Praduga Tak Bersalah Sebagai Prinsip Konstitusional dalam Penegakan Hukum Pidana. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 4(1), 672–686. <https://doi.org/10.62976/ijijel.v4i1.1672>
- Lestari, W. (2024). Ta'zir Crimes in Islamic Criminal Law: Definition Legal Basis Types and Punishments. *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam*, 5(1), 22. <https://doi.org/10.58836/al-qanun.v5i1.21486>
- Nameer Hashim Qasim, Said Salih Mohammed, Raad Fajer Ftayh, Mohammed Zuhair, & Jassim Kadhi Kabrch. (2025). Examining Legislation and Enforcement Mechanisms to Combat International Human Trafficking from an Islamic Criminal Law Perspective. *Al-Istinbath: Jurnal Hukum Islam*, 10(1), 251–279. <https://doi.org/10.29240/jhi.v10i1.12544>
- Nielsen, J., Siddique, A. B., Li, M.-H., Gentili, M., Columb, S., Correa-Cabrera, G., & Koizumi, N. (2023). Social network analysis of illicit organ trading networks: The Medicus case. *Trends in Organized Crime*. <https://doi.org/10.1007/s12117-023-09513-1>
- Nuraeni, I. (2025). *Analisis Hukum Pidana Islam Terhadap Kasus Perdagangan Anak (Studi Putusan Nomor 177/Pid.Sus/2023/PN Pre)* [Sarjana, IAIN Parepare]. <https://repository.iainpare.ac.id/id/eprint/11189/>
- Pinem, R. K. B. (2020). DONOR ANGGOTA TUBUH (TRANSPLANTASI) MENURUT HUKUM ISLAM (Upaya Mengidentifikasi Masalah dan Mencari Dalil-Dalilnya). *DE LEGA LATA: Jurnal Ilmu Hukum*, 5(1), 67–78. <https://doi.org/10.30596/dll.v5i1.3449>
- Pramana Sukma, A. (2025). *Penegakan Hukum Pidana Terhadap Perdagangan Organ Tubuh Manusia Di Indonesia* [Other, Universitas Jambi]. <https://repository.unja.ac.id/76849/>
- Putri, T. M. E., Rahmina, L., & Mutia, S. (2023). Transplantasi Organ Tubuh Manusia dalam Perspektif Etika Kedokteran dan Agama Islam. *Religion : Jurnal Agama, Sosial, Dan Budaya*, 2(4), 1184–1197. <https://doi.org/10.55606/religion.v1i4.541>
- Quran NU Online. (n.d.). *Surat At-Tin Ayat 4: Arab, Latin, Terjemah dan Tafsir Lengkap*. Retrieved

March 12, 2026, from <https://quran.nu.or.id/at-tin/4>

- Rashdi, S. (2024). Islamic Law and Human Trafficking: The Ethical and Legal Frameworks. *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum*, 9(1), 47–60. <https://doi.org/10.22515/alahkam.v9i1.7824>
- Rizkia, N. D., & Fardiansyah, H. (2023). *METODE PENELITIAN HUKUM (NORMATIF DAN EMPIRIS)*. Penerbit Widina.
- Romadhoni, K., Rosidin, U., Kholik, M. A., & Alifi, A. (2025). Urgensi Pembaharuan Hukum melalui Pendekatan Ius Constitutum dan Ius Constituendum pada Tindak Pidana dalam Kegiatan Bisnis di Indonesia. *AL-MUTSLA*, 7(2), 678–711. <https://doi.org/10.46870/jstain.v7i2.1953>
- Sari Yulis, Hamdani, & Budi Bahreysi. (2022). Kebijakan Hukum Pidana Terhadap Hukuman Qishas dan Diyat Bagi Pelaku Pembunuhan Dalam Qanun Jinayat Aceh. *Jurnal Al-Mizan*, 9(1), 22–35. <https://doi.org/10.54621/jiam.v9i1.274>
- Siregar, R. A. (2023). *Hukum Kesehatan*. Sinar Grafika.
- Susanto, A., S, R. M., & Hartini, M. I. (2025). *PERLINDUNGAN HUKUM PENDONOR TRANSPLANTASI ORGAN GINJAL MANUSIA DALAM PELAYANAN KESEHATAN YANG BERKEADILAN*. UNTAG PRESS.
- Sutrisno, A., Yunta, A. H. D., & Afrianto. (2025). Kehalalan Janin yang Mati dalam Perut Hewan yang disembelih Perspektif Mazhab Hanafi dan Mazhab Hambali: The Ruling on Eating a Dead Fetus Found in the Belly of a Slaughtered Animal: A Comparative View of the Hanafi and Hambali Schools of Thought. *AL-MABSUTH: Jurnal Studi Islam Dan Bahasa Arab*, 1(1), 253–278. <https://doi.org/10.36701/mabsuth.v1i1.2402>
- Tomalili, R. (2019). *Hukum Pidana*. Deepublish.
- Wulandari, C. T., Agustin, N., Rizky, S. C., Abdillah, M. F., & Astuti, M. S. (2024). Analisis Yuridis dan Implikasi Penegakan Hukum dalam Menangani Perdagangan Organ Tubuh Manusia. *Lentera Ilmu*, 1(1), 41–52. <https://journal.ciraja.com/index.php/JLI/article/view/22>
- Zulfaidah, R., Kholik, M. A., & Maulana, A. (2026). Harmonisasi Sanksi Administratif dan Sanksi Pidana Terhadap Pejabat Publik yang Terlibat Konflik Kepentingan (Conflict of Interest) dalam Pengadaan Barang dan Jasa. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 4(1), 838–849. <https://doi.org/10.62976/ijijel.v4i1.1716>