

## JURIDICAL REVIEW OF ORGAN TRAFFICKING IN INDONESIA

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### ABSTRACT

One of development of medical science is organ transplantation. The increasing need for organ transplants in the world triggers the actions of certain parties to gain profits. Human organs become illegally traded commodities. The act of organ trafficking is not only carried out individually, but has also become an organized action. The aim of this study is to analyze how are the legal policies related to organ traffickings in Indonesia. This research method is normative legal research, conducted by examining regulations, legal norms with the aim of finding a conclusive formulation to reduce the problem of organ trafficking in Indonesia. The result of this study shows that Indonesian regulation on organ transplantation is regulated in Act Number 36 Year 2009 concerning Health. Specific regulation for human trafficking is regulate in Act Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, which stipulates that the act of organ trafficking is punishable by criminal sanctions. However, there is no specific regulations for organ trafficking that formulate the characteristics of actions as the practice of buying and selling human organs.

**Keywords:** transplantation; organ trafficking

### INTRODUCTION

The rapid development of medical science has made several important breakthroughs for patients with chronic diseases at a terminal stage. One of them is by organ transplantation. This science is also developing in Indonesia. Various important organs that are damaged that cannot be treated with drugs, such as liver, kidney, heart, even muscles and nerves can be attempted for transplantation. Organs to be transplanted generally come from close relatives. This is necessary to obtain close genetic traits in terms of blood type, immune system, and other body's molecular systems. In addition, to minimize ethical, humanitarian, and kinship problems.<sup>1</sup>

Organ transplantation is done by transferring an organ in whole or in part from a healthy person to a person whose organs are permanently damaged. It aims to display the function of the organ. Various types of organs can be transplanted, considering the eyes, heart, liver, kidneys, and even sex organs. Organs to be transplanted can come from people who are still alive with a healthy body condition, or from people who have died. Generally, transplants are carried out for organ functions that are vital for human

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<sup>1</sup> Gani, A.R., Armansyah, A., (2016), Penegakan Hukum Kasus Jual Beli Organ Tubuh Di Indonesia: Model Integratif Dengan Pendekatan Hukum Islam dan UU Kesehatan, *Fenomena* 8(2), 158-161.

life, but in its development, transplants can also be done for cosmetic problems such as skin, hair transplants, and others.<sup>2</sup>

In some countries the issue of organ transplantation is still debated. Indonesia legalizes organ transplantation. In Article 64 of Act Number 36 of 2009 concerning Health it is stated that disease healing and health restoration can be carried out through organ transplantation, drug implants and/or medical devices, plastic and reconstructive surgery, and the use of stem cells. Organ transplantation are only carried out for humanitarian purposes and are prohibited for commercial purposes.

The increasing need for organ transplants in the world triggers the actions of certain parties to gain profits. Human organs become illegally traded commodities. The act of organ trafficking is not only carried out individually, but has also become an organized action. In Indonesia, trafficking in persons is regulated in Act Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, which stipulates that the act of organ trafficking is punishable by criminal sanctions.<sup>3</sup>

The difficulty to fulfill the needs of organs for transplantation has led to an increase in illegal organ trafficking. People with a weak economy capacity try to sell their body parts.<sup>4</sup> Likewise, people who are financially capable are looking to poor areas to find people who are willing to become organ donors. It is also used by those who act as organ brokers who are the liaison between people who need organs and the poor who are willing to donate their organs to get money.

The main motive for organ trafficking is economic problems. In living donors, the organs that are often sold are kidneys, because humans have two kidneys, so most people think that they can survive even though they only have one kidney. In deceased donors, organ sales are often carried out by family. Buyers of these organs generally come from people who have very good economic status. The difficulty of obtaining suitable organs to be donated to patients further increases the price of an organ trafficking.<sup>5</sup>

Development of information technology and social media, various buying and selling transactions are easier to do, including organ trafficking. People who need organ donors or their relatives look for organs through advertisements offered by people who intend to sell their organs. This condition is not something that can be considered normal and of course worries many parties. The biggest concern is the existence of organized crime that carries out illicit trade in organs that can endanger the lives of others and justify any means to achieve their goals.<sup>6</sup>

Poverty in developing countries contributes to the high number of black-market organ traffickings. However, poverty is not the only factor that causes the illegal trade in human organs, because even the poorest country in the world does not automatically become the number one country with black-market for organ trafficking. Legislation in a country also contributes to the high number of transactions in human organ trafficking on the black market.<sup>7</sup>

Various problems that pose a threat to the achievement of the ideals of the Indonesian nation are also related to the crime of illegally organ trafficking involving irresponsible

<sup>2</sup> Bunga, D., Politik Hukum Pidana Terhadap Tindakan Transplantasi Organ Tubuh, (last visited Nov. 9, 2022, 10.36 PM). <https://media.neliti.com/media/publications/73097-ID-politik-hukum-pidana-terhadap-tindakan-t.pdf>.

<sup>3</sup> Nuraeny, H., (2011) *Tindak Pidana Perdagangan Orang, Kebijakan Hukum Pidana dan Pencegahannya*, 39.

<sup>4</sup> Handayani, T., (2012), *Fungsionalisasi Hukum Pidana Terhadap Perbuatan Perdagangan Organ Tubuh Manusia* 68.

<sup>5</sup> Daud, B. S., Sopoyono, E., (2019). Penerapan Sanksi Pidana Terhadap Pelaku Perdagangan Manusia (Human Trafficking) Di Indonesia, *Jurnal Pembangunan Hukum Indonesia*, 1, 352-365. <https://doi.org/10.14710/jphi.v1i3.352-365>

<sup>6</sup> Dewi Bunga, *Supra* note 2, at 40.

<sup>7</sup> Gani, A.R., Armansyah, A., *Supra* note 1, at 160.

individuals who act for personal or illegal group interests.<sup>8</sup> This must be followed up seriously, because the human body is one of God's creations that must be respected and is not a commodity that can be traded freely. This organ trafficking can also threaten human life, either directly with the permission of the person who will sell his organs or the person whose organs have been taken through criminal acts of kidnapping, murder, and others. If this is not followed up seriously and occurs on a large scale, it is feared that this could also have an impact on the unity of the Republic of Indonesia. Based on the description above, the aim of this study is to analyze how are the legal policies related to organ traffickings in Indonesia.

## **METHODS**

This study method is normative legal research, conducted by examining regulations, legal norms, library materials or secondary data. This study aims to analyze how legal policies related to organ trafficking in Indonesia and finding a conclusive formulation to reduce the problem of organ trafficking in Indonesia.

## **DISCUSSION**

### **The Development of Organ trafficking in Indonesia**

Based on data from the Indonesian Child Protection Commission-KPAI the organ trafficking crime involved an organized group in Indonesia who sent children for adoption to various countries such as the Netherlands, Sweden, France, Singapore, and Malaysia. Other data shows that similar cases occurred in Bangka Belitung Province, where there were 24 cases of selling human organs that occurred between 2010 and 2011. In general, these cases were related to cases of child abduction. One of the reported cases of kidnapping accompanied by the loss of one of the organs occurred in an 8-year-old girl. In 2010 this girl was found when he was 12 years old. She was found in a hospital in Tokyo, Japan. When she was found, she had lost one of his kidneys, while her tongue was cut off to remove traces of the perpetrator.<sup>9</sup>

Between 2010 and 2018, approximately 300 victims of organ trafficking were detected across multiple countries. The data available confirms that organ trafficking has been reported in North Africa, South and South-East Asia, Central America, and Europe.<sup>10</sup> Several incidents of organ trafficking that occurred in Indonesia are reported as follows. The case on 21 August 2010, which involved child safety, was disclosed by the National Commission for Child Protection. Arist Merdeka Sirait, Head of the National Commission for Child Protection, revealed that cases of selling organs involving minors have various modes. Some of the cases that were revealed occurred in three regions in Indonesia, namely those that occurred in Bogor, Central Java, and in Tangerang. In fact, the case that occurred in Central Java resulted in a child who was the victim of a kidnapping who was later returned without organs and with his mouth gagged. Another case involved a 10-year-old boy who disappeared and was later returned to his family in Tangerang and Cikande (Serang), Banten. The condition of the victim at that time was found in a state without a heart and kidneys.<sup>11</sup> The recent case on January 2023, the murderer of a 11-year-old child who has murdered by 17

<sup>8</sup> Winata, M.R., Pujiati, T., (2019). Pemulihan Korban Tindak Pidana Perdagangan Orang Berdasarkan Pendekatan Hukum Progresif dan Hak Asasi Manusia, *Jurnal Yudisial* 12, 81-104.

<sup>9</sup> Setiawan, D., Organ Trafficking: Kanibalisme Modern Terhadap HAM Anak. (Last visited, October 1<sup>st</sup>, 2022, 11.36 p.m.). [www.kpai.go.id](http://www.kpai.go.id)

<sup>10</sup> The Inter-Agency Coordination Group against Trafficking in Person, *Trafficking in Persons for The Purpose of Organ Removal*, ICAT, November 2021  
[https://icat.un.org/sites/g/files/tmzbdl461/files/publications/icat\\_brief\\_tip\\_for\\_or\\_final.pdf](https://icat.un.org/sites/g/files/tmzbdl461/files/publications/icat_brief_tip_for_or_final.pdf)

<sup>11</sup> CNN, "Ketahui tentang Penjualan Organ Tubuh Manusia". (Last visited October 1<sup>st</sup>, 2022 10.33 p.m.) <https://www.cnnindonesia.com/edukasi/20180115100230-445-268830/ketahui-tentang-penjualan-organ-tubuh-manusia>

and 14 years old teenager because they were tempted by advertisements for organ trafficking from the internet.<sup>12</sup>

Next is the case that occurred on March 11, 2013. A man with the initials FR, a resident of Tangerang Regency, posted an advertisement on the internet about selling his kidney on March 11, 2013. Another case occurred on June 26, 2013, a man initials S, was an itinerant tailor with the. A 45-year-old man who wants to sell one of his kidneys to redeem his daughter's diploma in Bogor, West Java. He advertised the sale of his kidney in the Hotel Indonesia Roundabout area, Central Jakarta, accompanied by his 19-year-old daughter. Another case occurred on August 15, 2013, committed by a woman with the initials Y.O. 30 years old, a housewife in Padang City, West Sumatra. He wants to sell his kidney to pay off his debt.<sup>13</sup>

Cases of kidney failure continue to increase in number. Terminal-stage patients who need kidney transplants in Indonesia reach 40,000 people. The number of patients who receive optimal medical care is very small because the treatment is expensive and lasts a lifetime. The first kidney transplant in Indonesia was carried out at Cipto Mangunkusumo Hospital in 1977. Until now, in Indonesia only 500 patients have undergone kidney transplants, and 200 of them were carried out at the PGI Cikini Hospital. Kidney donors in Indonesia are all donors from people who are still alive and the number is very small compared to the number of organs needed.<sup>14</sup>

The factors that encourage someone to buy organs are health factors. This is the main reason for organ trafficking. While the main factor that causes someone to sell their organs is the economic factor. Problems like this are the trigger for cases of organ traffickings. The great responsibility to provide for family life, the fulfillment of the needs of life which is increasing with the increasing prices of necessities, very large debts, and various other motives can be the background for the act of trafficking in organs. It is not new that most donors also want to sell their organs to improve their economic status.<sup>15</sup>

### **Regulation of Organ trafficking According to Indonesian Positive Law**

The Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution. Indonesia has the goal of realizing a just and prosperous, orderly, safe, secure, lawful state, and nation system for all its citizens. To achieve these national goals, sustainable development efforts are carried out. The effort is an action carried out in a series of developments in a comprehensive, integrated and directed manner, including health development.<sup>16</sup>

Regulations regarding organ transplantation in Indonesia are regulated in Act Number 36 of 2009 concerning Health. The implementing regulation is Government Regulation Number 18 of 1981 concerning Clinical Corpse Dissection and Anatomical Corpse Dissection and Transplantation of Devices or Human Tissues. Organ trafficking is legally defined as an unlawful act committed by harvesting human organs without the knowledge of the person (the victim). This action is done by recruiting method; bringing victims directly; or sending the victim to the destination country, which is carried out by one person and/or an organized group of people with the aim of obtaining material benefits.

<sup>12</sup> Kompas. Fransiska, L., ed. Jan 15<sup>th</sup>, 2023. Meski Sudah Diblokir, Situs Jual Beli Organ Tubuh Manusia Masih Mudah Diakses. (Last visited, May 3<sup>rd</sup>, 18.38 p.m.). <https://www.kompas.id/baca/video/2023/01/15/meski-sudah-diblokir-situs-jual-beli-organ-tubuh-manusia-masih-mudah-diakses>

<sup>13</sup> *Id.*

<sup>14</sup> Handayani, T., *Supra* note 4, at 139-140.

<sup>15</sup> Handayani, T., *Supra* note 4, at 158.

<sup>16</sup> Agustina, B., (2015), Kewenangan Pemerintah Dalam Perlindungan Hukum Pelayanan Kesehatan Tradisional Ditinjau Dari Undang-Undang Republik Indonesia Nomor 36 Tahun 2009 Tentang Kesehatan. *Jurnal Wawasan Yuridika* 32(1), 83.

Organ trafficking involves various aspects that are contrary to public protection and general welfare. The practice of trafficking in persons is usually accompanied by various threats or acts of violence, which can result in torture for the victim and threats for their future. In general, victims of organ trafficking are those who are in a powerless condition both physically (e.g., women and children); psychologically; as well as economically.<sup>17</sup>

In Indonesia, trading or buying and selling of human organs is regulated in Article 192 of Act Number 36 of 2009 concerning Health. It is stated that anyone who deliberately trades organs and/or body tissues under any pretext, as stipulated in Article 64 paragraph (3) is threatened with imprisonment for a maximum of 10 years and a fine of a maximum of Rp. 1,000,000,000 (one billion rupiah). Apart from that, arrangements regarding organ traffickings have also been regulated in the Criminal Code, Act Number 23 of 2002 concerning Child Protection, and Act Number 21 of 2007 concerning the Eradication of Trafficking in Persons.

The law of organ trafficking is a form of violation of human right.<sup>18,19</sup> The main human rights principle that is most violated in the trade in human organs is the right to life which cannot be waived for any reason. Therefore, the criminal act of selling human organs has received great attention from the international community.

Transplantation is defined as a series of actions to transfer organs and/or tissues of the human body originating from one's own body or originating from the organs of another person, in the framework of medical action to replace an organ or body tissue that is no longer functioning and cannot be repaired. Organ traffickings is an act of exploitation, according to Article 1 point 7 of the Act Number 21 of 2007 concerning Eradication of the Criminal Act of Trafficking in Persons, this is a crime committed with or without the consent of the victim. There are several reasons why person prefers seeking an organ from a live donor. According to the International Association of Living Organ Donors, the quality of organs from live donors tends to be superior to organs from deceased donors.<sup>20</sup>

Criminal law policies against technology and information crimes related to the sale of organs carried out online, need to be supported by cyber laws. This cyber law requires good acceptance and can open insights to be able to define a crime of buying and selling human organs. This aims to obtain a formula for crimes that develop in cyberspace or what is known as cyberspace. A clear regulation also has an impact on a criminal act, that is, it can be dealt with quickly and clearly.

The criminal act of organ traffickings has not met expectations, both from the regulations in the Criminal Code, Act Number 36 of 2009 concerning Health, or Act Number 21 of 2007 concerning Eradication of the Criminal Act of Trafficking in Persons. Not a single article was found that had a formulation regarding the characteristics of actions included in the practice of trading human organs. The policy on the criminalization of the crime of organ trafficking in the Act Number 11 of 2008 concerning Electronic Information and Transactions does not only regulate various

<sup>17</sup> Nuraeny, H., (2017), Penyuluhan Hukum Mengenai Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang Bagi Guru Bimbingan Konseling Dan Siswa/ Siswi SMK/SMA/MA SE-KABUPATEN CIANJUR. *Journal of Empowerment*, 1, 27.

<sup>18</sup> Suhardin, Y., *Tinjauan Yuridis Mengenai Perdagangan Orang dari Perspektif Hak Asasi Manusia* (Last visited: October 2<sup>nd</sup>, 2022, 11.50 p.m.) <https://media.neliti.com/media/publications/40517-ID-tinjauan-yuridis-mengenai-perdagangan-orang-dari-perspektif-hak-asasi-manusia.pdf>

<sup>19</sup> Fadillah, A.N., Muammar, M., & Antio, S.I. (2022). Perdagangan Orang (Human Trafficking) : Aspek Kekerasan terhadap Perempuan di Indonesia. *SANISA: Jurnal Kreativitas Mahasiswa Hukum*, 2(2), 81–91. <https://fhukum.unpatti.ac.id/jurnal/sanisa/article/view/1206>

<sup>20</sup> Aronowitz, A., Isitman, E. (2013). Trafficking of Human Beings for the Purpose of Organ Removal: Are (International) Legal Instruments Effective Measures to Eradicate the Practice?, *Groningen Journal of International Law*, 1(2), 73-90.

types of traditional actions, but also those that occur in cyberspace, by criminalizing certain offenses in the field of cybercrime.

This illegal trading usually starts with placing advertisements/offers, from people who want to sell their organs or by their families. This advertisement can be done by people who need organs through newspapers or electronic media by including telephone numbers that can be contacted if anyone is interested in selling their organs. Another form is through offers coming from people who want to donate organs or potential donors who are willing to give their organs to other people in need for a certain fee. To avoid legal sanctions, usually the *modus operandi* is to use fake ID card data as if the donor is the patient's relative.

Until now, there have been no cases of organ traffickings that have been processed in Indonesian court. This is a question mark for various parties. Online and open trading does not seem to have any effect on law enforcement officials. It is very important that there are law enforcement efforts to enforce the regulations that have been prepared to eradicate this criminal act of organ traffickings to continue. It is also very important to enforce the law to prevent the widespread crime of organ traffickings so that it does not become an organized crime and becomes more difficult to eradicate.<sup>21</sup>

In general, organ transplants come from donors who are willing to voluntarily or who have died. However, not all families are willing to donate the organs of their deceased family members, resulting in a limited number of available organ donors. The national consensus states that human organs cannot be traded. The need for organs is increasing, while there is no effective mechanism to sufficiently supply the body's organs causing the emergence of black market.<sup>22</sup>

The elements of the sale and purchase agreement are not fulfilled in organ trading transactions, because the transplant act does not contain the essential elements of the agreement, namely in the form of goods and prices as should be included in the sale and purchase agreement. In organ trading transactions, the recipient (recipient) does not give money as an achievement for purchasing organs from donors. There is a provision that the recipient needs to be guaranteed not to know who is the organ donor for himself. This is to prevent psychological effects and prevent possible financial ties.<sup>23</sup> In addition, the legal condition of an agreement is a lawful cause. Organs are not a lawful commodity to be traded.

In Act Number 36 of 2009 concerning Health, it is stated that human organ transplants may only be carried out by doctors appointed by the Minister of Health who treat patients receiving organs, and may not be carried out by doctors who treat or treat the donor concerned. Consent for organ transplantation must be given by a living donor. The prospective donor is previously informed by the attending physician about the surgical procedure, the possible consequences, complications, and side effects. Doctors must be sure that the potential donor fully understands the information that has been given to him.

Furthermore, the Health Law also explains that donors or donor families who have died are not entitled to any material compensation in exchange for a transplant. So, the donor's actions must be carried out on a voluntary basis and do not expect anything in return. This principle is emphasized based on humanity. The government must educate the public regarding this regulation, especially the problem of the lack of compensation expected from donating organs to other people in need. Hospitals are also not allowed to take excess material compensation from donor recipients except

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<sup>21</sup> Pasaribu, H., (2014). *Perdagangan Organ Tubuh Manusia untuk Tujuan Transplantasi Dari Perspektif Kebijakan Hukum Pidana di Indonesia*, Medan: FH USU.

<sup>22</sup> Handayani, T., *Supra* note 4, at 68

<sup>23</sup> Gani, A.R., Armansyah, A., *Supra* note 1, at 14.

for costs incurred during transplant operations. If the donor is unable to pay, the government is obliged to bear the financing.

In addition to the things that have been regulated above, it is forbidden to carry out human organs, let alone to be traded illegally both inside and outside the country. Violation of this regulation will be subject to imprisonment and fines. Various illegal aspects related to the trade in human organs are contrary to the protection and general welfare. Especially if the practice of trafficking in persons or trading in organs is often associated with various acts of threats and violence.

Act Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons regulates the prohibition against trading in human organs. These rules are specifically regulated in Article 1 number 7 and Articles 2, 3, 4, 5, 6, and Article 7. In these articles, organ traffickings is classified as a crime. It is further stated in Article 13 that trafficking in persons can occur either individually or by organized groups. Article 15 stipulates the threat of sanctions in the form of a fine with a weighting of three times the fine listed in Article 2, Article 3, Article 4, Article 5, and Article 6, namely at least Rp. 120,000,000.00 (one hundred twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

According to Article 1 point 7 of Act Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons it states that trading in human organs is an act of exploitation. It is considered against the law to move or transplant organs and/or body tissues or use someone's energy or ability by another party to gain material or immaterial benefits.

Another regulation that is also related to organ trading is Act Number 39 of 1999 concerning Human Rights. This law becomes the umbrella law for the protection of human rights for all existing citizens. Article 3 of this law emphasizes that every human being is born free, has equal dignity and rights, and has basic rights that are protected. In Act Number 39 of 1999 concerning Human Rights there are several articles which clearly regulate the prohibition against human trafficking or slavery, namely:

1. Article 4: humans have the right to live, the right not to be tortured, the right to personal freedom, the right not to be enslaved. All these rights are part of human rights which cannot be reduced by anyone and under any circumstances.
2. Article 20: Prohibition of all forms of slavery.
3. Article 65: Every child has the right to protection from child exploitation, kidnapping and trafficking.

In addition, criminal regulations against technology and information crimes related to the sale of human organs online also need to be supported by cyber laws. There is also a need to have characteristics that can accept and have broad insight to define the act of buying and selling organs online. This is important so that all forms of cyber crime (cyberspace) can be eradicated because it has been supported by clear regulations.

The criminalization policy in the Act Number 11 of 2008 concerning Electronic Information and Transactions also criminalizes certain offenses in the field of cybercrime. Considering that the organ trade that is rampant nowadays uses a lot of social media, it is necessary to have strict rules relating to organ trading through electronic transactions.

Organ trafficking is a form of human exploitation. A crime that must be completely eradicated, so that criminal efforts are carried out with legal breakthroughs against all actions or attempts at trading human organs. This must also reach all actors, organized groups and intellectual actors who are involved in organ traffickings, must also reach

people who participate or participate or provide facilities and conveniences and include parties who know but omit this illegal trade.<sup>24, 25</sup>

## CONCLUSSION

Arrangements regarding organ transplantation are regulated in Act Number 36 of 2009 concerning Health and Act Number 21 of 2007 concerning the Eradication of Criminal Acts of Trafficking in Persons, which stipulate that acts of organ trading are punishable by criminal sanctions. However, until now no implementing regulations have been found that formulate the characteristics of actions that can be categorized as the practice of buying and selling human organs.

There needs to be cooperation between the government and various groups, such as hospitals, health workers, academics, and various other agencies to educate the public and conduct outreach so that they do not trade in human organs and prevent the practice of trading in human organs. In addition, the Indonesian government also needs to activate various collaborations with countries to prevent, eradicate, and punish perpetrators of organ traffickings and optimize communication channels in each country that collaborate to eradicate the practice of organ traffickings. The participation of the community is also highly expected in the act of eradicating trade in human organs. Awareness needs to be raised that the organs of the body are wealth bestowed by God Almighty on His people, so they cannot be used as trading commodities, especially if done for profit.

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<sup>24</sup> Gani, R.A., (2015). *Perdagangan Organ Tubuh Manusia Dilihat Dari Perspektif Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan Dan Menurut Hukum Islam*. IAIN Sulthan Thaha Syaifuddin, Jambi, 44.

<sup>25</sup> Putri, R.T., Baker, F.F., & Chairunnisa, D., (2022). Problematika Human Trafficking Sebagai Kejahatan Transnasional Dalam Perspektif Keimigrasian Dan Hukuminternasional, *Journal of Law and Border Protection*, 4, 79-87.



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