



THE CAUSES OF INDONESIAN PEOPLE SELLING COVERED KIDNEYS FROM A CRIMINOLOGY AND ECONOMIC PERSPECTIVE: ANALYSIS BASED ON RATIONAL CHOICE THEORY

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Abstract:

Kidney transplantation has been practiced in Indonesia by hundreds of patients with End-Stage Renal Disease (ESRD) and has been successful. Kidney transplant activity is considered legal as long as it does not contain elements of trading. Although buying and selling kidneys is considered a crime, there were more than 100 cases of covert kidney sales in Indonesia between 2015-2021. This crime must be eradicated by the Indonesian government, and in order for an effective eradication policy to be based on a study of the causes of people selling their kidneys, using rational choice theory as a theoretical and practical criminological theory is adequate. Based on the results of a study based on rational choice theory, people sell kidneys because they are based on self-assessment, and are always oriented towards the goal of getting money easily, quickly, and a lot. Kidney sellers use 3 criteria in selling kidneys, namely (a) selling kidneys is a preference and occupies the highest hierarchy in the calculation because it is financially profitable, (b) selling kidneys is safer from all risks and can maximize utility, (c) selling kidneys can be beneficial, easy to do, satisfying, and fun.

Keywords: cause, selling covered kidneys, rational choice theory

1. Introduction

Since 1977, Indonesia has used kidney transplantation as the last treatment option for patients with end-stage renal disease (ESRD), with a total of 629 transplants, which were carried out by 12 kidney transplant center hospitals (Supit et al., 2019). Kidney transplantation can save lives so that it is categorized as a legal activity, as long as the kidney used for transplantation is obtained ethically, does not contain elements of buying and selling, is not the result of murder or coercion to get people to donate kidneys.

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However, WHO estimates that 5-10% of organ transplant procedures worldwide result from commercial transactions (Shimazono, 2007).

Based on this phenomenon, the commercialization of human organs or tissues is prohibited by Indonesian law based on Article 64 (3) of Law Number 36 of 2009 concerning Health, and perpetrators are threatened with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000,00 (one billion rupiahs). Even though kidneys are prohibited, based on court rulings in 2016 and 2019 there are strong indications that there have been 81 cases of buying and selling kidneys for transplant purposes, because donors get money from recipients through brokers based on a written agreement. In fact, there have been more than 100 cases of kidney trafficking for transplants in Indonesia (Kementerian Perempuan dan Perlindungan Anak, 2016). In 2016-2019 the Indonesian police succeeded in dismantling a syndicate of kidney trafficking cases and arrested 3 people in Bandung, West Java, and 6 in Jakarta. Between the seller and the buyer of the kidney a written agreement deed, for example, Perry (donor) and Andri (recipient) made an agreement in Surabaya. Agreements were also made by Riandy with Midun, Ahmad with Oetomo, and Dasep with Ependi. The defendant was sentenced to prison for between 1-7 years for being involved in 15 cases of buying and selling kidneys (Putusan Pengadilan Negeri Jakarta Pusat, 2016). Kidney trafficking cases were discovered in Indonesia for the first time in 2016 (Putrawan et al., 2016).

Juridically, if it is based on the contents of Article 1457 of the Indonesian Civil Code, then the process of buying and selling kidneys carried out by donors with recipients in Indonesia fulfills the element of buying and selling, namely that there are 2 parties mutually agreeing to hand over the kidney by getting paid for the price of the kidney. agreed. However, this activity cannot be categorized as legal buying and selling, because buying and selling kidneys is prohibited by Indonesian criminal law. Based on this review, the authors mention (the phenomenon of organ donors accompanied by payment of a sum of money to donors in Indonesia based on a written agreement deed) with the term "buying and selling kidneys covertly." Donors who get money in return from recipients can be called "People Selling Covered Kidneys".

The Indonesian government is obliged to prevent its population from selling their kidneys for transplants so that organ trafficking does not occur. Organ trafficking violates fundamental human rights, endangers the health of individuals and communities and undermines the noble cause of transplantation, (Martínez et al., 2018). has physical and psychological implications for sellers, (Shroff, 2009) because usually there is no adequate treatment after selling a kidney (Laurence, 1998) and economically the activity of selling a kidney does not generate long-term economic benefits because the health costs after selling a kidney are actually more (Goyal et al., 2002).

In order for the prevention of these crimes to be effective, it must be done by eliminating the causes of people selling kidneys. An understanding of the causes of people selling kidneys can be known by scientific analysis, namely using criminological theory. Based on this thought, the author needs to examine the causes of people selling

kidneys from the perspective of rational choice theory. Rational choice theory is appropriate to be used to analyze the case because it can adequately explain the causes of people making decisions to commit crimes, and is currently being used by scientists more and more, and is positioned as a mainstream criminological theory in the United States and has proven to be able to adequately explain some crimes in the United States, China by cost and benefit factor (Zhao et al., 2020). In terms of theoretical content, the number of articles that test rational choice theory hypotheses to develop theories and concepts is increasing. Practically, this theory is widely used by scientists to explain the causes of criminal acts and the results are consistent in the context of criminology anthologies (Jaynes et al., 2017).

The benefits of the results of research on the identification of the causes of people selling kidneys can be used as a basis for consideration by the Government to prevent the sale of hidden kidneys while at the same time compiling more prospective health law provisions in the regulation of transplanted and prohibition of buying and selling human organs or tissues. In consideration, the rational choice theory has contributed to understanding the emergence of institutions that create conditions or social contexts for criminals that allow changing beliefs, preferences, norms, and values that are believed by individuals so as not to become recidivists, and other people do not commit the same crime (Sato, 2014).

2. Theoretical Framework

Criminology studies the definition of crime, the forms of crime, the causes of crime, and the reaction of society to crime. Many theories of criminology discuss crime but can be categorized into two, namely macro criminological theories and micro theories. Macro criminological theories discuss crime in a broad context, including discussing the causes of crime from the external side of the perpetrators of crimes such as geographical conditions, environment, situations, natural conditions (eg tension theory, subculture theory). While micro theories discuss the causes of crime from the side of the individual perpetrators of crime. One of the theories of criminology that belongs to the category of the micro criminological theory that discusses the causes of people committing crimes from an individual perspective is a rational choice theory because it examines individual characteristics, namely their attitudes and behavior (Muftić, 2009).

Rational choice theory is one of the core theories in criminology. Rational choice theory is used to model humans in decision-making, including the decision to choose to commit a crime. Each individual in choosing an action will (a) choose the action that most satisfies his desires; (b) believe that the action is the best choice because there is a lot of evidence of its goodness, and (c) assume that the choice of action can invest resources. Individual self-interest and desire to maximize pleasure and minimize pain (McCarthy & Chaudhary, 2014).

When someone makes a decision, the consideration of potential costs and benefits is always the main consideration, and each choice is based on the results of rational

thinking and is carried out with full awareness in order to optimize pleasure and minimize suffering. Individuals are free to choose any action including committing a crime if it is considered satisfying, useful, and easy to do. The general assumptions of the rational choice theory are: (1) humans are purposive and goal-oriented; (2) humans have a set of preferences or utilities that are arranged hierarchically; and (3) in choosing behavior, individuals make rational decisions based on (a) the utility of alternative behavior with reference to the hierarchical order of preferences, (b) the cost of each alternative choice, and (c) the best potential to maximize utility (Turner, 1997).

The rational choice theory was then developed by Cornish and Clarke to design a theory of crime prevention situationally because rational choice theory can explain many different components and is broad enough to be applied to several types of crime (R. Clarke, 2014). The goal is to help parties focus their efforts on situational crime prevention by reducing the opportunities for people to commit very specific crimes. Preventive measures are carried out by involving systematic and permanent management, design or manipulation of the immediate environment; make crimes more difficult to commit and riskier or perceived as less beneficial and unforgivable (R. V. G. Clarke, 1997). Thus, based on the results of crime studies based on the theory of rational choice, crime prevention efforts should be focused on specific ways to modify the physical and social environment of people that provide opportunities for people to commit crimes (Homel, 1996).

O'Grady criticizes the content of rational choice theory that all individuals have the capacity to make rational decisions, but does not explain why youth and adults are exempt from criminal responsibility, and the content of this theory contradicts the Criminal Justice System in several countries which forgives the perpetrators of certain crimes. In addition, this theory does not support the idea that not all individuals are rational actors due to cognitive disabilities, for example, individuals who do not think rationally (including people with mental disorders) (Grady, 2011). Although the rational choice theory has been criticized, it is gaining popularity because its content is simple and can adequately explain cases and even more predictive explanations (Elster, 2001).

3. Research Methods

This research is a case study with a qualitative approach. The phenomenological approach is used to understand the phenomenon of hidden kidney sales. Crime case studies are very important to understand the modes and motivations of crime so that the results of the study can be used to prevent crime because crime from time to time has different causes (Angkasa, 2020). This case study was conducted by examining 9 cases of kidney trafficking in Indonesia from 2015 to 2021 based on rational choice theory in order to understand the reasons why people sell their kidneys for transplants.

Primary data was obtained by using in-depth interviews with respondents to explore the reasons for selling their kidneys. The results of the interviews were controlled by secondary data in the form of data on cases of kidney sales.

This case study was conducted by examining 9 cases of kidney trafficking in Indonesia from 2010 to 2019 based on rational choice theory in order to understand the reasons why people sell their kidneys for transplant purposes. Data on cases is collected by identifying those contained in the annual reports of state ministries, data on hospitals, news in online mass media, and the contents of the 2016 and 2019 Central Jakarta District Court Decisions. Content analysis techniques are used to discuss the problems. The court's decision also contains the confessions of the perpetrators of the crime, statements from experts, witnesses, and the opinion of the judge. The analysis was carried out using deductive thinking techniques. In the steps, the researcher describes 3 propositions in rational choice theory (major premise) then applies these propositions in the case of people selling kidneys in Indonesia (minor premise), and then draws conclusions (conclusions).

4. Result and Discussion

Based on the annual reports of several Indonesian state ministries, news in online mass media, and the contents of Court Decisions, results of police investigations, and explanations of lawyers, it is known that there are 9 cases of kidney transplant processes in Indonesia that violate criminal law. The perpetrators consisted of several people coordinated by a broker, and all the perpetrators had skills in managing crime to earn money. Suryadi, Setiawan, and Defa are syndicate brokers in 2019, and Herry is a 2016 syndicate broker. Those kidney traders deserve to be called syndicates (Ikatan Dokter Indonesia, 2016).

The majority of people who sell kidneys covertly in Indonesia (called kidney sellers) are male, and only 1 is female. Kidney sellers age between 20 to 35 years and include the poor. The transplant process can be successful because it is facilitated by brokers by means of document falsification. The phenomenon in Indonesia is the same as in the Philippines, in that the majority of people who sell kidneys are male, young, and poor (Nancy, 2015).

With regard to the causes of the sale and purchase of human organs or tissues as a result of research and the content of court decisions by the 2016 and 2019 syndicates, it is necessary to test based on the content of rational choice theory by means of deductive thinking, which is to describe the theoretical proposition (major premise) and then apply the proposition in the case. kidney sales in Indonesia (minor premise) in order to make a conclusion (conclusion). According to Turner, that 3 assumptions in rational choice theory. If each proposition is applied to discuss the causes of people selling kidneys in Indonesia, the results of the discussion are as follows.

A. Humans are Purposive and Goal-Oriented

Humans are purposive (prioritizing self-assessment in making choices) and their choices are goal-oriented. There are 3 parties involved in buying and selling kidneys, namely the seller (donor), the buyer (recipient), and the trading syndicate (controlled by broker).

Kidney sellers prioritize self-assessment when deciding how to get money quickly, easily, in large quantities, namely selling kidneys. (a) The criteria for "quickly" according to them is to get money in a fast period of fewer than 3 months. (b) The criterion of "easy" is to earn money without working capital and without working hard. (c) The criteria for "a large amount of money" is between 75-90 million rupiah. For kidney sellers whose jobs are public transport drivers, laborers, small farmers, money between 75-90 million rupiah is considered a lot because their income is only 1.5 million rupiahs per month. Kidney sellers in some countries also understand that patients will choose to get a kidney from a living donor because the success rate of curing end-stage renal disease is very high compared to obtaining it from a cadaveric donor (Waterman et al., 2015).

Brokers look for potential kidney sellers by visiting hospitals that treat patients with kidney failure and dialysis. If the broker has found a potential buyer, it will assign kidney hunters to find potential sellers in the countryside and place advertisements on social media. The kidney hunter makes his own judgment on whether he is able to find a potential seller or not. Based on the results of studies on court decisions in 2016 and 2019 the party that regulates the kidney trading process is a broker, starting from the process of finding potential kidney buyers, assigning kidney hunters to search for potential sellers throughout Indonesia, assigning other syndicate members to accompany sellers in the initial medical examination, falsifying documents population, assisting sellers in the hospital before the transplant, to the process of dividing the money from buying and selling kidneys between syndicate members and kidney sellers. The members of the kidney buying and selling syndicate have their respective duties in accordance with the agreement and will receive the amount of money determined by brokers who can communicate with potential kidney buyers.

Based on the pattern of crime and risk management, kidney trafficking in Indonesia can be categorized as a syndicate. The reason is that they work systematically which is controlled by a leader (broker) in the territory of Indonesia so that between one member and another member has different tasks but always leads to efforts to earn money through kidney trading, including developing strategies so that their activities are not detected by the Indonesian police. The author's conclusion is based on the notion of a crime syndicate, namely a group of individuals who join together to commit crimes together based on an organized task in a certain area (Slabbert, 2008).

The choice of kidney seller action is based on an economic orientation, namely getting money the easy way, fast time, and large amounts. Perdagangan organ mengutamakan perolehan keuntungan atau keuntungan financial, Organ trafficking prioritizes the acquisition of profit or financial gain (Kalb & Negri, 2018) and the more selfish a person is, the more receptive he will be to opportunistic factors (Fehr & Fischbacher, 2002). In the case of several countries, many buyers think that what is done is reasonable because it is based on an agreement (Nancy, 2015).

Kidney sellers always assess the price of a decent kidney, physical and psychological abilities before and after transplantation. There are kidney sellers who are approached by kidney hunters, and there are also those who come to kidney hunters to

offer kidneys. Kidney hunters are always easy to explain all the terms and stages of selling kidneys to potential sellers because the majority of kidney hunters have sold kidneys for voluntary transplant reasons. Rational explanations from kidney hunters and syndicate members to potential kidney sellers can also be made more complex but easy to understand, so that prospective sellers develop their cognitive abilities perfectly to process information so that they make the right choice (Simon, 2000), namely selling kidneys in order to get a lot of money easily and quickly.

The goal orientation of kidney buyers is to obtain a cure for their illness in a relatively short time (because if you wait according to the transplant queue from people who actually donate kidneys for humanity, the waiting time can be longer), it is safe because it is done in a certified hospital, at an affordable price (cheaper than transplanting outside Indonesia). Some end-stage renal disease patients, who can't wait the long wait according to the waiting list, will seek a solution in the form of buying a kidney for a quick transplant (Martínez et al., 2018). In decision-making, the content of rational choice theory believes that the rationality of the actor occupies a dominant position in the actor's self-interest as a determination of preference, as is widely referred to in the economics literature, namely financial gain (Jaynes et al., 2017). The rationality and orientation of all kidney sellers in Indonesia in the context of economic interests is in accordance with the results of Vlaev's research, that generally, a person's choice in determining action is often consistent in a context, even though it is not stable between contexts (Ivo Vlaev, 2018).

B. Humans Have a Set of Preferences or Utilities that are Arranged Hierarchically

Based on the results of in-depth interviews and studies on the content of court decisions on cases of kidney buying and selling syndicates, it is known that sellers have the authority to prioritize a sequence of needs that they have arranged hierarchically, namely paying off debts and requiring working capital. Another option is that they don't sell their kidneys and work as usual, but cannot pay off their debts and have no working capital.

The attitude and behavior model of kidney sellers in choosing the act of selling kidneys rather than working to earn money easily, quickly in large quantities (as a preference) is strongly influenced by economic considerations and risks, as well as the behavior of people who have sold kidneys who live at home.

This kidney selling behavior is the same as Bandura's opinion in cognitive theory that there are many cognitive considerations that can be influenced by reasoned actions and interpersonal behavior and social behavior of individuals around them (Bandura, 1989) because brokers and kidney hunters have sold kidneys and live in the same area as the kidney's seller. Kidney sellers use other considerations from outside the individual, namely the money made from previous kidney sellers and the condition of the prospective recipient because according to rational choice theory, other people also have preferences that should be considered (Jaynes et al., 2017).

C. In choosing behavior, individuals make rational decisions based on:

- the utility of alternative behavior with reference to the hierarchical order of preferences,
- the cost of each alternative choice, and
- the best potential to maximize utility Human rational decisions are based on 3 considerations as taught by Turner in rational choice theory, namely as follows:
 - 1) The utility of alternative behavior with reference to the hierarchical order of preferences. The utility of the sale and purchase of kidneys is always a major consideration (first rank) because it can be used to pay off debt and additional working capital. Everyone's preferences can be different, but the kidney seller's preference which is hierarchically at the top is money. Psychologically, the value of each alternative choice is not always fixed, but the preference is made using sequential calculations based on pieces of information chosen by the decision-maker (Ivo Vlaev, 2018). Kidney sellers have calculations based on economic assumptions, and make money as the main preference, because of the ordinal assumption in economic theory that the consideration of financial benefits determines some people to arrange the order of preferences (Ariely et al., 2003). The kidney seller's vested interests motivate crime because it is often the easiest way to secure what he wants (Jaynes et al., 2017).
 - 2) The Cost of Each Alternative Choice. Kidney sellers have properly calculated how much it will cost if they choose to commit a crime, and it turns out that the cost or risk of selling a kidney is less than the money that can be put to good use. Many people with the end-stage renal disease need a kidney because impaired kidney function can lead to health complications (Hutajulu, 2020). Kidney trading brokers earned more than 1 billion rupiahs in a few months, for example, Kwok Herry Susanto who brokered about 30 transactions) (Radar24, 2016). Although the money earned is not as much as the brokers, all kidney sellers consistently choose to sell kidneys as the right action to meet economic needs. The kidney seller's thinking is in accordance with economic considerations in rational choice theory and psychological assumptions, that people will behave consistently in a context (Amartya, 2011).
 - 3) The Best Potential to Maximize Utility. The kidney seller wants to maximize the usefulness of the transaction, namely so that he can benefit from the money from the sale of the kidney, with the excuse that the kidney buyer is cured of the disease. They understand that many kidney buyers are willing to buy, because 1.5% of deaths worldwide are due to kidney failure, and the majority of kidney transplants are successful in curing the disease (Peng et al., 2019). This kidney seller's way of thinking is included in the choice of an appropriate attitude because the process of selecting an action is influenced by subjective probabilities that will result in certain actions whose value is also subjective depending on the perception (Ivo Vlaev, 2018).

Usually, decision-making is strongly influenced by self-confidence and values embedded in the local context, the ability to take into account the risk of a decision, perception of information, and the intensity of the stimulus as a basis for reviewing a decision (I Vlaev et al., 2011).

Regarding the individual behavior of kidney sellers, the argument that states that it is the result of attitudes and beliefs about certain actions is the result of self-assessment, the result of social control, and social approval (Norman et al., 2000). However, the decision of the kidney seller is only local/contextual (ie the decision when the perpetrator sells the kidney), and is not necessarily decided in the same way in other matters. Thus, according to the results of the study of the application of rational choice theory, the rationality of actors only applies to certain (local) affairs, not to all (global) affairs (Burger, 1999).

Referring to the thought of kidney sellers in Indonesia in choosing actions, the contents of the rational choice theory are proven to be able to explain precisely that what he does is solely for money. Thus, it is true that people will choose actions on the basis of whether they can produce pleasure and happiness, and can avoid pain, or help eliminate unhappiness (Siegel & McCormick, 2006).

It is precisely what scientists put forward that there are 4 micro considerations about the reasons people choose to be involved in crime, namely because the chosen act can be (a) useful, (b) easy to do, (c) can be satisfying, and (d) can be fun (R. V. G. Clarke, 1997)

This assumption is also rooted in Bentham's idea that everyone has free will in determining their own behavioral choices. Therefore, the rational choice theory is the dominant paradigm in criminology, and other social sciences such as political science, sociology, law, and economics (Becker, 1974).

5. Conclusion

Based on the results of qualitative research using this phenomenological approach, it can be concluded that rational choice theory can adequately explain the causes of people selling their kidneys covertly in Indonesia. Kidney sellers rely on self-assessment when choosing to sell kidneys facilitated by a broker. The decision to sell the kidney is based on the individual goal of getting money easily, quickly, and in large quantities. Kidney sellers use 3 criteria in choosing to sell a kidney, namely (a) the preferences are arranged hierarchically and selling a kidney is the main preference, (b) the cost of each alternative is taken into account and selling a kidney can maximize utility, and (c) selling a kidney is believed to be useful, easily done, satisfying, and fun.

Conflict of Interest Statement

The authors declare no conflicts of interests.

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