Juris Sinergi Journal (JSJ)
2026, Vol. 3, No. 2
Website https://journal.sinergilp.com/index.php/jsj
DOI: https://doi.org/10.70321/jsj.v3i2.201

Reconstruction of Criminal Liability for Blood Trading Practices Based on the Principle of Legal Certainty

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Abstract
The practice of buying and selling human blood raises legal issues that extend beyond violations of the prohibition on the commercialisation of human blood. It also concerns legal certainty in the framework of criminal liability and the protection of healthcare service delivery. Although Law No. 17 of 2023 on Health and Law No. 1 of 2023 concerning the Indonesian Criminal Code establish prohibitions and prescribe criminal penalties in relation to such practices, further harmonisation of legal provisions, clarification of the constituent elements of the offence, and consistency in the imposition of sanctions remain necessary. This study aims to analyse the legal framework governing the prohibition of blood trading and to reconstruct a law enforcement model grounded in the principle of legal certainty. The study employs normative juridical research methods, adopting descriptive-analytical and prescriptive approaches. The research encompasses statutory, conceptual, and case-law approaches. Primary legal materials consist of legislation and judicial decisions, while secondary legal materials include books, scholarly journal articles, and relevant legal doctrines. The materials are analysed qualitatively through statutory interpretation and the harmonisation of legal provisions. The findings indicate that the principal challenges in law enforcement arise from potential regulatory overlap, the lack of clear boundaries between the commercial trading of blood and legitimate blood-processing charges, and the need for consistency in determining criminal liability. Accordingly, a reconstruction of the existing legal framework is required through the harmonisation of legal norms, clearer specification of the constituent elements of the offence, strengthened interinstitutional coordination, and the proportionate imposition of criminal sanctions. These measures are essential to establishing a law enforcement system that ensures legal certainty while safeguarding blood donors, patients, and the sustainability of blood transfusion services.

Keywords: Blood Trading; Criminal Liability; Legal Certainty; Law Enforcement.
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Introduction

Human blood constitutes an essential component of healthcare services, the utilisation of which is concerned not only with the preservation of human life but also with the fundamental values of humanity and the State's responsibility to guarantee the public's right to health (Law No. 17 of 2023, Art. 114(1)–(3); World Health Organization [WHO], 2026). Accordingly, the blood service system must be established on the principles of safety, social solidarity, and voluntary blood donation (Government Regulation No. 7 of 2011, Art. 28(2)), rather than being driven by the commercialisation of the human body (Sayers, 2020; WHO, 2012).

Within the framework of Indonesian positive law, the prohibition against the buying and selling of human blood is expressly stipulated in Article 119 of Law No. 17 of 2023 on Health. This provision must be interpreted systematically in conjunction with the broader regulatory framework governing blood services and the relevant

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provisions of criminal law (Law No. 17 of 2023, Art. 119). Nevertheless, the existence of an express statutory prohibition does not eliminate the need to clarify the constituent elements of the offence, identify the persons or entities capable of incurring criminal liability, and establish the relationship between the perpetrator's conduct and the applicable penal provisions. Such clarification is essential to prevent criminal law enforcement from being undermined by interpretative uncertainty (Syah et al., 2025; Pastor Muñoz, 2023).

These considerations underscore the importance of reconstructing the legal framework of criminal liability in a manner that does not merely emphasise the existence of statutory prohibitions (Summers, 2022, p. 21), but also ensures coherence between the principle of legality, the precise formulation of criminal offences, and the proportionality of punishment (Pastor Muñoz, 2023). Consequently, a reconstruction of criminal liability for the buying and selling of human blood, grounded in the principle of legal certainty, is necessary to establish a systematic and coherent legal framework, provide clear and objectively ascertainable guidance for law enforcement authorities, and safeguard human dignity and public safety (Syah et al., 2025, p. 1875).

The relationship between Article 119 of Law No. 17 of 2023 on Health and Articles 345–346 of Law No. 1 of 2023 concerning the Indonesian Criminal Code lies in their shared objective of protecting fundamental human values in the provision of blood services. Article 119 establishes the prohibition against the buying and selling of human blood (Law No. 17 of 2023, Art. 119), whereas Article 345 of the Criminal Code criminalises the buying and selling of human blood, and Article 346 regulates commercialisation in the provision of blood transfusion services (Law No. 1 of 2023, Arts. 345–346).

With respect to the constituent elements of the offences, Article 345 of the Criminal Code requires the existence of conduct involving the buying and selling of human blood, without expressly recognising exceptions based on particular justifications. By contrast, Article 346(1) encompasses commercialisation in the provision of blood transfusion services. The scope of the latter provision requires careful statutory interpretation to ensure that not every payment associated with blood services is automatically classified as a criminal offence.

Regarding criminal sanctions, Article 345(b) of the Criminal Code prescribes a maximum term of imprisonment of three years or a fine not exceeding Category IV, while Article 346(1) provides for a maximum term of imprisonment of five years or a fine not exceeding Category V (Law No. 1 of 2023, Arts. 345–346). These provisions must be interpreted in conjunction with Article 431 of the Health Law, which also criminalises the buying and selling of human blood and prescribes a maximum term of imprisonment of three years or a fine not exceeding IDR 200,000,000 (Law No. 17 of 2023, Art. 431).

Accordingly, the principal legal issue does not arise from the absence of criminal-law provisions, but rather from the potential overlap between Article 431 of the Health Law and Article 345 of the Criminal Code. A further concern is the need to establish clear legal boundaries distinguishing the unlawful buying and selling of human blood, the commercialisation of blood transfusion services, and legally permissible blood-processing cost-recovery charges (Minister of Health Decree No. HK.01.07/MENKES/504/2024).

Method

This study employs a normative juridical research method, focusing on the examination of legal norms, doctrines, principles, and fundamental legal concepts relevant to the statutory prohibition and the construction of criminal liability concerning the buying and selling of human blood in Indonesia. The research adopts a descriptive-analytical and prescriptive approach, aimed at identifying, analysing, and evaluating the extent to which the existing legal framework ensures legal certainty. The methodological approaches employed comprise the statutory approach, conceptual approach, and case approach. The legal materials examined consist of primary legal materials, including legislation and regulations; secondary legal materials, comprising books, scholarly journal articles, and relevant legal doctrines; and tertiary legal materials serving as supplementary references. All legal materials are analysed qualitatively through statutory interpretation, the harmonisation of legislative and regulatory provisions, and prescriptive legal reasoning. This analysis seeks to develop a clear, systematic, and legally coherent framework of criminal liability for the buying and selling of human blood, grounded in the principle of legal certainty.

Results and Discussion

Legal Framework Governing the Prohibition and Criminal Liability for the Buying and Selling of Human Blood in Indonesia

A concrete case relevant to this analysis concerns the unlawful trading of convalescent blood plasma during the COVID-19 pandemic in Surabaya, involving Yogi Agung Prima Wardana, a former employee of the Indonesian Red Cross (Palang Merah Indonesia, PMI). In this case, the defendant was found to have engaged in the illegal sale and purchase of convalescent plasma by exploiting public demand for plasma as a therapeutic intervention for COVID-19. The conduct was prosecuted under Article 195 in conjunction with Article 90(3) of Law No. 36 of 2009 on Health (Law No. 36 of 2009, Arts. 90(3) and 195).

The case was adjudicated in Surabaya District Court Decision No. 2179/Pid.Sus/2021/PN.Sby, dated 27 December 2021. The panel of judges sentenced Yogi Agung Prima Wardana to one year and eight months' imprisonment and imposed a fine of IDR 100,000,000, having found him legally and convincingly guilty of the unlawful trading of convalescent blood plasma (Surabaya District Court Decision No. 2179/Pid.Sus/2021/PN.Sby, 2021). Another case concerning the unlawful buying and selling of blood was adjudicated in Decision No. 1117/Pid.B/2012/PN.Jkt.Ut., in which the defendant was convicted and sentenced to ten months' imprisonment and a fine of IDR 5,000,000 (North Jakarta District Court Decision No. 1117/Pid.B/2012/PN.Jkt.Ut., 2012).

The legal framework governing the prohibition of blood trading in Indonesia is constructed through the interrelationship between prohibitory provisions, criminalisation provisions, and penal sanctions established under health legislation and general criminal law. Article 119 in conjunction with Article 431 of Law No. 17 of 2023 on Health specifically prohibits and criminalises the buying and selling of human blood, while Articles 345 and 346 of Law No. 1 of 2023 concerning the Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP) regulate offences relating to blood trading and the commercialisation of blood transfusion services (Law No. 17 of 2023, Arts. 119 and 431; Law No. 1 of 2023, Arts. 345–346). Accordingly, the principal legal

issues extend beyond the mere existence of statutory prohibitions to encompass the harmonisation of applicable provisions, the accurate application of the constituent elements of criminal offences, and legal certainty in determining the statutory basis for imposing criminal punishment.

a. Normative Framework of the Prohibition on Blood Trading

From a normative perspective, Article 119 of the Health Law establishes a prohibition against the buying and selling of human blood for any purpose, while Article 431 of the same Law prescribes criminal consequences for violations of that prohibition (Law No. 17 of 2023, Arts. 119 and 431). These provisions demonstrate that the legislature does not merely regard blood as an essential resource for medical services but also restricts its utilisation to prevent it from becoming an object of commercial transactions that disregard humanitarian considerations and patient safety.

Nevertheless, this prohibition must be interpreted systematically in light of Article 117 of the Health Law, which authorises the Central Government to determine blood-processing cost-recovery charges (Law No. 17 of 2023, Art. 117). Consequently, the payment of blood-processing charges cannot automatically be equated with the buying and selling of human blood, as the two activities possess distinct legal characteristics. Blood trading concerns commercial transactions involving human blood as a commodity, whereas blood-processing charges relate to the financing of services and procedures necessary for the provision of blood. This distinction is essential to prevent the arbitrary extension of criminal liability to healthcare facilities that impose processing charges in accordance with applicable legal provisions.

b. The Relationship between Articles 119 and 431 of the Health Law and Articles 345 and 346 of the Criminal Code

Article 345 of the Criminal Code regulates the buying and selling of human blood and prescribes a maximum term of imprisonment of three years or a fine not exceeding Category IV. By contrast, Article 346(1) addresses commercialisation in the provision of blood transfusion services and prescribes a maximum term of imprisonment of five years or a fine not exceeding Category V (Law No. 1 of 2023, Arts. 345–346). The distinction between these provisions lies in the scope of the prohibited conduct. Article 345 focuses on transactions involving the buying and selling of human blood, whereas Article 346 extends to commercialisation in the performance of blood transfusions. Accordingly, the application of either provision must be determined by the specific facts of the case and the constituent elements of the offence established through admissible evidence.

From the perspective of legal harmonisation, the coexistence of Article 431 of the Health Law and Article 345 of the Criminal Code raises a significant issue because both provisions criminalise the buying and selling of human blood while prescribing penalties expressed in different terms. Article 431 of the Health Law provides for a maximum term of imprisonment of three years or a fine not exceeding IDR 200,000,000, whereas Article 345 of the Criminal Code prescribes a maximum term of imprisonment of three years or a fine not exceeding Category IV (Law No. 17 of 2023, Art. 431; Law No. 1 of 2023, Art. 345). Consequently, law enforcement authorities must identify the appropriate statutory provision by reference to the principle of legality, the relationship between general and special criminal-law provisions, and the applicable rules governing the adjustment of criminal penalties following the entry into force of the National Criminal Code on 2 January 2026.

c. Constituent Elements of the Offence and Criminal Liability

Criminal liability arising from the buying and selling of human blood cannot be established solely on the basis of payment or the transfer of blood. Rather, liability must be determined by proving that the conduct satisfies the constituent elements of the offence prescribed by the applicable statutory provision. Under Article 345 of the Criminal Code, the evidentiary inquiry concerns conduct constituting the buying and selling of human blood, whereas Article 346(1) requires proof of commercialisation in the performance of blood transfusions (Law No. 1 of 2023, Arts. 345–346). In both circumstances, law enforcement authorities must distinguish conduct that falls within the statutory definition of a criminal offence from lawful activities undertaken in the provision of blood services. This approach is consistent with the principle of legality enshrined in Article 1 of the Criminal Code, which prohibits the imposition of criminal punishment in the absence of a pre-existing penal provision and precludes the use of analogy to establish the existence of a criminal offence (Law No. 1 of 2023, Art. 1).

Persons who may potentially incur criminal liability include those who sell blood, purchasers involved in prohibited transactions, intermediaries who knowingly participate in blood trading, and individuals who organise the commercialisation of blood transfusion services, provided that their respective involvement and culpability can be established in accordance with the law. The determination of each person's criminal responsibility must take into account the nature of the conduct, the knowledge or intent relevant to the constituent elements of the offence, and the applicable provisions governing participation in criminal offences and criminal liability. Accordingly, an individual should not be subjected to criminal punishment merely because of an administrative or professional relationship with activities associated with blood services.

In this context, law enforcement must also distinguish the commercial trading of whole blood from the collection of plasma for the manufacture of plasma-derived medicinal products. Article 120(3) of the Health Law expressly permits the possibility of providing compensation to plasma donors under the conditions prescribed by law (Law No. 17 of 2023, Art. 120(3)). Accordingly, plasma donor compensation provided in compliance with statutory requirements should not automatically be classified as prohibited blood trading. Instead, its legal character must be assessed by reference to the material involved, the purpose of collection, the procedures followed, donor consent, and the specific legal provisions governing the activity.

d. Challenges to Legal Certainty and the Harmonisation of Criminal Sanctions

A fundamental difficulty within the existing legal framework arises from the coexistence of two regulatory regimes that establish similar prohibitions but prescribe criminal sanctions in different terms. This situation creates the potential for inconsistent determinations of the legal basis for punishment. In practice, investigators, public prosecutors, and judges must assess the relationship between the special provisions of the Health Law and those of the Criminal Code by examining the scope of the constituent elements of the relevant offences, the regulatory character of each provision, and the applicable principles of law. The principle of lex specialis derogat legi generali should not be applied mechanically without first determining whether the provisions being compared genuinely regulate the same conduct and legal subject matter.

The analysis of criminal sanctions must also take into account Law No. 1 of 2026 concerning the Adjustment of Criminal Penalties, which amends certain penal provisions and establishes adjustments relating to the National Criminal Code (Law No. 1 of 2026). Consequently, the determination of applicable sanctions in individual cases requires an examination of the statutory provisions currently in force, the relevant adjustment provisions, and the principles governing the temporal application of criminal law. This includes consideration of the application of a more lenient criminal-law provision where the legal requirements for its application are satisfied.

From the perspective of criminal-law policy, legal certainty cannot be achieved merely by establishing statutory prohibitions and prescribing penalties. It also requires consistency in the formulation of criminal offences, clearly defined boundaries of criminalisation, and uniformity in the application of the law by law enforcement authorities. Scholarship concerning voluntary blood donation systems further emphasises the importance of public trust, institutional regulation, and the safe governance of blood services. Accordingly, criminal-law enforcement must protect humanitarian interests while ensuring that lawful blood service activities are not unnecessarily obstructed.

Reconstruction of Law Enforcement against the Buying and Selling of Human Blood Based on Legal Certainty

The reconstruction of law enforcement concerning the buying and selling of human blood in Indonesia must be directed towards establishing a legal enforcement framework that ensures coherence between statutory prohibitions, the constituent elements of criminal offences, individual criminal liability, and the imposition of criminal sanctions. The fundamental issue does not lie in the absence of legal prohibitions, but rather in the need to clarify the relationship between applicable statutory provisions, the boundaries of conduct constituting a criminal offence, and the consistent application of the law to various forms of transactions involving human blood.

Within this framework, legal certainty cannot be achieved merely through the existence of provisions prohibiting blood trading. It must also be reflected in the precise formulation of criminal offences, clearly ascertainable constituent elements, consistency in identifying persons subject to criminal liability, and uniformity in the imposition of sanctions by law enforcement authorities. The reconstruction of law enforcement should therefore be understood as an effort to reform the legal framework governing criminal offences in the healthcare sector, ensuring that the prohibition against blood trading can be effectively enforced without giving rise to interpretations extending beyond the statutory boundaries of criminalisation.

a. Reconstruction of Substantive Law through Legislative Harmonisation

The first dimension of reconstruction concerns substantive law, particularly the harmonisation of Article 119 in conjunction with Article 431 of Law No. 17 of 2023 on Health with Articles 345 and 346 of Law No. 1 of 2023 concerning the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP). Such harmonisation is necessary because the prohibition against buying and selling human blood and the corresponding criminal penalties are regulated under two distinct legislative regimes, which must be applied consistently without creating uncertainty as to the appropriate

statutory basis for criminal punishment (Law No. 17 of 2023, Arts. 119 and 431; Law No. 1 of 2023, Arts. 345–346).

Conceptually, this reconstruction must establish clear legal distinctions between three categories of activities: prohibited commercial trading in human blood, legally permissible blood-processing cost-recovery arrangements, and plasma donor compensation authorised under specified statutory conditions. These distinctions are particularly important because Article 117 of the Health Law regulates blood-processing cost-recovery charges, while Article 120 addresses blood-processing activities and the possibility of providing compensation in connection with plasma collection for the manufacture of plasma-derived medicinal products (Law No. 17 of 2023, Arts. 117 and 120). Accordingly, each transaction must be assessed by reference to its subject matter, purpose, operational mechanism, and legal basis, rather than solely on the existence of a monetary payment.

In addition to legislative harmonisation, the legislature should clarify the objective and subjective elements of the relevant offences, including the prohibited conduct, the persons or entities capable of incurring criminal liability, the requisite culpability, and the involvement of parties deriving financial benefits from blood trading. Such clarification is necessary to prevent excessively broad interpretations of criminal-law provisions while ensuring that punishment is imposed only where all the constituent elements of an offence have been established in accordance with the principle of legality.

b. Reconstruction of Criminal Liability and the Application of Criminal Sanctions

The second dimension of reconstruction concerns the development of a criminal liability framework capable of distinguishing, in a proportionate manner, the respective responsibilities of sellers, purchasers, intermediaries, administrators, and persons organising the commercial trading of human blood. The criminal responsibility of each party must be determined by reference to their actual involvement, the nature of their culpability, their connection to the prohibited conduct, and the applicable provisions governing participation in criminal offences and corporate criminal liability.

In this context, Articles 345 and 346 of the Criminal Code must be applied according to the characteristics of the conduct established through evidence, while taking into account their relationship with Article 431 of the Health Law. Law enforcement authorities should not apply multiple penal provisions concurrently without first examining the correspondence between the constituent elements of the offences, the relationship between the applicable legal norms, and the possibility that specific statutory provisions govern the conduct concerned (Law No. 1 of 2023, Arts. 345–346; Law No. 17 of 2023, Art. 431).

Legal certainty in the determination of criminal sanctions must also take into account the entry into force of the National Criminal Code on 2 January 2026 and Law No. 1 of 2026 concerning the Adjustment of Criminal Penalties. Accordingly, the applicable penalties must be determined by reference to the legal provisions governing the particular conduct, including the relevant rules on the adjustment of criminal sanctions and the temporal application of criminal law, rather than merely reproducing the penalties prescribed under earlier legislation (Law No. 1 of 2023; Law No. 1 of 2026).

c. Reconstruction of the Law Enforcement System through Strengthened Supervision and Institutional Coordination

The third dimension of reconstruction focuses on strengthening the institutional structure of law enforcement through coordination among the Ministry of Health, the police, the public prosecution service, the judiciary, the Indonesian Red Cross (Palang Merah Indonesia, PMI), and healthcare facilities. Such coordination is necessary to ensure that supervision of blood services extends beyond the distribution stage to encompass blood collection, processing, storage, testing, and administration to patients.

Regulatory supervision should be strengthened through comprehensive blood-recording and traceability systems, transparency in blood-processing charges, audits of blood service operations, and reporting mechanisms for suspected unlawful transactions. These measures would facilitate the early identification of irregularities while generating administrative and technical evidence capable of supporting criminal investigations where indications of unlawful conduct arise.

The case concerning the unlawful trading of convalescent blood plasma, adjudicated in Surabaya District Court Decision No. 2179/Pid.Sus/2021/PN.Sby, provides a relevant basis for evaluating the vulnerability of blood services to the exploitation of public medical needs for financial gain. Although the case was decided under the legal provisions applicable at the time of the offence, its substantive circumstances demonstrate the importance of effective supervision and criminal-law enforcement in addressing irregularities in the management of human blood (Surabaya District Court Decision No. 2179/Pid.Sus/2021/PN.Sby, 2021).

d. Reconstruction of Law Enforcement Guidelines to Ensure Consistent Application of Legal Provisions

The fourth dimension of reconstruction involves establishing technical law enforcement guidelines for investigators, public prosecutors, and judges handling cases concerning the buying and selling of human blood. At a minimum, these guidelines should establish criteria for identifying prohibited transactions, proving the constituent elements of criminal offences, determining the parties responsible, distinguishing legitimate blood-processing charges from commercial profits, and identifying the appropriate mechanisms for applying the relevant penal provisions.

Such guidelines are essential to reducing disparities in law enforcement and preventing inconsistent interpretations of conduct exhibiting substantially similar characteristics. From the perspective of legal certainty, individuals must receive equal treatment before the law and be able to reasonably foresee the legal consequences of their conduct.

Accordingly, the Supreme Court of Indonesia, through its authority to provide technical guidance and supervision concerning judicial administration, could play an important role in promoting consistency in the application of the law. At the same time, the Government should strengthen implementing regulations and administrative supervision in the provision of blood services.

e. Reconstruction of a Proportionate and Just Sentencing Policy

The fifth dimension of reconstruction concerns the development of a sentencing policy proportionate to the degree of culpability, the offender's role, motives, financial benefits obtained, and the consequences of the conduct for human safety. Sentencing

should not be concerned exclusively with the severity of criminal sanctions but should also take into account the objectives of protecting society, preventing unlawful blood trading, and restoring the legally protected interests affected by the offence.

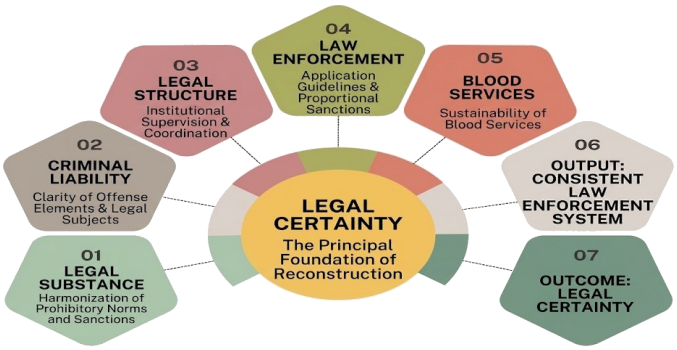
In its application, individuals who engage in organised blood trading for financial gain while disregarding the safety of donors and patients must be distinguished from those whose conduct involves administrative violations or procedural irregularities that do not satisfy the constituent elements of a criminal offence. This distinction follows from the principles of culpability and proportionality in criminal law, ensuring that criminal punishment does not become an instrument for criminalising blood service activities that are otherwise legally permissible.

Accordingly, criminal punishment should operate as a measure of last resort (ultimum remedium) in relation to conduct that genuinely satisfies the statutory elements of an offence, without diminishing the need for firm enforcement against unlawful commercial trading in human blood.

f. A Legal Certainty-Based Model for the Reconstruction of Law Enforcement

On the basis of the foregoing analysis, a legal certainty-based model for reconstructing law enforcement against the buying and selling of human blood can be developed through the integration of four components, namely the harmonisation of substantive law, clarification of criminal liability, strengthening of the legal and institutional framework through supervisory mechanisms, proportionate law enforcement, blood service delivery, consistency in the imposition of sanctions, and legal certainty. These seven components must operate as an integrated framework to ensure that the prohibition against blood trading does not remain merely a statutory declaration but also achieves practical effectiveness in criminal-law enforcement.

Figure 1. Model for the Reconstruction of Law Enforcement



The proposed model emphasises that legal certainty must be realised through a consistent relationship between the legal norms established by the legislature, the institutions responsible for their implementation, and the judicial decisions rendered in individual cases. Reconstruction must therefore extend beyond amendments to statutory provisions and encompass improvements to law enforcement mechanisms, ensuring that every form of prohibited conduct gives rise to legal consequences that are clearly defined, ascertainable, and capable of reasoned justification.

Ultimately, the reconstruction of law enforcement concerning the buying and selling of human blood, grounded in the principle of legal certainty, must produce a legal framework that responds firmly to unlawful blood trading while continuing to

provide legal protection for legitimate blood service activities. This orientation reflects the need to balance legal certainty, justice, and legal utility, ensuring that the management and utilisation of human blood remain firmly situated within a framework of humanitarian interests.

Conclusion

The practice of buying and selling human blood in Indonesia demonstrates the need for legal certainty grounded not merely in the existence of statutory prohibitions and criminal penalties, but also in the precise formulation of the constituent elements of criminal offences, the harmonisation of legislative provisions, and the consistent attribution of criminal liability. The reconstruction of law enforcement must therefore prioritise the systematic harmonisation of Law No. 17 of 2023 on Health and Law No. 1 of 2023 concerning the Indonesian Criminal Code, the clarification of the legal boundaries between prohibited blood trading and legitimate blood-processing charges, and the proportionate imposition of criminal sanctions based on the offender's conduct and culpability. Through these measures, legal certainty can be realised by means of firm, clearly defined, and consistent law enforcement, while simultaneously safeguarding the rights and safety of blood donors and patients and ensuring the continued provision of blood services in accordance with humanitarian objectives.

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