



Reconstruction of the Regulations on the Criminal act of Trafficking in Humans in Law Number 21 of 2007 Concerning the Criminal act of Trafficking in Humans

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Abstract

This research was conducted to find out and analyze how arrangement about category action criminal human trafficking in Indonesia a and b how reconstruction arrangement action criminal insider trading Law no. 21 of 2007 concerning Eradication Action Criminal Human Trafficking. In nature study This use study law normative. The approach method used is Statute Approach ; Approach Conceptual (*Conceptual Approach*) and Historical approach. As for the research This sourced from library data and the type of data used namely secondary data and materials law secondary. Data collection techniques material laws used by researchers is through studies bibliography. The analysis used in study This use method interpretation law that uses an interpretation process or giving meaning to text law (one of them) Law) so that it can applied to events. In addition, in study This use technical analysis material law deductive. The results obtained from the research conducted are the system arrangement in Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking has form something framework relative law comprehensive in classify various form action criminal human trafficking. This is show that law positive Indonesia has adopt a broad and systematic approach in reach all over chain crime human trafficking. Reconstruction arrangement action criminal insider trading Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking, particularly in Articles 3 and 4, is urgent need to improve weakness existing norms. Second chapter the Not yet in a way firm load the element " way " (*means*) as known in draft international, so that cause potential normative ambiguity and asynchrony with standard in Palermo Protocol.

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1. Introduction

Trading man moment This has become an increasingly pressing issue complicated, no only become focus attention domestically, but also has transform become involving global problems various countries. The situation This No only felt by Indonesia. The IV world survey report regarding Women and Development in 1999 stated that A number of developing countries in the Asian region, such as Vietnam, Sri Lanka, Thailand and the Philippines, are experiencing condition similar, which is caused by uncertainty and lack of ability For compete in system emerging liberal economy during the era of globalization, which has an impact on complexity, especially towards improvement role as well as position Woman in aspect economy at the national level

and international.^[1]

Human trafficking is type crimes that cross national jurisdictional boundaries and adapt with global dynamics. Globalization process, progress in technology and improvements movement individual has create supportive atmosphere practice planned and structured exploitation. In perspective law internationally, human trafficking has codified as crime transnational.

The crime of human trafficking (TPPO) is crime outside something that has been happening for a long time. TPPO usually done with method violation to right basic human, namely violation dignity and honor human beings in the form of treatment cruel, and even treatment like slavery. In the past, human trafficking was only considered as transfer in a way force going abroad for objective prostitution, work force illegally for a long time.^[2]

Human trafficking type crimes that are not realized by the victims. Often hiding behind difficulty economics and finance with offer the work required and makes the victim not have the opportunity behave critical to job offered Because pressed For only think How continue life. The condition of Indonesia which has not yet Good in a way economy make public own high orientation to life financial situation This push public especially circles lower For do various how to get it fulfil need his life. The community lower this is generally very easy fall into a hole in condition social in the form of human trafficking. Encouragement For life worthy with method whatever weaken they in a way psychic. Moreover If experienced by teenagers and children, shadows about stable life make they not enough capable realize danger behind case human trafficking.^[3]

Statistical data from the Ministry of Foreign Affairs revealed that in From 2020 to March 2024, at least 3,703 Indonesian citizens (WNI) became victims of online scamming crimes, of which around 40 percent from amount the identified as a victim of crime Criminal Human Trafficking (TPPO). Meanwhile that, based on data from the Criminal Investigation Unit of the Indonesian National Police Headquarters, throughout In 2023, the Republic of Indonesia Police (Polri) has handled 1,061 cases of TPPO with the number of victims reached 3,363 people.^[4]

The perpetrators action criminal human trafficking or *trafficker* usually will targeting victims with various ways. Some perpetrator there are some direct ones contact potential victims, or use another way with delivery mode worker migrants, inter- regional, inter- country, transfers or transfer, departure, reception and shelter carried out with systematic and not detected by the system applicable law.^[5]

Progress technology, openness of national borders, and mobility increasing number of people, goods and capital tall has utilized by groups crime organized For do various action

criminal cross state jurisdiction, such as human trafficking, smuggling migrants, trafficking narcotics, money laundering, and corruption. Crime the own characteristics structured, systematic, cross- country, and involving network international, so that handling No can Again done unilaterally by one country. Work The same comprehensive international become need urge For ensure effectiveness enforcement law. Shape and characteristics crime the make Union United Nations (UN) through *The United Nations Office on Drugs and Crime* (UNODC) formulated A instrument law international in nature binding, namely *United Nations Convention against Transnational Organized Crime* (UNTOC). Convention This ratified by the UN General Assembly in 2000 in Palermo, Italy, and began effective in 2003.

UNTOC is equipped with protocols additional designed For arrange crimes certain developing in a way significant and become global attention. Protocols This Then known as The Palermo Protocol, which substantive is the part that is not inseparable from regime UNTOC law. One of the protocol most important is Protocol For Prevent, Suppress, and Punish Human Trafficking, especially Women and Children.

Indonesia as part from public international realize that crime organized cross- country is threat real to state sovereignty, security national, as well as protection right basic human beings. Therefore Therefore, Indonesia ratified the UNTOC through Constitution Number 5 of 2009 concerning Confirmation *United Nations Convention against Transnational Organized Crime*. Ratification This mark Indonesia's commitment to subject to obligations international in prevent and eradicate crime organized across countries and strengthen Work The same international in the field enforcement law. Furthermore, Indonesia also ratified Palermo Protocol on Human Trafficking through Constitution Number 14 of 2009.

Constitution Number 14 of 2009 concerning Confirmation *Protocol To prevent, Suppress and Punish Trafficking In persons, Especially Woven and Childrem, Supplementing The United Nations Convention Against Transnational Organized Crime* (Protocol For Prevent, prosecute and punish trafficking in persons, especially women and children, complementing Convention Union Nations Against Transnational Organized Crime)^[6].

Regulation about crime human trafficking in Indonesia, has been updated and improved through Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking.^[7] Constitution Number 21 of 2007 Concerning Eradication Action Criminal Human Trafficking becomes step real the Indonesian government in take action crime human trafficking. In specific explained understanding Action Criminal Human Trafficking in Article 1 paragraph 1

¹ Syaafaat Rachmad, *Trade Man ; Study of Trafficking of Women and Children in East Java*, Lappera Main Library, Yogyakarta, 2003.

² Chairul Badriah, *Legal Regulations on Trafficking (Women and Children)*, Erlangga, Bandung, 2005, p. 5.

³ Andy Yentriani, *Trade Politics Humans*, Bina Media, Surabaya, 2012, p. 28.

⁴ Coordinating Ministry for Human Development and Culture, *Strengthening Data and Innovation in Handling Victims of Human Trafficking (TPPO)*, Ministry Coordinator for Human Development and Culture of the Republic of Indonesia, October 3, 2024, <https://www.kemerkopmk.go.id/penguatan-data-dan-inovasi-dalam-penanganan-korban-tindak-pidana-perdagangan-orang-tpo>, accessed on November 14, 2025.

⁵ Angga Putra Mahardika, " *Legal Protection for Workers" Illegal Indonesian Migrants Abroad Victims of Human Trafficking Crimes* ", (Thesis, Semarang State University, 2020), p. 4.

⁶ Indonesia, Law Number 14 of 2009 concerning Confirmation *Protocol To prevent, Suppress and Punish Trafficking In persons, Especially Woven and Childrem, Supplementing The United Nations Convention Against Transnational Organized Crime* (Protocol For Prevent, prosecute and punish trafficking in persons, especially women and children, complementing Convention Union Nations Against Organized Transnational Crime, State Gazette of the Republic of Indonesia 2009 Number 53, Supplement State Gazette of the Republic of Indonesia Number 4990.

⁷Paul, Sinlaeloe, *Act Criminal Trading People*, Setara Press, Malang, 2017

which reads :^[8]

“ Human trafficking is the act of recruiting, transporting, harboring, sending, transferring, or reception somebody with threat violence, use violence, kidnapping, confinement, forgery, fraud, abuse power or position vulnerable, debt trap or give payment or benefits, so that get agreement from the person holding control against other people, whether committed within the country or abroad between countries, for objective exploitation or resulting in people being exploited.”

It was formed Constitution Eradication Action Criminal Human Trafficking of course public expect justice can enforced with existence sanctions the sentence imposed to perpetrator in accordance with the provisions contained in the^[9] articles that regulate it.

Constitution Number 21 of 2007 concerning Eradication Action Criminal Trading is milestone law important in Indonesia's efforts to overcome crime human trafficking serious and structured. In addition to this law, the handling of human trafficking in Indonesia is more nature partial and scattered in various provisions, such as in the Criminal Code (KUHP).

Law no. 14 of 2009 no can used For arrange or take action against TPPO before the birth of Law No. 21 of 2007 because Constitution the only functioning ratify The Palermo Protocol, not load rule criminal offenses that can direct implemented. The Palermo Protocol itself No Can made into base criminalization Because its nature only give standards and guidelines international, not legal norms criminal national. Although Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking has approved before ratification Palermo Protocol, substance Constitution in principle is form adoption and adaptation to standard internationally regulated in protocol said. With Thus, the existence of the TPPO Law can viewed as manifestation Indonesia's commitment to internalize legal norms international to in system law national.

Action criminal human trafficking has three very important elements and must be fulfilled in a way cumulative For prove actions action criminal human trafficking. Elements This regulated in Palermo protocol and made as reference in Indonesian law. Elements the is actions, methods, and Third goal element This is minimum elements that must be proven in a way cumulative For state that something action is human trafficking. Act in context This covers recruitment, transportation, transfer, shelter, or reception someone. How to cover use threat violence, fraud, coercion, or abuse situation vulnerable. Meanwhile objective directed at exploitation in various form, good exploitation sexual, work force, slavery, organ harvesting, etc form exploitation other. Fulfillment elements action criminal human trafficking (TPPO) is fundamental aspects in system justice criminal Because become base For determine whether something actions worthy qualified as action criminal human trafficking or not. In law crime, wrongdoing in interpret or prove element offense can causes two fatal consequences. First, a person who should convicted precisely No can asked accountability, second someone who should No worthy categorized as perpetrator precisely convicted in a way

excessive (*overcriminalization*). Because that, clarity and fulfillment element become condition fundamental for achievement certainty law, justice, and protection towards the victim as focus main arrangement action criminal human trafficking.

Elements in action criminal compulsory human trafficking fulfilled so that the action can proven, but in reality there is difference structure normative between protocol international and formulation articles in the TPPO Law, especially Article 3 and Article 4 which are object reconstruction in study this. Articles the No in a way explicit load element method as arranged in framework international.

Article 3 and Article 4 of the Law Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking reads :

Article 3

" any person who brings people into the territory of the Republic of Indonesia with Meaning For exploited in the territory of the Republic of Indonesia or exploited in other countries is punishable by law with criminal imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and criminal a fine of at least Rp. 120,000,000.00 (one hundred and twenty thousand rupiah). million ryupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah)"

Article 4

“everyone who brings Indonesian citizens leaving the territory of the Republic of Indonesia with Meaning For exploited outside the territory of the Republic of Indonesia shall be punished with criminal imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and criminal a fine of at least Rp. 120,000,000.00 (one hundred and twenty thousand rupiah). million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah)”

Article 3 and Article 4 of the Law Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking has character important normative in formulation action criminal human trafficking in Indonesia. Absence element method in second chapter the cause problem normative which has an impact on clarity formulation crime, construction punishment, limitations criminalization, as well as effectiveness enforcement law in the field.

Expertise Body (Pusanlak UU) regarding evaluation Constitution Eradication Action Criminal Human Trafficking in firm take notes that the formulation of Article 3 and Article 4 does not adopt structure three elements of TPPO as known in The Palermo Protocol, namely element actions, methods, and goals. Element actions just Not yet describe existence actions oppose law If No accompanied by with element way, so that absence element method Not yet describe existence *actus reus*, namely violations law (elements objective). While element objective is *mens rea* which describes existence attitude inner perpetrator do element crime (element subjective). The absence of element method especially in Article 4 of the TPPO Law makes as if existence agreement from the victim, because No depicted existence actions oppose law carried out by the perpetrator.^[10]

Article 3 and Article 4 of the Law Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking

⁸ Constitution Number 21 of 2007 Concerning Eradication Action Criminal Trafficking in Persons, Article 2, LN No. 58 of 2007 TLN No. 4720.

⁹ Faradila, Ainuddin & Abdul Gani Makhrup, *Responsible Answer Criminal To Perpetrator Trade Human Trafficking Case Study Verdict Number : 367/ Pid.sus / pn.mks*, Unizar Recht Journal, vol. 2, no. 1, (April 2023): p. 34.

¹⁰ academic study manuscript on monitoring the implementation of law number 21 of 2007 on eradication of the criminal acts of trafficking in persons. Panlak uu/pusanlak uu quarter III 2023.

only contains two elements main, namely element actions and elements destination. Not loaded element method in second chapter mentioned cause problem juridical If associated with principle *lex certa*. *Lex certa* is principle in law criminal law that emphasizes the importance of certainty as objective main from law, because principle main from principle This is formulation offense No may blurry meaning. Without existence element method every action recruitment or delivery No can directly classified as action criminal human trafficking.

In a way normative Article 3 and Article 4 of the Law Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking has not fully contain principle formulation complete crime as well as precision. Not loaded element method No only about problem technical but also related with effectiveness enforcement law, as well as certainty law for the parties involved. Therefore That reconstruction to second chapter the become the need for formulation offense human trafficking can more clear, adaptive to forms and modes of crime, as well as in accordance with provision law international.

Based on description background behind said, the author interested For discuss How arrangement about category action criminal human trafficking in Indonesia and how reconstruction arrangement action criminal trafficking in persons under Article 3 and Article 4 of the Law No. 21 of 2007 concerning Eradication Action Criminal Human Trafficking.

2. Research Method

Based on description background behind as well as formulation problems that have been formulated by the author, in study This use study law normative. Research law normative is study the law that lays down law as normative system. The normative system in question is about principles, norms, rules, from regulation legislation, decisions court, agreement as well as doctrine (teachings).^[11]

3. Discussion

3.1. Arrangement Category Human Trafficking Crimes in Indonesia

Constitution Number 21 of 2007 is present as *lex specialis* which provides definition, space scope, as well as more settings details about action criminal human trafficking. In Constitution this, human trafficking is not only viewed as actions criminal normal, but as crimes that have characteristics special, good from in terms of modus operandi, perpetrators, and the impact towards the victim. Therefore that, the settings are made No only focus on aspects criminalization, but also includes aspect prevention, victim protection, and Work The same cross sectors and across countries.

Arrangement in Constitution this also shows existence differentiation category action criminal based on nature and characteristics his actions. For example, there is provisions that are special arrange actions put people in within the territory of the Republic of Indonesia for objective exploitation^[12], as well as bring Indonesian citizens to abroad with same meaning.^[13] Apart from that, there are also

categories action related crimes with abuse power, fraud, kidnapping, or forms coercion others who become means in do human trafficking. Differentiation This show that former Constitution make an effort accommodate various developing modus operandi in practice.

Arrangement category action criminal insider trading Constitution this also reflects existence expansion subject laws that can asked accountability. Not only individuals, but also corporations can charged sanctions criminal if proven involved in action criminal human trafficking. This is in line with development law modern criminal law that recognizes corporation as subject law criminal, especially in crimes of a criminal nature organized and involving network wide.

Arrangement category action criminal human trafficking in Indonesia has poured out in articles Constitution number 21 of 2007 concerning arrangement action criminal human trafficking, as following :

3.1.1. Article 2

Article 2 of the Law Number 21 of 2007 concerning eradication action criminal human trafficking, reads :

Verse 1

“ Everyone who does recruitment, transportation, harboring, sending, transfer, or reception somebody with threat violence, use violence, kidnapping, confinement, forgery, fraud, abuse power or position vulnerable, debt trap or give payment or benefit although get agreement from the person holding control over others, to objective exploiting the person in the territory of the Republic of Indonesia, shall be punished with criminal imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and criminal a fine of at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).”

Verse 2

"If the act as referred to in paragraph (1) results in people being exploited, then perpetrator convicted with the same crime as referred to in paragraph (1)."

Article 2 of the TPPO Law states level high suitability with Palermo Protocol because in a way explicit adopt third element the to in formulation the norm. In terms of element act, Article 2 contains various form action like recruitment, transportation, harboring, sending, transfer, or reception somebody.

Article 2 of the TPPO Law also regulates about element method in a way detailed, various the form of the mode used in practice human trafficking, such as threat violence, use violence, kidnapping, confinement, forgery, fraud, abuse power or position vulnerable, debt trap, and giving payment or benefit to the party that controls the victim.

Draft exploitation in the TPPO Law includes various form like exploitation sexual, work forced, slavery or practice similar slavery, as well as organ harvesting. This is fully in line with The Palermo Protocol also confirms that objective main from human trafficking is exploitation in various form said. Conformity This show that orientation protection law in the TPPO Law has in harmony with standard international which places the victim as the party that must protected from all form exploitation. This is also included in details of

¹¹ Mukti Fajar ND & Yulianto Achmad, *Dualism Normative Legal Research and Empirical Legal Research*, Pustaka Pelajar, Yogyakarta, 2010, p. 34

¹² Constitution Number 21 of 2007 Concerning Eradication Action Criminal Trafficking in Persons, Article 3, LN No. 58 of 2007 TLN No. 4720.

¹³ Constitution Number 21 of 2007 Concerning Eradication Action Criminal Trafficking in Persons, Article 4, LN No. 58 of 2007 TLN No. 4720.

Article 2 which confirms confirm that all over actions and ways the done with Meaning For do exploitation or result in somebody exploited.

3.1.2. Article 3 and Article 4

Article 3 and Article 4 consist of on two forms main, namely human trafficking that includes victims in within the territory of Indonesia (*inbound trafficking*) and human trafficking that carries Indonesian citizens to abroad (*outbound trafficking*). Second form This confirm that human trafficking is crimes of a nature transnational and involving mobility across national borders as an integral part of the modus operandi. Although Thus, the existing arrangements Still need improvements, especially in matter formulation elements action criminal in a way more complete and systematic, so that it is in harmony with principles law criminal as well as standard international in eradication action criminal human trafficking.

3.1.3. Article 5 and Article 6

Article 5 and Article 6 of the TPPO Law are instrument important laws in give protection to child from practice human trafficking. Second chapter This show existence comprehensive approach in arrange various trading modes good boy through appointment child and through delivery children. Therefore that, the settings This need implemented in a way consistent and supported by the system enforcement effective law, so that the objectives protection to child from exploitation can achieved optimally.

3.1.4. Article 7

The provisions of Article 7 in Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking is a norm that regulates about weighting criminal to perpetrator action criminal human trafficking if actions the cause serious consequences towards the victim. In systematic, article This No stand as an independent offense, but rather domiciled as provision aggravating continuation threat criminal from crimes the main thing that has been formulated in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6. With Thus, construction law in Article 7 shows that former Constitution No only focus on actions human trafficking yourself, but also provide significant attention to the consequences for the victims as base For increase accountability criminal perpetrator.

The formulation of Article 7 states that if action criminal human trafficking causes victims to suffer wound heavy, disturbance soul weight, disease dangerous infectious disease soul, pregnancy, or disturbed and disappearance function reproduction, then threat the penalty plus one third from threat crimes that have been determined in articles previously. Terms This reflect existence confession that action criminal human trafficking is crimes that have an impact broad and complex, no only in dimensions social and economic, but also deep dimensions physical, psychological, and biological aspects of the victim. Therefore that, the more heavy the impact experienced by the victim, then the more the sanctions imposed are also heavy to perpetrator.

The application of Article 7 requires existence connection causal between actions perpetrator with the consequences experienced by the victim. This means that the consequences the must can proven as results direct from action criminal

human trafficking is carried out. In context this, proof become very important aspect, because without existence connection clear cause and effect, provisions weighting criminal No can applied.

3.1.5. Article 8

The provisions of Article 8 in Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking regulates about weighting criminal acts that are special intended to state officials who abuse power so that result in occurrence action criminal human trafficking. This norm show existence attention Serious from former Constitution to potential involvement state apparatus in crime human trafficking, in essence is form betrayal to functions and responsibilities answer position public. In context this, state administrators should play a role as protector society, but precisely with abuse authority can become part from chain crime the.

According to explanation of Article 8 paragraph (1), which is meant with state administrators are officials government, members Indonesian National Army, members Republic of Indonesia National Police, security apparatus, law enforcement law or officials public who abuse his power For do or facilitate TPPO. Meanwhile, what is meant by with abuse power in provision This is operate existing power to him in a way No in accordance objective giving power the or run it in a way No in accordance provision regulation. ^[14]

In a way conceptually, Article 8 reflects implementation principle accountability in law criminal law, in particular to officials public. This norm in line with principle that every abuse power must accountable in a way law, especially if result in violation right basic man like in case human trafficking. In addition, the provisions this also reflects a holistic approach preventive, because with existence threat more criminal weight and risk lost position, it is expected can prevent state administrators for involved in practice human trafficking.

3.1.6. Article 9

The provisions of Article 9 in Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking regulates about criminalization to actions that are beginning or effort For push occurrence action criminal human trafficking, although action criminal that in the end No implemented. This norm show that law No only take action actions that have been done finished committed (crime completed), but also provide sanctions to actions that are still ongoing be at the stage test or mobilizing others to do crime said. With Thus, Article 9 expands range criminalization in action criminal human trafficking as part from effort prevention early.

Article 9 of the TPPO Law confirms that law No only functioning For punish crimes that have been happen, but also for prevent potential crime through criminalization to actions the beginning that leads to the occurrence action criminal human trafficking. Provisions This strengthen effort eradication human trafficking comprehensive with reach all over stages crimes, including stage planning and mobilization, so that give more optimal protection for public from threat exploitation man.

¹⁴ International Organization for Migration (IOM), Handling Guide Action Criminal Trafficking in Persons, International Organization for Migration (IOM), Jakarta, 2021, p. 48

3.1.7. Article 10

The provisions of Article 10 reflect approach law comprehensive criminal law in eradication action criminal human trafficking, with reach all over stages and roles in crime. This norm is also in line with with Spirit victim protection, because with expand coverage perpetrators who can convicted, it is hoped can reduce opportunity occurrence human trafficking and breaking network crime in a way comprehensive.

3.1.8. Article 11

important thing in provision. This is existence affirmation that perpetrator agreement wicked convicted with the same crime like perpetrator main. This is in form policy law strict criminal penalties, because in Lots provision general law criminal, the perpetrator is at the stage planning or agreement usually charged more criminal light. However, in context action criminal human trafficking, formation Constitution evaluate that role in planning own equal contribution big with implementation, so that worthy. For charged equivalent sanctions. Approach. This aim. For cause effect deterrent and prevent formation network crime since beginning.

3.1.9. Article 12

The provisions of Article 12 in Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking regulates about accountability criminal to everyone who uses or exploiting victims of crime criminal human trafficking. This norm expand coverage perpetrators who can convicted, no only limited to the party that carries out recruitment, transportation, or exploitation in a way directly, but also includes the parties who enjoy or take benefit from results crime said. With Thus, this Article confirm that action criminal human trafficking is not only stop the process of occurrence exploitation, but also includes contributing parties in maintain or extend practice exploitation mentioned. In Article 12 of the TTPPO Law, the victim is a victim of human trafficking by the perpetrator first, then used or utilized back by other TTPPO perpetrators.

3.1.10. Articles 13, 14, and 15

Article 13 regulates about accountability criminal corporation in action criminal human trafficking. In provision. This confirmed that if action criminal human trafficking is carried out by or on behalf of the corporation, then demands and sentences criminal can done to corporation and/ or the administrator. This is show that corporation recognized as subject law criminal offenses that can be asked accountability. In in practice, corporations can play a role in various form, such as company distributor power work, agent recruitment, or other entities that are direct and No direct involved in the process of human trafficking. Therefore that, the settings. This aim. For prevent corporation become means or tool. For do crime with hiding behind legal entity status.

Accountability criminal corporation. No only limited to the entity, but also includes administrator or the party providing order or own control to activity said. This is important. For ensure that the individual behind decision corporation. No can avoid not quite enough answer criminal. With Thus, Article 13 reflects principle that crime corporation must handled in a way comprehensive, good against legal entities and the individual who controls it.

Article 14 of the Law Number 21 of 2007 concerning eradication action criminal human trafficking, reads :

" In matter calling to corporation, then summons. For facing and surrendering letter calling delivered to on-site administrator administrator office, on site corporation. That operating, or in place stay administrator."

Article 14 regulates about type criminal offenses that can be dropped to corporation. Different with perpetrator individuals, corporations. No can charged criminal prison, so that sanctions imposed in the form of criminal fines. In addition, the provisions. This also opens possibility existence criminal additional, such as revocation permission business, robbery profits earned from action criminal, freezing activity business, until dissolution corporations. Sanctions. The show that former Constitution make an effort give effect significant deterrent to corporations involved in action criminal human trafficking, as well as prevent recurrence actions said in the future come.

Article 15 regulates about weighting criminal in matter action criminal human trafficking is carried out by corporations or in condition certain that show level more seriousness high. Provisions. This is basically give base law for judges to drop more criminal heavy if action criminal the done in a way organized, involving extensive network, or cause big impact against the victim. Aggravation criminal. This in line with characteristics action criminal human trafficking as crimes that often occur involving structure complex and cross-regional organizations.

In a way. Overall, Article 13, Article 14, and Article 15 of the TTPPO Law show existence development in law Indonesian criminal law that is not. Again only focused on the perpetrator individuals, but also recognizes and regulates accountability criminal corporation. Provisions. This strengthen effort eradication action criminal human trafficking with reach all over actors involved, both in a way direct and No directly, and give proportional sanctions with level errors and the resulting impacts. Approach. This is also in line with standard international like The Palermo Protocol which encourages countries to take step firm to crime human trafficking, including that involving legal entities.

3.1.11. Article 16

Article 16 of the Law Number 21 of 2007 concerning eradication action criminal human trafficking, reads :

" In matter action criminal human trafficking is carried out by an organized group, then every perpetrator action criminal insider trading organized group the convicted with the same crime as intended in Article 2 plus 1/3 (one third)."

This norm confirm that if crime human trafficking is carried out in a way together in something structure or organized network, then every the perpetrators involved charged the same crime as arranged in Article 2, with addition one third from threat criminal the existence of addition criminal as big as one third show that involvement in group organized is aggravating circumstances (aggravating *circumstances*). Weighting. This based on considerations that crimes committed in a way organized own level greater danger tall compared to with crimes committed individually. Group organized tend own source more power big, ability. For avoid enforcement law, as well as potential. For do crime in a way repeated and deep larger scale wide. Therefore that, more sanctions heavy required. For give effect deterrent and prevent development network human trafficking.

3.1.12. Article 17

Arrangement This based on the principle that child is groups that are very vulnerable and in need protection special from the country. In context action criminal human trafficking, children own more position weak compared to adults, both from aspect physical, mental, and social, so that more easy become object exploitation. Therefore that, when crime human trafficking befalls children, the impact caused No only nature term short, but also can influence development and future child in a way overall. On the basis of consideration said, the former Constitution give more sanctions heavy as form more protection strong.

3.1.13. Article 18

Provision it also has implications important in practice enforcement law, in particular in differentiate between perpetrator and victim. In Lots cases, victims of human trafficking can seen as if as perpetrators, for example when they involved in practice prostitution, use document fake, or other activities that violate law. However, with the existence of Article 18, the authorities enforcer law expected capable identify that action the done in condition forced, so the victim doesn't can asked accountability criminal.

Category action criminal human trafficking in Indonesia is fundamental aspects in system law criminal, because functioning as base conceptual and operational in determine room scope actions that can convicted as well as mechanism accountability the law. In context Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking, categorization action criminal human trafficking is not only intended For identify types prohibited acts, but also for create structure systematic law to guarantee certainty law, effectiveness enforcement law, as well as comprehensive protection towards the victim.

In context action criminal human trafficking, categorization become very important remember crime This own complex characteristics, involving various stages, actors, and form exploitation. Therefore that, without existence clear grouping, will difficult for apparatus enforcer law For identify which actions are included in category human trafficking, how prove it, and which article is correct ? For applied.

Category This covers No only actions main like recruitment, transportation, or exploitation, but also various form actions derivative like trial, assistance, conspiracy evil, until utilization results action criminal. With Thus, categorization This show that action criminal human trafficking is seen as something series mutual actions related and unrelated can separated One each other.

3.2. Reconstruction arrangement action criminal trafficking in persons under Article 3 and Article 4 of the Law Number 21 of 2007 Concerning Eradication Action Criminal Human Trafficking

Reconstruction efforts arrangement action criminal insider trading Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking is not can released from analysis critical to weakness normative contained therein. Reconstruction law in essence No just change editorial, but rather a scientific process that begins with identification and diagnosis of potential lack of norms hinder effectiveness enforcement law. Therefore that, step the

beginning that must be done is examine in a way deep the structure and substance of the norms, particularly in Articles 3 and 4, to find point fundamental weakness. For reconstruct Article 3 and Article 4 in Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking that is not load the element " way " (means), no Enough only add phrase certain. Possible steps made into framework reconstruction, is as following :

3.2.1. Identification weakness of norms

A. Emptiness element method

Palermo Protocol establishes Action Criminal Human Trafficking that must be There is that is actions, methods, and goals. However, in Constitution Number 21 of 2007 concerning Eradication Action Criminal Human trafficking exists a number of the article that only focus or only load element actions and goals only. Example from the Article are Article 3 and Article 4.

Article 3 of the Law Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking only contains 2 (two) elements just namely actions /processes and element destination. Not loaded the element of " method " in chapter This show existence mismatch with the requirements of the Palermo protocol.

Referring to Article 4 of the Law Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking, article this is also not load the element of " method " in the article. Where is the article? This only load element actions /processes and element purpose. Elements actions in chapter This Not yet describe existence actions oppose law If No accompanied by element way. With No existence element method Not yet can describe existence *actus reus*, namely actions violate law. Article 3 of the TPPO Law regulates about the act of bringing people into the territory of the Republic of Indonesia with Meaning to be exploited.

B. Blurring of norms

Vagueness of norms is one of the fundamental problems in formulation regulation legislation, in particular in law criminal. Normative ambiguity occurs if something provision law No formulated in a way clear, firm, and complete, so open room broad and potentially wide interpretation cause uncertainty in its implementation. In context law criminal law, the existence of vague norms is very problematic Because related direct with restrictions rights individual through criminalization.

In Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking, the problem normative ambiguity can found in the formulation of Article 3 and Article 4 is not load the element " way " as one element important in action criminal human trafficking. In fact, in conceptual and normative, the element " method " is an integral part of construction action criminal human trafficking consisting on three element main, namely actions, methods, and goals. If reviewed more further, condition this also shows existence mismatch with provision in Constitution Number 12 of 2011 concerning Formation Legislation.

Constitution Number 12 of 2011 concerning Formation Legislation in general firm arrange principles that must be filled in formation regulation legislation, both formal and material. This can seen in the content of Article 5 which reads

; [15]

" In form Legislation must done based on the principle Formation Good legislation, which includes :

- a. clarity objective ;
- b. institutional or officials proper shaper ;
- c. suitability between types, hierarchies, and materials load ;
- d. can implemented ;
- e. usability and effectiveness ;
- f. clarity formulation ; and
- g. openness.

Between principles said, the principle clarity formulation own very close relevance with problem the ambiguity of norms in Articles 3 and 4 of the Anti-TPPO Law. The principle of clarity formulation want that every regulation legislation must formulated with Language clear, systematic and unambiguous laws cause various interpretation. The formulation of norms must capable give certainty about rights and obligations as well as strict boundaries to regulated acts. In law criminal, principle This become very important Because related direct with determination something actions as action criminal penalties and consequences punishment. Absence the element " how " causes the formulation of norms becomes No complete and potential cause multi-interpretable. In in practice, law enforcement law can own different interpretations in understand whether something actions including in category action criminal human trafficking. Some can interpret that every action bring somebody For objective exploitation Already Enough For fulfil element action criminal, while others may still requires existence element coercion or fraud although No in a way explicit regulated. Difference interpretation This show that the formulation of norms does not give sufficient clarity, so contradictory with principle clarity formulation.

C. Mismatch with principle legality

The principle of legality is fundamental principles that become base legitimacy criminalization. This principle is basically confirm that No There is actions that can convicted except based on provision regulation legislation that has been There is previously. The principle of legality No only functioning as barrier state power in drop criminal, but also as guarantee protection to rights individual from action arbitrary.

Principle *lex scripta*

Element main in criminalization law positive Indonesia must based on the Law because Indonesia adheres to civil law system in other words based on written law. In written law (statutes) it is regulated all actions that are considered as offense criminal. This is implications that law criminal living customs / laws in public moment This No can made into as one of the element main For punish someone. Therefore That living law in public No own role important in system law criminal law in Indonesia without law laws that regulate prohibited acts so actions the No Can it is said as action criminal. [16]

principle *lex scripta* No only interpreted as must existence rule written, but also demands that the formulation of these norms truly reflect all over element offense in a way complete in form written. This means that a provision criminal No Enough only There is in The law, but also must formulate in a way explicit every determining elements can or whether or not something actions be punished. If there is element important that is not listed in a way written, then will arise problem in its implementation Because enforcer law potential fill in emptiness the through interpretation, which ultimately can deviate from principle *lex scripta* That Alone.

Principle *lex scripta* want that law criminal must poured in a way written in regulation legislation. The purpose is For ensure transparency, certainty, and accessibility law for society. In context this, the Law Number 21 of 2007 has been formally fulfil principle *lex scripta*, because provision about action criminal human trafficking has formulated in form Constitution.

Fulfillment *lex scripta* No only limited to the existence of written norms, but also to the completeness the substance of the norm. In Article 3 and Article 4, although has formulated in a way written, but No loaded the element " how " indicates that the norm Not yet fully reflect structure complete action criminal human trafficking.

Principle *lex certa*

Lex certa is principle legality in law criminal law that emphasizes importance certainty as objective main from law, because principle main from *Lex certa* that formulation offense No may blurry meaning. Concept *lex certa*, emphasize that certainty law is objective the main thing that must be achieved before taking into account other norms as balance and efficiency. Certainty This reflects two roles law ongoing criminal offenses simultaneously, namely secure unexpected from action arbitrary the accusing ruler without definite regulations, as well as convincing that the state is obliged For take action to all anti- social behavior without exceptions. [17]

Lex certa own very significant role in realm law criminal Because relate with principle base that No There is actions that can be punished without existence provision applicable law. When the law criminal No own clarity, society will find difficulty in understand which actions can be charged punishment and what is not. The *Lex Certa* concept is important in law criminal Because ensure clarity to public about the laws applied. The principles This help protect rights individuals and prevent enforcement laws that do not fair with define crime and punishment. [18]

Compiler Constitution should set in a way detailed and thorough categorized actions as crime. This term often called as *lex certa* or *bestimmtheitsgebot*. The makers regulations must give clear explanation and not vague meaning (*nullum crimen sine lege stricta*), in other words it should be No confusing in drop punishment to actions that have been taken determined. Ambiguity in definition or exceed limitation will cause law become No clear and hinders the judicial process criminal. This is due to public tend think that rule This No

¹⁵ Constitution Number 12 of 2011 Concerning Formation Statutory Regulations, Article 5, LN No. 82 of 2011 Supplement to LN No. 5234

¹⁶ Elsam, *Principle of Legality In the 2005 Criminal Code Draft*, Community Advocacy Study Institute, Jakarta 2005.

¹⁷ Iwan Darmawan, *Perspective Analogy In Criminal Law*, Lex Publica Journal Knowledge Law Association Indonesian Higher Legal Education Leadership, Vol 1 No 1, 2014

¹⁸ Chritovel Yamado Jacob, *Problematics Application of Article 28 Paragraph (2) of the Law Number 19 of 2016 Concerning Electronic Information and Transactions*, Legitia Law Journal, Vol 6 No 2, 2014, p. 165

effective as guide ethics.^[19]

In context action criminal human trafficking, construction of norms in international has formulated in a way comprehensive in The Palermo Protocol of 2000 which established three element main, namely act, means, and purpose. Third element this, in particular for adult victims, it is cumulative so that must formulated in a way complete in regulation legislation national so as not to cause ambiguity of norms. The element of " method " has very important position Because become differentiator between human trafficking with other acts which are external looks similar, like recruitment power Work normal or movement of people voluntary. Therefore that, ambiguity or No loaded element This can implications Serious to certainty law.

Formulation of Article 3 of the Law Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking shows existence problem from perspective principle *lex certa*. Formulation the No in a way explicit and systematic to describe the "way" element as it becomes standard in law international. Absence affirmation this element of " method " cause structure offense become No intact, because only emphasize on aspects actions and goals without give clear boundaries about How actions the done in order to be able to qualified as action criminal human trafficking.

Incompleteness element in Article 3 implications direct to violation principle *lex certa*. Norms that are not load element in a way complete potential cause multiple interpretations in practice enforcement law. Apparatus enforcer law can interpret in a way wide various form actions as action criminal human trafficking even though No there is element coercion, fraud, or abuse power. This is ultimately can blurring the lines between legitimate and unlawful actions law, so that reduce certainty law for society. In addition, the conditions this also opens opportunity occurrence disparity enforcement law Because difference interpretation between apparatus.

Problems similar also found in formulation of Article 4 of the Law Number 21 of 2007 which regulates about actions bring Indonesian citizens to abroad with objective exploitation. This article return emphasize the elements actions and goals, without to describe in a way clear the element of " method " used by the perpetrator. In fact, the element of " method " is element important For determine whether something actions truly contain characteristic exploitative violations law or precisely is activities carried out in a way voluntary. Absence element This make the formulation of norms in Article 4 is of a nature vague and potential giving rise to overcriminalization, namely trend For qualify various actions as action criminal without sufficient basis clear.

From the perspective principle *lex certa*, condition the show that Article 4 also does not fulfil standard clarity and firmness of criminal norms. Formulations that are not detailed and not complete causing norms to become open to various different interpretations. This is contradictory with objective main law criminal as instruments that must be give certainty and protection law for each person.

Principle *lex stricta*

Lex Stricta with widely studied by scholars known in a way literally means " strict law " or " narrow law ". This principle emphasize importance clear formulation in provision criminal, without existence interpretation double. Every element from action criminal must explained in a way detailed, so as not to There is chance For interpretation exceeding the limits set by law. The purpose is For limit authority apparatus enforcer law, ensuring that somebody can punished only on actions that are firm prohibited by applicable regulations.^[20]

Prohibition analogy This stated in a way clear in Article 1 paragraph (2) of Law No. 1 of 2023 (new Criminal Code) which reads : " In set existence Action Criminal forbidden used analogy." This verse is consequence direct from implementation principle legality is also regulated in Article 1 paragraph (1) of the new Criminal Code which reads : "There is no One any action that can subject to sanctions criminal and/ or action, except on strength regulation criminal in regulation legislation that has been There is before actions done ". The principle of legality in the new Criminal Code shift from formal legality becomes material legality, which allows the validity of " living law " in society " (law customs) in determination action criminal in Article 2 of the New Criminal Code, however still need arrangement with strict limitations.^[21]

Principle *lex stricta* requires that every element offense must formulated in a way clear and complete, so that No open room for interpretation that goes beyond the limits of the norm text. If something provision criminal formulated in a way No complete or contain blurriness, then there is trend for enforcer law For fill in emptiness the through interpretation extensive even analogy. Condition this is what is actually contradictory with principle *lex stricta*, because of criminal norms should implemented in a way restrictive, not expanded.

Article 3 of the Law Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking shows existence potential mismatch with principle *lex stricta*. Formulation the No in a way firm and systematic list the element of " method " as part from structure crime. Absence element This causing norms to become No own clear boundaries about condition or method that makes something actions as action criminal human trafficking.

Not formulated element of " method ", enforcer law in in practice potential do broad interpretation For determine whether something actions including in category human trafficking. For example, action recruitment or delivery someone who is basically legitimate can interpreted as action criminal if associated with objective exploitation, although No there is element coercion, fraud, or abuse power.

Condition the clear contradictory with principle *lex stricta*, because of criminal norms No Again implemented in a way strict in accordance with sound Law, but rather expanded through interpretation. In fact, in law criminal, every expansion meaning offense must avoided so as not to cause injustice and violation to rights individual. With thus,

¹⁹ Zakaria A, *Inconsistency of the Principle of Legality In Design Criminal Code 2005*, Unmul Faculty of Law Treatise, Vol 2 No 2, 2006, p. 136.

²⁰ M. Hendra Cordova Masputra, *Every Word Matters In Formulate Criminal Law in Indonesia*, November 27, 2025, <https://marinews.mahkamahagung.go.id/artikel/tiap-kata-penting-dalam-merumuskan-pidana-di-indonesia-OCI>, accessed on March 29, 2026.

²¹ *Ibid.*,

it can it is said that the formulation of Article 3 opens opportunity occurrence violation to principle *lex stricta* consequence incompleteness element coercive offense existence interpretation addition.

Article 4 of the Law Number 21 of 2007, which regulates about actions bring Indonesian citizens to abroad with Meaning For exploited. This article return emphasize the elements actions and goals, without give description about the element of "method". As a result, this norm potential cause very broad interpretation, because every action bring somebody to abroad can qualified as action criminal human trafficking if associated with objective exploitation, without must proven existence element coercion or fraud.

Article 3 and Article 4 of the Law Number 21 of 2007 has potential mismatch with principle *lex stricta* Because No formulated the element of " method " in explicit in structure crime. Incompleteness This causing norms to become No own clear boundaries, so that push enforcer law For do interpretation extensive or even analogy in its implementation. As a result, the principle *lex stricta* which requires implementation law criminal in a way strict and limited No fully can realized, which in the end impact on reducing certainty law and protection to rights individual.

Principle *lex praevia*

The principle of legality contain a number of principle functional derivatives as guarantee protection to rights individual, one of them is principle *lex praevia*. Principle This confirm that something actions only can convicted if has arranged moreover formerly in regulation legislation before actions the done. In other words, the law criminal No may valid retroactive (*non-retroactive*), so that somebody No can asked accountability criminal based on the norms that were born after actions That happened. Principle *lex praevia* own objective main For give certainty law, prevent state arbitrariness, and guarantee that every individual can know moreover formerly consequence law from his actions.

Principle *lex praevia* No only interpreted formally as prohibition its validity law criminal in a way retroactive, but also contains dimensions substantial, namely must that the applicable criminal norms previously must truly clear and complete in formulate elements offense. This is important Because if the norms that have been There is previously No formulate element in a way intact, then in its implementation potential happen expansion meaning that is implicit resemble enforcement law in a way receding. With Thus, the existence of norms before actions done must accompanied with clarity and completeness the substance of the norm.

4. Formulation re-examine legal norms

Formulation re-examine legal norms is one of the step strategic in do reconstruction arrangement action criminal human trafficking, in particular to the provisions of Article 3 and Article 4 in Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking. This step No just nature editorial, but rather concerning improvement in a way fundamental to structure and substance of norms.

Knowledge about formation types of regular legal norms For can reach the target. The reference to related matters with formulation elements and structures something provision in norms such as norm object, norm subject, norm operator and norm condition. On method This the main thing is discuss

about substance or material cargo regulation legislation, including ways find material its load.^[22]

Article 3 and Article 4 of the PTPPO Law indicate existence weakness fundamental in structure the norm, especially related with No loaded the element " way " (means) as part from normal conditions. In fact, in construction action criminal human trafficking, the " means " element is element essential that is not can separated from element actions and goals. Elements This covers various form action like threat violence, use violence, fraud, kidnapping, abuse power, or utilization position vulnerable to use For control or exploiting the victim. The absence of element This in Article 3 and Article 4 causes formulation offense become No intact and not in line with construction normative that has been formulated in Article 2.

Analysis and reconstruction against Article 3 and Article 4 of the PTPPO Law in study This based on theory formulation of norms that divide legal norm structure to in four element main. Fourth element the is : (1) the subject of the norm, namely addressee or subject to norms; (2) objects of norms, namely actions or conditions regulated by norms; (3) norm operators, namely orders, prohibitions, or decisive ability nature of norms; and (4) conditions of norms, namely condition or the context that must be fulfilled so that the norm applies. Fourth element This in a way together form intact and operational normative structure.

Referring to the theory formulation of norms, then formulation re-examine legal norms can in the form of :

4.1. Subject of norms

Article 3 and Article 4 of the Law Number 21 of 2007 Concerning Eradication Action criminal Human Trafficking, loading subject of norms or target from the norm. In matter this is stated with the phrase "everyone". Formulation This nature general and inclusive, covering anybody without differentiate citizenship, profession, or position.

4.2. Norm object

The object of the norm contained in Article 3 of the Law Number 21 of 2007 Concerning Eradication Action criminal Human Trafficking is outlined with the phrase " bringing people into the territory of the Republic of Indonesia". While in Article 4 the object of the norm is stated with the phrase " bring Indonesian citizens to outside the territory of the Republic of Indonesia".

4.3. Norm operator

In Article 3 of the Law Number 21 of 2007 Concerning Eradication Action criminal Human Trafficking, operators of norms are stated with the phrase "with Meaning For exploited in the territory of the Republic of Indonesia or exploited in other countries". Referring to Article 4, the operator of the norm is stated with the phrase "with Meaning For exploited outside the territory of the Republic of Indonesia".

4.4. Normal conditions

normal condition is components of norms that formulate circumstances, or condition certain things that must be done fulfilled so that the norms applies. In Article 3 and Article 4 of the Law Number 21 of 2007 Concerning Eradication Action criminal Human Trafficking, no loaded normal conditions. Not included normal conditions in matter This

²² Gazali, *Introduction Legal Science*, Sanabil, Mataram, p. 27.

method For do prohibited acts in Article 3 and Article 4 shows formulation of norms that have not yet been perfect. So that in matter this is needed existence reconstruction focusing on Article 3 and Article 4.

Reconstruction that can done in the form of addition the "manner" element in Article 3 and Article 4 becomes form from conditions of norms. Looking at the formulation of Article 2, it is very complete contains 4 theories formulation of norms. Completeness in Article 2 can made into reference For reconstruct Article 3 and Article 4 of the Law Number 21 of 2007 Concerning Eradication Action criminal Human Trafficking.

Element ways that can be added in Article 3 and Article 4 of this can poured with existing phrases in Article 2, namely "with threat violence, use violence, kidnapping, confinement, forgery, fraud, abuse power or position vulnerable, debt trap or give payment or benefit although get agreement from the person holding control over others."

Improvement the expected No only strengthen quality formulation of criminal norms, but also increases effectiveness enforcement law, giving more protection Good towards the victims, as well as create consistency arrangement in system law eradication action criminal human trafficking in Indonesia.

5. Harmonization with law international

Harmonization law is an effort or process that tries For overcome various differences, conflicts, and discrepancies that exist. This step or process aim For create harmony, suitability, compatibility and balance between legal norms in Constitution as part from system law in One framework law a complete nation.^[23]

Harmonization law in context This interpreted as a process of adjustment, alignment and integration of legal norms national with legal norms international which has accepted in a way widely known by the community international. Harmonization No means remove sovereignty law national, but rather ensure that national norms No contradictory with standard international, as well as capable accommodate universal principles that have been agreed together. In context action criminal human trafficking, harmonization law become very important remember crime This has arranged in a way comprehensive in instrument international, especially Palermo Protocol.

Palermo Protocol or Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is instrument international the main one who regulates about definition, elements, and countermeasures action criminal human trafficking. Protocol This become references main for countries in formulate regulation legislation national related to TPPPO. In Palermo Protocol, follow-up criminal human trafficking is formulated through three element main, namely element action (*act*), element means, and elements purpose (*purpose*). Elements action covering recruitment, transportation, transfer, shelter, or acceptance of people. Elements method covers threat or use violence, kidnapping, fraud, abuse power, or position vulnerable, as well as giving or reception payment or benefits. While that, element objective related with exploitation, including exploitation sexual, work forced, slavery, or practice similar slavery.

Referring to the provisions in Constitution Number 21 of 2007 concerning Eradication Action Criminal Human

Trafficking, there is difference fundamental in formulation element action criminal law, in particular in Article 3 and Article 4. Second chapter the No in a way explicit load the element "way" as arranged in Palermo Protocol. Absence element method This cause problem significant juridical, because result in formulation offense become No complete and potential cause normative ambiguity.

Reconstruction chapter done with method identify gap between applicable national norms with provision in instrument international. Gap the can in the form of absence element certain, ambiguity formulation of norms, or even conflict substance. Therefore that, reconstruction chapter must done with approach normative-comparative, where the former Constitution examine in a way critical substance agreement international, then integrate it to in system law national with still notice principles formation regulation legislation, such as clarity formulation, suitability between types and materials load, and can implemented.

Indonesia as a state party in various instrument international related human trafficking has obligation law For adapt regulation legislation national level. The ratification process is based on the law Number 24 of 2000 does not only stops at formal endorsement, but also demands existence implementation substantial through adjustment of legal norms national. In matter this, the reconstruction of Articles 3 and 4 must be viewed as part from ratification legislation, namely the internalization process obligation international to in law national.

Absence element *method* in formulation chapter show that the ratification process legislation Not yet completely optimal. This is can caused by the approach partial in adopt provision international, where only part integrated elements, while element other ignored. Therefore that, reconstruction chapter must done with approach comprehensive, namely with enter element *method* in a way explicit to in formulation crime, so that created harmony between national norms and standards international.

Entering higher level special, reconstruction arrangement must focused on improvement formulation of Article 3 and Article 4. Improvements This done with method enter element *method* in a way explicit to in formulation crime, so that the norm structure becomes complete and systematic. Elements *method* covers various form actions that show existence coercion or manipulation towards the victim, such as threats, use violence, kidnapping, fraud, abuse power, or abuse position vulnerable. With loaded element said, then the legal norms will more capable catch the complexity of the modus operandi of human trafficking that occurs in practice. Reconstruction at the level special also must notice approach victim protection (*victim-oriented approach*). In matter this, element *method* own function important For identify existence condition the vulnerability experienced by the victim, so that give more basic strong for giving protection law. Without existence element mentioned, there are risk that the victim did not will recognized in a way law as a victim of human trafficking, ultimately can hinder access they to justice and restoration.

Reconstruction must also be consider effectiveness enforcement law. With complete and clear formulation of norms, apparatus enforcer law will own more guidelines concrete in do investigation, prosecution, and evidence in court. This will increase quality enforcement law as well as

²³ Sapto Budoyo, *Systemic Step Concept Harmonization of Law in Formation Legislation*, Journal Civis Scientific, Vol IV No 2, 2014.

reduce possibility occurrence error in implementation law. Reconstruction arrangement action criminal human trafficking, particularly in Articles 3 and 4, must be done in a way comprehensive with approach from general to special. At the level general, reconstruction based on the principles law, principle formation regulation legislation, as well as harmonization with law international. Meanwhile that, at the level special, reconstruction realized through repair concrete to formulation of norms with enter element *method* as element essential in action criminal human trafficking. Approach This expected capable produce more legal norms comprehensive, clear, and effective in eradicate human trafficking and give optimal protection for victims.

6. Closing

6.1. Conclusion

1. system arrangement in Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking has form something framework relative law comprehensive in classify various form action criminal human trafficking. Categorization the No only covers core actions such as recruitment, transportation, and exploitation, but also includes deeds derivative like trial, assistance, conspiracy evil, exploitation of victims, and involvement corporations and groups organized. This is show that law positive Indonesia has adopt a broad and systematic approach in reach all over chain crime human trafficking. the existence of provision weighting criminal, good Because consequences, involvement state administrators, child victims, and crimes committed in a way organized, showing that system Indonesian law has give attention special to level seriousness and impact crime the.
2. Reconstruction arrangement action criminal insider trading Constitution Number 21 of 2007 concerning Eradication Action Criminal Human Trafficking, particularly in Articles 3 and 4, is urgent need to improve weakness existing norms. Second chapter the Not yet in a way firm load the element " way " (*means*) as known in draft international, so that cause potential normative ambiguity and asynchrony with standard in Palermo Protocol. Formulation repeat element action criminal with in a way clear add phrases that mention various the form of " how to " such as threat violence, use violence, kidnapping, confinement, forgery, fraud, abuse power or position vulnerable, debt trap or give payment or benefits. In addition, harmonization with law international is also needed in the reconstruction process this. Harmonization this is basically aim For align law national with standard international, especially as arranged in *Protocol to Prevent, Suppress and Punish Trafficking in Persons* who become references main in define action criminal human trafficking.

6.2. Suggestion

1. The need for done improvement in Article 3 and Article 4 of the Law Number 21 of 2007 Concerning Eradication Action Criminal Human Trafficking, as one form category arrangement action criminal human trafficking in Indonesia. This intended so that the category arrangement action criminal human trafficking has more detailed formulation complete, systematic, and harmonious with standard international.
2. Constitution Number 21 of 2007 Concerning Eradication

Action Criminal Human Trafficking, especially in Articles 3 and 4, the need for done formulation repeat the norm more comprehensive with enter in a way explicit the element of "means" next to element actions and goals exploitation. This is important For avoid ambiguity of norms and ensure harmony with standard international as arranged in Palermo Protocol. Harmonization between provision in Constitution This is also necessary so that it does not happen inconsistency between articles that regulate action criminal human trafficking. Reconstruction should also be notice clarity formulation about limitation actions and space scope action criminal, so that can minimize difference interpretation in practice enforcement law.

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