

## ***Prostitution in the Context of Human Trafficking***

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### **ABSTRACT**

The phenomenon of prostitution is currently very widespread among young people. Based on this reality, the phenomenon of prostitution needs to be studied theoretically from a sociological and legal perspective, which also affects the emerge of laws and regulations that regulate the issue of human trafficking and prostitution. The purpose of this study are (1) to examine theoretically from sociological and legal perspectives on human trafficking (2) to determine the influence of laws and regulations on trafficking and prostitution. This study is empirical by using primary data and secondary. Data collecting of primary done by observation and interview directly with sides related to. Sample specified in purposive sampling. Secondary data obtained passing the bibliography study and document with descriptive analysis method qualitative. The result of this study is in fact, the proliferation of prostitution has prompted law enforcement officials, both at the national and local levels, to draft legislation to prevent the proliferation of prostitution. In fact, the various regulations created to address the practice of prostitution are not effective in enforcing the law.

**Keywords:** *Prostitution, Human Trafficking, sociological, legal Perspective.*

## 1 Introduction

### 1.1 Background

The phenomenon of prostitution is currently very widespread among young people. Based on this reality, the phenomenon of prostitution needs to be studied theoretically from a sociological and legal perspective, which also affects the emerge of laws and regulations that regulate the issue of human trafficking and prostitution. The flickering lights of a dimly lit karaoke night stall spun fast, the thumping music filling the room. A beautiful woman in skimpy, seductive clothing approaches her guest. This is what is often found in dimly-lit karaoke nightclubs that serve as a front for covert prostitution, which eventually turns sensuality into a commodity (Dwiharso, 2023). One of the locations suspected of being a place of prostitution is a dimly lit shop on Jalan Mahir-Mahar, Kereng Bangkirai Village, Palangka Raya City, Central Kalimantan Province. Not only in Palangka Raya, if we look elsewhere, dozens of dimly lit night stalls are scattered in Cangkingan Village, Karangampel District, Indramayu, West Java. In front of the stalls, with an average size of 3 x 5 metres, there is a small stage where people dance to the music of a tape recorder. The stall also displays beautiful young girls, aged 13 to 15. Most of them admitted that they were still in junior high school.

Some even said they were still in grade VI. These little virgins accompany the beer drinking men who visit the stall, and dance "goyang dombret" until late at night. Despite their young age, these girls are adept at seducing their guests into drinking until they are high, and then disbursing large amounts of tips. However, they refused to be asked to "sleep over" (Abriansyah, 2002). The night stalls of Cangkingan Village are the so-called apprenticeship centres for Indramayu girls to become professional entertainers in big cities and even abroad. It is common knowledge that Indramayu is known as a supplier of beautiful women to Jakarta. In fact, the Coalition Against Trafficking in Women, an anti-trafficking organisation, says that over the past three years, more than 1,000 young girls from Indramayu have been sent to Japan as prostitutes. These girls are sent to Japan under the guise of cultural missions, using tourist visas (Abriansyah, 2002).

For them, prostitution is a personal and family choice to improve their poor economic conditions. The education and cultural factors they receive from their families and local communities greatly influence this perception (Damanik, 2013).

Departing from this fact, the phenomenon of prostitution needs to be studied theoretically from the point of view of sociology and law, which also affects the birth of laws and regulations governing the problem of trafficking in persons and prostitution.

### 1.2 Objectives

The purpose of this study are:

- a. To examine theoretically from sociological and legal perspectives on human trafficking
- b. To determine the influence of laws and regulations on trafficking and prostitution.

## **2 Literatur**

### **2.1. Prostitution**

A prostitute is a woman who whores, a prostitute, an immoral woman. Prostitution is the act of selling oneself as a prostitute, prostitution (Kartono, 1997). According to William Benton in the Encyclopedia Britanica, prostitution is described as the practice of sexual intercourse that is done for a moment. Prostitution or also known as prostitution comes from the Latin word *prostiture* which means to allow oneself to commit adultery, to commit acts of harlotry, fornication, prostitution. In English prostitution is called prostitution which means not much different from Latin, namely prostitution, harlotry or immorality.

### **2.2 Human Trafficking**

Trafficking in persons can victimise anyone, be it children, male or female adults, in general prostitution, and sexual exploitation including paedophilia, legal and illegal migrant labour, child adoption, mail order brides, beggars, domestic servants, the pornography industry, organ sales, drug trafficking, and other forms of exploitation (Wignyasobroto, 1997).

### **2.3 Sociological**

Sociology is the scientific study of society, which is interested in the study of social relationship between people in group context. Sociology is interested in how we as human beings interact with each other (the pattern of social interaction); the laws and principles that govern social relationship and interactions (Experts, 2000).

#### 2.4 Legal Perspective

Soerjono Soekanto has a view of "a tool of social engineering" or "social engineering" where the role of law in society is as follows Law as a tool for changing society, in the sense that the law may be used as an agent of change or a pioneer of change is a person or group of people gets confidence from the community as the leader of one or more social institutions. The pioneer of change leads the community in changing the social system and in doing so is directly involved in pressures to make changes, and may even cause changes in other social institutions (Soekanto, 1979).

### **3 Prostitution in the Context of Sociology**

Thanh-Dam Truong, in his book *Sex, Money and Power: Tourism and Prostitution in Southeast Asia*, mentions sexual politics as a major factor in the occurrence of prostitution in Southeast Asia. As is the case in Indonesia, trafficking is actually a type of prostitution. Overall, there are three main elements of prostitution that are widely recognised: economic, sexual and psychological (psycho-individual, emotional structure). Why are these three used as the benchmarks of prostitution? Because these three elements are present in most sexual relationships (Truong, 1992).

Durkheim saw social evolution and the division of labour as having affected male-female relations in the following way. Originally based primarily on the sexual function (procreation), the division of labour between the sexes was later extended to other social functions. As a result, two major functions of psychic life (affective and intellectual) became separated. The first function is attached primarily to women, while the second to men. Durkheim concluded that women psychically regressed and men progressed as a result of social evolution (Truong, 1992).

Davis states, "Sex, like other elements of human life, is drawn toward integration, and therefore toward control Sexual appetites, like all others, are tied to socially necessary functions. The function most logically and naturally associated with it is procreation. The nature of procreation and socialisation is such that their exercise requires institutionalised primary group life. As such, the family receives the highest honour among all sexual institutions in society, while the others receive lower valuation due to their more distant position from the character of the *Gemeinschaft* and the purpose of reproduction. Commercial prostitution occupies the lowest class; it shares fundamental features with the other sexual institutions, namely the utilisation of sex for a hidden purpose in a system of different opportunities, but it differs from the others in its demand for wages, promiscuity and emotional detachment (Truong, 1992).

#### **4 Prostitution Seen in the Context of Human Trafficking**

By their very nature, women and children are the most likely to experience the criminal offence of trafficking in persons. In fact, victims are trafficked not only for "conventional" purposes of prostitution or other forms of sexual exploitation, but also include other forms of exploitation such as forced labour or service, slavery, slaverylike practices, or baby trafficking. The crime of trafficking in persons, particularly Indonesian women and children, has become widespread in the form of both organised and unorganised crime networks. Trafficking crimes involve not only individuals but also corporations and state officials who abuse their authority and power. Trafficking gangs operate not only within the country but also across borders.

In everyday life, men and women have acquired different roles, duties, values and rules. Women because of their reproductive function are placed in the domestic sphere while men are placed in the public sphere. The division of roles, duties and values as well

as rules are given through social rules of society, customs, laws, and erroneous religious interpretations. The simplest example is the enactment of roles in Law Number 1 Year 1974 on Marriage. In addition to discrimination against girls, such as young marriage, the value of virginity, the view that girls do not need higher education is a key driving factor. Child victims of trafficking work relatively long hours and are prone to physical, mental and sexual abuse. They have no external support or protection. Their health is often threatened by sexual infections, alcohol and drug trafficking. In Law No. 21/2007 on the Eradication of the Crime of Human Trafficking, the issue of prostitution is referred to as sexual exploitation. This can be seen in 2 articles, such as In Article 1 paragraph (7) and in Article 1 paragraph (8). In addition to the articles contained in Law No. 21 of 2007, there is also the practice of prostitution known as mail-order brides. This practice occurs across state lines, or what is known as transnational crime. The various causes of trafficking in persons through the mail-order bride model are:

#### Poverty

The most common reason for transnational marriages is to improve the economic standard of oneself and one's family. Poverty has also encouraged parents to let their children become wives to foreigners. In very depressed living conditions, when approached by brokers who persuade to match their daughters with foreign men. The parents will persuade their daughters, even if there seems to be an element of coercion, so that their daughters want to marry foreign men who are known through the photos shown by the brokers.

Parents become very instrumental in a marriage when the marriage that is carried out by a person is based on parental coercion. The reasons why parents force their children to marry strangers also vary. For example, there are parents who think that marrying a

foreigner will improve the dignity of their family life, because they are forced to pay their debts. The coercion of parents is based on economic pressure in the family so that marrying off their children is one solution to the welfare of the family.

Economic factors that become important reasons are also often used by a woman to marry a man. These three backgrounds are common reasons, there are many other reasons behind a marriage, especially transnational marriages. On the other hand, the condition of parents who have a hard life due to poverty is increasingly burdensome, so the parents of this girl will let their daughter marry a foreign man with the hope that the departure of her daughter will be able to support the economy of the entire family she leaves behind, not only from the dowry received but also from the delivery of her daughter who can work and send her income to her parents.

b. Gender Inequality and Injustice

Forced marriages usually come from parents who accept the persuasion of brokers looking for the necessary women to target for arranged marriages such as mi. On the other hand, girls occupy a sub-ordinate position as a result of their patriarchal culture. As a result of this division of roles, men have become the dominant party, superior in almost all fields, while women's access to development is partially hampered. It is at this point that injustice occurs, because women and girls get gender discrimination such as the occurrence of stereotypes (negative role standardisation), overburdening for working wives, subordination, marginalisation which results in violence (acts of violence) against women in the domestic and public sectors.

The view that education for boys is more important than for girls has caused girls, especially from poor families, to have less access to higher education, making it difficult to gain access to economic resources because they have less access to employment

opportunities. As a result, girls are considered to be a burden on poor families, while on the other hand, the girls also want to get out of poverty and live a better life. This condition is utilised by marriage brokers as a target for bride-hunting brokers to easily attract their victims.

c. Consumerism

In addition to poverty, consumerism is a factor that ensnares the lifestyle of girls to seek a better life in a fast way.

## **5 The Relationship between Law and Social Change in the Practice of Prostitution**

Law is the result of society's own culture, namely its members together. Man as an individual and as a person does not stand alone, but as a social being. As a social being, he behaves while evaluating his own behaviour, which is good and which is bad, which is beneficial and which is harmful, which may and which may not be done, which are rights and which are obligations. In this case it is often said that "man is behaving and evaluating individually" (Sanusi, 1984).

Humans in social life need social control in carrying out all their activities. This social control is often given the meaning of supervision by the community against the course of government. This social control is carried out by individuals against other individuals, which aims to achieve a balance between stability and change in society (Soekanto, 1986). Every group in society always has problems as a result of the difference between the ideal and the actual, between the standard and the practical, between what should or is expected to be done and what is in reality done. Group standards and values in society vary as factors that determine individual behavior (Ali, 2007).

There are several opinions on where ethical rules come from. Some suggest that the rules of ethics come from God and that God taught them to the first human beings who



then passed them down to the next generation. There are others who suggest that the ethical rules of life were created by wise ancestors and continue to be maintained as habits and customs for all its members. Another approach suggests that the rules of life were studied by clever religious scholars, then further compiled by social and state experts, so that they were ratified as generally binding rules. However, there is also an opinion that states that the rules of law are essentially sourced in the awareness and conscience of each member of the community itself which is displayed as their respective values and attitudes in every socio-cultural relationship in society (Sanusi, 1984). Social movements, such as the workers' and women's movements that were born in defence of the oppressed strata, did raise the issue of prostitution as a form of social and sexual oppression. However, this opposition to the established order lost momentum when the interests of prostitutes became apparent. Within the labour movement, the issue of prostitution has been raised in relation to the rise of capitalism, wage labour and exploitation, but then set aside as a symptom of the decadence of the bourgeoisie. Empirically, however, the phenomenon has been closely linked to the renewal of the labour capacity of the workers themselves (Sanusi, 1984).

Law basically does not stand alone, cannot live and grow alone without the support of the philosophical values of the nation, without the support of its religious beliefs and values, without economic and political support, without the support of the intelligence, skills, technology, and morality of a strong nation. Therefore, the law is in dire need of socio-cultural services from the community (Sanusi, 1984). Where there is a society, conflicts have the potential to arise, as well as where conflicts occur, the law will also appear there to offer solutions. For a long time, the law has positioned itself as a forum or prominent instrument in the settlement of conflicts of interest that arise in the midst

of human civilization (Bakir, 2007). Without law, there would be no such thing as society. Man, society, conflict and law are inseparable entities.

In this most original sphere of civilisation, law shows its figure as a means of restricting individual wills that damage the public atmosphere, such as the tendency to behave immorally (out of habit) or instinctive impulses; protector (protector) of individual rights from all kinds of deceit, ignorance, or feelings of envy, spite and so on from certain individuals; coordinator of individual relations in the process of organising sexual life; guarantor of control over ownership; and stabiliser and dynamist of feelings of security and tranquility (Bakir, 2007). From here it can be said how instrumental the law is in bringing society to a better direction. Because the law covers all aspects of life and protects every individual in carrying out their lives in society. Law is one of the tools of social control, where its use is commonly known as law-enforcement. Therefore, to find out how far the effectiveness of the law in its function as a means of control. Every society will use tools according to its needs, which in the process are always evolving (Soekanto, 1986). E. Adamson Hoebel said, "Law as a process is an aspect of the total system of social control maintained by a society". From there, it is stated that law is a process of one aspect of the entire system of social control that exists in society (Soekanto, 1986).

Soerjono Soekanto said that law as a method is a benchmark for proper behaviour or attitude. The benchmark provides guidance on how humans should behave or act (Ishaq, 2008). Basically, the law has a goal to be achieved. The main purpose of law is to create an orderly society, creating order and balance. In achieving this goal, the law has the task of dividing rights and obligations between individuals in society, dividing

authority and regulating how to solve legal problems and maintain legal certainty (Mertokusumo, 1986).

Soerjono said that the law that is held or formed carries a certain mission, namely public awareness which is outlined in the law as a means of control and change in order to create peace and tranquillity in society. Meanwhile, Purnadi Purbacaraka and Soerjono Soekanto explained that the purpose of law is the peace of life between individuals which includes external order between individuals and internal peace of mind (Ishaq, 2008). In law there is an inevitable clash, a recurring battle between the demands of justice and the demands of legal certainty. The more the law fulfils the requirement of "fixed rules", which as much as possible eliminate uncertainty, so the more precise and sharp the legal rules are, the more justice is pushed aside. That is *summum ius, summa iniura* (Apeldorn, 1982).

The law is forced to sacrifice justice in favour of expediency. However, there are a large number of legal rules that do not realise justice at all, but are based solely on the interests of utility, for example regarding evidence and expiry, and rules that protect the "bezitter" to a certain extent against the "eigenaar" in the interests of peace in society (Apeldorn, 1982). We can see in fact, that the rampant practice of prostitution has provoked law enforcement officials, both at the central and regional levels, to make various draft laws and regulations to prevent the rampant prostitution. Even prostitution today is carried out through electronic media platforms such as Facebook, Michat, and other social media platforms, which are the norms of human trafficking crimes that occur in the Central Kalimantan region.

However, law enforcement officials have difficulty using the right legislation, considering that the Law of the Republic of Indonesia Number 21 of 2007 concerning

Eradication of the Crime of Trafficking in Persons and Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions and its amendments, namely Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions are not clearly implied regarding acts or criminal offences of trafficking in persons using cyber facilities. In fact, as contained in the Directory of Decisions of the Supreme Court of the Republic of Indonesia, cases of trafficking in persons in Indonesia since the enactment of Law of the Republic of Indonesia Number 21 of 2007 on the Eradication of Trafficking in Persons, there are 1116 (one thousand one hundred and sixteen) cases of trafficking in persons that have permanent legal force and 14 (fourteen) cases of trafficking in persons.

However, if we look at the various regulations made to overcome the practice of prostitution, they are not very effective in enforcing the law. Because in every society there are social forces that can function as tools to achieve a goal. The goal in question can be good or bad for society. For the law, the most important thing is the use of social forces that harm the State and society (Ali, 2007). However, what happened in Palangka Raya and Indramayu is not a social force, but a phenomenon that occurs in the families of victims and traffickers or who trap them into prostitution.

What the author can reveal is that debt bondage is the dominant factor driving this trafficking practice. In addition, the perpetrators also take advantage of the moment to trap the victim with the pretext of big money, if the victim wants to be invited to work in big cities or abroad. In Indonesia itself, as stated by Donald Black, formulates that when social control by the government, which is often called law, does not work, then other forms of social control will automatically emerge. Whether we like it or not, actions taken

by individuals and groups, which from a juridical optic can be classified as vigilantism (eigenrichting), are essentially a form of social control carried out by the people (Ali, 2007). In addition, a group of people in a certain place is destroyed, divorced or extinct not because the law fails to carry out its duties, but the duty of the law must be applied to serve as social control and social engineering in the life of the community. This is because the duties and functions of the law are not the purpose of the law itself, but an instrument that cannot be replaced to achieve balance in the activities carried out by humans (Ali, 2007).

The existing laws to deter all forms of human trafficking are no longer so effective. This is because of a social factor that has developed in the community, namely the financial problems that ensnare almost all Indramayu people in rural areas. Debt bondage is always used as an excuse. So the law on human trafficking is not so effective in enforcing the law because there are other factors that encourage the perpetrators and victims to carry out the practice of human trafficking can be justified. Because what happens can already be said to be a habit for girls to become prostitutes or become prostitutes.

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