

## LAW ENFORCEMENT AGAINST THE CRIME OF HUMAN TRAFFICKING AT LINE TWO, POROS SAMARINDA-TENGGARONG

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### Abstract

Indonesia has provided a legal basis for the criminal conduct of human trafficking in Law Number 21 of 2007 concerning the Crime of Human Trafficking. The disclosure of the case of human trafficking at the coffee shop pangku on Line Two Poros Samarinda-Tenggarong which was carried out directly by the Tenggarong Sebrang police found one of the practices of human trafficking under the guise of a coffee shop, on Line Two Poros Samarinda-Tenggarong. Even though the stalls have been brought under control several times, in reality these stalls are quickly operating again. So it can be seen that law enforcement against the crime of human trafficking under the guise of a coffee shop on Line Two Poros Samarinda-Tenggarong has not been fully running well. The purpose of this study is to determine the enforcement of criminal law against perpetrators of criminal conducts of human trafficking in the Line Two Poros Samarinda-Tenggarong. The two authors want to know the efforts that have been made by the government to overcome the practice of human trafficking in Line Two Poros Samarinda-Tenggarong. Based on the collection of legal data, the authors get answers regarding law enforcement against the perpetrators of the criminal conduct of human trafficking in Line Two Poros Samarinda-Tenggarong, only 1 case was carried out in 2018 against the defendant Wiwik Julianto with an underage victim, in which the defendant was sentenced to 6 years imprisonment. Apart from this case, law enforcement has not been carried out against the perpetrators of the criminal conduct of human trafficking at the coffee shop on Line Two Poros Samarinda-Tenggarong by the Tenggarong Seberang sector police on the grounds that they have not found strong evidence of the existence of human trafficking in the form of prostitution, although they also admit that there are many and still active prostitution activities in the coffee shop. The government's efforts against the practice of human trafficking in the Line Two Poros Samarinda-Tenggarong, efforts by the *Satpol PP* of Kutai Kartanegara Regency were hampered by field conditions which were indeed protected by community organizations that protected coffee shops on the Line Two Poros Samarinda-Tenggarong and the unpleasant treatment by shopkeepers. The shop is a threat to the safety of its officers. Legal efforts made by the Tenggarong Seberang Police are only limited to data collection, raids on alcohol and arrests traffickers in the form of prostitution only if they receive a report.

**Keywords:** Trafficking, Human, Effort, Enforcement, Law.

#### History:

Received: February 9<sup>th</sup> 2021

Accepted: July 25<sup>th</sup> 2021

Published: August 1<sup>st</sup> 2021

**Publisher:** Universitas PGRI Madiun

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### INTRODUCTION

The act of human trafficking is an act that is not in accordance with human dignity and has actually violated human rights, so that action must be taken firmly. Legal protection for child victims of human trafficking is inadequate in accordance with statutory regulations and human rights (Setiawati et al, 2021). Indonesia has provided a legal basis for the criminal

conduct of human trafficking as stated in Article 1 paragraph (1) of the Law of the Republic of Indonesia Number 21 of 2007 concerning the Crime of Human trafficking, hereinafter referred to as the Law on Human trafficking, providing a definition related to the crime of human trafficking. A person who is an act or conduct involving the recruitment, transportation, harboring, dispatch, transfer or receipt of a person by means of the threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, debt bondage or the giving of payments or benefits, so as to obtain the consent of the person who has control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or causing the person to be exploited, and whoever commits the crime of human trafficking will be punished in accordance with human trafficking law.

The form of the act of human trafficking that most often occurs is in the form of providers of commercial sex services or prostitution services. Prostitution itself becomes a very complex problem because prostitution is related to various aspects of people's lives. such as social aspects, gender equality, legal norms, health, morals and ethics, religious values, education, psychology, economics and industrialization, and political issues". (Pradana, 2015).

Alfian (2015) said that the crime of human trafficking is an object of crime which is currently growing rapidly in Indonesia. The problems related to the regulation related to this matter are contained in Article 297 of the Criminal Code, but even to this day the benefits of this arrangement have not yet been felt.

Based on the news published by merdeka.com, the Tenggarong Sebrang police have uncovered one of the practices of human trafficking under the guise of a coffee shop, on Line Two of the Samarinda-Tenggarong. The 15-year-old teenager from Blitar who was initially promised a job as a coffee seller turned out to be a child prostitute. The teenager within 4 days of starting work has served 12 men. The existence of two coffee shops in the area is known or referred to by people as pangku stalls and this has increased in the past 5 years. Based on the news that the author got from electronic media 3, there have been several attempts to control the existence of the pangku coffee shop when it was indicated that they had practiced human trafficking in the form of prostitution. The alleged practice of human trafficking at 4 pangku coffee shops on the Line Two of the Samarinda-Tenggarong fulfills the elements of Article 1 paragraph (1) of the human trafficking Law or the Crime of Human trafficking, where shelter and acceptance are elements of the crime.

Regarding law enforcement against the perpetrators of the criminal conduct of human trafficking on the Line Two of the Samarinda-Tenggarong, is it possible to implement it in this case? In addition, it is also necessary to analyze the efforts that can be made by the government on the practice of human trafficking on the Samarinda-Tenggarong Axis Line Two.

## **MATERIALS AND METHODS**

The research approach in writing this research uses a Socio Legal Research approach. According to Peter Mahmud Marzuki, sociolegal research is research that places law as a social phenomenon and views the law from an external perspective only, therefore in sociolegal research, law is always associated with social problems.

The use of data in this study uses 2 data, namely primary data and secondary data, primary data that will be obtained when observing the research location is in the form of interviews from sources and secondary data, namely legal data that is relevant to regulations regarding human rights and trafficking issues that have been regulated in the regulations. Indonesian legislation

## **RESULTS AND DISCUSSION**

### **1. The Mechanism of Amendment to the Indonesian Constitution**

#### **A. The Crime Of Human Trafficking In The Line Two Of The Samarinda-Tenggarong**

##### **a. Factors of Human trafficking in Indonesia**

###### **1. Economic Factor**

The existence of factors related to the economy is indeed the main cause when human trafficking occurs based on the poverty of the victims and the absence of jobs or existing employment opportunities is not appropriate and cannot accommodate the existing population due to the large population. In addition, differences in welfare categories between countries can also lead to human trafficking. It can be seen that the countries that receive the arrival of the victims of human trafficking from Indonesia are indeed rich countries, including Malaysia, Singapore, Hong Kong, Taiwan, and Saudi Arabia so that the victims feel that there is an opportunity for them to have a more prosperous life if they can go and work in other countries (Farhana, 2010)

Plantika said that the existence of economic factors is indeed the cause of the occurrence of a criminal conduct of human trafficking, often based on poverty and the lack of available employment opportunities is still not proportional to the large number of people, which causes a person to feel obliged to earn a living and any work even though they have to leave their area of origin with not little risk. (Plantika, 2009)

In the study, the authors found that the reasons given by commercial sex workers who were in the coffee shop on Line Two of the Samarinda-Tenggarong pangku coffee shop were traded because of economic needs. Those who work as waitresses under the guise of prostitutes in these coffee shops need jobs, which they think are very difficult to find so far.

###### **2. Socio-cultural factors**

What is related to this socio-cultural factor is an agreement that occurs in the community and in the end the agreement will be able to cause conflict, one of which is a cultural conflict which explains the relationship between conflicts that arise in society. Individuals in the community learn the norms where the norms themselves are based on the culture that comes from the individual environment in the community. So that in the end the surrounding community will consider something that happens as a normal thing in their social life and finally justify something happening on behalf of it as a culture or habit.

###### **3. Educational Factor**

The level of education is a determining factor in the life of a human being and education itself is not only in the level of formal education but also non-formal education which can lead to the emergence of skills and experience of a person.

The low level of education will make a person ultimately not have any skills that can be used in his life later and also make a person have a simple mindset where only the material is sought without considering other things related to the material he is looking for (Hanim, 2015).

##### **b. The Practice of Human trafficking at the Pangku Coffee Shop on the Line Two of the Samarinda-Tenggarong**

The practice of human trafficking at the Pangku Coffee Shop on the Line Two of the Samarinda-Tenggarong, where business actors recruit and also accommodate women as waitresses under the guise of sex service providers, has come under the spotlight after a case was filed in the Tenggarong District Court. The accused who was reported as WJ, was reported by the victim to be a direct minor who felt trapped by the lure of a lawful job, departing from this case the author wanted to explore the intricacies of human trafficking in the form of sex services in coffee shops at Line Two of the Samarinda-Tenggarong.

The existence of human trafficking who provide prostitution services in coffee shops on the Line Two of the Samarinda-Tenggarong makes the women of the Koranic study in Tenggarong Seberang uneasy, because there is a resident of a wife who is infected with HIV due to her husband who often uses sexual services from a coffee brewer under the guise of sex workers in these stalls. Based on information from Mr. R as Investigator at the Tenggarong *Satpol PP*, Kutai Kartanegara Regency, the recitation mothers at the mosque near the Tenggarong Seberang Police Station were concerned about the practice of human trafficking in the form of prostitution at the coffee shop and submitted their complaints to the Tenggarong Satpol PP.

B. Law Enforcement Against The Crime Of Human Trafficking On Line Two Axis, Samarinda-Tenggarong

a. Law Enforcement of Human trafficking According to the Criminal Code and Legislation and Regional Regulations of Kutai Kartanegara

1. Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations

There are several actions related to human trafficking when viewed from the rules contained in the Criminal Code, including:

- 1) Obscene acts committed against children;
- 2) Acts in the form of facilitating or facilitating or providing facilities for immoral acts with children or minors;
- 3) Acts that facilitate an obscene act as a livelihood or work or habit;
- 4) The act of employing a person who is still a minor as a beggar or other dangerous work;
- 5) Acts that take the worker to another place different from what was agreed upon;
- 6) The act of pimping.

Regarding the existence of several articles above that have become the author's concern in the criminal conduct of human trafficking at the Pangku coffee shop at Line Two of the Samarinda-Tenggarong, it relates to

- 1) Facilitate obscene acts as a means of livelihood/work, or habits are threatened with criminal sanctions as regulated in Article 296 *KUHP*;
- 2) The provisions of Article 297 *KUHP* which are used as general provisions relating to the criminal conduct of human trafficking, with the stipulation that if a person intentionally deprives another person of human rights, he will be sentenced to imprisonment for 6 years.

The provisions of Article 296 reads to facilitate obscene acts as a livelihood/job, or habit. So the elements of the article are:

- a. Make it easy: the people who run the coffee shop pangku on the Line Two of the Samarinda-Tenggarong accommodate and provide rooms.
- b. Obscene acts: the people who run the pangku coffee shop on the Line Two of the Samarinda-Tenggarong make it easy by providing rooms for the purpose of practicing prostitution which is definitely obscene.
- c. For livelihood/work: the purpose of facilitating obscene acts above is solely for livelihood, as evidenced by being charged a room price per one time prostitution is carried out, a clear example is in the case of convict W who takes room rent every time the victim serves guests .

Then there are also provisions in Article 324 related to the prohibition to carry out slave trade or carry out slave trade acts where the elements of prohibited acts are:

- 1) Whoever: the people who run the pangku coffee shop on Line Two of the Samarinda-Tenggarong.

- 2) Own/other's expense: by bringing in prospective women to be sold from Java, the people who run the pangku coffee shop on Line Two of the Samarinda-Tenggarong use their own money to bring them in.
- 3) Running a slave trade: the people who run the pangku coffee shop on Line Two of the Samarinda-Tenggarong instruct the waiter to serve men who need sex services.

## 2. Laws

Article 20 of the Human Rights Law regulates the prohibition to enslave and trade slaves, trafficking in women. This means that when a human being has been turned into a commodity and then transfers the existence of that person arbitrarily, it will be loaded with various acts of violation and the occurrence of criminal conducts aimed at exploiting labor which results in harm to the victim and will certainly benefit to the other party. The act of human trafficking involves many children and women who are used for sexual exploitation. Furthermore, the victims have been treated as sex objects which will certainly destroy the lives of the victims so that it can be said that human trafficking is a humanitarian tragedy which must be strictly stopped (S.Yohanes, 2008).

## 3. Kutai Kartanegara Regional Regulations

Rules relating to human trafficking also exist in Kutai Kartanegara Regency as contained in the Kutai Kartanegara Regional Regulation Number 5 of 2013 concerning Peace and Order. The actions that are prohibited in the Regional Regulation include:

- 1) Acts that influence, persuade, offer and lure other people with words, gestures, signs or other actions to invite adultery or obscene acts;
- 2) Obscene acts committed in public places;
- 3) Actions that act as pimps or intermediaries who coordinate one or several people who will be hired to become prostitutes, transvestites and provide a place including providing facilities and infrastructure to commit adultery and obscene acts.

## b. Law Enforcement Against Perpetrators of Criminal conducts of Human trafficking on the Line Two of the Samarinda-Tenggarong

In 2018, November 4<sup>th</sup>, the Tenggarong Seberang Police received a report from a 15-year-old teenager named R. From this report, the Tenggarong Seberang Police found that R was a victim of the Crime of Human trafficking at a Coffee Shop on Line two Poros Samarinda-Tenggarong. The police immediately arrested the suspect named WJ on November 9, 2018.

The chronology of the case is on October 31<sup>th</sup>, 2018 on street of Poros Samarinda-Tenggarong Bukit Raya Village RT 16 Tenggarong Seberang District, Kutai Kartanegara Regency, the defendant has a coffee shop, just returned from Blitar City, East Java with two children, namely RL and A where the defendant promised both of them to be coffee brewing employees at his shop and never said that he would be asked to have sex with guests who came to the shop, but just arrived at the defendant's coffee shop then a man who was not known by the defendant related to his identity stopped for coffee and immediately asked how much the fee was if enter the room and invite the victim to have sex. Since then until the date the victim reported to the Tenggarong Seberang Police, there were at least 7 more unidentified guests who were served by the victim with varying wages and paid the defendant Rp. 100,000, - each serving guests. Then on November 4<sup>th</sup> 2018 at around 19.00 WITA when the defendant's husband entered the Parikesit hospital, the victim suddenly ran away when the defendant was told to buy diapers at a shop with his friend A, when A entered the shop, the victim immediately ran away and reported the defendant to Tenggarong Seberang Police Station.

From this case, the Tenggarong District Court Judge had several considerations in imposing a sentence against the defendant, namely things that aggravating and mitigating the defendant. The thing that weighs the judge's consideration is that the defendant's actions have

damaged the future of the victim and disturbed the community, there are also circumstances that provide relief to the defendant, namely when the defendant always gives a polite attitude during the trial process, the defendant also tells the truth and is frank during the process. So that the trial process was end smoothly. In addition, the defendant also regretted his actions and promised not to repeat his actions, especially since the defendant had never been convicted before.

In the decision Number 6/Pid.Sus/2019/PN.Trng on behalf of WJ, the judge finally stated that the defendant was indeed guilty and was sentenced to 6 years in prison and the payment of a fine of Rp. 120,000,000 accompanied by the provision that if the fine was not paid it was replaced with imprisonment for 3 months.

After approximately 4 months of going through the trial process, the victim RL was safely accompanied by the Tenggara Social Service and given psychological treatment by the Tenggara Social Service, until the end of the trial period RL was sent back to her hometown to Sidoarjo, in collaboration with the Sidoarjo Social Service. As far and as long as the operation of the coffee shops on the Line Two of the Samarinda-Tenggarong, according to testimonies from the *Satpol PP* and the Tenggara Seberang Police, only one case has been pursued through litigation.

### C. The Government's Effort Against The Crime Of Human Trafficking In The Line Two Of The Samarinda-Tenggarong

#### a) Efforts by the Kutai Kartanegara Regency Officials

In accordance with the provisions in Article 1 of the Government Regulation of the Republic of Indonesia Number 39 of 2012 concerning the Implementation of Social Welfare which shows that the implementation of social welfare is a directed, integrated, and sustainable effort carried out by the government, local governments, and the community in the form of social services in order to meet the needs of the community that include basic needs of every citizen, social rehabilitation, social security, social empowerment and social protection. In addition, there is also a moral rehabilitation that is believed and also called for by many parties as a way to overcome the escalation or increase in prostitution activities. (Patnani, 2007).

#### 1. Efforts of the *Satuan Polisi Pamong Praja* in Kutai Kartanegara Regency

Government Regulation of the Republic of Indonesia Number 16 of 2018 concerning Civil Service Police Units regulates the existence of civil service police units or commonly referred to as *Satpol PP* which is a regional apparatus formed to enforce Regional Regulations and Regional Head Regulations, carry out the implementation of public order and peace and provide protection. Public.

Based on the results of interviews with the *Satpol PP* of Kutai Kartanegara Regency, the author found that the *Satpol PP* itself still does not clearly know the ownership of the land for the coffee shop on the Line Two of the Samarinda-Tenggarong. This is quite strange because the *Satpol PP* should have known about the ownership of the land. Then from his side's acknowledgment, the last raid was held during the month of Ramadhan 2019, after that it was no longer there. In fact, raids should be held routinely, especially in relation to public order and public peace on the Line Two of the Samarinda-Tenggarong.

#### 2. The efforts of the Tenggara Seberang Sector Police.

In this study, the Tenggara Seberang Police also handled the case of Defendant W in 2018. Apart from this case, it turned out that the confession from the police, namely Mr. Sundoyo as the Head of Binmas, stated that several legal remedies had been taken apart from implementing the existing Procedural Standard.

From the results of interviews with the Tenggara Seberang Polsek, the author captures that the efforts made by the Sector Police are still not effective because the arrests of

business actors who accommodate commercial sex workers are still very large, even though it is known and admitted that there are prostitutes there. In addition, administrative efforts from the Tenggarong Police Sector in the form of sending letters to the district and sub-district governments regarding the existence of prostitution on the Line Two of the Samarinda-Tenggarong

### 3. Efforts from the Tenggarong Social Service (*Dinas Sosial Tenggarong*)

The existence of a Social Service is with the function to formulate technical policies that include the social sector to be adjusted to the determination of the strategic plan by the Regional Government.

However, it turns out that the Social Service only completes or accepts individuals in tackling the community's ills. The Social Service will act only when there are reports coming in from related institutions such as the Polsek and Satpol PP or residents who directly come to the Social Service. The Social Service as a state tool to overcome social problems in the community should be able to go directly to the community to provide counseling and provide education to women who are powerless because of their economy or because they are not well educated.

#### b. Preventive and Repressive Efforts Against Human trafficking in the Form of Prostitution

From the results of research on 3 Institution, namely *Satpol PP* Kutai Kartanegara Regency, *Polsek* Tenggarong Seberang and *Dinas Sosial* Tenggarong. In addition to following up with the legal process, the *Satpol PP* and *Polsek* also carried out outreach to residents around coffee shops on the Line Two of the Samarinda-Tenggarong. This is done in order to educate women, whether they are workers in coffee shops or not, so that they are well educated about the importance of health and entrepreneurship as well as in the context of moral improvement. From the *Satpol PP* itself, Mr. Rasidi explained that another effort made by the *Satpol PP* was to put up banners warning about the dangers of free sex leading to HIV. This is done as a public advertisement that can be read by everyone, especially teenagers and women who work as prostitutes and men who often use sexual services. Then the Kutai Kartanegara Regency *Satpol PP* made a persuasive effort in the form of notification to coffee shops on the prohibition of prostitution practices.

There are deficiencies in the legal product made by the Kutai Kartanegara district government, in the Kutai Kartanegara Regency Regional Regulation Number 5 of 2013 concerning Public Order and Public Order, the authors did not find any sanctions against the prohibitions article by article contained in the body of this regulation. So that it becomes flawed and ineffective in law enforcement to use the legal instrument of this regional regulation. Another reason that hinders and weakens enforcement and efforts for the government, especially related agencies in Kutai Kartanegara district in reducing the practice of prostitution in the coffee shop Pangku on route two Samarinda- Tenggarong is the lack of initiative from the agency related to the reason there is no order from the district government, lack of funding and other things as well as the lack of firmness from the local Regent so that the practice of prostitution which is also included in the qualifications for human trafficking at the coffee shop is still actively operating until now.

## CONCLUSION

Law enforcement against the perpetrators of the criminal conduct of human trafficking on the Line Two of the Samarinda-Tenggarong has been only carried out in 1 case in 2018 against the defendant WJ with a minor victim, for which the defendant was sentenced to 6 years in prison. Apart from this case, law enforcement has not been carried out against the perpetrators of the criminal conduct of human trafficking at the coffee shop on Line Two of the Samarinda-Tenggarong by the Tenggarong Seberang sector police on the grounds that

they have not found strong evidence of the practice of human trafficking in the form of prostitution.

The government's efforts against the practice of human trafficking on the Line Two of the Samarinda-Tenggarong Legal efforts by the Kutai Kartanegara Regency *Satpol PP* were hampered by field conditions which were indeed protected by community organizations that protected coffee shops on the Line Two of the Samarinda-Tenggarong and unpleasant treatment by guards stalls that threaten the safety of its officers. Legal efforts carried out by the Tenggarong Seberang Police are limited to data collection, raids on alcohol and arrests traffickers in the form of prostitution only if they receive reports, it also states that the obstacles are also the difficulty of catching sex workers because they always run away and lack of evidence to arrest the perpetrators of human trafficking in the form of prostitution.

## Acknowledgments

I say thank to God, my family, and all friends who support us to finish this research.

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