

Human Body and Prostitution in Hedonism (Human Rights Perspective)

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ABSTRACT

Studies of human trafficking have been already widely performed, but a study of self-prostitution as a part of human trafficking syndicates still leaves a big question. Based on a study using a method of direct involvement (participatory action research), a wrong mindset in perceiving an ownership of the body was found among self-prostitution perpetrators. Actually, there was an opportunity to stop from the prostitution activity after a fall in a pool of trafficking syndicate, but it was not used. Hedonism and high lifestyles become another color to continue the activities of making the body as a commodity. According to the National Law, the practice of self-prostitution violates many rules and it is also prohibited according to study of Islamic Law. However, there is an interesting idea to study from the side of Islamic law affirming that the body does not belong to a man himself/herself, but it is absolutely only borrowed from the God. This side distinguishes between perception of Islamic Law about the body and perception of the national law based on human rights granting an individual with a freedom to treat his/her own body (concept of ownership). As the body becomes a commodity in activity of self-prostitution, the national law is paralyzed and leaving a loophole called the concept of 'consensual sexual intercourse' and "a freedom to make expressions" to break by perpetrators of self-prostitution.

Key Words: self-prostitution, human rights, hedonism

INTRODUCTION

Background

As Horkheimer and Adorno put forward for the first time about the concept of effectiveness and commodity leading to reification, such view still has blurry pictures. But when the conception is associated with the emerging phenomenon of human trafficking, and human beings, who are essentially possessing a very high degree as the keeper of the earth, become the trading commodities, then the eyes of the world see clearly urgency of the thought of Horkheimer and Adorno.

Observing carefully the dialectics of human trafficking or often referred to as a modern era slavery for economic interests is really not a new topic at all. Long ago, the thinkers of Critical Philosophy were already warning against such conditions of liberalization and free competition. Horkheimer and Adorno, through *Dialectic der Aufklarung* published firstly in 1944, gave deep criticisms of 'commodities' and 'economic efficiency'.¹ As rationality of the capitalism theory says '*let the market work, because the market creates the purest efficiency*', then a new myth emerges equating rationality to efficiency. Inefficient

¹ Franz Magnis-Suseno, *Dari Mao ke Marcuse, Percikan Filsafat Marxis Pasca-Lenin*, see "Teori Kritis Marx Horkheimer dan Theodor Wiesengrund Adorno" (Jakarta: Gramedia Utama, 2014), p. 203-249

products will be crushed and destroyed in marketplace. At a later stage, all areas of human life become commodities. All values become commodities, meaning that the true value has been lost, and production is no longer intended to meet the needs, but only to bring up new needs that are continuously created for the growth of production.²

In the context of human trafficking crime, these values of human and humanitarian are deemed to have been lost. The human and humanity values are replaced by material, money and the spirit of hedonism solely as an effective means to achieve wealth. Such statement is based on temporary findings that complexity of human trafficking syndication has been leaving a weird phenomenon that is beyond human reason in general. In one segment of the study of human trafficking, a surprising empirical fact was found that the human body is interpreted only as a commodity to sell in prostitution activities that even made consciously by oneself. The segment or a small part of the complexity of the human trafficking phenomenon contains practices of human trafficking that, in fact, can also be manifested in a form of self-prostitution. The context of self-prostitution is not always correlated with coercion or violence from others. In this situation, prostitution becomes a profession and a way of making a living performed consciously and on personal will. A hedonic mindset and to attain a luxurious life quickly as well as unethical and faithless instant lifestyle become dominant factors as an individual ultimately plunges herself into a human trafficking business in the form of self-prostitution.

There are indeed two phenomena of prostitution. The first is a prostitution performed under coercion and intimidation of others as part of human trafficking or trapping. Prostitutes of the type of prostitution phenomenon should not be punished, because in fact, she is a victim who must be saved. However, what has been surprising is a phenomenon of human trafficking with the body as a trading commodity. As an illustration, the case of celebrity prostitution involving more than 200 artists with pimp Robbie Abbas (RA alias Obbie)³ is an undeniable fact about phenomenon of making the body as a commodity in prostitution business. Even more surprising, there was also an attempt to protect the second type of prostitution phenomenon by a policy of prostitution localization. Just as conveyed by the Regent of Kendal of period 2010-2015, Widya Kandi Susanti, about her personal statement on the existence of prostitutes. According to her, prostitutes are family heroines, because usually they work to make a living for their families. Under such condition, it seems inhumane that localization of the prostitution is closed. Argument to defend the opinion is the closing of localization will cause new problems, namely poverty will increase and outbreaks of venereal diseases. The underlying reason of this idea is prostitutes will most likely 'hawk' themselves uncontrollably on streets post-closing of their business location. According to Widya Kandi, it was easy problem to shut down a prostitution location. It only needed approval of Regional Assembly members and coordination with Police and unit of Satpol PP. However, further impacts of the location shutting down will be very difficult to overcome, she said.⁴

However, an underlying question immediately arising over pros and cons of the phenomenon of human trafficking primarily with regard to self-prostitution is, in fact,

² Franz Magnis-Suseno, '*Aktualitas Filsafat Kritis*', General Lecture Paper in PDIH UNDIP, Semarang, December 8, 2014, p.2

³ Decision of the District Court No. 834.B/2015/PN Jaksel

⁴ Kompas Daily, 'Bupati Widya Nilai PSK Adalah Pahlawan Keluarga', January 23, 2014.

targeting the conception of body ownership. There is a distinct bias of thought and perception of the human body as an object of study in the complexity of the human trafficking crime. Does the human body belong fully to each human being individually so that there are various freedoms to treat it? Or is the human body exactly an entrusted material from the God that a human being will be held accountable in the hereafter for all the blessings coming from the body entrusted to him or her?

RESEARCH QUESTION

Course of the present study is focused by proposing a problem statement, namely what are the perspective of human rights according to National Law in interpreting the human body in the context of prostitution?

RESEARCH METHOD

The present study is a sociolegal research⁵ with direct involvement (participatory action research) approach. Based on primary data obtained by interviewing informants, namely former prostitutes, the underlying thoughts and conceptions of the body they understood were known. The data sources were triangulated by conducting interviews with informants from Ministry of Children and Women Protection who were the forefront guards in handling human trafficking. The data sources triangulation provided reinforcement of primary data obtained previously. Literature review was also carried out as next step in finding theoretical foundation of prostitution phenomenon as part of human trafficking crime.

RESULT AND DISCUSSION

As an order, national law relating to self prostitution offense has largely governed various prohibited aspects. However, when facing a case, the national law that is expected to settle it often paralyzes. It can be observed when it faces phenomenon of self-prostitution both syndicated or performed personally, the criminal law seems to have difficulty when confronted with the concepts of 'consensual sexual activity" and 'the freedom of expression' in treating the body.

For such legal paralysis, step of exploring the value content is needed in order to know the root of unresolved legal issues. Therefore, the human rights values that are frequently used as a 'shield' on the perception of freedom to treat own body, becomes further focus of the study.

With regard to the study of human body according to the perspective of human rights, there is a general view considering that it is something natural when it comes to the thought and logic that most people understand about the self and the limbs of their bodies as a unity of their absolute personality existences in the world. This is because from the time of birth to death, human being as an individual has automatically the rights to his/her body in absolute terms. The concept of the body ownership has been increasingly gaining support as recognition of the importance of human rights was declared through the Universal Declaration of Human Rights in 1958. The right to own body is considered

⁵ Sulistyowati Irianto, 'Memperkenalkan Studi Sosiolegal dan Implikasi Metodologisnya', *Metode Penelitian Hukum-Konstelasi dan Refleksi*, (Jakarta: Yayasan Pustaka Obor Indonesia, 2013), p.173-174

to be within the scope of recognition of human rights as individual as a part of the community. However, from so many regulations on human rights, there are still no provision concretely regulating the right to the own body. Therefore, a search about human rights thinking in terms of historical aspect is important to do.

It can be observed that historical development of the concept of rights began from the thoughts of the Ancient Greeks and Romans. The concept of rights at that time was closely related to the natural environment in which the man lived. Weston explained that during this period, human rights were closely related to the pre-modern natural law doctrines of Greek Stoicism. The Zeno School maintained a universal power encompassing all creations and therefore all human actions and relationships must be harmonized with the laws of nature. The ideology of natural laws continued to influence mindset of the laws at that time until it met a very important change in the middle ages. Beginning with the opposition to feudalism of the king who was considered failed to fulfill the natural law, there was a thought shift from the natural law as a duty to the law as a right and gave birth to some evidence such as Aquinas's teachings (1224-1274) and Grotius's teachings (1583-1645) in Europe and Magna Charta (1215), Human Rights Petition (1628) and British Human Rights Statement (1689). Following the establishment of such human rights milestones, the rights were understood as immutable and irrevocable gifts and they cannot be abandoned by human beings as individuals although he joined in a social construction. Based on this understanding, the concept of rights develops further.

The study is concentrated to the concept of the rights to the body underlying the enforcement of national criminal law and theoretically various concepts surround it can be uncovered. First, the concept of the rights as 'ownership'. The right to the body as a property ownership is in line with the concept of 'dominium'. In this case, holder of the rights has broad and strong authority over what is the object of his or her rights. Griggs L explained this with *'ownership in this sense is the largest bundle of rights known to property law. It allows the person the fullest enjoyment of the property and the ability to use, manage and freely alienate that thing.'*⁶

Ownership on the concept of law is often referred to as 'property rights', because the right holder can do anything to the object of rights both in whole and in part. Satjipto Rahardjo explained the concept of ownership with property' showing "relationship between an individual and an object of ownership target."⁷ If this thought is applied to the body, then relationship between an individual and his/her body is a property rights one. All legal provisions of property apply for the property rights relationship as in the civil law. Position of the body can be equated with the wealth possessed by a person so as to have specific economic value. In other words, a human being has full rights over his/her body, including also to present parts of his/her body to others. This understanding will give rise to an unlimited individual freedom. It is said to be unlimited because an individual is protected to do anything to his/her rights regardless values of morality or values living in society. Guido Calabresi underlined this *'if people really owned their bodies in the same way that they own property, we would presumably allow people to sell all their body parts.'*⁸

⁶ John Devereux, *Medical Law*, (Sydney: Cavendish Publishing, 2002-2nd Edition), p. 428

⁷ Satjipto Rahardjo, *Ilmu Hukum*. Bandung: Citra Aditya Bhakti IV, p. 64

⁸ Guido Calabresi, "Do We Own Our Bodies?", Bernard M. Dickens (Ed.), *Medicine and The Law*. Sydney: Dartmouth, p. 10

Therefore, based on such a concept of ownership, there is an important note that if direction of ownership of the body is ultimately only leading to economic interests, so it will be certainly not very desirable, because the body is not an economic commodity.

In order to oppose the idea of ownership, the emerging idea of 'possession' is very different when compared to the concept of ownership rights. The concept of possession grants a very limited power to the rights holder of an object, he or she is not allowed to sell or do legal action like an owner. The importance of rights as a possession in this regard is 'the main capital for an individual to enter into a network of common life.'⁹ Human being must have a 'possession' of food, clothing, house and no exception, his/her body to meet all his/her needs. Satjipto Rahardjo defines this possession as 'a real relationship between a person and properties included in his/her power.'¹⁰ In this concept of possession, there are conditions: goods are included in one's control (*corpus possessionis*) and there is intention to possess and to use them (*animus possidendi*).¹¹ Goods are said to be in control, meaning that an individual is actually holding the goods and it can be regarded as the controller of the goods, so if it is associated with the body as an object of rights according to the concept of possession, then relationship of a person with his/her body is only a control in nature.

With this concept of possession, there are restrictions in the use of the body by oneself, namely the values of humanity. The values of humanity are realized with health, meaning that any possession of the body by oneself should not cause a reduced quality of health or further degrading his/her values of humanity. An understanding of the rights to the body by using the concept of possession is actually a form of universal protection of the human rights.

Reading carefully the discourse between the concept of ownership and the concept of possession, it can be seen that in every legal provision,¹² even when the national criminal law as if to be blunt¹³ in facing of self-prostitution practice, in fact there is no provision of the national law that accommodating the rights to the body as a material right for economic use. The practice of 'consensual sexual intercourse' and 'freedom of expression' in order to disguise self-prostitution still cannot be justified legally, because the body is not an object to give and to use for its economic benefit. There are values of morality, ethics and decency that are actually the content values of the national law prohibiting such commercialization of the human body.

CONCLUSION

Based on the study on human rights according to national law related to human trafficking crime (especially self-prostitution), a meeting point is actually found, namely prohibition of the use of the body as a tool of hedonism and an economic commodity. So, perspectives of Human Rights in the National Law in interpreting the body in the

⁹ Callope Farsides, 'Body Ownership'. p.62

¹⁰ Satjipto Rahardjo, Op.Cit, p. 63

¹¹ ibid

¹² See Law No. 35 of 2009 on Health affirming every person to take care of his or her body's health, it should not be directed to illness. Article 4 of the Health Act is an example in applying the concept of possession or control of the body for health purposes.

¹³ Related to the right to the body, there is no legal provision in the Criminal Law Code (KUHP) to regulate specifically the right to the body.

context of human trafficking crime provides an absolute prohibition as grade of the human body is, in fact, degraded into merely goods and even an economic commodity. Although the concept of ownership is found for an individual's own body, it is opposed with the concept of possession and the concept of humanity with which the human beings and all aspects of their body are awarded with high standard of human glory.

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