

Artikel

by Linda Fh

Submission date: 17-May-2019 01:23PM (UTC+0700)

Submission ID: 1131896562

File name: JURNAL_1872-4106-1-PB_JEP.pdf (466.99K)

Word count: 8474

Character count: 46071

PROSTITUTION, GENDER JUSTICE, AND LAW ENFORCEMENT¹

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Abstract

The purpose of this research is to investigate the implementation of law enforcement against the criminalization of women commercial sex workers in Parangtritis after enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution and the problem of regulation enforcement of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution. This research is an empirical legal research with a descriptive approach. The results were analyzed with qualitative methods which further draw conclusions with inductive thinking method. The results showed that the application of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution is not successful in reducing the number of prostitution in Parangkusumo, Bantul. In addition, the negative impacts were appeared such as the impact of economic, the impact of law certainty, and the impact of the Social Politics on gender mainstreaming in form of inferiority inaugural women's position in society. The Failure of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution to identify the root of prostitution's problem is another implementation obstacle.

Keywords: District Regulation, Law Enforcement, Prostitution.

Intisari

Tujuan dari penelitian ini adalah untuk mengetahui implementasi penegakan hukum terhadap kriminalisasi perempuan pekerja seks komersial di Parangtritis setelah pemberlakuan Peraturan Daerah Kabupaten Bantul Nomor 5 Tahun 2007 tentang Larangan Prostitusi. Penelitian ini adalah jenis penelitian hukum empiris dengan pendekatan deskriptif. Hasil penelitian dianalisis dengan metode kualitatif dan penarikan kesimpulan dengan metode berpikir induktif. Hasil penelitian menunjukkan pelaksanaan Peraturan Daerah Kabupaten Bantul Nomor 5 Tahun 2007 tentang Larangan Prostitusi tidak berhasil menurunkan angka prostitusi di Parangtritis, Kabupaten Bantul. Di samping itu, Pelaksanaan Peraturan Daerah Nomor 5 Tahun 2007 tentang Larangan Prostitusi menimbulkan beberapa dampak negatif yaitu dampak ekonomi, dampak kepastian hukum dan dampak sosial politik pengarusutamaan gender dalam bentuk inferioritas posisi perempuan dalam masyarakat. Kegagalan Peraturan Daerah Kabupaten Bantul Nomor 5 Tahun 2007 tentang Larangan Prostitusi dalam mengidentifikasi akar kemunculan prostitusi menjadi salah satu penghalang pelaksanaan hukum.

Kata Kunci : Peraturan Daerah, Penegakan Hukum, Prostitusi.

A. INTRODUCTION

Women are the entities in society placed in subordinate positions. The construction of patriarchal-mindset in the society is presumed to be one of the

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root problems of inequality for women. One form of persistent practice of inequality is the placement of women as objects that have no authority over their own bodies. For example is the myth of beauty that forms the regulatory norms and ethics of women's behavior and even in the way women dress. At higher stages, this negative stigma develops at the level of **sexual exploitation of women in the form of prostitution** practices.

The Prostitute is a term for a subject who do prostitution and make it as a livelihood. Some parties refer to prostitutes as Commercial Sex Workers to indicate jobs /professions that must obtain legal protection. Grammatically, there is no difference in meaning between prostitutes and commercial sex workers.

In sexually permissive society, Prostitution did not exist because it was unnecessary. It develops as a by-product of the regulation of sexuality³. Therefore, Prostitution is a social phenomenon that arises from the exclusion of women in the social position on the inferior level. Prostitution had not been a cultural universal. Since women have lost control of the main food production in the clan, the degree of women's position has begun to decline, becoming one of the means of production to produce labor and wealth that can be traded or exchanged with buffaloes, rice, and other materials.⁴ The destruction of equality in society and

the loss of women's economic control are pointed out as one of the reasons for the development of **sexual exploitation of women in the form of prostitution**.

There are eight types of prostitutes, namely :

- 1) The Professional prostitute is those who do prostitution as the main livelihood
- 2) Occasional Prostitutes is those who engage in prostitution as additional workers.
- 3) One-man Prostitutes is those who surrender themselves to a certain person by acting as a sexual servant by receiving payment in the form of money or other material.
- 4) Promiscuous Adulteress is those who have been bound in legal marriage but have sex with other people.
- 5) Adulteress with one man is those who have been bound in legal marriages but commit adultery only with one person and not solely aiming to take advantage
- 6) Promiscuous Unattached is those who are not married, or those who have become widows, or those who have separated from their husbands, or those who have divorced, have sex with many people without benefit.
- 7) Unconventional is those who enter into unmarried household affairs

³ Gerda Lerner, "The Origin of Prostitution in Ancient Mesopotamia," *Signs: Journal of Women in Culture and Society*, Vol. 11, No. 2, 1986, p. 36.

⁴ Frederick Engels, 2005, *The Origin Family, Private Property and State*, Kalyanamitra, Jakarta, p.11.

8) Doubtful, the woman who is doubtful between committing adultery or prostitution.⁵

According to the elements of prostitution which include a person who offers her body, engages in sexual relations and makes a living by receiving payments, the type mentioned above that fulfill the element of prostitution according to Reckless are letters a, b, c, and h. Adultery or free sex cannot be categorized as prostitution because it is not done on the basis of payment or livelihood.

The organized sex industry in Indonesia developed in the Dutch era. The condition could be known in the predicate of "Nyai" which means concubine to satisfy the sexual desire of European. This activity developed around the port of the archipelago and the majority were indigenous women, which by the Dutch colonists were considered as the lowest caste. Since the Dutch colonial government approved the commercialization of the sex industry in 1852, the commercial sex industry was rapidly expanding in Indonesia. Indonesia was even the largest prostitution business center in Southeast Asia, for instance, Dolly, Localization in Surabaya which has more than 9000 Commercial Sex Workers operating daily.⁶ In 2014, Indonesia government shuttered this red-light district in order

to eradicate the spread of HIV/AIDS.⁷

In 2003, The United Nations Development Program (UNDP) estimated 190,000 to 270,000 commercial sex workers and 10% of them were under age 18 with 7 to 10 million customers.⁸ On 2004, the Indonesian government estimated 21,000 prostituted children on the Java Island and 70,000 throughout Indonesia⁹. The rapid development of prostitution in Indonesia is seen to have an impact on the moral decline of the nation.

Legal regulations were shaped to reduce the problem impacted by prostitution, namely Criminal Law (KUHP), Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, Law Number 23 of 2004 on The Elimination of Domestic Violence and Law Number 21 of 2007. Women commercial sex workers in these regulation are put as victims. Although, In this case, Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution has a different idea about women commercial sex workers. This regulation precisely indicates women commercial sex workers as criminal who may be subjected to criminal threats. For instance, on article 1 point 4, which regulate that the acts of

⁵ 19 G. W. Bawengan, 1977, *Masalah Kejahatan Dengan Sebab Dan Akibat*, Pradnya Paramita, Jakarta, p. 54.

⁶ Yazid Fahmi, "Prostitusi dan Indonesiaku", *sosbud.kompasiana.com*, accessed on October 7th 2012.

⁷ Elin Yunita Kristanti, 2014, "Heboh Penutupan Lokalisasi Dolly Jadi Sorotan", *www.liputan6.30*, accessed on May 8th 2018

⁸ Badan Perencanaan dan Pembangunan Nasional, "Pembiayaan Pencapaian MDG's di Indonesia: Laporan Kajian Kementerian Negara Perencanaan Pembangunan Nasional", *bappenas.go.id*, accessed on December 10th 2012.

⁹ Yazid Fahmi, *Loc.Cit.*

prostitution is a series of actions ranging from inviting, organizing, providing places and opportunities and taking action with words, gestures, signs or other ways to perform obscene acts. This definition provides a loophole in legal uncertainty because it does not clearly identify the meaning of words, gestures, signs or other deeds to perform obscene acts. Article 3 of the prohibition confirms that the perpetrators are those involved in prostitution, both commercial sex worker, an intermediary who withdrawing profits from a woman's lewd acts, or the users of commercial sex worker's service

The area that is subject to the potential process of law enforcement and arrests with the legal basis of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution is a tourist area of Parangtritis Beach. According to data from Bantul District Health Office, quoted by KPAD (Commission of HIV AIDS) Special Region of Yogyakarta together with KPAD Gunung Kidul and Kembang Foundation, reported by viva news, there are 400-500 commercial sex workers in Bantul District, with the highest number in Parangkusumo and Parangtritis.¹⁰ This caused the high-intensity of enforcement operation of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution since 2007.

¹⁰ Sanbawa Juna, "Prostitusi Dilarang, PSK jadi Takterawasi", *Nasional.news.viva.co.id*, accessed on November 6th, 2012.

B. SCOPE OF ANALYSIS

1. How is the implementation of law enforcement against the criminalization of women commercial sex workers in Parangtritis after the enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution?
2. What are the impacts of the implementation of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution?

C. RESEARCH METHODS

This type of research is empirical legal research, namely research that focused on the behavior/incidence of legal society and based on primary data in addition to secondary data. This is a descriptive study that accurately depicts the circumstances and the specific phenomena that occur in society.¹¹

The results of field research and literature are analyzed by qualitative methods, namely collecting, understanding, selecting and data compilation, which have been systematically collected from various objects or examined problems.¹² The next step is to draw conclusions with inductive thinking methods that depart from analyzing events that are special and then go to general statement.¹³ At the next stage, this study will produce an appropriate picture to the actual situation.

¹¹ Soerjono Soekanto, 1986, *Introduction to Legal Research*, UI Press, Jakarta, p. 50.

¹² *Ibid*, p.50.

¹³ Soetrisno Hadi, 1987, *Metodologi Research*, Publisher Faculty of Psychology UGM, Yogyakarta, p. 36.

D. RESULT OF STUDY

1. The Law Enforcement of Gender Justice

The law enforcement mechanism is to ensure law implementation as an instrument of social order and social protection. Thus the existence of law and its implementation cannot be separated from the existence of society¹⁴, as Bohannan argues that there is a relation between the law and the customs of society.

General understanding of people holds that law enforcement depends on "human" as the subject of law. On the one hand, there is an assumption that good law without good law enforcement will be a consequence of misappropriation for personal interests. Others assume that bad law with good law enforcement will lead to a role gap because of the inadequacy of the law in society. Based on Herbert L. Packer's Theory of "The Limits of Criminal Sanctions" quoted by Mohammad Hatta in his book *Kebijakan Politik Kriminal*, there are two models of law enforcement, namely *The Due Process Model* and *The Crime Control Model*, with a viewpoint on the State, Society, and Individual.

The first model in The Due Process Model is a law enforcement policy that is limited by the conception of prioritizing individual interests for everyone who commits crimes and protection from the power of a ruler who tends to violate authority. The second is a model of law enforcement by prioritizing

precautionary quickly, precisely and efficiently especially for law enforcers so the effort to protect the society can be effective.¹⁵ The development of law enforcement that pursues the development of science and society is part of the policy to overcome crime and provide protection to the society. The problem that arises later is how this law enforcement can provide protection against crime which is a configuration of conception due to the hierarchical distribution of power, in this context, the conception that formed related to the criminalization against Women Commercial Sex Workers.

Formal equality provided by dominance theory was not adequate to analyze the experiences faced exclusively by women because it was not including the analyzes through social and cultural structures of power.¹⁶ Law, in the context of dominance theory, has been part of the process of providing quite specific cultural meaning to women's bodies. Law is not concerned with bodies just because its rules are applied in the context of criminal or civil trials. It is concerned with the body because it has defined them as specific sites of activity over which the law should have jurisdiction¹⁷. Moreover, this concept has shown in relation to prostitution and in relation to rape and criminal responsibility, the

¹⁴ Mohammad Hatta, 2010, *Kebijakan Politik Kriminal*, Pustaka Pelajar, Yogyakarta, p. 3.

¹⁵ *Id*, p. 6.

¹⁶ Cynthia Grant Bowman & Elizabeth M. Schneider, "Feminist Legal Theory, Feminist Lawmaking, and The Legal Profession", *Fordham Law Review*, Vol. 22 Issue 2, 1998, p. 252.

¹⁷ Carol Smart, 2002, *Sociology of Law and Crime: Feminism and The Power of Law*, Routledge, London and New York, p. 92.

²⁴ law has, respectively, sexualized women's bodies and rendered them unreliable and too prone to nature. Hence, it is pivotal to explore historically the relationship between law and women's bodies and examine how and why women's bodies have constituted a particular mode of regulation in law.¹⁸

One of the studies about prostitution came from Judith Walkowitz in Victoria England. Walkowitz show how women's bodies, came to be regarded as sites of dangerous sexuality through Contagious Diseases Act of the 1860s. These views were turned into regulation which allowed local magistrates' courts to arrest working-class women (who involved in prostitution) in lock hospital and force punitive medical treatment. This case showed how legal discourse established an alliance to regulate social awareness and behaviors. The reason why women's body take the significant role and become problematic are clearly linked to gender domination.¹⁹ State law and society norm affect each other for the widespread practice of gender inequality in everyday life.²⁰ On the contrary, The law's power is able to claim a special place in the definition of events²¹, so it can be an effective element for the realization of gender justice and ensure its enforcement through all elements of society.

2. Prostitution in Positive Law of Indonesia.

Prostitution is derived from the Latin,

³⁴ ¹⁸ *Ibid*, p. 90.

¹⁹ *Ibid*, p. 94.

²⁰ Agnes Widiyanti, 2005, *Hukum Berkeadilan Jender*, Buku Kompas, Jakarta, p. 35.

²¹ *Ibid*, p. 164.

⁴⁵ Prostitue or Prostauree, which means allowing to commit adultery, performing prostitution, fornication, and bypass. In the Indonesian dictionary, there is no Prostitution term found. Another term that has the same definition with the term prostitution is Pelacuran, which comes from the word Lacur means Unfortunate, Woe, Fail, or not to be.²² According to Paul Moedikdo in Soedjono, the variables contained in the practice of prostitution include the surrender of a women's body, by receiving payment, to many persons and for the satisfaction of the sexual desire.²³ This definition has a narrow scope and gender bias because limits only to women prostitutes. Other definitions come from Kapur, Kumar, Mukhreji, and Truong which find some of the major components can be used to define prostitution, namely payment, infidelity and emotional indifference. From these three components, payment is considered the most basic element in prostitution, so prostitutes can be defined as

"Someone who exploits her body as a commodity and sells sex service in certain price units, has sex for money, and the action of earning money for sex".²⁴

The definition of prostitution according to the Bonger is a social phenomenon in which women surrender themselves to perform sexual acts as a

²² Koenjoro, 2004, *On The Spot, Tutur dari Sarang Pelacur*, Cetakan Pertama, Tinta, Yogyakarta, p. 26.

²³ Soedjono, 1977, *Pelacuran Ditinjau Dari Segi Hukum dan Kenyataan Dalam Masyarakat*, Karya Nusantara, Bandung, p. 17.

²⁴ *Ibid*, p. 30.

livelihood. The most essential variable in prostitution is the commercial purpose underlying the act of prostitution. Women who marry for economic motives cannot be said to do prostitution because prostitution requires repetition by making sexual acts as a livelihood.

To provide protection to the society, the legal rules governing prostitution are formulated. In the Criminal Law, Article 296 regulates:

“Whoever deliberately causes or facilitates lewd acts by others, and makes them as livelihoods or customs, is punishable by imprisonment of a maximum of one year and four months or a fine of up to fifteen thousand rupiahs.”

According to Article 296 of the Criminal Law, perpetrators who may be penalized are those who act as an intermediary for obscene acts and make them habitual or livelihood. This article is reinforced by article 506 of the Criminal Law which regulates

“Whoever profits from the lewd acts of a woman and makes her a prostitute is threatened with a maximum of one year’s imprisonment.”

This article identifies the perpetrator as a person acting as an intermediary by withdrawing profits from a woman’s lewd acts. Women, according to this, are placed as victims of the prostitution practice as a form of sexual violence. The other regulation that protects women victim on prostitution practice is Law Number 23 of 2004 on the Elimination of Domestic Violence, in particular, Article

8, regulates sexual violence as

- a. Coercion of sexual intercourse committed against a person who resides within the sphere of the household.
- b. Coercion of sexual intercourse with any person in the sphere of the household with others for a specific commercial purpose.

Article 8 Letter b regulates the protection against victims of sexual violence from forced prostitution. This article confirms that victims in the practice of prostitution are women who subjected to sexual exploitation, and the perpetrators are those who impose sexual intercourse on one within the sphere of their household or with others. In other words, the perpetrators are those who act as intermediaries.

Another regulation governing the practice of prostitution is Law Number 21 of 2007 on the Eradication of Human Trafficking (here in after written: Law No. 21 of 2007). The variables of human trafficking in Law no. 21 of 2007 are:

- a. Exploitation, namely the actions with or without the consent of the victim including, not limited, to prostitution practice, forced labor or services, slavery or similar practices of slavery, oppression, extortion, physical, sexual exploitation, sexual, reproductive organs exploitation or unlawfully transferring or transplanting organs and or body tissues, and others.

- b. Sexual exploitation, namely any form of sexual organs or other organs exploitation from the victim for gain, including but not limited to all activities of prostitution and fornication.
- c. And others.²⁵

According to Law no. 21 of 2007, Women Commercial Sex Worker are placed as victims of sexual exploitation both with and without the consent of the victim. As victims, Women Commercial Sex Workers are entitled to obtain legal protection by applying the following principles:

- a. Equality before the law without discrimination;
- b. Presumption of innocence;
- c. Right to compensation and rehabilitation;
- d. Right to legal aid.²⁶

In the Convention on the Elimination of All Form of Discrimination Against Women, ratified by Indonesia in Law No. 7 of 1984, particularly article 6 affirms that parties should take appropriate consideration, including legislation to suppress all forms of women trafficking and exploitation of prostitution against women.²⁷ Subsequent affirmations are set out in the General Recommendation Number 19 on Violence Against Women, The 11th Session in 1992 United Nations Committee on the Elimination of All

Forms of Discrimination Against Women, in general review 11 and 12 on Articles 2 (f), 5 and 10 (c) namely:

“11...Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practice involving violence or coercion, such as family violence and abuse, forced marriage, dowry death, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women....while this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skill, and work opportunities.

12. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This, in turn, contributes to gender-based violence.”

This section confirms sexual exploitation for commercial purpose as a form of violence against women by placing Women Commercial Sex Workers as sexual objects. Along with it, the 2000 Palermo Protocol, an international law signed and agreed to by the United

²¹ Aziz Syamsuddin, 2011, *Tindak Pidana Khusus*, 26, Grafiika, Jakarta, p. 56.
²⁶ Henny Nuraeny, 2011, *Tindak Pidana Perdagangan Orang, Kebijakan Hukum Pidana dan Pencegahannya*, Sinar Grafika, Jakarta, p. 120.

States, states that consent is irrelevant to whether or not trafficking (coerced prostitution) has occurred. The Palermo Protocol specifically states that money is a means of coercion in prostitution. Thus, Prostitution is a strategy of gendered survival that constrains the person in it to take illogical and execrable risks for money or for other material. These documented risks include rape; rape without a condom; and other forms of sexual harassment and sexual exploitation against women.²⁷

The development of sexual exploitation against women is a complication of the social elements that holding the principle of exaltation against patriarchy, a traditional attitude in which women are considered as male subordination. This patriarchal principle spawned consequences of negative construction by placing women as seducers and allowed the practice of prostitution to be born and developed. In addition, inadequate levels of education and economic independence provide insufficient grounds for women to engage as formal sector workers. Law No. 7/1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women is an excellent achievement in the field of law because it becomes the first positive law in Indonesia which provides protection to women from all forms of discrimination in the social, economic, politics and law.

²⁷ Melissa Farley, "Risks of Prostitution: When the Person Is the Product," *Journal of the Association for Consumer Research*, Vol. 3, No. 1, 2018, p. 98.

According to Eleanor T Glueck and Seldon, Women Commercial Sex Workers are generally born in poor family and neighborhoods. The inadequate standard of economic and education in the family does not allow them to have adequate formal and moral education. In addition, the assumption that women as supplementary workers, giving women little opportunity to enjoy formal education and little choice to survive, hence impacting to the weakness of productivity.

The opinion of society about the problem of prostitution is immoral women who choose to be Sex Commercial Workers. Prostitution is associated with alteration in the roles of women in family structure. It is considered as a cause and consequence of the change in social phenomena, such as a rising divorce rate, a falling birth rate, a great increase in single and married working women, and a rise in feminist political and social demands that challenged patriarchal orders.²⁸ This society awareness impacts on the criminalization of Women Commercial Sex Workers, especially in Bantul Regency in the form of Regional Regulation of Bantul Regency Number 5 of 2007 on the prohibition of prostitution.

Criminalization in this context concerns the process of defining crime as a social phenomenon in which crime is a human act. In the view of critical criminology theory, the level of crime and the characteristics of the offender

²⁸ Ann M. Lucas, "Race, Class, Gender, and Deviancy: The Criminalization of Prostitution," *Berkeley Journal of Gender, Law & Justice*, Vol. 10, No. 1, 1995, p. 53.

are primarily determined by how the law is organized and executed. This means that we cannot understand crime solely by studying criminals but must be seen in the context of the whole process of criminalization namely the process of defining a person and a particular action as a crime²⁹. This is closely related to Labeling theory which holds that only certain types of people are likely to be labeled as criminals, where law enforcement takes action based on perceptions arising from negative stereotypes due to the hierarchical distribution of power.³⁰

On this basis, the criminal predicate attached to Women Commercial Sex Workers is systematically structured causality. First, the existence of a gender-biased law is a reflection of a patriarchal public consciousness. Second, the patriarchal awareness is a social construction that has been more than 3000 years old and developing the negative stereotype of women. For 3000 years this construction has influenced and decisively defined the world.³¹ Third, these social constructions arise because of the exclusion of women in production fields, as well as forming classes in society.³² Bantul District Regulation No. 5 of 2007 on the Prohibition of Prostitution, is a reflection of public awareness by local government is manifested by giving

criminal predicate to Commercial Sex workers.

3. The Enforcement of Discriminatory Regional Regulations Against Women

Democracy expectations borne by the policy of Regional Autonomy do not necessarily provide the foundation for the fulfillment of human rights of vulnerable groups, one of them is Woman. The National Commission on Women in 2010 noted 154 discriminatory policies against women which includes 19 policies at the provincial level, 134 at the district level and 1 policy at the village level. The regulatory aspects of the Regional Regulation can be seen from the diagram below.³³

²⁹ I.S. Susanto, 2011, *Kriminologi*, Genta Publishing, Jakarta, p. 21.

³⁰ PIP Jones, 2009, *Pengantar Teori-Teori Sosial, Dari Teori Fungsionalisme hingga Postmodernisme*, Yayasan Obor Indonesia, Jakarta, p. 157.

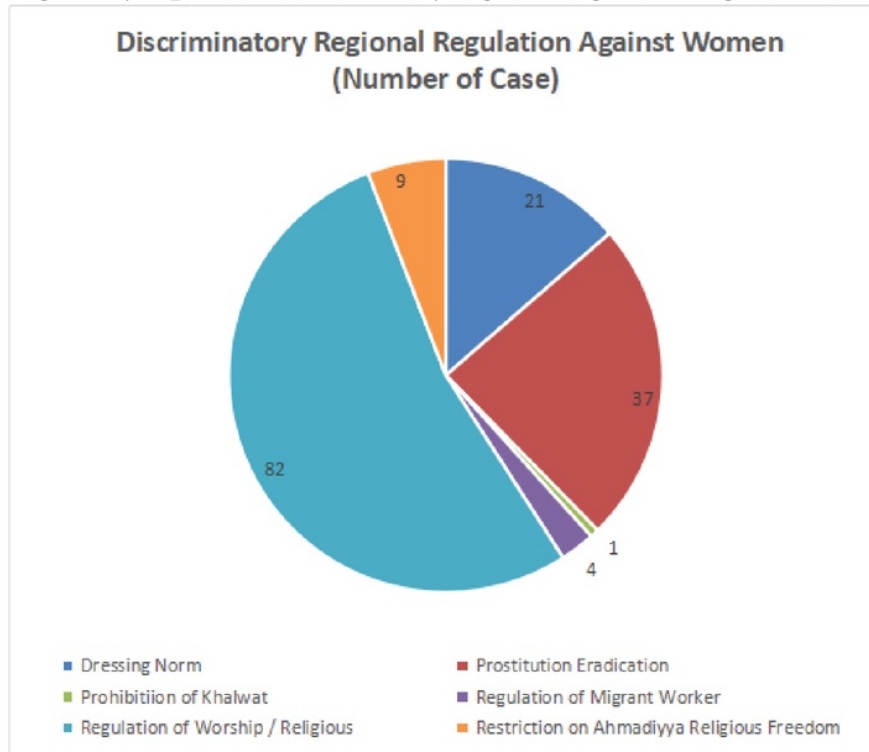
³¹ Agnes Widanti, *Op.Cit.*, p. 15.

³² Pat Brewer, 2000, *The Dispossession of Women*, Chippendale: Resistance Book, p. 11.

³³ Komnas Perempuan, 2010, *Atas Nama Otonomi Daerah: Pelembagaan Diskriminasi dalam Tata Negara Indonesia*, Komnas Perempuan, Jakarta.

PIE CHART1

Regulatory Aspects of Discriminatory Regional Regulations Against Women



Regulatory of aspects of Prostitution in the Regional Regulation is in the second position, reaching 37 policies. Implementation of policy and substance of those 37 policies, which contained violations of constitutional rights against women, as seen in the table below.³⁴

Table 1. Violation of Women's Constitutional Rights

Number	CASE	VIOLATED CONSTITUTIONAL RIGHT	CONSTITUTION (UUD 1945)
1	Wrongly Arrest	Right to Legal Certainty	Article 28 D (1)
2	Afraid to go out at night as if there were a curfew	The right of protection from the threat of fear	Article 28 G (1)

³⁴ *Ibid.*

3	Women commercial sex workers are trapped in operations and tend to be ignored	The right to legal certainty and equality before the law	Article 27 (1) and 28 D (1)
4	Commercial Sex Workers are not provided with other solutions of employment	The right to a decent living	Article 27 (2)
5	Women are considered a disease of society	The right to be free from discriminatory treatment	Article 28 I (2)

Table 1

Violation of Women's Constitutional Rights

Bantul District Regulation is only one of several Regional Regulations which regulates the prohibition of prostitution. Previously Indramayu has issued **Regional Regulation Number 4 of 2001**, Tasikmalaya with **Regional Regulation Number 28 of 2000** and Regional Regulation Number 8 of 2005 for Tangerang. The similarity of these rules lies in its abstract formulation of the prostitution's definition that can be seen in the table below

NO	Regional Regulations on Prohibition of Prostitution	Regulation
1.	Indramayu District Regulation Number 4 of 2001	Article 6: any person whose conduct / behavior <u>can lead to allegations</u> that she is a prostitute, prohibited for being in public streets
2.	Tasikmalaya District Regulation Number 28 of 2000	Article 5: any person whose conduct / behavior <u>can be identified</u> that she is a prostitute, prohibited for being in public streets
3.	Tangerang District Regulation Number 8 of 2005	Article 4: Any person whose attitudes or behavior are <u>suspicious, giving rise to a presumption</u> that she/they are prostitutes, prohibited from being on public streets
4.	Bantul District Regulation Nomor 5 Tahun 2007	Article 1: prostitution is a <u>series of actions</u> undertaken <u>by any person or institution</u> including <u>inviting, persuading, organizing, giving opportunity, taking action, or luring others with words, gesture, signs or other deeds to</u> commit lewd <u>acts</u> either with the return or not.

Table 2

The Abstract Formulation of Regional Policies on Prohibition of Prostitution³⁵

The similarities that can be drawn from the rules of the prohibition of prostitution are the obscure and multi-interpretation definitions of prostitution. There is no further explanation related the actions that can be identified as “can lead to allegations”, “can be identified”, “suspicious, giving rise to a presumption” or “persuading, organizing, giving opportunity, taking action, or luring others with words, gesture, signs or other deeds”. The formulation of this kind of law is subjective because its interpretation depends on the awareness and understanding of each subject thus providing a space of legal uncertainty and ignoring the presumption of innocence.

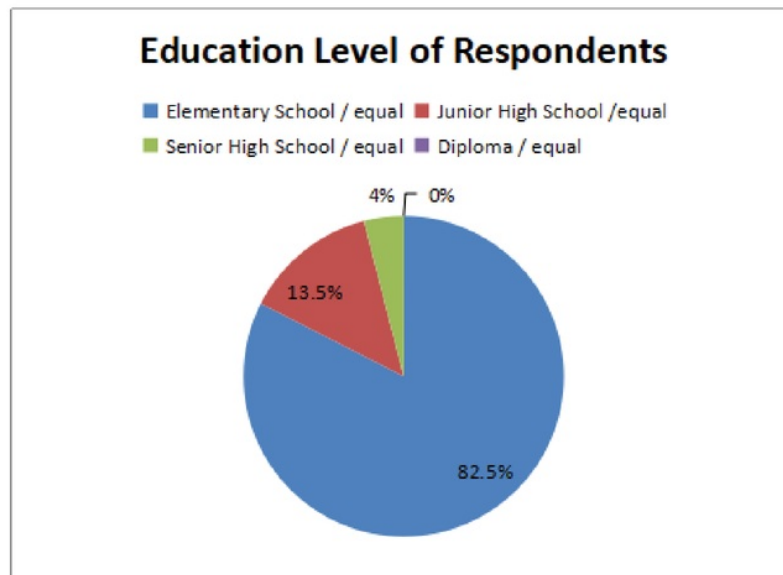
¹ In the constitutional framework, the implementation of regional autonomy in the form of local policies that still

neglect the interests of women is a proof of the unsuccessful implementation of democracy and legal certainty in Indonesia. It is the task of all elements of the government to lead and guide gendered awareness of the society so discriminatory regional policy no longer adorn the legal stage in various regions, instead making the law as said by Donald Black as a means of social control for the realization of society, hence gender justice is no longer a dream.

4. Study on the Enactment of Bantul District Regulation No. 5 of 2007 on the Prohibition of Prostitution

a. Respondents Identity

The results of the study of 200 respondents indicate the existence of categorization, which includes the level of education, place of origin and reason to engage in commercial sex workers. The description of respondents by level of study can be seen in the diagram below:



³⁵ Ibid.

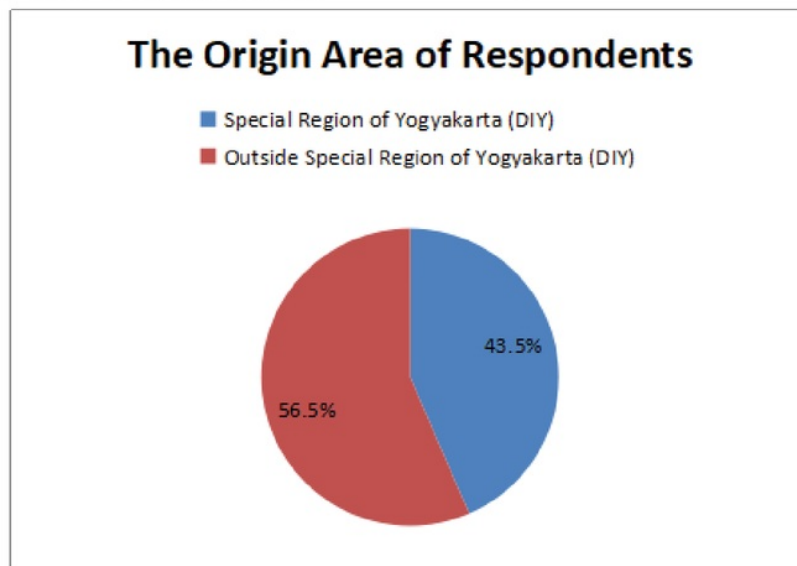
PIE CHART2

Education Level of Respondents

The chart above shows the respondents with elementary education level are 165 persons (82,5%). Education is one of the factors in causing prostitution.³⁶

Weak level of education and skill give a difficulty to find a job. Respondents claimed have no a great opportunity to have a job or to switch to another

job because of low level of education. This shows the relationship between the education level with the choice of work from respondents to become Commercial Sex Workers. In addition, the results of the 200 respondents, shows the area of origin varied. This can be seen from the diagram below:



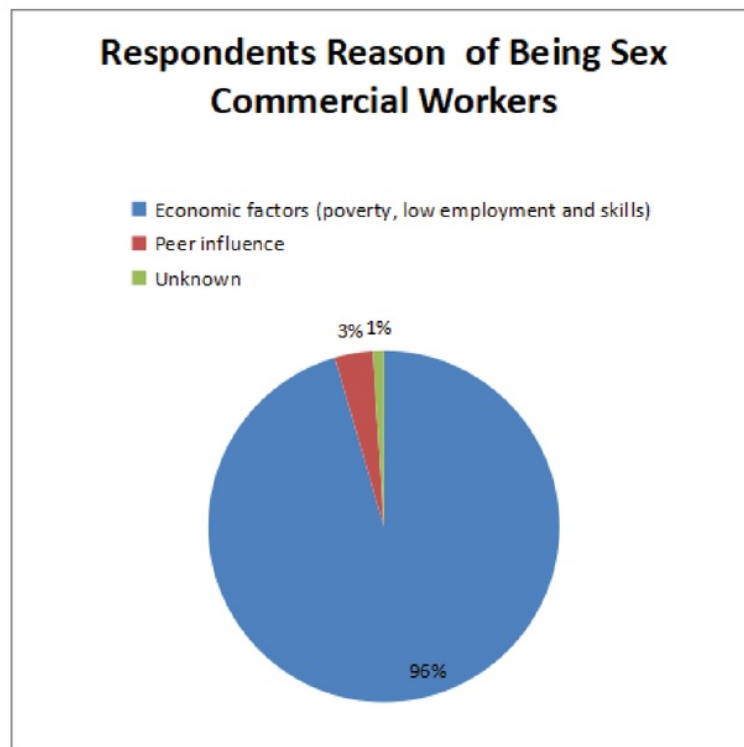
PIE CHART3

The Origin Area of Respondents

The chart above illustrates that more than half of respondents, that is 113 persons (56,5%), are not native people of Special Region of Yogyakarta. Respondents admitted that the level of poverty and unemployment in the area of origin is the reason to choose to migrate to other areas that have advanced

economic potential. Evidently from the reason of the respondents choose to become a commercial sex worker as seen from the diagram below:

³⁶ Rini Fathonah, "Analisis terhadap Faktor Penyebab Prostitusi pada Anak", *Fiat Justitia Jurnal Ilmu Hukum*, Volume 9, No. 2, April-Juni 2015, p. 153.



PIE CHART 4

Respondents Reason of Being Sex Commercial Workers

Based on the above chart can be seen that the economic bottleneck is a major factor, which encourages respondents to choose work as Commercial Sex Workers. Thus, There is a tendency to believe that prostitution is always followed by poverty that lead to the perpetuation of gender discrimination. Further impacts may generate multiple traumatic, namely physical harassment, rape, helplessness, homeless, post traumatic stress disorder (PTSD), etc.³⁷

³⁷ Suhar N:31k, Sanggar Kamto, dan Yayuk Yulianti, "Fenomena Keberadaan Prostitusi dalam Pandangan Feminisme", *Wacana*, Vol. 15, No. 4, 2012, p. 25.

a. Law enforcement of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution di Parangkusumo

The National Commission on Women noted that there are 37 local policies, which regulates the eradication of prostitution, one of them included Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution. One of the unique things in this rules is the emphasis on criminalization against individuals/commercial sex workers, who are involved in the practice of prostitution, not only against those

who act as pimps, as set out in other regulation.

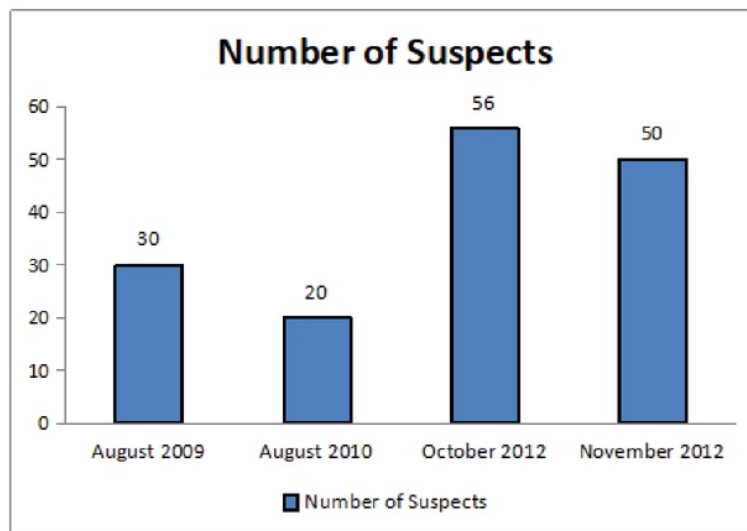
It causes the resolution of prostitution's problem to be not right on target. Comparisons of controlling operations conducted by the Civil Service Police Unit following the enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution, the number of suspect, and the number of prostitution case trial, which can be seen in the diagram below, can clarify the understanding in this regard.

BAR CHART 1

the intensity of control operation by the Civil Service Police after the enactment Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution

The above chart shows an increase in the intensity of controlling operations from year to year despite fluctuations.

The list of suspect data, which entangled Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution obtained from Bantul District Police Resort shows fluctuating figures, as illustrated in the diagram below:



BAR CHART 2

The number of suspect, which entangled Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution

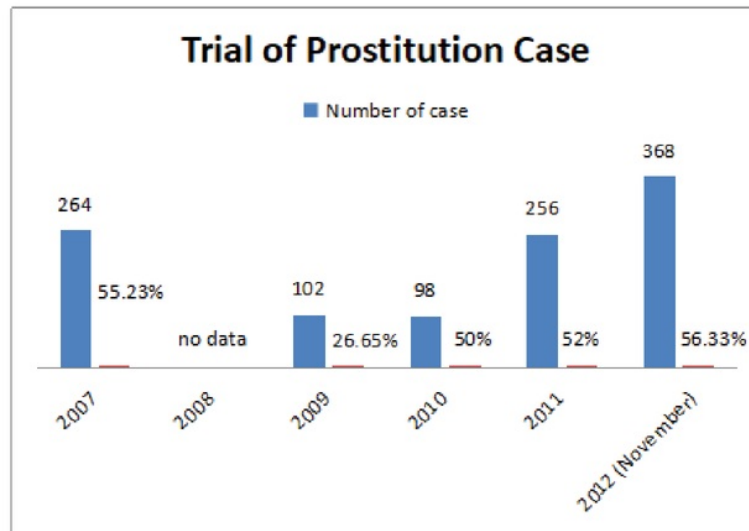
The chart above shows that an increase in the number of suspects, who

was caught in the process of controlling based on Bantul District Regulation

¹ Number 5 of 2007 on the Prohibition of Prostitution.

Data obtained from the Bantul District Court showed an increase in prosecution hearings against suspects,

which entangled by Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution. For more details, can be seen in the diagram below:



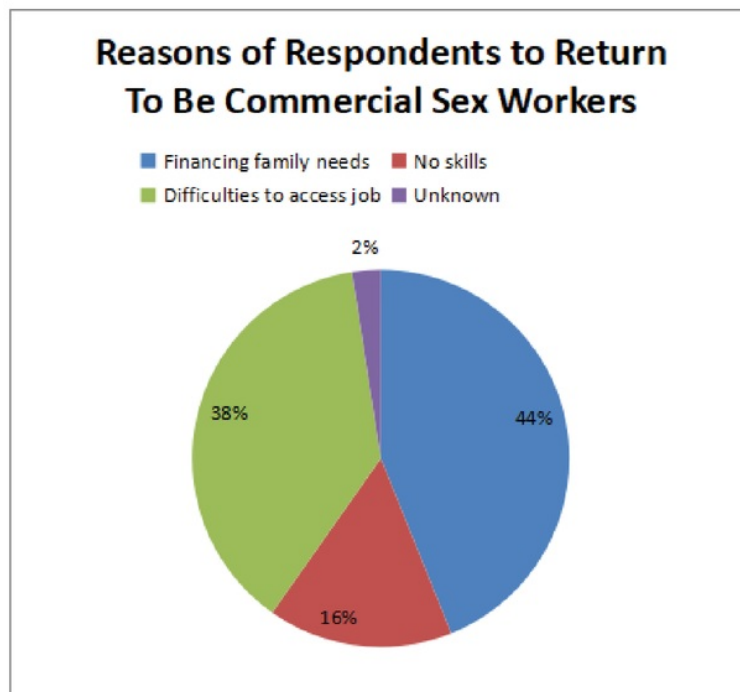
BAR CHART 3

Trial of Prostitution Case after the enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution

From 200 respondents, there are 82 commercial sex workers who had been caught in the operation of Civil Service Police Unit (Satpol PP) and or Police Resort of Bantul District.

Through the comparison between high intensity of control operation and increase in number of suspect, as well as case number in court shows that superior number of control operation is not always directly proportional to the decrease in the number of prostitution. In order to understand this phenomenon, it is good

to understand the reason of respondents to be Commercial Sex Workers after arrestment as follows:



PIE CHART 5

**Reasons related to the return of
respondents to commercial sex
workers after arrest**

The chart above illustrates that the factors of poverty, skill, low education level, and difficulties to access employment are the main reason for the respondents to become commercial sex workers after the arrestment even though the intensity of control is higher. Poverty, weak of skill, low education level bring about problem of poor job opportunity.

The results of interview with Bantul District Social Service indicated that the rehabilitation process was never conducted on commercial sex workers after the enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution. This is

because the rehabilitation process to the prostitutes was not regulated in Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution. As it is known that Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution only set sanctions in the form of imprisonment or fines for convicted, including commercial sex workers.³⁸

**3. Impact of Enactment of Bantul
District Regulation Number
5 of 2007 on the Prohibition of
Prostitutionin Parangkusumo**

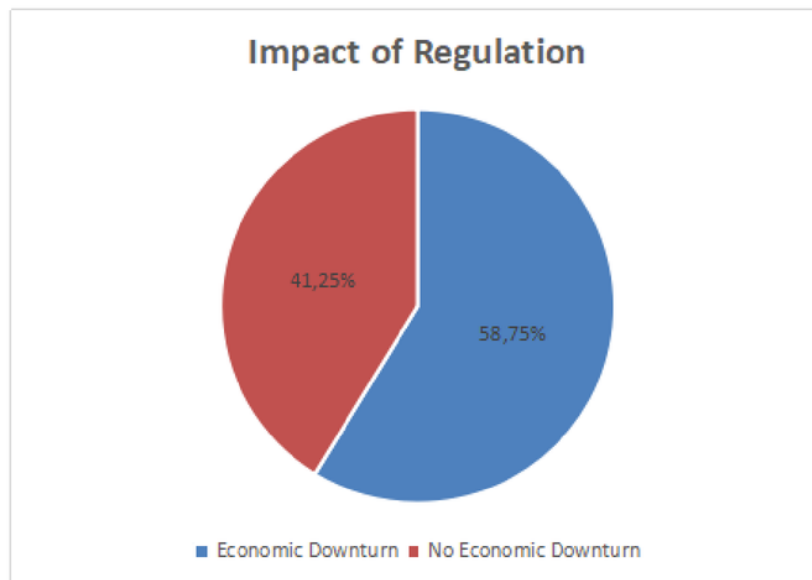
³⁸ Based on interview with Arfin Munajah, on Desember 11th, 2012, Yogyakarta

1) Economic Impact

The results of the study revealed that there is a drastic economic decline experienced by traders after the enactment Bantul District Regulation Number 5 of 2007 on the Prohibition of the prostitution in Parangkusumo. One of the things that cause tourists began to leave Parangkusumo as recreation choice are fears of misdirected control and arrests, except for tourist who come in the form groups of pilgrims, study tours, family and others in the form of groups on national holidays or when the kite festival, because the process of control is not possible at the time³⁹.

A Parangtritis retribution officer argued that control operation that was often done on Tuesday and Friday Kliwon has an impact on the decrease of visitors in Parangtritis Beach, whereas Tuesday and Friday Kliwon is a ritual day when there are most visitors.⁴⁰

The chart below can clarify our understanding related to the impact of enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution against the 80 merchants consisting of merchant accessories, food vendors, itinerant food vendors, market vendors, itinerant merchants and owner of inns in Parangkusumo.



³⁹ Based on interview with Riyono, on Desember11th, 2012 and Suparmadi, on December19th, 2012.

⁴⁰ Sugiarto, "Akibat Operasi Pemkab Bantul Jumlah Pengunjung Parangtritis Turun 10 Ribu", *Suaramerdeka.com*, accessed on November 6th, 2012.

PIE CHART6

The Impact of Enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution to the Traders in Parangkusumo.

The chart above shows that more than half of the traders who were subjected to the interview, i.e. as many as 47 peoples (58.75%) suffered economic downturn after the enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution. It means local communities have relied on the existence of prostitution to set up their livelihood. In this case, the associative process has occurred which means a social process that lead to a mutual interest between local communities and prostitution.⁴¹

2) Legal Certainty Impact

Article 1 point 4 which describes the definition of prostitution as a series of actions from inviting, organizing, providing places and opportunities and to act with words, gestures, signs or other deeds, to perform obscene acts. There is no further explanation regarding the identification of the meaning of words, gestures, signs or other deeds, to perform obscene acts.

This has an impact on legal uncertainty in the implementation of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution. One of the derivative impacts from this is the potential for the case of being wrong arrests, for example in the control operation that occurred on August 20,

2007, 11 from 16 people were the victims of wrongful arrests.

The head of the Sabhara Unit justifies the frequent occurrence of cases of wrongful arrest and it was still considered reasonable because the massive operations, which was performed in public space. The efforts made by Bantul District Police to minimize the case of wrongful arrest was performing the control operation in lodging rooms and or pretending to be a customer.

Ironically, on November 13, 2012, at the time the operation was carried out again in the tourist area of Parangtritis. As usual, all the guests who were in the lodging room was sent out for examination, except one of the rooms located at the end of the building. Such unusual action raised the suspicion of one of the citizens who then checked the room. The result, the guest who was in the room was The Head of Police Provost Unit of Jetis Sector, District, named Aiptu SW. Immediately protests of citizens raging demanded justice. As a result, the police chief of this sector was also taken to the police station.⁴² Citizens were again disappointed with the enforcement of local regulations that considered impartial to the ordinary people⁴³ after knowing that the police officers who were caught in the control operation would not undergo minor criminal trial in the District Court of Bantul along side with 25 other suspects, who were caught in the control operation, but only penalized with violations of the code of conduct.

⁴¹ Suhar, *Opcit*, p. 24.

⁴² Sugiarto, *Op. cit.*

⁴³ *Ibid.*

In addition, the results of the study indicate that arrests are made on legal basis of Bantul District Regulation No. 5 of 2007 on the Prohibition of Prostitution, not only against those who have taken action ranging from inviting, organizing, providing places and opportunities with words, gesture, signs or other deeds to perform obscene acts, but at the same time against the adulterous couple,⁴⁴ whereas there are no rules regarding adultery in Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution. By definition, prostitution has a different understanding with adultery. Adultery according to Article 284 of the Criminal Law (KUHP) is acts committed by two people in which one or both are tied to marriage, conducted on the basis of consensual and this article is included in the complaint-based offense, whereas prostitution, as stipulated in Article 1 Item 4 of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution, is a series of actions that involve inviting, persuading, organizing, giving opportunity, taking action, or attracting others with words, gestures, signs or other deeds to perform obscene acts.

Based on the experiences of some respondents who have been caught in the operation, conducted by the Police Unit of Pamong Praja and Police Resort of Bantul District, arrests do not always end up in court. One of the remedies is done by penalties on the field, which ranges

from Rp.300.000-Rp.2.000.000.⁴⁵ The Civil Service Police Unit and the Police Resort of Bantul District also claimed have never conducted a settlement through court. Another case happened to Pariyo, the innkeeper who was ransacked and arrested without a local court's permission. Pariyo was fined Rp.10.000.000,00 in prisons without going through the court process and payment receipt.⁴⁶ The enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution allegedly provides space for the growth of the system of bribery or extortion in the field.

Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution is a manifestation of the low commitment of the government in establishing legal certainty and social equality for Indonesian women. Post-reform, the social position of Indonesian women is relatively progressing through various policies, such as the Law on Domestic Violence, 30% quota for women in parliament, etc, which returned women from de-ideologization for over 32 years under the authoritarian regime of Suharto. However, structural discrimination against women is still occurred. Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution is one of concrete manifestation of structural discrimination practices against women. The culture of patriarchy has given rise to women stereotypes as teaser,

⁴⁴ Interview with Riyono, Head of Sabhara Police Unit of Bantul District on November 10th, 2012

⁴⁵ Interview with Sutinah, November 20th, 2012, Yogyakarta.

⁴⁶ Interview with Pariyo, November 21th, 2012, Yogyakarta.

the cause of morals declining, and others, which affects the inferiority of women's social position, as well as large-scale economic problems that affecting women. Those factors are not identified by the government as the problem which should be considered as the threaten of the productivity of society, on the contrary, it is even strengthened in the form of criminalization practices against women. As a result, patriarchal awareness gets the foundation to survive, the productivity of women decreases and becomes more entangled in the black mire of oppression.

5. Conclusion

Based on the results of the study can be concluded that one of the purposes of enforcement Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution to reduce the number of prostitution in Parangkusumo has not been achieved. Evidently from the results of study conducted both in the District Court and Police Resort of Bantul District which indicates an increase in the cases of Prostitution, as well as to the respondents, which shows the high number of respondents, who chose to return into commercial sex workers after the arrest. There are several factors that cause the failure of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution to reduce the number of prostitution in Parangkusumo, namely:

- a. The enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of

Prostitution with no regard to the main root of prostitution problem in Bantul District so it is not able to provide solutions for solving problems of prostitution.

- b. Multi-interpretation substances that lead to legal uncertainty.
- c. Abuse of authority by certain law enforcement officers in enforcement practices of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution.
- d. Rigid law enforcement practices without considering the status of the territory and social conditions of society.

In addition, enactment of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution has created considerable restlessness for group of people because of the economic impacts, such as the decrease incomes of citizens; the impact of legal certainty, such as the rampant cases of wrongly arrests, growing opportunities for illegal levies, and other concerns due to multi-interpretative substances in Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution; and the impact of social politics, namely gender stereotyping in the form of inauguration inferiority women's position in society, in which the prostitution is associated with women's body and became problematic are clearly linked to gender domination. State law and society norm affect each other for the widespread practice of gender inequality in everyday life.

Some matters that become obstacles to enforcement of Bantul District Regulation Number 5 of 2007 on the Prohibition of Prostitution are :

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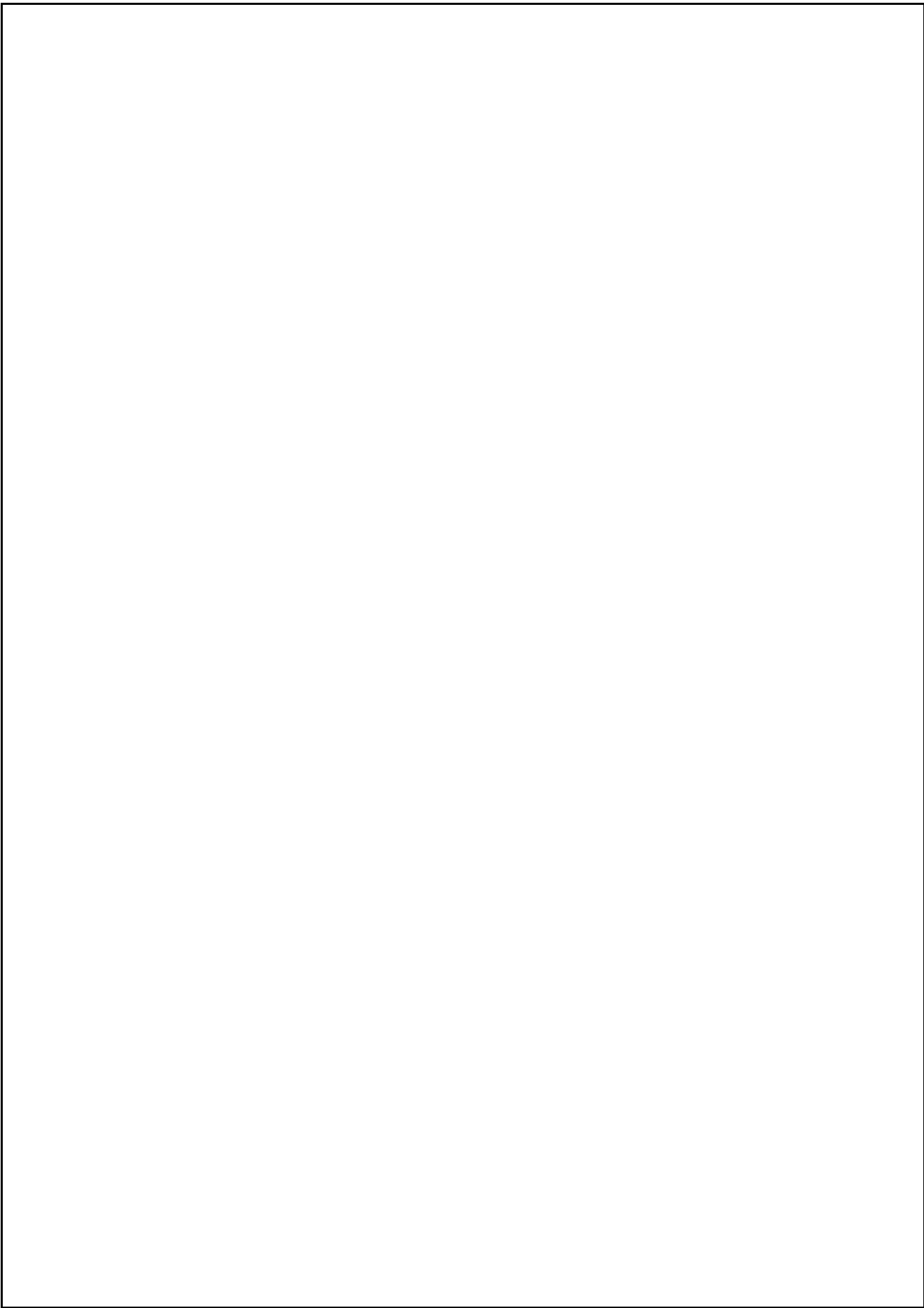
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