



Reformulating the Legal Policy for Online Prostitutes based on Electronic Information and Transactions Law viewed from Legal Certainty

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Abstract—Online prostitution is a sexual practice in which a woman engages in sexual activity for payment with her client and makes transactions through an electronic platform, where the client gives the amount of money for the sexual interaction. The crime of online prostitution generally happens in every part of Indonesia. The different criminal penalties between pimps and sexual workers in the case of online prostitution practice have become the focus of discussion. One of the logical approaches to solving online prostitution is using a criminal law policy approach by formulating a criminal penalty as a concrete system from criminal liability for the online prostitute. The lack of regulations that control the penalty for online prostitution clients causes the attempts to reduce online prostitution to become insignificant. Without national regulations for this thing, the clients of online prostitution might be safe and keep using the services for their pleasure, although the act is against the norms, particularly in the context of community rules. Therefore, there should be an improvement in the criminal law for criminal liability for those who use online prostitution. “Article 27, section (1) of EIT Law” regulates the penalty for an individual who provides, sells, or facilitates people in committing an action against the courtesies norms. The main challenge in enforcing the law for online prostitution is the incapability of the law to arrest and withhold the perpetrators quickly and efficiently. The lack of specific regulations about online prostitution in the criminal core became a vital factor.

Keywords—Online Prostitution; Sex Workers; Electronic Information and Transactions.

I. INTRODUCTION

The government considered that law number 11, the year 2008 about Electronic Information and Transactions became necessary for Indonesia because Indonesia has large users of technology information and has become efficient in using them. Therefore, on 26 April 2008, the government officially signed the implementation of the law of electronic information and transactions. The regulation was made to give some protection such as legal certainty for the individual who is involved in electronic transactions, support economic development, prevent information technology crime, and secure the users through informatics technology.

Nowadays, obtaining information has become quick and simple. The advent of globalization and advancements in technology have led to a variety of crimes that are either directly or indirectly committed through online media. Among them is the incidence of sexual offenses carried out through social media networks. Not only that, but prostitution offenders are now using social media, with its extensive network, as a platform to carry out their activities. The problem of online prostitution shows a great hidden agenda, with a significant impact on individual society, and the country nationally. The victims of human trafficking trapped in this practice suffered trauma due to the exploitation and violence that harmed human rights and their integrity. Besides, the development of technology has made access to the prostitution platform easier and widened the prostitution practice, creating a new challenge in enforcing the law and protecting the victims. [1]

The social issues caused by the prostitution practice cover the increased risk of sexually transmitted diseases (STD), the spread of diseases including syphilis, herpes genital, chlamydia, HIV/AIDS, and the threat to family

stability. [2] The law for prostitution practice determined the perpetrators of online prostitution will get a penalty based on law number 11, the year 2008 about Electronic Information and Transactions. However, the effective implementation of the associated legal policy about online prostitution did not completely apply in some regulations of prostitution cases. Some regulations about online prostitution involved law articles 284, 296, and 509 of the Criminal Code; the Law of Number 44, the Year 2008 about Pornography; the Law of Number 21, the Year 2007 about the Eradication of Human Trafficking Crime; the Law of Number 23, the year 2002 as well as the Law of number 35, the year 2014 about Child Protection Law; and the law of Electronic Information and Transaction number 11, the year 2008 as well as the law of number 19, the year 2016.

The social issue of prostitution or sexual work is difficult to explain exactly through the analysis of cause-effect and the origins. However, prostitution is still a common phenomenon that happens in daily life in every area of Indonesia in an open space and underground. Therefore, there should be a policy as a new attempt in criminal law to solve the prostitution case. In this context, the perpetrators of prostitution could only be sentenced if they are pimps or the service providers.

By considering the wide scope of the prostitution problem, to prevent the complexity and scaffold the discussion, there should be limitations for the problem. The research question for this study was how the criminal law policy for online prostitution according to the positive criminal law in Indonesia lacks legal certainty and how the law of Electronic Information and Transaction gives legal certainty to the perpetrators.

Even though there are a bunch of supporting laws, the implementation of the prostitution law policy in Indonesia still showed limitations in giving sentences. The unconfident action in taking assertive steps to those practices, especially through the law enforcement effect that makes them give up, became the main issue. The focus on the deterrent effect should be not only for the pimps but also for the clients. This study specifically discussed the attempt to strengthen criminal liability and the importance of criminal law reform to respond to the dynamics of online prostitute clients in Indonesia. With the case in mind, this study aimed to identify the understanding of various aspects of criminal liability and break down the needed reform in the criminal law related to online prostitution services in Indonesia.

II. LITERATURE REVIEW

According to this present day, there are still very few substantial restrictions governing prostitute activities. Only the Criminal Code, Law Number 44 of 2008 about Pornography, and Law Number 21 of 2007 concerning the Crime of Human Trafficking control this provision in Indonesia. These regulations only offer a cursory overview and serve to dissuade pimps from offering prostitution services.

According to a number of current Indonesian statutes, the penalties or fines specified by the legislation are limited to those who commit crimes and offer prostitution services, both in-person and online. Naturally, this becomes an issue when there are still a lot of clients or users for these service providers, which makes it harder and harder to stop prostitution-related activities. The Indonesian Criminal Code states that an act of prostitution between a prostitute (a commercial sex worker) and her client is not a criminal act. As a result, any prostitution activity organized or managed by the prostitute and their clients cannot be classified as a crime that carries a penalty, including online prostitution.

The Criminal Code does not inquire about clients who purchase sex while engaging in prostitution. This demonstrates that, unless the person being purchased is a kid under the age of 18, purchasing sex as part of a prostitution operation is neither illegal nor a crime. Should this be carried out, the Child Protection Law (Law No. 23 of 2002 in combination with Law No. 35 of 2014) may pose a danger to this act.

In a similar vein if the person obtaining sexual activity is a married man or woman, they may be prosecuted for adultery under Article 284 of the Criminal Code, which has a maximum sentence of nine months. Adultery, however, is a complaint offense, meaning that the spouse of the adulterer, or their legal partner, must file a complaint. According to Article 284 of the Criminal Code, a sexual client cannot be considered to have committed a crime if there is no complaint.

The problem of criminal prevention in the community naturally related to the discussion of penal policy. This policy refers to the rational attempt to control crime through the existing criminal law. The use of penal policy has a similar meaning to the "criminal law policy" and "criminal law politics". Therefore, the overall terms can be used interchangeably and have similar concepts related to the aspects of criminal law. [3] Essentially, the criminal law policy is not only limited to the technical process of law drafting that can be done through a normative approach and systematic search of law, but also it requires a comprehension of factual context involving sociological, historical, and comparative approaches. In addition, criminal law policy requires approaches of various social sciences and adopts some integrated approaches with the implementation of social policy or national development. [4]

Prostitution commonly known as sexual working is originally from the Latin word "pro-situare" referring to an act of adultery, fornication, assault, or cheating. In the English language, the term "prostitution" has seminal meaning in the Latin language, which means prostitution or immoral act. A person who works in prostitution is

commonly called a prostitute and sometimes known as Female Sexual Workers or in the Indonesian language is called *Wanita Tuna Asusila* (WTS). [5] Based on the Indonesian Dictionary, the word prostitution is derived from “*lacur*” which represents a disadvantage and bad condition. *Pelacur* refers to a woman who is involved in prostitution and is also known as *Sundal*. The term “*pelacuran*” refers to the act of selling a body for sexual service or a dirty act. [6]

According to William Benton in Britannica Encyclopedia, prostitution is a practice of temporary sexual transmission with various clients and often requires payment. [7] Terminologically, prostitution or sexual work refers to providing a sexual service by an individual, both man or woman, as a way to get income or fulfill their pleasure. [8] Prostitution can be done by a woman or man, and they are labeled as prostitutes if they are involved in sexual intercourse without marriage. [9] In this context, sexual assaults are not only in the form of sexual intercourse without marriage but also homosexual intercourse and other sexual variations.

One of the law's objectives is acquiring legal certainty which is an integrated part to achieve justice. Practically, legal certainty involves the implementation and enforcement of law for all acts, without any subjectivity. [10] With the availability of legal certainty, everyone can predict the consequences that they will face for what they have committed. Legal certainty guarantees every individual can control their action based on the existing law and vice versa. Without legal certainty, an individual does not have a clear guideline for their action. In line with that case, Gustav Radbruch stated that legal certainty has become the key to the law system. [11]

III. METHODS

The technique used in this law study covered the approaches based on the laws (statute approach), historical approach, comparative approach, and conceptual approach. The study of normative law is usually called law research with doctrinal characteristics and relying on law documents. [12] The researcher has chosen legal materials as the secondary data collected from books for this research. The secondary data were from primary law, secondary law, and tertiary law. The researcher collected secondary data from literature reviews. In completing this journal, the researcher used the technique of legal materials analysis using a normative method which is based on logic and regulations of law and local regulations to conclude from the existing information.

IV. RESULTS AND DISCUSSION

Since about the current moment, there are still a small percentage of significant rules governing prostitute operations. Only the Criminal Code, Law Number 44 of 2008 about Pornography, and Law Number 21 of 2007 concerning the Crime of Human Trafficking control this provision in Indonesia. These regulations merely offer a cursory overview and serve to dissuade pimps from offering prostitution services.

In terms of a number of current Indonesian statutes, the sanctions or fines specified by the legislation are limited to those who commit crimes and offer prostitution services, both in-person and online. Naturally, this becomes an issue when there are still a lot of clients or users for these service providers, which makes it harder and harder to stop prostitution-related activities. The Indonesian Criminal Code states that an act of prostitution between a prostitute (a commercial sex worker) and her client is not a crime. As a result, any prostitution activity organized or managed by the prostitute and their clients cannot be classified as a crime that carries a penalty, including online prostitution.

The Criminal Code provides no information about clients who acquire sex while engaging in prostitution. This highlights that, unless the person being purchased is a kid under the age of 18, acquiring sex as part of a prostitution activity is neither illegal nor a crime. Whenever this issue is carried out, the Child Protection Law (Law No. 23 of 2002 in combination with Law No. 35 of 2014) may be used to threaten this act.

In a similar way if those who are acquiring the sexual service are a married man or woman, they may be prosecuted for adultery under Article 284 of the Criminal Code, which has a maximum sentence of nine months. But since adultery is a complaint offense, a legal partner—that is, the adulterer's spouse or partner—must file a complaint. According to Article 284 of the Criminal Code, the sex buyer cannot be considered to have committed a crime if there is no complaint.

Prostitution is not only about the sexual workers, but also the broad networks, including pimps, prostitute brokers, and clients, where the majority of them were males that were often missed by the law enforcers. In Indonesia, the government did not explicitly prohibit prostitution. This was because the online prostitution regulations did not include a lawful penalty for the clients of prostitution. It made the clients not be sued or did not have the right to be sued based on the laws so that they can use the service from the sexual workers with no fear of the law consequences. Although the laws of Electronic Information and Transactions number 11, the year 2008 (EIT Law) have been applied, some problems were not solved by the laws.

The significant spread of online prostitution in Indonesia has become a serious problem now. Earning money in such an instant way made people addicted to that job. One of the factors causing people to dare to do online prostitution was the economic factor. The urgent needs and inflation everywhere have made some people desperate. Those things made some people dare to take the job in online prostitution without any considerations such as sexually transmitted diseases or the criminal law consequences when they got arrested. Many societies

did not consider this thing as a problem and did not mind the criminal law consequences, this was due to the fact that the related law for online prostitution was not assertive.

Particularly, in adjusting the ethical standards for social media users along with the liberty that is based on the Constitution. The laws of number 19, the year 2016 (Law No. 19/2016) were born in the context of political dynamics, in which the laws were the revision of law number 11, the year 2008 about Electronic Information and Technology. As a response to those changes, the laws gave a substantial adjustment to EIT Law (Laws of Electronic Information and Transactions), determining the ethical norms for social media, and the regulations to control their freedom in using social media.

The laws of number 11, the year 2008 (EIT Law) about Electronic Transactions and Information have given an excellent legal framework to handle cybercrime, including online prostitution. Even though it did not directly mention online prostitution, EIT Law can give legal certainty to criminals in certain ways, such as EIT Law allows the authority to handle illegal content that is spread around the social platforms, including websites or applications that facilitate online prostitution. The perpetrators could be charged based on EIT Law if they are involved in spreading or facilitating the contents of online prostitution. EIT Law can also control identity protection and user privacy on the internet. This could give legal certainty for the user of online prostitution services to protect their identity from misuse or illegal spread by other parties. [13]

Besides, EIT Law can be used as the law to tackle other criminals related to online prostitution, such as human trafficking, money laundering, or online scams. By having strong regulations, law enforcers can identify and prosecute the wrongdoers effectively. EIT Law can require the service providers of online platforms to filter the content that is uploaded by their users. This could offer the service providers the right to take preventive action against online prostitution content and make a report to the authorities if the contents infringed the law.

At this point, Indonesia's criminal law has not fully controlled specifically online prostitution. This created uncertainty in enforcing the law and protecting the community from online prostitution. The inconsistency of law enforcers and the lack of criminal law decisions online prostitution caused some negative consequences, both for the community and the perpetrators.

The uncertainty in criminal laws caused doubt among societies about the law consequences of online prostitution involvement. Without a clear law, the perpetrators may have the freedom to continue their online prostitution with no fear of getting arrested. This situation has created an environment where the practice could develop and continue uncontrolled, potentially damaging morals, and increase the risk of other crimes such as human trafficking and sexual exploitation.

Moreover, an appropriate regulation to handle online prostitution can also resist the identification and prosecution process by law enforcers. The lack of background regulations that are strong and clear hardens the law enforcers to collect the evidence and charge the perpetrators. [14]

To solve this, there should be a renewal of the criminal law that accommodates the practice of online prostitution. This required deep comprehension of how crimes could develop in a digital era and how criminal law can handle the challenges. There should be detailed research and collaborations among governments, law enforcers, and law experts to design effective regulations based on the development of technology and social ethics. By adopting the approach of legal certainty, Indonesia can strengthen the protection of the community from the prostitution practice and make sure that law enforcement is consistent and effective to the perpetrators.

The user of online prostitution services is an individual who is in a normal state and able to be responsible. However, the judgment for them required clear and detailed research, while the current regulations were not enough to handle those things. The discussion of law regulations has highlighted the importance of lawmakers to solve the things that were not regulated yet, with the possibility of following national regulations in the future.

V. CONCLUSION

Immoral activities increase day by day in society, such as the use of prostitution services regularly that potentially damages the nation's reputation and shows the lack of power from the law enforcers to take assertive actions due to the unavailability of proper regulations to control prostitution services in criminal code now. Without clear national regulations, the clients of online prostitution would be free and safe to continue their actions that were against the current society's norms. Economic factors became the main reason why society keeps doing these things. If it was compared to justice, it could not be compared. Because the penalty did not target the actual perpetrators and did not create fear in them. Therefore, there should be an improvement in the implementation of criminal law that controls the criminal liability to the clients of prostitution services. A detailed comprehension should be done of the criminal law so that it can cover online prostitution in the digital world. This requires broad interpretation and discussion on how the criminal liability for online prostitution perpetrators can be covered in the digital world in EIT Law that could be part of the existing law.

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