



ENFORCEMENT OF CRIMINAL LAWS AGAINST USERS AND PROVIDERS OF PROSTITUTION SERVICES IS SEEN FROM SEVERAL STATE COURT RULING

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Abstract

Prostitution or prostitution is one of the many disgraceful acts. This act is considered to be contrary to the values that grow in society because it is not in line with religious provisions and community customs. The research method used in this research is normative legal research. Normative legal research is legal research that uses secondary data sources. The results of this research are: there are no regulations governing the crime of prostitution in Indonesia, the factors that influence users and providers of prostitution services can come from themselves or the influence of the environment and criminal law policies regarding criminal liability for providers and users of prostitution services. It should be reformulated because it is not in accordance with society's values and can have negative effects on health.

Keywords: *Prostitution, Service Providers, Service Users*

A. INTRODUCTION

Generally, in court decisions that try prostitution cases, the perpetrator is sentenced using the articles regulated in Law Number 21 of 2007 concerning the Crime of Human Trafficking (as in Decision Number 1451/Pid.Sus/2021/PN Mdn in the name of the defendant Hanita Sari Nasution Als Nona sentenced to prison for 4 years and a fine of Rp. 120,000,000). However, the provisions of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking only regulate the punishment of pimps. There are no criminal sanctions for users of prostitution services. In fact, to eradicate a crime, eradication must be implemented starting from the parties involved. Currently, only pimps are given criminal sanctions, even though when viewed from the aspect of the purpose of punishment, users of prostitution services must also be given criminal sanctions. This is so that prostitution can be eradicated or at least minimized.

In its development, prostitution cases are not only charged with Law 21 of 2007 concerning Human Trafficking, in several decisions the use of Article 27 Paragraph 1 of Law Number 11 of 2008 concerning Information and Electronic Transactions as amended into Law Number 19 of 2016 in ensnare perpetrators involved in prostitution, this can be seen in the decision. This can be seen from several decisions, including decision Number 129/Pid.Sus/2021/PN Kph in the name of defendant Sanelia Amelia Binti M. Idris Als Sanela and defendant Monicxa Caroline Als Monic Binti Dedi Irawan was sentenced to 1 year and 3 months each, as both convicts were providers of prostitution services. Then in Decision Number 713/Pid.Sus/2020/PN Cbi, the defendant, Acep Zaelani Alias Ajel Bin Ali, was sentenced to prison for 1 year and 6 months, in which case the convict was his pimp.

The decision uses Article 27 Paragraph 1 of Law Number 11 of 2008 concerning Electronic Information and Transactions as amended into Law Number 19 of 2016 which states: Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which have content that violates decency. The article does not clearly regulate the punishment of users and providers of prostitution services, the article only prohibits the spread of immoral content, however in several decisions as described above this article is the legal basis for the punishment of the defendant.

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If you look closely at the decisions explained above, there are those that provide criminal sanctions to providers of prostitution services, namely in Decision Number 129/Pid.Sus/2021/PN Kph, then Decision Number 713/Pid.Sus/2020/PN Cbi only provides sanctions. only criminal sanctions are imposed on the pimps, and in Decision Number 1451/Pid.Sus/2021/PN Mdn, criminal sanctions are imposed only on the pimps. Some of these decisions handed down different decisions, some gave criminal sanctions only to pimps, some gave criminal sanctions only to providers of prostitution services. In fact, prostitution activities certainly involve several parties, namely providers of prostitution services, users and pimps and if you look at Articles 55-56 of the Criminal Code, it is explained that participation in criminal acts, whether committing, ordering to commit, or participating in committing, can be subject to criminal sanctions.

The act of using prostitution services must undergo a criminalization process, the criminalization process can make the actions carried out by users of prostitution services a criminal act. Based on the norms that exist in society, it is assumed that users of prostitution services have also violated legal, moral and religious norms. Imposing criminal sanctions is the main and only way to provide a deterrent effect to users of prostitution services. Law enforcement officials can also firmly impose criminal sanctions if there is a positive law that regulates the punishment of users of prostitution services. Based on this description, it is known that the actions of users of prostitution services are in accordance with the nature of criminalization due to a strong legal feeling in society, in this case, namely the religious and moral norms that exist in society which consider that the use of prostitution services is to fulfill biological (sexual) needs.) its use is an action that also violates moral norms so it needs to be classified as a criminal act.

Criminalization of users of prostitution services must also be accompanied by criminalization of providers of prostitution services, so that all parties involved in prostitution can be equally charged, unlike currently where criminalization is more biased towards pimps only, so that with criminalization all parties involved can overcome the problem of prostitution in Indonesia. Based on this explanation, research will be carried out entitled Criminal Responsibility for Law Enforcement Users and Providers of Prostitution Services (Study of Several District Court Decisions). It is hoped that this research will be able to contribute to the reform of criminal law, especially in the crime of prostitution, and then it can become a

B. Formulation of the problem

1. What are the legal regulations regarding criminal liability for users and providers of prostitution services?
2. What are the factors causing the existence of users and providers of prostitution services?

C. DISCUSSION

1. Legal regulations regarding criminal liability for users and providers of prostitution services

a. Criminal Code

Even though the Criminal Code currently in force in Indonesia is a product of colonial era law, it is still in effect and is the basic reference for punishment. Likewise, regarding the crime of prostitution, there are still several articles of provisions that serve as references for the crime of prostitution. This article will be explained below.

Article 295 Paragraph 1 of the Criminal Code which states:

Punished:

- 1) With a maximum prison sentence of five years, anyone who intentionally causes or facilitates obscene acts committed by his child, stepchild, or adopted child who is not yet an adult, by a child under his supervision, a minor who is handed

over to him, so that he can look after him. , being educated or looked after by someone who is a minor or someone who is under him with another person.

- 2) With a maximum prison sentence of four years, anyone who intentionally, apart from the matters mentioned in 1e, causes or facilitates obscene acts with another person carried out by a minor that he knows or reasonably suspects that he is a minor.

According to this article, obscene acts are included by people who are not yet adults or children, what is meant by children according to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection explains that a child is someone who is under the age of 18 years old, including children who are still in the womb. Article 296 of the Criminal Code states: Any person whose livelihood or habit is to intentionally carry out or facilitate obscene acts with another person shall be punished by imprisonment for a maximum of one year and four months or a fine of up to Rp. 15,000. According to this article, people who run places of prostitution can be punished and must be proven that the act is a livelihood or habit that has been carried out repeatedly. Those who can be subject to sanctions under this article are people who provide a house or room which is usually accompanied by a bed with payment to a woman or man for having a relationship.

This article contains several elements, namely:

- 1) Whom Who is meant by who is everyone
- 2) Deliberately What is meant by deliberate action is committing a prohibited act or action with intention and knowledge
- 3) Facilitating What is meant by facilitating is making it easier for other people's obscene acts with other people and making it a livelihood or habit.

Article 506 of the Criminal Code states:

Anyone who, as a pimp (sounteneur) makes a profit from female prostitution, is sentenced to imprisonment for a maximum of three months. According to this article, a pimp is an obscene broker, which means a man whose life seems to be financed by a prostitute who lives with him, whose actions include helping, looking for customers and from the proceeds he gets a share. This article also ensnares a man against his wife if the man commits prostitution against his wife and the profits are divided in half. The difference between the two articles lies in the perpetrator who must be responsible. In Article 296 of the Criminal Code, the person responsible is the liaison, namely the person who facilitates the act. Article 506 of the Criminal Code, the person responsible is the pimp as the person who takes advantage of prostitution activities. Looking at the provisions regulated in the Criminal Code, what can be criminally charged is anyone who facilitates or takes advantage of someone to carry out sexual acts for a fee and takes advantage of these acts. So those who can be punished are pimps and people who facilitate or carry out prostitution.

b. Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking

The practice of prostitution is also regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. Indeed, the rules regarding prostitution are regulated in the Criminal Code, but if during prostitution activities there is a threat of violence or coercion so that someone wants to become a provider of prostitution services, then this act can be referring to Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. Article 2 Paragraph 1 of Law Number 21 of 2007 concerning the Crime of Human Trafficking states: Any person who recruits, transports, harbors, sends, transfers or receives a person with the threat of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a vulnerable position, debt bondage or providing payments or

benefits despite obtaining the consent of the person who has control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least IDR 120,000,000.00 (one hundred twenty million rupiah) and a maximum of IDR 600,000,000.00 (six hundred million rupiah). Based on this explanation, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking regulates the prohibition of acts of prostitution carried out by force. The slight difference with the Criminal Code is that there are acts of coercion carried out to take advantage of other people in the practice of prostitution to enrich themselves. self. If you look closely at Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, it only ensnares pimps or people who use other people for exploitation. This is the same as the prohibition regulated in the Criminal Code, the difference being that in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, there are methods of violence or coercion.

c. Law Number 11 of 2008 as amended into Law Number 19 of 2016 concerning Information and Electronic Transactions

As time goes by, crime has also experienced several new modes. In the crime of prostitution, which is generally carried out conventionally, currently prostitution is also carried out online by utilizing information and communication technology to carry out this crime. This is not the fault of technological developments but rather a mistake made by humans themselves. Article 27 Paragraph 1 of Law Number 11 of 2008 as amended into Law Number 19 of 2016 concerning Information and Electronic Transactions states: Every person intentionally and without right distributes and/or transmits and/or makes accessible electronic information and/or electronic documents which have content that violates morality. If you look at the provisions in the article, there is no explicit mention of the term prostitution, the article only regulates the prohibition. spreading content that violates decency. However, this article is often used to ensnare perpetrators of criminal acts of prostitution.

One example of an online prostitution case that is charged under Article 27 Paragraph 1 of Law Number 11 of 2008 as amended into Law Number 19 of 2016 concerning Electronic Information and Transactions is the case of the capital city artist Vanessa Angel being tried by the Surabaya District Court where Vanessa sentenced to five months in prison after being found guilty of distributing and/or transmitting electronic documents containing contents that violate decency. Therefore, the practice of prostitution can also be charged under Law Number 11 of 2008 as amended into Law Number 19 of 2016 concerning Information and Electronic Transactions, only that prostitution must meet the elements of spreading immoral content, such as: distributing photos/ Fulgar videos to social media. Based on this explanation, up to now there is no law that regulates in detail criminal sanctions against users and providers of prostitution services, the Criminal Code, the new Criminal Code, Law Number 21 of 2007 and Law Number 19 of 2016 do not exist. strictly regulate criminal sanctions against users and providers of prostitution services.

As Isharyanto said, law as a system has many connections with various aspects and even other systems in society. Law as a product must be able to create legal certainty for society. Often the laws and regulations that are formed fail to provide legal certainty for society, which ultimately fails to create legal order in society. In the context of this problem, the Criminal Code, Law Number 21 of 2007 and Law Number 19 of 2016 do not provide legal certainty for the public regarding punishment for the practice of prostitution, especially for users and service providers. Positive law currently only provides sanctions for pimps, this can be seen in Article 296 and Article

506 of the Criminal Code, while looking at Law Number 21 of 2007, specifically Article 2 paragraph 1, only prohibits acts of prostitution carried out by coercion. The difference with the Criminal Code is that there are coercive actions carried out to take advantage of other people in the practice of prostitution to enrich themselves. Meanwhile, Law Number 19 of 2016 does not mention a prohibition on the practice of prostitution or trafficking, Article 27 Paragraph of the Law only regulates the prohibition on spreading content that violates decency. However, this article is often used to ensnare perpetrators of criminal acts of prostitution. Generally, perpetrators of criminal acts of prostitution who are charged under this article are perpetrators of online prostitution. This problem cannot be separated from the problem of the legal system itself, which has not yet been created or has been left behind by society. According to Sunaryati Hartono, law as a system consists of 7 parts, namely:

- 1) Legal principles
- 2) Legal regulations
- 3) Professional, responsible and legally aware human resources
- 4) Legal institutions
- 5) Legal institutions
- 6) Legal culture

In this context, the legal system that is problematic is the legal regulations. This can be seen as not yet being expressly provided for criminal sanctions against users and providers of prostitution services. Even a phrase in an article that does not clearly state the prohibition of the practice of prostitution is used to ensnare perpetrators of criminal acts of prostitution, even though this is seen from the context of spreading immoral content.

2. Factors causing the existence of users and providers of prostitution services

Factors that cause prostitution from women:

- a. Moral Factors There is demoralization or low moral factors, individual and community piety and disdain for religious teachings. Educational standards in their families are generally low, pornography is growing freely and wildly.
- b. Psychological Factors: Broken family relationships, excessive pressure and sexual experiences in the family as well as traumatic experiences (mental injuries) and a feeling of wanting revenge caused by things such as failure in marriage, being married off, being defiled by a lover who was then simply abandoned.
- c. The laziness factor is usually caused by low psychology and mental health, not having religious norms and morals in facing life's competition. Only with physical capital, beauty, you can easily collect money.
- d. Biological Factors The presence of abnormal sexual desire, not integrated into a personality that does not feel satisfied having a sexual relationship with one wife/husband.

Internal factors for users of prostitution services include:

- a. Male genital desire to channel sexual needs without any ties.
- b. Feelings of fun and wanting to experience sexual relations outside of marriage. Want to find variety in sexual relations.
- c. The wife is unable to menstruate, is pregnant or has been suffering from an illness for a long time, so she is unable to have sexual relations with her husband.
- d. Wife goes crazy.
- e. Being assigned to a faraway place, moving for work or being sent to another place, and not having time or being able to bring the family.
- f. Physical disability, so that you feel embarrassed to marry; then channeled his sexual needs with prostitutes. For example, because of a hunchback, a bad face, a limp, stumped arms, and so on.

- g. Because his profession is a criminal, it is impossible to raise a family.
- h. Not getting satisfaction in channeling sexual needs, with a partner or wife.
- i. There is no need for responsibility or consequences for sexual relations and is felt to be more economical. For example, there is no need to look after offspring, there is no need to build a household and ensure the life of a wife. But you can have fun in a sea of romance with various women.

D. CLOSING

a. Conclusion

1. Legal regulations regarding criminal liability for users and providers of prostitution services, if seen in Article 296 and Article 506 of the Criminal Code, do not regulate criminal liability for users and providers of services, if seen from Article 1 Paragraph 2 of Law Number 21 of 2007 there is no regulation regarding criminal liability for users and perpetrators, as regulated in Article 27 Paragraph 1 of Law Number 19 of 2016, does not regulate criminal liability for users and service providers. If we look at this from legal system theory, there is a problem that existing legal regulations have not been able to respond to and follow developments in society, so that other legal sub-systems have an influence in responding to existing problems.
2. The factors causing the existence of users and providers of prostitution services consist of external and internal factors. The internal factors of the users themselves cannot be separated from their desires and lack of faith within themselves, while the external factors cannot be separated from the environment and social media. The internal factors of prostitution service providers are based on moral, psychological and laziness factors, while the external factors come from economic and social conditions and no juridical reasons have yet been regulated.

b. Suggestion

1. A law should be formed that specifically regulates the criminal act of prostitution. Even though the provisions regarding the practice of prostitution have been regulated in the new Criminal Code, these provisions are not substantially different from the old Criminal Code, only the pimp can be charged with a crime while the user and provider services cannot be punished, so that regarding users and service providers there is no regulation of criminal sanctions, even though users and service providers should be criminalized because their actions are not in accordance with the values of society, so it would be good to fill the legal vacuum, a law needs to be formed. -the law which is the *lex specialis* in cases of criminal acts of prostitution.
2. Law enforcers (Police) should be able to take progressive steps towards criminal acts of prostitution, bearing in mind that the factors that hinder law enforcement in criminal acts of prostitution lie in their own cultural and legal factors, the culture of society which seeks profits from criminal acts of prostitution and is not accompanied by provisions. Strict laws become an obstacle to law enforcement regarding criminal prostitution. Progressive efforts that can be taken by law enforcers are to ensnare the perpetrators who are involved in criminal acts of prostitution with provisions that violate the laws that exist in society or in criminal law are called material unlawful acts, although this will be proven at trial before the Panel of Judges, but at least it has been There are efforts by the Police to overcome the crime of prostitution.

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