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The Importance of Reconstructing Criminal Liability for Prostitution in the Reform of Criminal Law

Itok Dwi Kurniawan¹ 

¹ Faculty of Law, Universitas Sebelas Maret Surakarta, Surakarta, 57126, Indonesia

*Corresponding Author: itokdwikurniawan@staff.uns.ac.id

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ABSTRACT

The practice of prostitution is currently evolving rapidly, primarily driven by the dissemination of information through electronic media. The lack of comprehensive regulations regarding prostitution allows the law to contribute to the development of this phenomenon. Insufficient regulation has created a new legal culture among those involved in prostitution, which has widespread effects on society. One of the most severe consequences of the widespread practice of prostitution is the spread of sexually transmitted diseases, which can impact the health of both those directly involved and individuals nearby, such as the partners of sex workers. This research aims to analyse the regulation of prostitution in Indonesia's criminal law today. Through this analysis, the importance of reforming the law to comprehensively regulate prostitution in the future is highlighted. The method used in this research is legal research with a normative approach, utilizing secondary data obtained through literature review and examination of legislation. The analytical method applied is prescriptive analysis. The findings indicate that although some regional regulations have addressed prostitution practices, there is no national regulation that explicitly governs prostitution. Recommendations for the future include providing a clear definition of prostitution, criminalizing consumers or users of prostitution services, criminalizing sex workers, reformulating offenses for pimps, implementing a double track system for sanctions, increasing criminal penalties, and clarifying the formulation of offenses.

Keywords: reconstruction, prostitution, criminal law.

ABSTRAK

Praktik prostitusi saat ini semakin berkembang dengan cepat, terutama didorong oleh penyebaran informasi melalui media elektronik. Kurangnya regulasi yang komprehensif mengenai prostitusi membuat hukum ikut berkontribusi pada perkembangan fenomena ini. Regulasi yang minim menciptakan budaya hukum baru di kalangan pelaku prostitusi, yang berdampak luas pada masyarakat. Salah satu dampak terburuk dari praktik prostitusi yang meluas adalah penyebaran penyakit menular seksual, yang dapat mengganggu kesehatan, baik bagi mereka yang terlibat langsung maupun bagi orang-orang di sekitar mereka, seperti pasangan pelaku prostitusi. Penelitian ini bertujuan untuk menganalisis regulasi prostitusi dalam hukum pidana Indonesia saat ini. Melalui analisis ini, diungkapkan pentingnya melakukan pembaruan hukum untuk mengatur prostitusi secara menyeluruh di masa depan. Metode yang digunakan dalam penelitian ini adalah penelitian hukum dengan pendekatan normatif, menggunakan data sekunder yang diperoleh melalui studi pustaka dan kajian peraturan perundang-undangan. Metode analisis yang diterapkan adalah teknik analisis preskriptif. Hasil penelitian menunjukkan bahwa meskipun beberapa peraturan



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daerah telah mengatur praktik prostitusi, belum ada regulasi yang secara tegas mengatur prostitusi di tingkat nasional. Beberapa rekomendasi untuk ke depan meliputi pemberian definisi yang jelas mengenai prostitusi, kriminalisasi terhadap konsumen atau pengguna jasa prostitusi, kriminalisasi terhadap pekerja seks komersial (PSK), reformulasi delik bagi mucikari, penerapan sistem dua jalur dalam sanksi (double track system), peningkatan sanksi pidana, dan perumusan bentuk delik yang lebih jelas.

Kata Kunci: rekonstruksi, prostitusi, hukum pidana.

1. Introduction

The world has transitioned from the era of industrialization to the information age.¹ This shift has redefined society as an information society,² marked by the rapid expansion and advancement of information technology, which has made accessing information incredibly easy. The fast-paced development of science and technology has led to the emergence of new media, namely the internet. Innovations in computing, telecommunications, and the internet have introduced trends that reshape work patterns and lifestyles. Today, technology (including internet and computer devices) plays a vital role in bridging distances, compressing space, and reducing time in what is often called cyberspace.³ The evolution of information technology brings both positive and negative consequences. On the positive side, these developments greatly enhance welfare, progress, and human civilization. On the other hand, the negative aspects include the frequent use of technology as a tool for unlawful activities (Explanation of Law No. 11 of 2008 on Information and Electronic Transactions). The advancement of sophisticated technology has led to various legal issues, particularly the intention of irresponsible parties to use technology for unlawful acts for personal gain. This behaviour is referred to as cybercrime, which has become a focus of international attention. One emerging form of this new criminal modus operandi is online prostitution, which utilizes computers and the internet as its medium. Prostitution is not a new phenomenon in Indonesia. Historically, it has been present since the Dutch and Japanese colonial periods (Mahardika, 2020).⁴ Over time, the issue of prostitution has proven to be complex, involving various aspects of societal life, including social, gender, legal, health, moral and ethical, religious, educational, psychological, economic, industrialization, and political issues.⁵ In practice, prostitution activities can be categorized into two types. The first is organized prostitution, characterized by the establishment of locales such as nightclubs, brothels, and massage parlors. The second type is individual or unorganized prostitution, which involves women soliciting themselves on the streets.⁶ Currently, individual prostitution is increasingly rare, largely due to advancements in technology that have shifted these activities to online platforms, commonly referred to as online prostitution.

According to data presented by the Ministry of Health of the Republic of Indonesia, the number of HIV cases in Indonesia reached 16,410 in 2023. Among this total, there are three provinces with the highest number of HIV cases: West Java Province with 2,575 cases, East Java Province with 2,432 cases, and Central Java Province with 2,423 cases.⁷ The high number of HIV/AIDS cases is primarily caused by prostitution practices occurring in society. In fact, many instances of prostitution are found among various age groups. If these practices are not regulated clearly and comprehensively in the future, they have the potential to result in

¹ Herwantono, H., Hasibuan, K., & Judijanto, L. (2023). Pengaruh Revolusi Industri 4.0 Terhadap Sistem Hukum Dan Kebijakan Penggunaan Dalam Teknologi Di Indonesia. *Jurnal Hukum Dan HAM Wara Sains*, 2(10), 973-982, <https://doi.org/10.58812/jhhws.v2i10.709>

² Bahram, M. (2023). Transformasi Masyarakat Di Era Digital: Menjaga Kaidah Hukum Sebagai Landasan Utama. *Sentri: Jurnal Riset Ilmiah*, 2(5), 1733-1786, <https://doi.org/10.55681/sentri.v2i5.884>

³ Agung, A., Hafrida, H., & Erwin, E. (2023). Pencegahan Kejahatan Terhadap Cybercrime. *PAMPAS: Journal Of Criminal Law*, 3(2), 212-222, <https://doi.org/10.22437/pampas.v3i2.23367>

⁴ Mahardika, Moch. D. G. (2020). Prostitusi Di Surabaya Pada Akhir Abad Ke-19. *Sejarah Dan Budaya: Jurnal Sejarah, Budaya, Dan Pengajarannya*, 14(1), 22-30, <http://dx.doi.org/10.17977/um020v14i12020p22-30>

⁵ Sevrina, G. I. (2020). Kebijakan Kriminalisasi Praktik Prostitusi Di Indonesia. *Law And Justice*, 5(1), 17-29, <https://doi.org/10.23917/laj.v5i1.9216>

⁶ Rahmawati, W. H. (2020). Pertanggungjawaban Pidana Pengguna Jasa Prostitusi Online. *Media Iuris*, 3(3), 367-382, <https://doi.org/10.20473/mi.v3i3.23047>

⁷ Databoks.Katadata. (2024, January 3). *Ada 16 Ribu Kasus AIDS Baru Di Indonesia, Terbanyak Di Jawa Barat*. <https://Databoks.Katadata.Co.Id/Layanan-Konsumen-Kesehatan/Statistik/A388ae6f7dd6b9c/Ada-16-Ribu-Kasus-Aids-Baru-Di-Indonesia-Terbanyak-Di-Jawa-Barat>.

numerous victims due to the increasingly widespread nature of prostitution.⁸ Prostitution in Indonesia is becoming increasingly complex and difficult to dismantle due to the use of advanced technology, making it more concealed. Currently, there are several regulations that address prostitution; however, these regulations do not fully hold accountable those involved in prostitution. Most often, only pimps or brokers can be prosecuted under existing laws, while the regulations for targeting consumers of prostitution are still very limited. At present, there is no clear regulation regarding the prosecution of individuals involved in prostitution, despite the potential presence of victims or social elements. Therefore, a comprehensive reform of criminal law is necessary to criminalize prostitution in Indonesia. The research presented in this article will discuss the current criminal law regulations regarding prostitution. It is important to examine these regulations to reconstruct the provisions related to prostitution that are currently ineffective in reducing the incidence of prostitution in Indonesia. This article will also address the necessity of criminalizing other parties involved in prostitution, as the existing laws only hold pimps accountable, while sex workers and consumers of prostitution are not subject to prosecution under these provisions.

2. Research Method

The writing of this article employs a normative legal research method with a conceptual approach. The legal issue in this research is that the regulations related to prostitution currently in effect have a narrow scope. The formulation of the prostitution offense has only been able to target pimps or providers of prostitution services, while commercial sex workers and users of prostitution services remain untouched by criminal law. This legal issue will be examined using deductive analysis techniques.

3. Result and Discussion.

Prostitution as a social problem is not a new issue in Indonesia. The practice of prostitution has been widespread in Indonesia long before the country's independence. The practices of prostitution and concubinage were commonly carried out by Indonesian women since the Dutch colonial era and continued during the Japanese occupation. The popular term used to refer to women who became concubines during the colonial period was "Nyai." These women willingly became the mistresses of colonial officials at that time and were tasked with satisfying their sexual desires in their daily lives.⁹ The motif behind Indonesian women engaging in practices such as concubinage and prostitution during that time was driven by economic conditions. Indonesian women lacked sufficient educational qualifications, making it difficult for them to find jobs. At the same time, they were burdened with the responsibility of contributing to the daily needs of their households.

In the subsequent period, prostitution in Indonesia also continued to grow. The practice of prostitution, primarily occurring in major cities, was largely driven by economic factors. One example is Surabaya. Since the era of economic liberalization implemented by the colonial government in 1870, people from rural areas flocked to Surabaya in search of better fortunes. For them, particularly women without skills, choosing to enter the world of prostitution became a viable option.¹⁰ In the following era, after Indonesia gained independence, prostitution remained a choice for meeting needs, as it did not require special skills and the financial rewards were quite tempting.

The ongoing prevalence of prostitution in Indonesia today is due to the lack of adequate regulatory laws for those involved in prostitution. Researchers have conducted studies on several regulations related to the act of prostitution, which include the following:

1. Old Indonesian Penal Code (Translation WvS-NI)

Article 296 of the Penal Code prohibits prostitution but is directed only at pimps. A pimp is someone who profits from the prostitution practices of women who are sex workers. Based on this definition, the scope of subjects considered pimps is quite broad, including, for example, a husband who sells his wife to provide sexual services to others. Similarly, Article 506 of the Penal

⁸ Prawira, I. M. A. W., & Subawa, M. (2019). Pertanggungjawaban Pidana Terhadap Pekerja Seks Komersial dalam Prostitusi Online di Indonesia. *Kertha Wicara*, 8(7), 1-17.

⁹ Riska Khairunnisa Pasaribu. (2024). Peran Perempuan Dalam Perekonomian Di Hindia Belanda Pada Abad XIX-XX. *Siginjai*, 4(1), 60-74.

¹⁰ Mahardika, Moch. D. G. *Op.cit.*, 22-30.

- Code can only prosecute someone who profits from women engaged in immoral acts.
2. Law Number 21 of 2007 on the Crime of Human Trafficking
Similar to the Old Penal Code, this law also has limitations in its scope regarding those involved in human trafficking offenses. Article 1, paragraph 4 of this law clearly restricts criminal liability to pimps or individuals and corporations that commit human trafficking crimes. In the context of human trafficking, a person who sells sexual services is positioned as a victim of sexual exploitation, meaning they cannot be prosecuted for the act of selling sexual services.
 3. Law Number 44 of 2008 on Pornography
The crime of pornography addressed in the Pornography Law can be found in Articles 29 to 38. According to the provisions in this law, only pimps and "Pedila" can be punished under the Pornography Law. "Pedila" is an abbreviation for women who are prostituted (in bahasa Indonesia we said: perempuan yang dilacurkan). They are compelled to work in the prostitution industry. Pedila fall into the marginalized group category, as they are vulnerable to impoverishment; they originally belonged to a group above the poverty line but became poor again due to economic conditions, social conflict, and natural disasters. Pedila often face stigma from society as prostitutes or immoral individuals.¹¹ Furthermore, this law restricts the definition of pornography to a material form, such as images, sketches, illustrations, photos, writings, sounds, noises, moving images, animations, cartoons, conversations, body movements, or other forms of messages conveyed through various types of communication media and/or public performances.¹² The limitation of this law is that it cannot prosecute the actions of sex workers who provide sexual services to their clients in the form of sexual intercourse.
 4. Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection
Article 76I of this law explicitly states that consumers or users of prostitution services from sex workers can be subjected to criminal sanctions if the sex worker is underage. The legal definition of adulthood according to child protection regulations is those who are under 18 (eighteen) years old. The limitation of this provision is that it applies only if the sex worker is a child; if the sex worker is an adult, this article cannot be enforced.
 5. Law Number 11 of 2008 on Information and Electronic Transactions, as amended by Law Number 19 of 2016 (First Amendment) and Law Number 1 of 2024 (Second Amendment)
This law does not explicitly contain the word "prostitution" in its articles, but it implicitly includes terms related to prostitution. Article 27 of this law prohibits anyone from distributing and/or transmitting and/or providing access to electronic information and/or electronic documents that contain content that violates decency. Although it is related to prostitution, this law does not provide regulations regarding the act of using prostitution services.
 6. Law Number 12 of 2022 on Sexual Violence Crimes
This law also provides regulations related to prostitution, but it is limited to pimps who can be prosecuted with criminal sanctions. Furthermore, upon examination of its wording, there is no specific formulation regarding what acts of prostitution can be penalized; it tends to focus more on sexual violence in general.

Based on the regulations regarding prostitution in the Penal Code, laws outside the Penal Code, and several regulations mentioned above, most of them primarily target providers of venues and pimps. Meanwhile, users of services and workers cannot be penalized. The fact that only pimps face prosecution does not reflect justice. In prostitution practices, there are various subjects involved, which means this does not reflect legal certainty that is fair or equal treatment under the law.¹³ The weakness of these regulations is further exacerbated by the massive growth of prostitution currently facilitated by technology. One form of technological abuse is its use as a medium for engaging in prostitution. Prostitution conducted through

¹¹ Amrianto, A. D., Putri, M. K. A., Yusup, A., & Putra, I. P. A. D. (2023). Kriminalisasi Dan Reformulasi Perbuatan Prostitusi Dalam Hukum Pidana: Catatan Kritis Atas Minimnya Pengaturan Perbuatan Prostitusi Di Indonesia. *Jurnal Penegakan Hukum Dan Keadilan*, 4(2), 123-142, <https://doi.org/10.18196/jphk.v4i2.18091>

¹² Kusumawati, A., & Rochaeti, N. (2019). Memutus Mata Rantai Praktik Prostitusi Di Indonesia Melalui Kriminalisasi Pengguna Jasa Prostitusi. *Jurnal Pembangunan Hukum Indonesia*, 1(3), 366-378, <https://doi.org/10.14710/jphi.v1i3.366-378>

¹³ Sari, A. A., & Sularto, R. B. (2019). Kebijakan Formulasi Kekerasan Seksual Terhadap Istri (Marital Rape) Berbasis Keadilan Gender Di Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 1(1), 117-127, <https://doi.org/10.14710/jphi.v1i1.117-127>

electronic means becomes increasingly difficult to trace and eradicate. The update of criminal law manifested in the enactment of the New Penal Code, also known as the National Penal Code, Law Number 1 of 2023, has not significantly addressed the issues related to prostitution. Articles 419 to 423 of this law only regulate criminal penalties that are limited to pimps. Thus, even in the most recent legislation, there is still no provision that addresses sex workers and users of prostitution services. In relation to this situation, the researcher suggests that a reconstruction of prostitution practices is necessary within various legal regulations. This reconstruction is one of the efforts included in the modernization of criminal law. The steps to be taken would naturally involve the process of criminalization.

Criminalization is one of the subjects of substantive criminal law that discusses the determination of an act that was previously not considered a crime, transforming it into a criminal offense punishable by specific penalties. Criminalization leads to a change in the value of an act that was previously deemed acceptable by law, altering its status to one that is viewed as disreputable and deserving of punishment.¹⁴ The reconstruction of prostitution practices can involve the criminalization of acts that fall within the spectrum of prostitution activities. So far, the only criminal acts recognized are those involving intermediaries in prostitution services, commonly known as pimps. This is clearly inadequate because it has a narrow scope and is unjust, as sex workers and users of prostitution services remain untouched by criminal law. Criminalization should also target the actions of sex workers who provide sexual services to their clients, as well as the users of these sexual services. Punishing both parties would certainly be a more effective way to reduce the incidence of prostitution in Indonesia. Moreover, efforts to reconstruct prostitution practices should be organized in a more systematic and structured manner. Ideally, prostitution should not merely be a part of a single law with only a few articles addressing it. Instead, prostitution should be regulated in a separate law. This also aims to unify various regional regulations across Indonesia that have addressed prostitution as a violation of local ordinances. The unification seeks to establish national standards regarding the definitions of prostitution, types of prostitution, and the criminal penalties associated with prostitution offenses. Equally important is accommodating prostitution facilitated by technology, commonly known as online prostitution. Addressing online prostitution certainly requires a distinct strategy. This includes enhancing the capabilities of law enforcement, improving the sophistication of tracking information related to prostitution, and, most importantly, establishing proof of the occurrence of online prostitution.

The reconstruction of prostitution practices is urgent not only because it violates legal norms but also moral standards. Additionally, it has negative impacts on clients of prostitution services, as it poses the risk of transmitting sexually transmitted infections. On the other hand, it can also lead to other criminal offenses, such as those reported in various social media regarding the murder of sex workers by their clients. The reconstruction of prostitution practices should not only be a repressive effort aimed at prosecuting those involved in prostitution but also serve as a preventive measure against the practice of prostitution itself.

4. Conclusion

Acknowledgements and Reference heading should be left justified, bold, with the first letter capitalized but have no numbers. Text below continues as normal. Prostitution in Indonesian criminal law is currently regulated by several provisions, including the Penal Code, the Human Trafficking Law, the Pornography Law, the Child Protection Law, the Electronic Information and Transactions Law, the Sexual Violence Crimes Law, as well as several regional regulations such as those from the Province of DKI Jakarta, the City of Tangerang, the City of Denpasar, Badung Regency in Bali, Bandung Regency, and Batam City. The regulations in these laws primarily penalize pimps or service providers, resulting in a new legal culture that addresses the inadequacies in prostitution regulation and consequently creates new modes of criminal behaviour due to the incomplete existing regulations.

In the future, the policy for formulating prostitution regulations in Indonesian criminal law should be comprehensive, not only criminalizing pimps/service providers but also sex workers and clients. In addition to criminalization, there should be a reformulation of offenses, particularly for pimps or service providers, by including the element of "conducted using electronic media," which would increase the penalties. Several points are proposed for formulating prostitution offense policies in the future, including clear definitions of

¹⁴ Adhipradana, Y. A., & Afifah, W. (2023). Urgensi Kriminalisasi Bagi Pekerja Seks Komersial. *Bureaucracy Journal: Indonesia Journal Of Law And Social-Political Governance*, 3(2), 1535-1554, <https://doi.org/10.53363/bureau.v3i2.264>

prostitution, criminalization of clients/users of prostitution services, criminalization of sex workers, reformulation of offenses for pimps, the use of a dual-track system for determining/imposing penalties, increased penalties, and the formulation of offense types.

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