Juridical Study On The Application Of Articles 296 And 506 Of The Criminal Code To Perpetrators Of Online Prostitution

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Abstract

Prostitution in Indonesia has been around since the Dutch colonial era and later expanded in Indonesia and even to various regions. Prostitution is a deed by a person or group of people whose purpose is to trade someone or some person to benefit. Various ways and motives were done by the perpetrators of prostitution so as not to smell their crimes by law enforcement officers. Law No. 1 of 1946 on criminal law regulation or the Book of Criminal Law is the answer to the issue of prostitution. However, with the rapid development of technology allows the variation of prostitution to be done in a way that is easier through online media. The existence of the chapters in Law No. 1 of 1946 concerning criminal law regulation are then no longer felt and do not have relevance to the various crimes of prostitution that are increasingly modern today. The emphasis was made in Article 296 of Jo. Article 506 of the criminal CODE is to punish those who become pimps/brokers/service providers therefore women commercial sex workers are as victims. However, with the development of modern prostitution which provides widespread access not only to pimps/brokers/service providers as perpetrators, but also commercial sex workers as actors because they also sell themselves to the willingness and not the coercion of others. On the basis of this, more legislation was formed such as Act No. II year 2008 about ITE, Law No. 21 of 2007 on the Eradication of criminal trafficking in persons and some other relevant laws and regulations. The results of this study are elaborated in the formulation of chapters 296 and 506 of the CRIMINAL code and are associated with more specific legislation and outlining the barriers occurring in the law enforcement of online prostitution and the efforts that can be made to eradicate criminal acts of prostitution online.

Keyword: Online Prostitution, Commercial Sex Workers, Criminal Code

I. Introduction

This phenomenon of Internet use will be a double edged sword in the social behavior of society, and the impact can be positive and also negative. One of the things that has negative impact is the rise of a new prostitution network that is online prostitution. 1 Facebook, which was originally used only for friendships, is now used to market sex transactions. Terms that can use ‘Bispak’, the call guy, the call chick, prostitutes, college women, commercial sex workers in this case is PSK is a mention in cyberspace especially online prostitution to show that the individuals concerned offer sex services.

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Besides Facebook, online media are often used such as Twitter, Instagram, Skype, blog, Friendster as well as websites. Lately, there is a case of prostitution using social media in Indonesia, which not only happens because of the economic needs but has evolved into a lifestyle. Therefore, this is where the legal role should help. Hans Kelsen said that the law is an order, as a system of rules on human behaviour. Online prostitution activities that concern many parties should be able to create rules so that online prostitution activities can be eradicated or minimized. However, looking at the fact that Indonesia’s law is a legal system that has not yet reflected a unified system as a national legal system. This is evidenced by the positive rules which concerning prostitution itself (although not specifically set about online prostitution) are spread to a wide variety of statutory regulations.

In the Criminal Code, the provisions governing of prostitution are known by crimes against morality as stipulated in article 282 paragraph (1), 282 paragraph (2), 282 paragraph (3), Article 296 and article 506 of the Criminal code. In addition, there are also rules regarding criminal acts using the online media in the ITE ACT. In addition to the Penal code and the ITE law, there are also positive laws governing the prohibition of pornography content, Law of Pronograf. In addition to the above rules, there are also other regulations governing online prostitution of Law No. 21 of year 2007 concerning the eradication of criminal trafficking and child protection ACT.

Though, they are not specifically regulating online prostitution, they know the sexual exploitation of prostitution. The most fundamental drawback in Indonesian positive law relating to online prostitution is the formulation of a rule that is partial (likely to be fragmentary). For example, in the criminal CODE, the Dutch colonial heritage did not set up at all specifically about prostitution using social media. Whereas in the pornography LAW it provides a charge about the contents of pornographic content but does not specifically give the elements related to prostitution so that only certain parties can be imposed criminal. Whereas the state of Indonesia adheres to the legality of "nullum delictum nulla poena sine previa legi poenale" means that no one can be sentenced without any rules that set it up first. There needs to be an update in criminal law related to this issue of prostitution as an effort in the law enforcement.

II. Method

This research is done using the method of normative juridical approach. This is a type of legal research conducted by researching libraries or secondary data. This normative legal research is a literature study, which is research on secondary data. Secondary data is data obtained from official documents, books related to the research object, the results of research in the form of reports, theses, dissertations and statutory regulations that emphasize and adhere to juridical facets.

III. Main Heading of the Analysis or Results

A. The Relations Between Article 296 and 506 of The Criminal Code With Specific Laws

Law No. 1 of 1946 concerning the Criminal CODE (Book of Penal Law) governs the crime of morality in CHAPTER XIV, namely in article 281-303, but the special governing article on prostitution is Article 296, article 297 and article 506. These four chapters do not emphasize the prostitution but to the men who do the promistification and the parties that facilitate the prostitution or the providers of prostitution. Provisions for pimping/pimp/the service provider referred to in Article 296 of Jo. Article 506 criminal CODE.

In Article 296 of Criminal Code there are many similarities with the crime of decency in Article 295 of Criminal Code, which is that they both commit acts of causing and facilitating obscene to others with others. A striking difference can be seen below:

According to Article 295 of the Criminal Code paragraph (1), people who are made easy to commit obscene acts are certain qualified people, namely their children, adopted children, and others who are not yet mature. Meanwhile, according to Article 296 of the Criminal Code these elements are not needed.

The elements is used as a livelihood and habit according to Article 295 of the Criminal Code is in the form of criminal charge. Crimes can occur without having to fulfill the elements used as a livelihood or habit. On the contrary, according to Article 296 of the Criminal Code this is an essential element of crime, which means that crime is not possible without this element.

3 Soerjono Soekanto, Penelitian Hukum Normatif, Raja Grafindo Persada, 2004, p. 11
According to Article 295 of the Criminal Code, the object of the victim whose obscene acts is made easy must be a person who is not yet an adult.

On the contrary, according to Article 296 of the Criminal Code that requirement is not necessary meaning that it can be adult or not. In fact, many provide prostitution, rent houses or rooms for prostitution, provide prostitutes to be ordered by everyone (including intercourse). These so-called pimps who according to Article 296 of the Criminal Code can be convicted. There is Article 297 of the Criminal Code explaining that the sanction of imprisonment for a maximum of 6 (six) years is imposed on anyone who trade women or men who have not been mature.

The formulation of article 297 of the Criminal Code can be specified with the following elements:

a. His actions trade

b. The objects are girls and boys who are not yet mature.

The Article provides a description of criminal act by trafficking in persons (women and boys who are not yet mature), to get a sum of money or profits for the offender. Thus, the term trade is not the formulation of an act, but the name of the qualification of crime, the same as the persecution in Article 351 of the Criminal Code. The term trade itself already contains elements of the act of trafficking, which means that there is a transaction to surrender something (person) to another person by receiving certain compensation or payment which is generally in the form of a sum of money.

This crime objects that are trafficked are women and boys who are not yet mature, which are intended for the purposes of the sexual abuse, including the special meaning of making women prostitutes (for female objects). Even though this article does not contain such intentions, but seeing the background of the formation of this crime is intended to protect the legal interests of women and boys from acts that make a woman and a boy as satisfying sexual desires, the will of trafficking of women and children men will be used for such sexual satisfaction. Because if there is no such will, trafficking of women and boys is not included in Article 297, but can be included in Article 324 regarding the crime of carrying out the slave trade.⁴

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Article 297 provides a maximum criminal threat of 6 (six) years imprisonment for the perpetrators, but in his opinion does not fulfill the sense of justice if seen the loss suffered by the victim due to the perpetrators actions. The provisions do not clearly state the minimum threat of criminal. This is not comparable to what victims have experienced both physically the suffering they experienced, they dignity and dignity of victims who have been deprived. The elements in this Article indicate that an adult male is not protected if he is a victim of trafficking.

Then, Article 281 of the Criminal Code also regulates the crime of decency. Which in this article can be described as follows:

In paragraph (1) there is an element of “whosoever” which refers to all people, where the action carried out by the perpetrators contain “intentionally and openly” and have an element of “violating decency”.

In paragraph (2) also has similarities with paragraph (1) there is an element of whosoever, but there is a difference that lies in this verse that is the element of intentions carried out simultaneously in front of others who are there and is a matter that is contrary to his will and still has an element of violating decency.

The online prostitution is not only regulated in the criminal CODE above, but if the development of prostitution has been widespread, there have been various provisions of legislation governing the crime of online prostitution as well as supporting the criminal threat that has been regulated in the Penal CODE (the Criminal Code law). The provisions concerning prostitution online are governed into several statutory regulations including Law No. 11 of 2008 on electronic information and transactions, Law No. 21 of 2007 on the Eradication of trafficking in persons, and law number 44 year 2008 about pornography, as well as law number 23 year 2002 on child protection. The existence of each of these special legislation is also not able to answer the problem of the crime of prostitution online. The focus of the application of sanctions only to the media used not to the object of the act of prostitution conducted online. Therefore, it is necessary that law enforcement in accordance with the problems that occur in the formulation of the article in the CRIMINAL code is also associated with the provisions of the existing legislation. Some cases of online prostitution are happening in Indonesia with diverse motives and have had a fixed legal force.
One of them is verdict No. 267/Pid. B/2015/PN.Pgp that ensnared a woman who in this case encouraged the act of prostitution as pimps or called “Mami”. The online prostitution run is a salon-based prostitute where the woman initials A was made defendant according to a court ruling for having provided prostitution to the salon to benefit from the work. The law which is then used against the case is Law No. 11 of 2008 on information and electronic Transactions article 27 paragraph (1) of Jo. Article 45 paragraph (1).

The other case is also from Denpasar where the decision number is based. 642/Pid. B/2015/PN.Dps of sanctions are given to pimps who have marketed prostitution through online means, in which the defendant’s deed was initiated by creating an advertisement for the fine corner in one of the print media (newspaper). The defendant offered the following message with a phone number as well as a BBM PIN with contact name Miss Medhok KyuKyu. This BBM service is used to promote/approach it’s customers in order to take this prostitution service. The judge in this case dropped the prison sentence on the defendant for 5 (five) months with the alleged breach of Article 296 of the criminal CODE.

B. Barries to Online Prostitution Law Enforcement and Efforts to Eradicate Online Prostitution

These decisions suggest that with the new method of offering sex services in the business of prostitution, it has also changed the laws and regulations used. The problem arises from law enforcement practices that differ from one another. There are judges who then use the criminal CODE, but then there is also the use of other legislation in this case law No. 11 year 2008 about ITE. This is precisely the impression of the difference between prostitution and online prostitution. The difference is actually only on the media used, the rest of the activities of prostitution and online prostitution are still being implemented in the physical world. The precise root problem of prostitution cannot be solved until at any time.

The cases outlined above found some barriers in law enforcement efforts against online prostitution. Among them can be described as follows:

1. The existence of chapters 296 of Jo. 506 The criminal CODE precisely restricts the space of law enforcement in resolving the case of online prostitution, due to the
limited emphasis given to pimps/germo/touts/prostitution service providers. This provides a large space to elicit uncertainty in law enforcement efforts against online prostitution.

2. The word ‘online’ raises the understanding that is blurred by our law enforcement who then influence the use of legislation on the case of online prostitution.

3. From the other side, it can seem that the lack of legal awareness of society becomes one of the barriers in law enforcement online prostitution, which ultimately impact on community disobedience to applicable law. It is also a result of the lack of understanding and knowledge of the public about the crimes that occur in cyberspace.

4. There are limitations in infrastructure by law enforcement that in this case conducting the examination, investigation, and also investigation of the monitoring of the sites that allegedly are transactions from the presence of online prostitution crimes.

5. The case of online prostitution belongs to the new case in society, so there is not a lot of attention to the public and also the concerns of the community to help law enforcement in the effort to eradicate these criminals.

The effort then is to be done is to optimize law enforcement of criminal acts of prostitution online. The problem of online prostitution crimes requires standardization and harmonization in three areas namely legislation, criminal enforcement, and judicial review. Therefore, this issue does not merely look at the rules contained in the Criminal Code governing the crimes of immoral, or other legislation relating to online prostitution. There is a need for harmonization in law enforcement and its justice. By staying based on the understanding that online prostitution is growing, then online prostitution that occurs today is still the essence of prostitution as a criminal offence set forth in the criminal CODE.

In addition, the penal CODE provides criminal against prostitution by imposing a criminal to pimps, or people who become intermediaries of the act of prostitution and not to female sex workers or to users of sex services. What’s new in online prostitution is simply a model of sex service offering that uses the Internet network, with the aim to facilitate the prostitution business. In relation to the ruling on the case of prostitution
with the use of different laws, namely the criminal CODE and the LAW No. 11 year 2008 on information and electronic transactions, then the verdict is currently justified in Indonesia because the online activities of liaison and pimps have fulfilled the use of rules that have been determined by the ITE LAW in order to expand the market to attract the maximum profit, but its realization is still done in the physical world. It takes a broad partnership with the community it is a part to help law enforcement officials in dismantling the existence of accounts related to online prostitution. On the other hand, the availability of adequate facilities and infrastructures can accelerate law enforcement to resolve online prostitution cases.

IV. Conclusions

Law Number 1 year 1946 about the Code of Criminal Law Article 296 of Jo. Article 506 of the criminal CODE must be changed by looking at the development of prostitution crimes that have expanded in society. Although there are specifications in the charge of other legislation, but because the basis in the criminal CODE does not elaborate more in depth, there is a junction in law enforcement in the community.

Appropriate and fair enforcement of law should be a part of every person in the country with the certainty of legal content in a general regulation, so that it can reach a specific regulation, as well as be the basis in the allotment of sanctions to anyone who is involved in the crimes of prostitution online

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