



Regulation of The Imposition of Criminal Sanctions against The Criminal Acts of Prostitution in Indonesian Positive Law

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Published: 15/03/2022

How to cite (in APA style):

Sakti, I, B, G, G., Arjaya, I, M. (2022). Regulation of The Imposition of Criminal Sanctions against The Criminal Acts of Prostitution in Indonesian Positive Law. *Jurnal Hukum Prasada*, 9(1), 20-27. doi: <https://doi.org/10.22225/jhp.9.1.2022.20-27>

Abstract

Prostitution activities that occur in society are not only caused by pimps and sex peddlers, but are also closely related to users of prostitution services. The absence of regulations that can ensnare perpetrators of prostitution practices, especially users of prostitution services, shows the government's inconsistency in combating prostitution practices. There are two problems in this study, namely, first, how is the regulation of punishment for perpetrators of criminal acts of prostitution in Indonesian positive law and second, how is the imposition of criminal sanctions against perpetrators of criminal acts of prostitution, especially users of prostitution services through complaint offenses in the Criminal Code. This study uses normative research conducted through an assessment of the legislation and legal concepts. The approach in this study uses a legal concept approach, and a statutory approach. Based on various explanations of articles in Indonesian positive law, it is not at all clear and implicit that there are articles that regulate criminal sanctions against users of prostitution services. With the absence of legal norms related to criminal sanctions for users of prostitution services, other legal remedies can be taken to ensnare users of prostitution services through the application of a complaint offense with the alleged crime of adultery as regulated in Article 284 of the Criminal Code.

Keywords: criminal sanctions; prostitution; service users

INTRODUCTION

The State of Indonesia is a legal state, as mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This provision means that all aspects of life in society, the state and government must always be based on law (Azhary, 2004:68). In order to realize the concept of a rule of law, one of which is required legal instruments that are used to regulate balance and justice in all fields through the establishment of laws and regulations.

Society is a small group of people consisting of several humans, which or because of themselves are related to one another. From various different backgrounds that underlie a human being, of course, they form different societies, both from background, family, ethnicity, religion and personality of each person. Likewise, efforts to meet the needs of each community are also different. Starting from being an employee, Civil Servant, to entrepreneur are some examples of work done to fulfill the family's economy. It's just that efforts to fulfill the community's economy are hampered by the lack of employment opportunities and insufficient business capital, so that some people take "bad" jobs. One of the phenomena caused by these economic problems is the emergence of the practice of

prostitution.

Prostitution raises pros and cons in society. According to the people who are against it, prostitution is a disease of society that is contrary to the spirit of the nation and also challenges human dignity which has been explicitly stated in Law no. 39 of 1999 concerning Human Rights. In article 20 paragraph (2) of Law no. 39 of 1999 concerning Human Rights states that "slavery or servitude, slave trade, trafficking in women, and all acts of any kind with a similar purpose are prohibited". The existence of prostitution is often opposed by the community, especially those who are against it. For people who are pro, prostitution presents a tremendous economic impact. For example, the existence of localization for sex peddlers, this has an economic impact on local residents, namely people who carry out businesses such as opening shops, street vendors, or sex brokers (Bachtiar & Purnomo, 2007:30). The existence of these pros and cons illustrates the two opposite sides related to the existence of prostitution.

The occurrence of the practice of prostitution is not only determined by the presence of sex peddlers, but is also influenced by the demand from sex users or users of prostitution services and the participation of brokers or pimps. So prostitution here is not merely a symptom of moral violation but has become a trading activity. The phenomenon of prostitution is still a homework for the government that has not been resolved, although many efforts have been made by the government, both preventive and repressive. This is inseparable from the "demand" for the services of sex workers which is still high. Besides that, the practice of prostitution is an alternative for some people in an effort to meet economic needs.

Profession as a sex peddler, is a phenomenon in society that is not foreign anymore. This woman's identical profession is mostly caused by economic factors. The choice of easy work with lucrative rewards is the biggest reason why some women fall into this profession. Likewise, the lack of intellectual abilities that affect the mindset so that they take shortcuts to earn income. Being a sex worker is considered a promising profession because by being a female sex worker, money can be easily earned. Another point of view of being a sex peddler is of course the negative stigma from the community. In addition, the threat of disease also overshadows the sex peddlers.

In contrast to sex peddlers, sex users or users of prostitution services as one of the parties in the practice of prostitution, are actually separated from the negative stigma. In fact, it is the users of prostitution services that determine the increasing number of prostitution practices that occur. The principle of economics is that when there is demand, there is also supply. As long as there is demand from users of prostitution services, the practice of prostitution will never run out. This is exacerbated by the absence of positive Indonesian legal provisions that regulate perpetrators of criminal acts of prostitution, especially sex peddlers and users of prostitution services, and only regulates brothel owners and pimps/pimps/providers of prostitution services only.

Based on the Criminal Code, related to prostitution is regulated in Article 296 of the Criminal Code and Article 506 of the Criminal Code. Article 296 of the Criminal Code states that anyone whose livelihood or habit is to intentionally commit or facilitate obscene acts with other people is threatened with a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiahs. Meanwhile, Article 506 of the Criminal Code states that anyone who takes advantage of the obscene act of a woman and makes it a search, is threatened with a maximum imprisonment of one year. In this article, there are no elements that regulate criminal sanctions against sex peddlers or users of prostitution services, which is emphasized in the article only the punishment of brothel owners and pimps/pimps or prostitution service providers only.

Likewise, when an assessment is carried out on users of prostitution services through the interpretation of other positive Indonesian laws, starting from the Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography, Law of the Republic of Indonesia Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, until the Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, that there is not a

single article that regulates criminal sanctions against users of prostitution services.

It appears that only pimps/pimps or service providers can be charged with criminal charges, while sex peddlers and users of prostitution services are not regulated in it. Even though both pimps, sex peddlers and users of prostitution services are actors who both have an important role in the crime of prostitution. In essence, the practice of prostitution can occur not only because of the existence of service providers and women who work as sex peddlers, but also because of the users of prostitution services themselves.

A previous related study conducted by [Chumairo et al. \(2021\)](#) that examined criminal policy for client of prostitutes in positive laws in Indonesia and criminal policy for client of prostitutes to realize substantial justice. The result found that criminal policy for client of prostitutes in positive laws is not optimal. The arrangement of prostitution in particular article 296 jo. 506 KUHP only discuss about criminal responsibility for a pimp, so there is a legal vacuum in Indonesia's penal formulation policy that regulates prostitution. The government's policy to close brothels in Indonesia still raises problems as it is not followed by reformulation of criminal laws that regulate prostitution crimes. Thus, it has been necessary for criminal policy either by penal or non-penal efforts to realize the laws expected by society and to attain substantial justice (the perfect justice). Another similar study also conducted by [Alanda et al. \(2019\)](#) that analyze what are the criminal responsibilities towards the prostitution perpetrators and also to find out the criteria of pimp in prostitution. The results of this study showed that Arrangements on prostitution become urgent and it is very important to immediately make a special law on prostitution (lex specialist) in the hope that the mushrooming practice of prostitution can gradually diminish. Considering the negative impact caused by the practice of prostitution so there is no reason for the legislature to prioritize prostitution cases. into the national legislation program (Prolegnas) in the future.

Based on the background and the previous studies above, this study aims to examine the regulation of punishment for perpetrators of criminal acts of prostitution in Indonesian positive law and the imposition of criminal sanctions against perpetrators of criminal acts of prostitution, especially users of prostitution services through complaint offenses in the Criminal Code

METHOD

The research used in this paper is a type of normative legal research, normative legal research is legal research that puts the law as a foundation of systems and rules. The system in question is about reviewing theories, concepts, legal principles and laws and regulations and then using purposive sampling. The legal approach used in this paper is the Legislative approach which is carried out by examining all laws and regulations related to the legal issues being handled. The conceptual approach departs from the views and doctrines that develop in the science of law. The legal materials used are primary legal materials obtained from literature or legislation, secondary legal materials in the form of legal journal books, official documents, research in the form of reports. The technique of collecting legal materials is using a literature study technique that is to describe, analyze and make conclusions from the literature, Documentation techniques are data collection that is used to inventory notes, book transcripts or others.

DISCUSSION

Criminal Arrangements Against Actors of the Crime of Prostitution in Indonesian Positive Law

Juridical Review of Actors of the Crime of Prostitution in The Law of The Republic of Indonesia Number 44 of 2008 Concerning Pornography

The crime of pornography is an act in all its forms and methods regarding and relating to pictures, sketches, illustrations, photos, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media. or public performances that contain obscenity or sexual exploitation that violates the norms of decency in society as formulated in the Law of the

Republic of Indonesia Number 44 of 2008 concerning Pornography and is subject to criminal sanctions for those who commit such acts.

The provisions that can be studied as a threat of punishment for perpetrators of criminal acts of prostitution both online and offline in the Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography, are in Article 4 paragraph (2) letter c, namely "everyone is prohibited from providing pornographic services that are exploit or exhibit sexual activity". Based on the grammatical interpretation, the word exploitation of sexual activity can only ensnare pimps or prostitution service providers into a criminal act. The prostitution service provider or pimp is declared to have exploited sexual activity, with the object being a female sex worker, because there is a reward for the sex peddler in question.

Article 8 of Law Number 44 of 2008 concerning Pornography states that "everyone is prohibited from intentionally or with his consent from becoming an object or model containing pornographic content". If examined on the basis of the sentence "intentionally or with his consent", this article is often used to ensnare people who are objects of the pornographic content, such as photo models and sex peddlers.

Looking at all the articles in Law Number 44 of 2008 concerning Pornography relating to perpetrators of criminal acts of prostitution, there is absolutely not a single article that explains criminal sanctions against perpetrators of criminal acts of prostitution, especially users of prostitution services in the practice of prostitution both online as well as offline. In this law, it can only ensnare perpetrators of criminal acts of prostitution such as pornography service providers, pimps/pimps, people who finance and models or sex peddlers.

Juridical Review of Actors of The Crime of Prostitution in The Law of The Republic of Indonesia Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions

Actually there are several parties who are the subject of online prostitution crimes, namely: (Pisani, 2008:65)

Service users, namely people who open, download, access, or various other activities that smell pornographic carried out using website media from the internet;

Service providers, namely internet cafe owners or individuals who provide a place to access pornographic websites;

The owner of an online prostitution website, namely a person who provides online prostitution services via their website to users of online prostitution services;

Server owner, namely the person who provides a place for prostitution website owners to store their data so that it can be accessed by everyone.

The provisions of Article 27 paragraph (1) of the Law of the Republic of Indonesia Number 19 of 2016 concerning Electronic Information and Transactions, based on a grammatical interpretation that in the provisions "everyone intentionally and without rights distributes and or transmits and or makes accessible electronic information and or documents electronic content that has content that violates decency", does not explicitly regulate criminal sanctions for perpetrators of criminal acts of prostitution, especially users of prostitution services in online prostitution practices. The word "distributing" in a criminal act of prostitution, especially those carried out online, can only ensnare perpetrators of criminal acts of prostitution such as pimps or service providers, for example by offering the services of female sex workers through social networks, or uploading and disseminating content that contains pornographic elements. In addition, if female sex workers who spread or distribute their own sensual images online to attract prostitutes, they can also be charged with criminal sanctions in this article.

Juridical Review of The Criminal Act of Prostitution in The Law of the Republic of Indonesia Number 21 of 2007 Concerning Eradication Criminal Act of Human Trafficking

Currently, the crime of trafficking in persons is a crime with a very complex form and modus operandi because it is related to new forms of crime such as white color crime,

organized crime and transnational crime (Ali & Pramono, 2011:7). Trafficking according to the Indonesian Women's Coalition is any act of directing or inviting, transporting, moving from one place to another, handing over women to another person or group of people or sponsoring agents to do jobs that violate human rights and humanity, exploitation so as to provide benefits. to that person or group (Sedyaningsih, 2010:76).

The crime of trafficking in persons, especially sexual exploitation, cannot be separated from the existence of perpetrators and victims. The perpetrator here is based on Article 12 of the Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons stating that any person who uses or exploits victims of trafficking in persons by means of sexual intercourse or other obscene acts with victims of the crime of trafficking in persons, employs victims of criminal acts. trafficking in persons to continue the practice of exploitation or take advantage of the proceeds of the criminal act of trafficking in persons shall be punished with the same punishment as referred to in Article 2, Article 3, Article, 4, Article 5, and Article 6, namely imprisonment for a minimum of 3 years and a maximum of 15 years and a minimum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

The pimp in the article above will fulfill the element as a perpetrator of the criminal act of trafficking in persons if in using or exploiting the victim to work as a commercial sex worker and taking advantage of the exploitation of the victim using threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of violence or position of vulnerability, debt bondage or the giving of payments or benefits. In this case, sexual exploitation is all forms of using sexual organs or other organs of the victim for profit, but is not limited to all activities of prostitution and obscenity.

In relation to perpetrators of criminal acts of prostitution, especially users of prostitution services, the provisions of Article 12 of the Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons cannot be used to ensnare users of these prostitution services. The existence of the element "people who use or exploit victims of trafficking in persons by means of sexual intercourse or other obscene acts" in the article, if it is associated with perpetrators of abuse of prostitution services, is more relevant to be imposed on service providers or pimps.

Juridical Review of The Criminal Act of Prostitution in The Law of The Republic of Indonesia Number 1 of 1946 Concerning the Criminal Code

Prostitution is a form of crime that is very difficult to handle and this type of crime is mostly caused by economic factors in people's lives, where society itself gets the fulfillment of human needs (Purnomo, 2010:68). Article 296 of the Criminal Code states that whoever intentionally causes or facilitates obscene acts by others and makes it a livelihood or habit, is threatened with a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiahs. Furthermore, Article 506 of the Criminal Code states that anyone who takes advantage of the obscene acts of a woman and makes her a prostitute, is threatened with a maximum imprisonment of one year.

Article 296 and Article 506 of the Criminal Code clearly stipulate the owners of brothels and pimps or people who contribute or intermediary in the practice of prostitution, because there is an element of profit taking, making women prostitutes and facilitating the practice of prostitution. In addition to pimps, the owner of a place that facilitates the practice of prostitution or termed a brothel, can also be charged with this article. Meanwhile, other perpetrators of criminal acts of prostitution such as sex peddlers and users of prostitution services cannot be charged with the provisions of Article 296 and Article 506 of the Criminal Code, because it clearly only regulates owners of embroidery houses, pimps and brokers or brokers from the practice of prostitution.

After being studied in depth and looking at the various explanations of the articles in the Indonesian positive law law, it is not at all clear and implicit that there is an article that regulates the punishment of perpetrators of criminal acts of prostitution, especially users of prostitution services. This shows that the user of prostitution services in a prostitution

practice is not an offense or an act that is against the law. So that the users of prostitution services themselves cannot be charged under the positive law that applies in Indonesia.

Imposition of Criminal Sanctions Against Perpetrators of Criminal Acts of Prostitution, Especially Users of Prostitution Services through Complaints in The Criminal Code

An offense is an act that violates the law that has been committed intentionally or unintentionally by a person whose action can be accounted for and by law has been declared an act that can be punished. In criminal law, it is known as formal offense and material offense. What is meant by formal offenses are offenses whose formulation focuses on actions that are prohibited and threatened with criminality by law. Meanwhile, material offenses are offenses whose formulation focuses on the consequences that are prohibited and are punishable by law (Poernomo, 2010:45).

According to Memories of van Teolichting, a complaint is required for certain offenses based on the consideration that the interference of the authorities in a particular case may result in greater harm to certain interests of the people who have been harmed than if the authorities did not intervene in certain cases. So that the decision whether someone who has harmed needs to be prosecuted or not by the authorities, it is left to the consideration of the person who has felt aggrieved (Prasetyo, 2014:15-17).

In relation to criminal acts that are included in the complaint offense, the complaint offense can be divided into two types, namely: (Prasetyo, 2014:27)

Absolute complaint offense (absolute klacht delict)

An absolute complaint offense is every crime committed, which can only be prosecuted by the public prosecutor if a complaint has been received from the person entitled to complain. As stated by Pompe that an absolute complaint offense is an offense in which in essence, the existence of a complaint is a *voorwaarde van vervolgbaarheid* or a condition so that the perpetrator can be prosecuted. The crimes included in the type of absolute complaint offense are crimes of humiliation, crimes of immorality, and crimes of revealing secrets.

Relative complaint offense (relatieve klacht delict)

Relative complaint offenses are crimes committed, which are not actually a complaint crime, but specifically for certain matters, which are actually needed as complaint offenses. As stated again by Pompe, that a relative complaint offense is an offense where the existence of a complaint is only a *voorwaarde van vervolgbaarheid* or a condition to be able to sue the perpetrator, namely when between the guilty person and the injured person there is a special relationship. Generally, this relative complaint offense can only occur in crimes such as:

Theft in the family, and crimes against other similar assets

Blackmail and threats

Embezzlement

Fraud

Users of prostitution services are one of the main subjects in the practice of prostitution, but the punishment only applies to pimps or service providers as well as owners of brothels in accordance with the provisions of Articles 296 and 506 of the Criminal Code. This does not at all reflect a sense of justice, because in the practice of prostitution there are interrelated subjects, namely pimps, prostitution service users and sex peddlers themselves.

The practice of prostitution is part of the act of adultery which is categorized as a crime without a victim, that in the Criminal Code, sex peddlers and users of prostitution services are classified as witness victims and not as perpetrators in their actions so that the positive Indonesian criminal law currently does not provide legal certainty against it. A sex peddler who prostitutes himself with or without a pimp is not a crime because it is not prohibited in Indonesian criminal law even though it violates from the point of view of

religion, customs, and morality in society, as well as users of prostitution services cannot be punished.

The act of adultery as contained in Article 284 paragraph (1) of the Criminal Code which stipulates that "threatened with a maximum imprisonment of nine months":

- a. A married man who performs *mujah* (overspel),
even though it is known that Article 27 BW applies to him,
- b. A married woman who performs *mukah*;
a. A man who participated in doing the deed, even though
knowing that the guilty party is married,
b. An unmarried woman who participated in the act
even though he knew that the guilty party had married and
Article 27 BW applies to him.

Article 284 of the Criminal Code which regulates adultery, must meet the following elements:

Damaging decency or decency (intercourse)

One/both of them are married/husband

One of them applies Article 27 of the Civil Code

The more complete explanation of adultery according to Article 284 of the Criminal Code is as follows:

Adultery according to Article 284 of the Criminal Code is sexual intercourse carried out by a man or woman who is married to a woman or a man who is not his wife or husband. In order to be included in this article, this intercourse must be done voluntarily, without any coercion from either party. What is meant by sexual intercourse is a competition between male and female genitalia which is usually carried out to get children, so the male genitalia must enter the female vagina, so that semen is released.

This article is an absolute complaint offense, which means that it cannot be prosecuted if there is no complaint from the husband or wife who has been harmed. This complaint must not be divided, meaning that the complaint of the aggrieved party applies to both parties who harm him, including his adulterous partner as well.

This article is an absolute complaint offense which means that it cannot be prosecuted if there is no complaint from the husband or wife as one of the injured parties. This article can also only apply to one of the prostitution service users or sex peddlers who already has an official partner or is bound by marriage and then the partner complains about the actions of his partner who engages in prostitution, therefore if the prostitution service user and sex peddler are not yet bound by marriage, then it cannot be punished under this article.

CONCLUSION

Indonesia's positive law only regulates the punishment of service providers, both brothel providers and pimps/pimps. And not at all expressly and implicitly there is an article that regulates criminal sanctions against users of prostitution services and sex peddlers. This shows that Indonesian positive law views that prostitution service users in a prostitution activity are not an offense or an act that is against the law. So that users of prostitution services and sex peddlers cannot be criminally charged under positive law in force in Indonesia.

Users of prostitution services can also be charged with adultery, as regulated in Article 284 of the Criminal Code with a maximum penalty of 9 months imprisonment. However, the implication of this adultery offense is that it is an absolute complaint offense, so there must be a complaint from a legitimate partner, namely the husband or wife of the adulteress. If there is no complaint, then the prostitution service user cannot be said to have committed a criminal act as regulated in Article 284 of the Criminal Code.

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