

**Original Article****CRIMINAL REGULATORY REFORM TO ERADICATE PROSTITUTION PRACTICES**

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ABSTRACT

Background. The rapid technological advancement accelerates the spread of various forms of information, including information regarding prostitution practices. Meanwhile, from a legal perspective, a complete regulation of prostitution practices is at its minimum. The impacts of prostitution practices affect health aspects and drive social turmoil in the community. This research aims to review regulations related to prostitution practices, especially in the applicable criminal law in Indonesia, and propose factors that emphasize a law reform, so that in the future, prostitution practices may be handled more thoroughly.

Research Method. This research uses a normative method, with secondary data that includes literary research, reviews on laws and regulations, and an analysis method that uses a prescriptive technique.

Findings. In reality, several regional regulations have regulated prostitution practices, but nationally, there has not been any regulation that strictly regulates prostitution practices.

Conclusion. In a preventive and repressive form, which are clear limitations of prostitution practices, criminal act reform for pimps, criminalization for commercial sex workers, the use of the double-track system in imposing sanctions, criminal act formulation, and criminal aggravation.

Keywords: Criminalization, Criminal Law, Prostitution Practices, Regulatory Reform.

BACKGROUND

Information technology that never stops developing has brought substantial changes to all aspects of human life, so significant that the industrialization era dominated by machines and digital technology in Industry 2.0 and 3.0 is gradually moving into an industry driven by intelligence and automation technology with large information absorption. With a culture that is full of information flow, the society that exists today is an information society that lives in the information age [1]. Behind the sophistication of today's technology, the first thing that drives all these major changes is a technology that in its time was a new thing, namely the internet. The Internet has created and encouraged new patterns that did not exist in previous technologies, ranging from computerization, communication, work, industry,

and lifestyle in society. The internet has a huge role to play in overcoming the barriers associated with distance and time that have existed with connections in cyberspace [2].

However, the other side of information technology that advances human civilization is the increasingly sophisticated technology to commit unlawful acts (Explanation of Law No. 11 of 2008 concerning Electronic Information and Transactions). In the use of technology, of course, there are still parties who have the intention of obtaining profits through the use of irresponsible technology leading to cybercrime that occurs throughout the world. One form of cybercrime or cybercrime is prostitution carried out online, in short, online prostitution, using technological devices and the internet.

The practice of prostitution has long existed in Indonesia and is not new. Even before Indonesia declared its independence, during the colonization by Japan and the Netherlands, the practice of prostitution already existed in Indonesia [3]. Practice of prostitution itself in its implementation is divided into organized practices, namely localization such as brothels, clubs, and massage parlors, and unorganized ones such as prostitutes who peddle their services on the street both individually and in groups [4].

With the shift in people's lifestyles that make it an information society as described above, the practice of prostitution eventually participates in using online-based technology media so that online prostitution practices occur. This adds technological aspects to the list of aspects affected by the practice of prostitution, such as health, gender, psychological, legal, religious and moral, social, even economic, industrial, and political aspects [5]. The real problem can be seen in the health aspect, where data from the National Narcotics Agency (BNN) shows that in Indonesia there have been 62,856 cases of HIV / AIDS, consisting of 9,901 cases of AIDS cases and 53,955 cases of HIV, with a male demographic of 31,218 cases or 58.95% of the total cases [6].

This problem in the health aspect is just one example of the aspect affected by the practice of prostitution. In reality, the practice of prostitution also has a profound impact on other aspects. For example, in the gender aspect, the practice of prostitution significantly increases the potential for sexual harassment due to the objectification of women. In the social aspect, the practice of prostitution can damage relationships within the family as the first social group in the stages of social life, as well as other social relationships. In religious and moral aspects, prostitution in localized places can normalize crimes of decency for children living around the area. In the legal aspect, the practice of prostitution can be related to human trafficking networks, and so on. The many aspects affected make handling the problem of prostitution quite complicated so if not regulated hard and thoroughly, the impact that occurs in the community can be widespread and cause many victims. This is what is referred to as the subsocial element (subsocialiteit) in the context of criminal law, namely the danger that can arise to society as a result of an action, even though the danger that arises is relatively small [7].

At present, regulations related to the practice of prostitution mostly focus on the entanglement of pimps, not on service users or prostitutes, so it can be said that the existing regulations are still quite limited. Although in positive law in Indonesia the practice of prostitution contains several criminal elements, the fulfillment of these criminal elements is

still not enough; according to a Vos quote by Eddy O.S. Hiarej [8], A review of the core objectives or cores intended by the framers of the law, also called Wesenschau, must be considered. Coupled with the subsocial element that occurs, this further emphasizes that there is a need for a complete change in the criminal law so that the criminalization of prostitution can be carried out more firmly and comprehensively.

Furthermore, this strict and comprehensive criminalization of prostitution has not only punitive but also preventive and repressive objectives, namely preventing and suppressing prostitution practices in any form in the future. In addition to mentioning the problems that can arise in health, gender, and social aspects as described above, Brents and Hausbeck also expresses a fundamental reason for the importance of criminalizing the practice of prostitution [9]. By the logic of thinking in the buying and selling process in general, if buyers decrease, buying and selling practices will also decrease, so that the size of the existing market can be limited. The same is true of prostitution; When service users are threatened with criminal penalties due to the criminalization of prostitution, the practice of prostitution will also decrease, coupled with criminal threats for prostitutes so that there is a reluctance to engage in the practice of prostitution so that the scope of localization and even the practice of unsystematic individual prostitution can be reduced.

With this background, this study aims to examine the criminal law in Indonesia that regulates the practice of prostitution based on the following problem formulation: 1) What are the current criminal law arrangements in Indonesia related to the practice of prostitution?; 2) How the criminalization and regulation of the practice of prostitution should be carried out so that it can be the basis for effective law enforcement to deal with the practice of prostitution?

RESEARCH METHOD

This research uses normative legal research by conducting a study of applicable legislation and applying it to existing legal problems confronting the positive laws applicable in Indonesia with facts that occur in the legal context [10]. The approach applied in this study is a legal approach and a conceptual approach to identify, observe, analyze, and obtain legal perspectives and principles that can explain the concept of criminalization for the practice of prostitution in the future. The data in this study consists of primary legal materials, namely related laws and regulations to be analyzed, secondary legal materials from journals, papers, or books relevant to the issues under discussion, as well as other relevant tertiary legal materials. Furthermore, in the analysis, this study uses prescriptive analysis to provide arguments (true/false) and, from a legal perspective related to legal events that occur, provide views related to what should be done in the context and scope of the law.

FINDINGS

Criminal Law Regulation against the Practice of Prostitution

The word prostitution, commonly known as prostitution, is etymologically derived from the Latin word pro meaning "to offer, to put forward", and the word situate meaning "for sale",

and thus the word prostitute itself means to offer for sale [11]. Time, this word was widely used in the context of prostitution, as it is now commonly known, so that in a broader definition, prostitution is defined as the act of offering oneself for sale, specifically to provide services to fulfill or satisfy sexual desires from buyers or service users.

When viewed from the perspective of sociology, in the social order, the practice of prostitution is seen as a negative fact, where the perpetrators are seen as immoral people who cause unrest in society, degrade the dignity of women, and even able to defame those related to the practice [12]. In the social reality that occurs, the practice of prostitution does not only have an impact because of the practice of prostitution itself, but also because there are various other phenomena that have the potential to be related to it, such as prostitution of minors, trafficking in women, fights due to the influence of alcohol, and the circulation of illegal drugs [13].

Meanwhile, in terms of the law itself, in Indonesia, there have been a number of regulations that regulate offenses related to the practice of prostitution. From the regulations that will be explained further below, it can be seen that currently the law in Indonesia still regulates the practice of prostitution from different sides or dimensions separately and not plenary or comprehensive. Regulations in Indonesia governing the practice of prostitution include:

1. Criminal Code (KUHP)

In the Criminal Code, there are several articles that according to some legal opinions can be used to crack down on the criminal practice of prostitution, but if reviewed again, these articles cannot be used to address and overcome the practice of prostitution as a whole because the definition or description given is more directed towards the entanglement of pimps or people who systematically manage prostitution services or businesses only [14].

The pimp itself, as Soesilo describes [15], be considered or referred to by the term "obscene broker". Pimps help, attract and seek prostitution customers, earn a living from the sexual activities of prostitutes who live with them or live separately but keep in touch with them the interests of the commercial sex services they provide.

It can be observed in the Criminal Code that Article 296 and Article 506 specifically regulate acts that in reality occur in the practice of prostitution. Article 296 indicates that those who can be charged by the criminal code under the Penal Code are persons who "cause or facilitate obscene acts", and "make them work or habit", and in Article 506 persons who "profit from obscene acts". It can be seen that the acts described in the statements of Articles 296 and 506 are closer to the work of a pimp, that is, a person who earns income or profits from fornicating activities, generally by young women called prostitutes or prostitutes, with men who are not the husbands of these women and become customers of the pimp.

As a side note, under the definitions of Article 296 and Article 506 of the Penal Code, a husband who offers his own wife for prostitution and earns income from such activities can also be punished. The Criminal Code itself also regulates the crime of adultery in Article 284, and in this context, married users of prostitution services who are bound by conjugal relationships can be charged with this article, although in the end, the offense contained in the act is a complaint offense that must be reported by the legal spouse of the perpetrator or user of prostitution services.

Thus, Article 296, Article 506, and Article 284 of the Criminal Code cannot be the basis for comprehensive criminal law enforcement that reviews all legal subjects in prostitution cases, namely pimps, service users, and prostitutes themselves. This is because based on Article 296 and Article 506 of the Criminal Code, in the matter of prostitution, those who can be punished are people who benefit from fornicating activities between prostitutes and service customers, namely pimps/intermediaries/brothel managers who knowingly manage commercial sex businesses. In fact, there are still other parties involved in the practice of prostitution, namely users of prostitution services, and there is no article in the criminal regulation that threatens consumers of these services.

2. Law No. 12 of 2022 concerning Sexual Violence

Article 12 of Law No. 12 of 2022 stipulates that acts of sexual exploitation by using threats, abusing power or trust, utilizing helplessness or vulnerability, entangling with debt, or providing benefits or payments can ensnare people who do so with criminal penalties. It can be seen that the acts described in Article 12 of Law No. 12 of 2022 may occur in the practice of prostitution, but as in the case of Article 296 and Article 506 of the Criminal Code, this legislation focuses on the entanglement of pimps who are more prone to exploiting prostitutes than the prostitutes themselves or their service consumers. Given that Law No. 12 of 2022 specifically regulates the Criminal Act of Sexual Violence, this law regulates more forms of sexual violence and exploitation in general and not the practice of prostitution specifically.

On the other hand, there have been regions in Indonesia that have specific concerns about various forms of prostitution, resulting in specific local regulations (hereinafter referred to as Perda) regulating the practice of prostitution. This regulation also clearly targets not only pimps but also prostitutes and even consumers of prostitution services, so that they can be ensnared by law and sanctioned in accordance with applicable regulations. These local regulations include:

- 1) DKI Jakarta Provincial Regional Regulation No. 8 of 2007 concerning Public Order, stated in Article 42 paragraph (2);
- 2) Tangerang City Regional Regulation No. 8 of 2005 concerning the Prohibition of Prostitution, stated in Article 2 paragraph (2);
- 3) Denpasar City Bylaw No. 1 of 2015 concerning Public Order, stated in Article 39;
- 4) Regional Regulation of Badung Regency of Bali Province No. 7 of 2016 concerning Public Order and Public Peace, stated in article 26 paragraph (2);
- 5) Bandung Regency Regional Regulation No. 5 of 2015 concerning the Implementation of Peace, Public Peace, and Community Protection, stated in Article 24 letter c; and
- 6) Batam City Regional Regulation No. 6 of 2002 concerning Social Order, stated in Article 5.

Although the above local regulations have more clearly regulated the practice of prostitution, the fact that these regulations are not national laws shows that efforts to eradicate prostitution activities are still not comprehensive and equitable.

3. Law No. 21/2007 on the Eradication of Trafficking in Persons

Chapter I, Article 1 of the General Provisions of Law No. 21 of 2007 on the Eradication of Trafficking in Persons, defines Victimhood, Sexual Exploitation, and Exploitation in trafficking offenses, and the definition defines sexual violence as one of the categories of violence that victims can experience in acts of sexual exploitation and exploitation in trafficking cases. Moreover, the explanation in section I of the anti-trafficking law states that prostitution or sexual exploitation is one of the purposes of trafficking, in which vulnerable women and children are victims.

Just like points A and point b related to the Criminal Code and Sexual Violence Crime discussed above because the context of criminal acts in this case tends to focus on exploitation and not prostitution. Thus, this positive law can only ensnare owners or managers of brothels in trafficking networks and does not ensnare service users. However, the thing to note here is that Article 1 Number 4 states that "everyone is an individual or corporation" so the perpetrators in this case not only concern humans but also corporations as legal entities.

4. Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2022 concerning Child Protection (PA Law)

Article 76 I of the PA Law prohibits sexual exploitation of children, a phenomenon that often occurs in the case of children who become prostituted women (hereinafter referred to as Pedila) in the act of Commercial Sexual Exploitation of Children (CSEC). If a child becomes a pedophile in the practice of prostitution, users of prostitution services can be charged with criminal law and sanctioned. Of course, as in the case of sexual violence and trafficking in persons, this article applies specifically, so that crimes can only be processed when Pedila falls into the age category of children [16].

5. Law No. 44 of 2008 concerning Pornography (UUP)

Any acts related to pornography that are subject to criminal sanctions in Law No. 44 of 2008 are regulated in Articles 29 to 38. In line with the previous three points, there are limitations that mean the UUP does not directly regulate the criminal law for the practice of prostitution, of course, because the UUP is not intended to regulate the practice of prostitution but pornography. However, when there is an element of pornography or the taking and/or dissemination of media related to fornication or sexual exploitation in the practice of prostitution, the UUP can entangle the act as a criminal offense of pornography.

The first limitation is the understanding of pornography itself as stated in Article 4 paragraph (1) which defines pornography as "images, sketches, illustrations, photographs, writing, sounds, sounds, moving images, animations, cartoons, conversations, gestures or other forms of messages" containing obscenity or sexual exploitation content so that if the practice of prostitution is carried out outside the media mentioned, Perpetrators of criminal acts cannot be entangled. Second, the UUP emphasizes criminal penalties on pimps and Pedila as parties who create, facilitate, and make themselves objects of pornography when they occur within the scope of prostitution.

6. Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law)

Article 27 Paragraph (1) of the ITE Law ensures perpetrators who distribute and provide access to documents containing immoral content, and the practice of prostitution are included in acts that violate decency. Thus, prostitution service users who document and/or distribute electronic documents or information containing fornication content, as in the pornography act above, can be charged with Article 27 of the ITE Law. However, this article is not directly related to the practice of prostitution and can ensnare anyone who distributes or gives access to documents containing immoral content, even if they are outside the network or scope of prostitution practice, so the context of using articles in the ITE Law to ensnare perpetrators or actors in the practice of prostitution can only occur in more specific cases.

DISCUSSION

Criminalization and Proposed Regulation of Prostitution in the Future

1. Criminalization of Prostitution

Prostitution is a phenomenon that has a broad impact on health, psychology, gender, social, religious, and moral aspects, as well as the economy. In fact, with the rapid advancement of technology today, the impact of the practice of prostitution that damages individuals and society has penetrated into the world of information technology, resulting in a transition from the practice of prostitution which was originally a conventional crime to a form of cybercrime. The impact of the widespread and multidimensional practice of prostitution needs to be addressed with efforts to overcome crime, which can basically be done through penal, namely the application of criminal law to the phenomena that occur, or non-penal. The author focuses the analysis of this research on the discussion of crime reduction through penal/criminal policy in legal science [17].

Summarizing the nature of regulations on the practice of prostitution that have been accommodated through the Criminal Code, legislation, and regulations discussed earlier, these regulations can be said to be inadequate for two reasons. First, the Criminal Code and laws outside the Criminal Code only ensnare one or a few subjects, especially in this case pimps or service managers, and not as a whole. Second, regulations that ensnare all subjects, both pimps, prostitutes, and service users are regional regulations that only apply in certain areas that issue them. These two reasons show the absence of equal treatment before the law and also fair legal certainty regarding the practice of prostitution from a legal perspective in Indonesia, its multidimensional and pervasive impact [18].

It should always be remembered in reviewing the absence of a plenary policy against the practice of prostitution, that the policies that existed in the last decade have an impact on the occurrence of new phenomena in society about crime and insecurity [19]; clearly, along with the emergence and existence of laws at this time, new notions of crime also emerged, resulting in new modes of crime arising as a result of the emergence of these laws and policies. Moreover, with the advancement of technology and the development of the times

at this time, the nature, methods, and forms of crime have become more and more advanced as well. This is what J.E. Sahetapy said in Sevrina's quote that is, a crime reflects the cultural results of that nation so that in the culture of an advanced nation, there are forms of evil that are also advanced [20].

Therefore, reform in criminal law (penal reform) is needed to overcome social problems, protect the community, and become an effective means of law enforcement, so as to realize a nation and state that gets benefits and fair legal certainty. Criminal law reform reviews the sociopolitical, socio-philosophical, and sociocultural values that form the basis for action so that there is a new orientation in criminal law designed to effectively also tackle crimes that develop over time [21]. Form of criminal law reform that can be carried out in the practice of prostitution is criminalization.

Criminalization, as an object of material criminal law, stipulates that acts that were not previously considered criminal offenses become criminal offenses that can be charged by criminal law and sentenced to certain criminal penalties. In this case, there is a shift in value that initially viewed, from the eyes of the law, an act as an act that is beyond reproach to be reprehensible and needs to be acted upon in accordance with criminal law [22] In the book Democratization, Human Rights, and Law Reform by Muladi [23], the conditions of criminalization are as follows:

1) Does not lead to overcriminalization

In the legal reform carried out, criminalization must not lead to overcriminalization, where there is more than one criminal law that overlaps in acting on one criminal act so that there is no balanced proportion between criminal acts and sanctions [24]. By Considering regulations that have not been holistic in the previous discussion, criminalization as a form of legal reform that will not only regulate pimps but also prostitutes and users of prostitution services should not cause overcriminalization. Therefore, the aforementioned pimping arrangements that were previously separate are no longer valid, and the arrangements become a single entity in the form of laws so that one regulation does not overlap with other regulations.

2) Not Ad Hoc

The literal ad hoc definition of Latin is "for this", and in law, it is often used in the context of "for this purpose"[25]. Practice, something that is ad hoc means only for certain interests and is temporary until the goal is achieved. In the context of criminalizing the practice of prostitution, a law must not be temporary and must be applied permanently. That way, there is legal certainty that protects the community from the impacts that can occur due to the practice of prostitution, such as the spread of HIV/ AIDS, damage to social relations, vulnerability to sexual harassment, and others.

3) Contains Elements of Actual and Potential Victims

Based on data and cases that occur daily, the practice of prostitution has in fact caused many actual victims, namely those who are exposed to sexually transmitted diseases due to providing and using prostitution services and communities who are disturbed by violations of decency around them. Meanwhile, there are also potential victims of the practice of

prostitution, namely spouses, lovers, or families of service users whose social relationships can be damaged by people who use prostitution services. In addition, children and women around the location of prostitution can also become potential victims due to the damage to moral education due to the example shown in the practice of prostitution and the vulnerability of female harassment that can occur due to the normalization of objectification of women.

4) Analyzing Cost and Benefit and Considering the Principle of Ultimate *Remedium*

In cost and benefit analysis in the legal field, rules are considered as something that can burden (cost) and/or provide benefits (benefits) to society. Some opinions from practitioners, academics, and legal researchers state that Cost and Benefit Analysis (CBA) actually has efficiency benefits in law enforcement. With a more efficient cost, the results of law enforcement obtained can be maximized for the welfare of the Indonesian people themselves [26].

In general, expenditures that can arise in the making or updating of laws by lawmakers occur at the formulation stage and at the application stage, namely socialization related to new regulations. In the practice of prostitution, costs can also arise in the process of law enforcement i.e. in the act or execution stage. However, the benefits obtained by the community from the criminalization of the practice of prostitution and its law enforcement are also proportional to the costs incurred, namely the avoidance and recovery of the community from the consequences of the practice of prostitution and the suppression of the spread of the HIV / AIDS virus due to the eradication of the practice of prostitution.

Meanwhile, the principle of ultimate *remedium* which is a requirement for criminalization can be implemented if criminalization is applied to administrative crimes. However, in the context of the practice of prostitution, given the enormous and widespread impact it has on society and individuals, the principle of *primum remedium* must be applied so that criminal law can be a means of protecting actual and potential victims.

5) Produced Rules Must Be Enforceable (Enforceable)

Enforcement of a regulation or law can be viewed from the fulfillment of the delic element, the imposition of sanctions in accordance with applicable regulations, and the readiness of law enforcement. In the context of the criminalization of the practice of prostitution, the element of offense is fulfilled when it is proven that there has been a violation of criminal laws and regulations after the rules and regulations related to the practice of prostitution have been legally established. Sanctions can also be imposed in accordance with the clauses or articles stated in these rules and regulations. In the end, the readiness of law enforcement can be realized through the dissemination of laws and regulations on the practice of prostitution to law enforcement officials.

6) Gaining Public Support

Various forms of community approval of the criminalization of certain acts show their support for a criminalization process. Especially in the case of the practice of prostitution, support for its criminalization is shown through the criticisms of community leaders. For example, the declaration on the rejection of prostitution by the Mayor of Banjarbaru City,

South Kalimantan, which was attended by people who put their signatures as a form of support for the declaration of rejection and closure of the place of prostitution practice [5].

In addition, there are various cross-disciplinary studies and research, especially related to the social field, that show people's attitudes towards certain social phenomena, including the practice of prostitution, where support or rejection can be seen. An example is in a journal article entitled *The Influence of Community Attitudes Towards the Existence of Dolly Prostitution Localization and the Rise of Online Prostitution Through Facebook Social Networks and Its Implications on Socio-Cultural Resilience*[27] published in the *Journal of National Resilience*. The article shows the Surabaya community's rejection of the existence of Dolly localization and online prostitution as measured through five indicators, namely religious values and social norms, images arising from the pattern of living habits of the local community, intermingling in social activities, economic dependence, and the creation of job opportunities.

Various forms of community and/or community leaders' responses to the practice of prostitution as described above show public understanding of the impact of the practice of prostitution and that the practice of prostitution should be criminalized. Thus, criminalization in accordance with the criminal politics of society becomes in harmony with the basic values prevailing in society itself [28].

7) The existence of subsocial elements (Subsosaliteit)

As explained in the introduction, the subsocial element is the potential harm that can occur, both large and relatively small, as a result of unlawful acts, to society. The impact or danger that arises can directly result from the act itself or because the act is not criminalized. The forms of danger that can arise from the practice of prostitution have also been mentioned in previous discussions, namely the spread of HIV/ AIDS or other sexually transmitted diseases, the vulnerability of harassment of women, damage to the moral education of children and adolescents, damage to social relations, and so on.

8) Noting that the criminal code restricts people's freedoms and allows the authorities to curb those freedoms

All forms of laws, laws, and regulations that have been passed have the power to restrict the freedoms possessed by the people, and law enforcement officials are obliged to enforce these regulations. However, criminalization that exceeds the burden of the task of the officer can negate the authority of the law enforcement officer and make criminalization ineffective [29]. This discussion, the practice of prostitution is criminalized to protect citizens from damaging impacts on community life. However, there is still a possibility that the criminal regulations to be formed can increase the burden on the authorities so that there can be excessive restrictions on freedom, especially in certain conditions, such as deepening the motives of perpetrators or prostitutes in practicing prostitution, and so on.

Proposals for the Regulation of the Practice of Prostitution in the Criminal Law in the Future

By considering the significance of the consequences of the practice of prostitution on various aspects of people's lives and reviewing the fulfillment of the criteria for criminalization by

the practice of prostitution, the practice of prostitution can be called a crime that should be tackled through criminal law. Of course, in determining and even choosing criminal sanctions, wise and rational considerations and reasoning must be used taking into account the conditions of development of society [30].

The purpose of the criminal law proposed by the researcher is to protect Indonesian society and the moral values contained in cultural diversity from the threat of damage due to immoral acts along with various impacts on the dimensions of people's lives. Against the background of the regulation of the practice of prostitution that is not yet comprehensive and has not defined clear boundaries, the researcher proposes that in the future legal reforms related to the practice of prostitution should be carried out in a comprehensive formulation, touching not only managers and with clear boundaries.

The overarching nature of the formulation of the criminal law of the practice of prostitution includes which legal subjects can be punished, clear and definite definitions of prostitution itself, the formulation of forms of delicacy, and what kind of laws should later regulate the practice of prostitution. According to the author, the following matters need to be regulated in the regulation of prostitution practices.

1) Limits to Understanding Prostitution

Prostitution itself, first of all, needs to be defined with general boundaries as a basis that provides certainty so that there is a firm and clear understanding of what prostitution is, what acts are categorized in the practice of prostitution, the form or manner of the act, the legal subjects related in the context of the practice of prostitution, and others. Furthermore, it is necessary to determine whether the practice of prostitution will be regulated as an administrative crime or a pure criminal offense.

Administrative crimes aim to make people comply with administrative regulations, so threats in administrative crimes cannot be severe threats, with a maximum of one year of imprisonment or confinement. If the purpose of the framer of the law is not to punish violators, then the form of administrative crime can be carried out, namely by the establishment of a new law or by inserting a new section into the existing law, for example, the Pornography Law. The nature of law enforcement against administrative crimes is *ultimum remedium*, where criminal law enforcement becomes the last resort after other paths are taken.

Meanwhile, pure criminal acts aim to punish violators of the law, so that the criminal threat given can exceed one year to 20 years maximum for imprisonment or confinement within a certain time. If this is the purpose of the framer of the law, then pure crime becomes the path taken through the establishment of a special criminal law or inserting new regulations related to prostitution into existing special criminal laws, such as the TPKS Law.

From the two options above, the researcher proposes that the practice of prostitution is regulated as a pure criminal offense for two reasons, namely from consideration of aspects of the impact caused by the practice of prostitution itself and the impact of the seriousness or severity of the threat given by the criminal law to the criminal act of prostitution. First, the enormous and widespread effects of prostitution require strict and severe sanctions, given that so many actual and potential victims of all ages suffer damage and/or negative effects

on health, mental/psychological, educational and moral aspects, social relationships, and so on. Second, the severity of the threat to the practice of prostitution is expected to have a repressive impact on potential perpetrators who have not been involved in the practice of prostitution. This is in accordance with the theory of vom psychologischen zwang by Feuerbach [31] or it can also be called psychological coercion, where potential violators are made afraid of severe criminal threats for the criminal acts they want to commit.

2) Criminalization of Consumers of Prostitution Services

The criminalization of consumers or users of prostitution services is carried out based on several reasons. First, criminalization can reduce health hazards that can occur to potential victims, such as lovers or legal partners of prostitution service consumers who contract HIV/AIDS due to sexual relations with prostitutes in a network of prostitution practices.

Second, there is a criminalization of cohabitation in the New Criminal Code, which when compared to the practice of prostitution, has something in common, namely that the parties involved are not bound by a legal marital relationship, there are acts based on mutual/consensual interest in terms of sexual relations. If cohabitation is considered to undermine the values of decency in society, the practice of prostitution should also be criminalized, especially with the heavy transactional elements and structured acts (e.g. in the case of localization or trafficking in persons) in the practice of prostitution that further expand the scope of its potential impact.

Finally, based on the logic of business and sales in general, a service or business will not survive without consumers or users of its services. Similarly, the practice of prostitution will not be able to survive if service users are afraid or deterred by criminal punishment, according to the concept of vom psychologischen zwang described above.

Of course, with the criminalization of prostitution service users, there are sanctions that will be imposed on them, which can be in the form of criminal sanctions, consisting of principal criminal sanctions additional criminal sanctions, and the second is action sanctions. The main criminal sanctions can be in the form of confinement, imprisonment, and/or fines, while additional criminal sanctions can be adjusted according to the considerations of the framer of the law in addition to the sanctions already in the current Criminal Code. Then, action sanctions can be in the form of treatment at hospitals for consumers who are proven to be infected with HIV / AIDS and can be in the form of social rehabilitation for service users who are proven to violate due to sexual desire or excessive desire (hyper sex).

3) Criminalization of prostitutes

In addition to the criminalization of service users, the criminalization of prostitutes also needs to be carried out based on several similar reasons. First of all, sex workers get material benefits from the results of providing sexual relations services so it can be said that these benefits are their rights, but these rights are obtained by violating the rights of other citizens to obtain health, considering the potential of sex workers to contribute to spreading sexually transmitted diseases, including HIV/ AIDS. On the other hand, the state is obliged to protect its citizens, including in realizing healthy citizens, and the criminalization of sex workers is one way the state protects its citizens from these dangers.

The second reason is also not much different from the previous point, namely that criminal threats can cause fear of prostitutes from legal entanglement for their prostitution practices. Although the reduction of prostitution service providers is slightly different from the reduction of consumers, where a business will not survive or thrive without the consumer, criminalization of prostitutes involved in providing prostitution services can significantly reduce the practice of prostitution and its health, social, moral education, and other impacts.

In this criminalization of prostitutes, criminal sanctions and action sanctions can be threatened with the elaboration of the same reasons as the criminalization of prostitution service users above. However, there is also another context for regulating the criminalization of prostitutes, namely the causes of these prostitute women committing acts of prostitution and obtaining livelihoods; These causes include poverty, lifestyle, and satisfying sexual needs. Thus, sanctions are needed that are also social rehabilitation for these women. Meanwhile, there are also women who are not punished for their involvement in prostitution, namely those who are coerced by pimps or others with threats or tricks, so that they are sexually exploited.

4) Reformulation of Delik of Prostitution Service Management

For managers of prostitution or pimping services, there have been many regulations that can ensnare them, as described in the discussion of the first issue above, both in the Criminal Code, laws outside the Criminal Code, and regional regulations. However, with today's technological advancements, the practice of prostitution has penetrated into cyberspace through the internet and sophisticated communication devices. This creates quick and easy access to perpetuate the practice of prostitution which further exacerbates the damaging impact it can cause, given the nature of the internet world that can be accessed by anyone regardless of age, especially children and adolescents. Therefore, the element of using electronic means needs to be added to the criminal law as an element that aggravates criminal sanctions for pimps in the reformulation of delicts.

5) Imposition of Criminal Sanctions Through Other Elements

In addition to information technology elements, there are other elements that can aggravate criminal sanctions in the practice of prostitution, such as elements of violence that cause loss of life and injuries or injuries, both minor and severe. The damage or loss that occurs in the element of violence can be clearly seen in the loss of one's life or physical injury that occurs. In addition to violence, the element of prostitution of children and persons with disabilities can also aggravate the penalties imposed on violators of the law because of exploitation committed on one's helplessness.

6) Delik Shape Setting

In the formation of policies criminalizing the practice of prostitution, the offense of prostitution will be established and can take both formal and material offenses. In the case of formal offenses, the act of prostitution can be punished simply by proving the practice of prostitution, while material offenses will focus on the consequences that arise, such as injuries due to violence, loss of life, and so on.

CONCLUSION

Currently, in Indonesia criminal law regulations related to the practice of prostitution can be seen in the provisions of the Criminal Code, TPKS Law, Trafficking Law, Child Protection Law, Pornography Law, ITE Law, and various Regional Regulations separately. Arrangements in the provisions of the Criminal Code and legislation outside the Criminal Code tend to focus more on snaring pimps only and are limited by special contexts such as exploitation, trafficking in persons, pornographic media, and so on. Meanwhile, some Regional Regulations can ensnare prostitutes and service consumers in addition to pimping, but of course, these Regional Regulations do not apply nationally so comprehensive enforcement cannot be applied. The lack of complete existing criminal laws against the practice of prostitution can give rise to a new legal culture where there is an opportunity for modes of crime to look for loopholes in the imperfections of existing arrangements.

One way to address the practice of prostitution from a legal perspective is through criminalization and renewed regulation of prostitution. Criminalization must be done by ensuring that there is no overcriminalization, ensuring that the law is permanent, ensuring that there are victim elements, conducting cost and benefit analysis, ensuring that new regulations can be enforced, gaining public support, clearly identifying subsocial elements, and considering people's freedoms and the possibility of restraint of these freedoms by law enforcement officials. In addition to criminalization, the author offers that reformulation can be done by providing limits on the understanding of prostitution, including establishing the regulation of prostitution practices as a purely criminal act, criminalizing consumers of prostitution services and prostitutes, reformulating pimp offenses as managers of prostitution services, imposing criminal sanctions through other elements such as violence, prostitution of children and persons with disabilities, and determining the form of delict.

Regulation of the practice of prostitution as a whole both on the subject of law, the definition and limits of prostitution, outreach in the sense that it can be applied nationally, discussion of elements that can incriminate criminals, determination of the form of delicacy, and fulfillment of elements of criminalization are expected to be the basis for effective law enforcement to handle prostitution cases. Thus, criminal law can be a means to realize legal certainty, justice, and equal treatment before the law, and protect the welfare of all Indonesian citizens by eradicating prostitution practices that have a widespread and profound impact on various aspects of community life.

REFERENCES

- [1] Astrid Faidlatul Habibah dan Irwansyah, 2021, "Era Masyarakat Informasi sebagai Dampak Media Baru," *Jurnal Teknologi dan Informasi Bisnis*, Vol. 3, No. 2, h. 350-363.
- [2] Wasisto Raharjo Jati, 2016, "Cyberspace, Internet, dan Ruang Publik Baru: Aktivisme Online Politik Kelas Menengah Indonesia," *Jurnal Pemikiran Sosiologi*, Vol. 3, No. 1, h. 25-35.

- [3] Kompas.com, 2023, "Sejarah Prostitusi di Indonesia, Terjadi Sejak Era Kolonial", dikutip dari laman resmi Kompas.com <https://www.kompas.com/stori/read/2023/01/20/140000079/sejarah-prostitusi-di-indonesia-terjadi-sejak-era-kolonial?page=all> (diakses pada 11 Januari 2024).
- [4] Kartini Kartono, 2009, *Patologi Sosial*, PT Raja Grafindo Persada, Jakarta, h. 251-252.
- [5] Arya Mahardika Pradana, 2015, "Tinjauan Hukum Pidana Terhadap Prostitusi dan Pertanggungjawaban Pidana Para Pihak Yang Terlibat Dalam Prostitusi," *Jurnal Hukum & Pembangunan*, Vol. 45 No. 2, h. 276-307.
- [6] Katadata Media Network, 2023, "Laki-Laki Mendominasi Jumlah Kasus HIV dan AIDS di Indonesia pada 2022", dikutip dari laman resmi Databoks <https://databoks.katadata.co.id/datapublish/2023/07/03/laki-laki-mendominasi-jumlah-kasus-hiv-dan-aids-di-indonesia-pada-2022> (diakses pada 11 Januari 2024).
- [7] Sudaryono dan Natangsa Surbakti, 2017, *HUKUM PIDANA Dasar-Dasar Hukum Pidana Berdasarkan KUHP dan RUU KUHP*, Muhammadiyah University Press, Surakarta, h. 98.
- [8] Edward O.S. Hiariej, 2016, *Prinsip-Prinsip Hukum Pidana Edisi Revisi*, Cahaya Atma Pustaka, Yogyakarta, h. 133.
- [9] Barbara G. Brents dan Kathryn Hausbeck, 2005, "Violence and Legalized Brothel Prostitution in Nevada," *Journal of Interpersonal Violence*, Vol. 20 No. 3, h. 270–295.
- [10] Peter Mahmud Marzuki, 2007, *Penelitian Hukum*, Kencana Prenada Group, Jakarta, h. 35.
- [11] Legal Explanations, 2020, "Prostitute Definition and Legal Meaning", dikutip dari laman resmi Legal Explanations <https://legal-explanations.com/definition/prostitute/> (diakses pada 12 Februari 2024).
- [12] Marhaenanda Pandega Persada dan Martinus Legowo, 2021, "Labelling Masyarakat Terhadap Anak Pekerja Seks Komersial di Jombang". *Paradigma*, Vol. 10, No. 1, <https://ejournal.unesa.ac.id/index.php/paradigma/article/view/50686> (diakses 12 Februari 2024)
- [13] Mariyadi, 2013, "Persepsi Masyarakat Tentang Prostitusi Liar Di Kelurahan Sempaja Utara Samarinda," *Acta Diurna*, Vol. 2, No. 4, <https://media.neliti.com/media/publications/93332-ID-persepsi-masyarakat-tentang-prostitusi-l.pdf> (diakses 12 Februari 2024)
- [14] Dika Rahmat Nasution dan Frans Simangunsong, 2023, "Pertanggung Jawaban Pidana Terhadap Penggunaan Jasa Prostitusi pada Media Online", *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, (2023), Vol. 3 No. 2, h. 1732-1744.
- [15] R. Soesilo, 2013, *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar-Komentarnya Lengkap Pasal demi Pasal*, Politeia, Bogor, h. 327.

- [16] Apriliani Kusumawati and Nur Rochaeti, 2019, "Breaking the Chain of Prostitution Practice in Indonesia through Criminalization of Prostitution Service Users," *Indonesian Journal of Legal Development*, Vol. 1 No. 3, pp. 366–378.
- [17] Dey Ravena dan Kristian, 2017, *Kebijakan Kriminal*, Prenada Media Group, Jakarta, h. 128.
- [18] Islamia Ayu Anindia dan R.B. Sularto, 2019, "Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Prostitusi Sebagai Pembaharuan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia*, Vol. 1, No. 1, h. 18.
- [19] David Garland, 2002, "Crime Complex: The Culture of High Crime Societies," *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford University Press, h. 139–166.
- [20] Gea Illa Sevrina, 2020, "Kebijakan Kriminalisasi Praktik Prostitusi di Indonesia," *Law and Justice*, Vol. 5, No. 1, h. 17–29.
- [21] Banda Nawawi Arief, 2008, *Bunga Rampai Kebijakan Hukum Pidana*, Kencana Prenada Media Group, Jakarta, h. 28.
- [22] Rusli Effendi dkk, 1986, "Masalah Kriminalisasi dan Dekriminalisasi dalam Rangka Pembaruan Hukum Nasional," Binacipta, Jakarta, h. 64-65 (disampaikan dalam BPHN, Simposium Pembaruan Hukum Pidana Nasional Indonesia, Jakarta)
- [23] Muladi, 2002, *Demokratisasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia*, The Habibie Center, Jakarta, h. 53.
- [24] Mahrus Ali, 2018, "Overcriminalization Dalam Perundang-Undangan di Indonesia", *Jurnal Hukum Ius Quia Iustum*, Vol. 25, No. 3, h. 450–471.
- [25] Legal Information Institute, 2020, "ad hoc", dikutip dari laman Legal Information Institute oleh Cornell Law School https://www.law.cornell.edu/wex/ad_hoc (diakses pada 13 Februari 2024)
- [26] Carla Isati Octama, 2013, "Meski Bermanfaat, "Cost Benefit Analysis" dalam Pembentukan UU Belum Diterapkan, dikutip dari laman Berita Satu <https://www.beritasatu.com/news/128294/meski-bermanfaat-cost-benefit-analysis-dalam-pembentukan-uu-belum-diterapkan> (diakses pada 13 Februari 2024)
- [27] Diana Agustianingsih, 2014, "Pengaruh Sikap Masyarakat Terhadap Keberadaan Lokalisasi Prostitusi Dolly dan Maraknya Prostitusi Online Melalui Jejaring Sosial Facebook serta Implikasinya pada Ketahanan Sosial Budaya," *Jurnal Ketahanan Nasional*, Vol. 20, No. 1, h. 11-18
- [28] Moeljatno, *Azas-Azas Hukum Pidana*, Bina Cipta, Jakarta, 1985, h. 5
- [29] Roeslan Saleh, 1993, "Kebijakan Kriminalisasi dan Dekriminalisasi; Apa yang Dibicarakan Sosiologi Hukum dalam Pembaruan Hukum Pidana Indonesia", Yogyakarta, h. 38-39 (disampaikan dalam Seminar Kriminalisasi dan Dekriminalisasi dalam Pembaruan Hukum Pidana Indonesia, Fakultas Hukum UII, 1993)

- [30] Banda Nawawi Arief, 2020, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, Genta Publishing, Yogyakarta.
- [31] Dion Valerian, 2021, "Pemikiran Anselm Von Feuerbach tentang Hukum Pidana: Pembacaan atas Literatur Primer," *Percikan Pemikiran Makara Merah*, Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok, h. 59-67.



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