



The Online Prostitution Act From Legal Sociology Perspective in Indonesia



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Abstract

The practice of online prostitution that is happening right now is believed to be due to the rapid development of information technology. The influence of technology in the cyber world causes prostitution services to be carried out in disguise such as through mi chat. The purpose of this study was to analyze the existence of online prostitution in the corner of sociology law. Through the approach of legal sociology, online prostitution is only a way of peddling the real practice of prostitution that has happened thousands of years ago. Using normative juridical research methods, this study tried to address some of the problems caused by online prostitution in the country. From the standpoint of legal sociology, online prostitution is a social phenomenon accompanied by technological developments and updates that occur due to economic needs. To overcome this, a law is needed in the form of laws that can now be used by the ITE Law, the development of education, especially religion, expanding employment, the renewal of the Criminal Code to the practice of online prostitution and fostering families so as not to fall into online prostitution.

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1 Introduction

Law is one of the products of human rules in building justice with fellow citizens [Dwisvimiari \(2011\)](#). He added that legal justice in the study of the legal science perspective. Law that can be observed or examined through interactions that take place in the community. In a sense, the law was born by humans and to guarantee the interests of human rights itself to get a sense of fairness to all citizens. However, in the legal journey, it could be stopped and justice far from expectations [\(Nasution, 2014\)](#).

Law is closely related to culture because it has been created by humans, including customary law [\(Aslan & Yunaldi, 2018\)](#). However, the created culture contained taboos and prohibitions in the human life system and became a role in people's lives [\(Aslan, 2017; Dirdjosisworo, 1983\)](#). Laws relating to society have their values which become a system in society [\(Marmosudjono, 1989\)](#). However, not all laws that develop in society become role models in human life, which is caused by social changes that occur in society, reviews public compliance with the law as community awareness for justice and compliance.

Social change is a series of history experienced by humans [\(Sztompka, 1993\)](#). The historical renteten is changing human life in the social, cultural, economic, political, and other fields [\(Aslan, 2019; Aslan, 2018\)](#). The series of history has been mapped by [Toffler \(1970\); Toffler \(1980\)](#), into three waves namely agriculture, industry, and the current era or known as the information age [\(Mujiburrahman, 2017; Mujiburrahman, 2017; Aslan, 2019; Aslan & Hifza, 2020\)](#). The information age has turned positive values upside down negative values [\(Aslan, 2017; Aslan & Setiawan, 2019\)](#).

Values that are role models of people in life in society have experienced a shift, such as nightlife, premarital sex, promiscuity, prostitution, and other social symptoms. Prostitution consists of several meanings including prostitution, prostitution, molestation, and aggression, which is done on awareness as a job to make money. For Muslims, prostitution is haram so that it does not fall prey to sexual acts, so the Islamic religion requires marriage to be old enough and can establish a household. However, this negative action is not as easy as turning the palm so that humans do not prostitute themselves, especially those who have Islam.

The events that recently occurred in Indonesia there are many people suspected of being involved in online prostitution cases so that as a deterrent for those who commit these criminal threats. The threat is seen from several things; First, there is the involvement of people who benefit from prostitution online, for example, one of the big cases that are attracting public attention is the Vanessa Angel case in case file No. 1112 / Pid.Sus / 2019 / PN. Vanessa Angel was charged with practicing prostitution online through Whatapps with her friend Siska as a prostitution network to find Vanessa Angel with service users. Siska then contacted Tentr and Nindy to meet someone known as Rian Subroto. The form of online prostitution which constitutes a criminal offense is regulated in Article 27 Paragraph 1 of the ITE Law.

While the Criminal Code does not regulate, except for those who carry out prostitution as livelihoods, where these people can sentence based on Article 506 of the Criminal Code with a maximum penalty of 1-year imprisonment. Or, there is the involvement of people in online prostitution and make it a livelihood, by facilitating or conducting prostitution where these people are referred to as pimps and can be threatened with Article 296 of the Criminal Code with a maximum penalty of 1 year 4 months imprisonment or a fine a maximum of Rp. 15 million (with adjustments to the provisions in Article 3 of the Republic of Indonesia Supreme Court Regulation Number 2 of 2012 concerning Adjustment of Limits of Minor Crimes and the Number of Fines in the Criminal Code). Second, the authorities also need to prove whether CSWs can be threatened with criminal offenses following the formulations in the ITE Law? Article 27 Paragraph (1) of the ITE Law prohibits anyone from doing intentionally and without the right to distribute and / or transmit and / or make access to Electronic Information and / or Electronic Documents that have contents that violate decency. Decency here means the custom or good habits in relations between community members, especially those related to sexuality (sexuality).

Rahmat Dwi Putranto believes in the provisions of the law in Indonesia, the regulation regarding crimes against decency through electronic media is specifically regulated in Article 27 Paragraph (1) of Law Number 19 the Year 2016 concerning Information and Electronic Transactions which states that: "Everyone is intentionally and without the right to distribute and/or transmit and/or make access to Electronic Information and/or Electronic Documents which have contents which violate decency". With a systematic interpretation of the Criminal Code (as a general provision), it can be seen that the provisions in Article 27 Paragraph (1) of Law Number 11 the Year 2008 concerning Electronic Information and Transactions prohibit activities that violate immoral norms carried out with electronic media. Article 27 Paragraph (1) of the ITE Law states: "Everyone intentionally and without the right to distribute and / or transmit and / or make access to Electronic Information and / or Electronic Documents that have contents that violate decency".

Furthermore Rahmat Dwi Putranto said: "With reference to the provisions of Article 27 Paragraph (1) of the ITE Law, someone who distributes and / or transmits and / or makes access to Electronic Information and / or Electronic Documents that have contents that violate decency, with elements intentionally and without rights is categorized as having committed a criminal act and to which criminal liability can be held according to criminal law" (Sujamawardi, 2018).

This online prostitution case is a moral offense, thus reporting on the examination process should be done in a limited or even closed manner because the characteristics of the examination and trial process of morality are closed to the public following applicable law. This is to respect the rights of each party involved specifically to guarantee the protection of the rights of the perpetrators as suspects so that they can be proven guilty of what they have done. Widespread reporting in the mass media can make those who appear vulnerable to judgments by the public, which can violate the presumption of innocence guaranteed by the Criminal Procedure Code (Zukerman, 2011; Coy *et al.*, 2011).

Apart from the view of criminal law, of course, prostitution is one of the serious problems that occur in the social environment. In the view of the sociology of law that is a branch of science that analytically and empirically analyzes or studies the interrelationships between law and other social phenomena (Whetten-Goldstein *et al.*, 2000; Barnes & Kingsnorth, 1996). The sociology of law aims to explain why legal practices in social life occur, their causes, and what factors influence, background, and so on. Scope of Legal Sociology, where the sociology of law in science, is based on what is called a scientific discipline, which is a system of teaching about reality, which includes analytical and legal disciplines (Dasih *et al.*, 2019; Dann & Cohen, 1991; Power, 1995).

Sociology analysis based on the Legal Approach and Function Method, which in essence is the existence of elements such as Legal Sociology Instrumental Approach, Natural Law Approach, and Characteristics of Legal Sociology Studies. By requiring a method of approach of Legal Sociology, Comparison of Juridical Empris and Normative Juridical, Law as Social Control and Law as a Tool for Changing Society, which is as a benchmark against the norms or rules that live in society, whether the norms or rules are obeyed or to is violated, if violated how the application of sanctions, as the offender.

2 Materials and Methods

Normative juridical research methods are research that is a source of understanding of the norm problems experienced by dogmatic law in its activities describing legal norms, formulating legal norms (forming legislation), and enforcing legal norms (judicial practice) (Diantha, 2016). Normative research emphasizes the use of legal norms in writing which are expected to be the able answer in detail and systematic and comprehensive about prostitution in the view of sociology law (Giancaspro, 2017; Lea & Hall, 2004; Saunders, 1998).

The data source used in this study is secondary data with three types of categories. First, primary legal sources, namely legal sources which become binding / legal basis such as the 1945 Constitution of the Republic of Indonesia. Second, secondary legal sources, namely materials that provide explanations regarding primary legal sources such as materials in the form of books, daily/magazines, and scientific papers. Third, Tertiary Law Sources, namely materials that guide to primary and secondary legal sources such as legal dictionaries, encyclopedias, and bibliographies.

The data analysis technique was done in a descriptive qualitative manner. The data obtained will be processed, then described in the form of a logical and systematic description to describe prostitution in the view of the sociology of law in Indonesia.

3 Results and Discussions

Prostitution in the view of legal sociology

Prostitution comes from the Latin "Protituo" which is a behavior that openly surrenders to adultery (Dirjosisworo, 1977). In Indonesian positive law, adultery is an act of intercourse between someone who is married and someone who is not his wife or husband (Anwar & Andang, 2010; Simandjuntak, 1981; Soekanto, 1980). In general, prostitution or prostitution can be seen by several elements, including; First, there is an act, in the form of surrender of a woman. Second, surrender to many men whoever wants sex with him; and third, there is payment in the form of money given by a man to a woman.

Components involved in prostitution crime consist of pimps, commercial sex workers (CSWs), and users of CSW services. Murcikari is acting as a liaison between the two parties and will get a commission from the acceptance of CSWs whose percentage is divided based on the agreement. Pimps are usually very dominant in managing this relationship because many prostitutes are "indebted" to him. Many commercial sex workers are removed from poverty by pimps, although pimps can exploit their "foster children". Meanwhile, Commercial Sex Worker (CSW) is someone who sells his services to have sex for money or is called a prostitute. Commercial sex workers are referred to as refined as prostitutes and some female adolescents also refer to commercial sex services. The practice of prostitution wherever commercial sex workers are the main objects of exploitation in the chain of the practice of prostitution. As for a prostitute service user becomes the point of how this prostitution transaction bias can occur. Although of course the other party also gave impetus to the practice of prostitution.

According to Tjiptono, (1995); Hill & Brierley, (2003), actions offered by one party to another. Interactions between service providers and customers often occur in services, even though the parties involved may not realize it. Besides, there may be situations where customers as individuals do not interact directly with service companies. Based on some of the definitions above, the service is something that has characteristics; First, something that is intangible, but can meet the needs of consumers. Second, the process of a product can use or not use the help of a physical product. Third, services do not result in the transfer of rights or ownership. Fourth, there are interactions between service providers and service users.

Thus, online prostitution when viewed from legal sociology is theoretically analytical and empirical, highlighting the influence of other social phenomena on the law and vice versa. Legal sociology is inseparable from facts or reality because legal sociology is paradigmatic of social facts. Legal sociology is a special branch of sociology that is concerned with studying law not as normative concepts but as social facts. Paradigmatic social facts mean not reviewing any values, norms, or ideas about the law.

The study of law can be divided into several views, including; First, Normative Studies see the law in its form as a rule, which determines what is permissible and what cannot be done. In other words, normative studies examine law in books. The normative study of the world is *das sollen* (what should be). Second, Philosophical studies are studies that view the law as a set of ideal values, which should always be a reference in every formation, regulation, and implementation of the rule of law. In other words, the study of legal philosophy examines law in ideas. Third, empirical study this study views the law as a reality consisting of social reality, cultural reality, and others. In other words, an empirical study examines law in action. The approach in legal phenomena consists of three kinds of approaches namely moral approach, legal science approach, and sociological approach.

Of the three approaches, the moral approach to law and the legal approach to law, both relate to how legal norms make actions meaningful and orderly. Although these two approaches have differences which in this case the moral approach encompasses law in a broader sense with the beliefs and underlying principles that are made really as a source of law. While the approach through the science of law tries to determine legal concepts and their relationship that is independent of the principles and non-legal values, but both are equally focused on the content and meaning of the law itself.

According to Lawrence M. Friedman, three important elements can determine the functioning of law, namely the structure, substance, and legal culture. A good legal structure will run well if supported by good legal substance, and vice versa. Both elements will work well if followed by a good legal culture from the community. If the legal culture of the community cannot support these two elements then it has no meaning.

According to Lawrence, three important elements that determine the functioning or punishment; First, the legal structure encompasses the order of the elements of the legal institution (organizational framework and levels of the police, prosecutors, judiciary, penal, and legal) institutions. Second, the legal culture encompasses the values, norms, and institutions which are the basis of the attitude of the legal servant's behavior. Third, the legal substance includes the regulations or regulations made by the competent institution.

How to overcome prostitution activities

Prostitution to overcome this can be done as follows;

First is a law enforcement or strict sanctions against all perpetrators of prostitution or adultery. By applying the rules of the Creator, Allah SWT, which strictly prohibits free sex (adultery), and various other disobedience. Regarding the prohibition of adultery, Allah SWT said: Do not you approach adultery because adultery is a heinous behavior and a very bad way (QS al-Isra '[17]: 32). In this case not only pimps or pimps, prostitutes, and service users who are subjects in the circle of prostitution must be subject to strict sanctions. Punishment according to Islam for adultery is

stoned (stoned) if he has been married, or flogged a hundred times if he has never been married and then exiled for one year.

Second is the provision of employment. The poverty factor is often the main reason for CSW to go into prostitution. This does not need to happen if the state guarantees the necessities of life for every member of society. Including providing employment, especially for men.

Third, there is a comprehensive education. Quality education and free of charge will provide knowledge and expertise for everyone to be able to work and work in a good and lawful manner. Education must be based on aqidah and Islamic sharia which instill the basic values of right and wrong as well as living standards that can be taken and not.

Fourth social path, fostering to form a family that is sawah mawaddah warohmah is the completion of a social path that must be a concern of the government because the family is one of the pillars in society that determines the quality of a generation and also requires the formation of a social environment that is not permissive to immorality so that prostitution will get social control from the surrounding environment.

Fifth is political will. Resolving prostitution requires implementing policies based on Islamic law. A law must be made that strictly regulates the prohibition of any business related to prostitution. Not only close all the localization but also all the production that triggers free sex such as pornography through various media both print and online. Of course, this requires political will at the country level to completely close the doors of prostitution. This requires a country that applies Islamic rules perfectly in all aspects of life. Only then can the practice of prostitution be completely eradicated, as well as the blessing and goodness of life can be embraced and the pleasure of Allah SWT can be achieved.

4 Conclusion

Based on the above analysis, the conclusion is:

First, legal sociology is a science that theoretically analytically and empirically highlights the influence of other social phenomena on the law and vice versa. Legal sociology views online prostitution from a normative, philosophical, and empirical perspective. In legal sociology, online prostitution is a social phenomenon in the form of deviant behavior for those who do it without coercion. However, online prostitution carried out under pressure can result from trafficking. As a distorted social phenomenon, prostitution has occurred thousands of years ago, even before BC. The law has an important role to overcome online prostitution during the community one of them through the Electronic Transaction Information Act.

Second, law enforcement is essentially influenced by five factors, namely the factor of law which can include religious elements as a form of prohibition accompanied by sanctions in online prostitution practices, factors of law enforcement facilities and infrastructure, law enforcement factors, socialization factors of the law and legal culture. Also, preventing the practice of online prostitution can be done through education, especially religious education, expanding employment, fostering sakinah mawaddah families, and the political will of the government to create strict legal rules in combating online prostitution.

Conflict of interest statement

The author declared that he have no competing interests.

Statement of authorship

The author have a responsibility for the conception and design of the study. The author have approved the final article.

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