



The Concept of Criminalization of Prostitution as A Legal Instrument for The Renewal of Indonesian Criminal Law

I Dewa Agung Gede Mahardhika Martha*, I Ketut Rai Setiabudhi, Erny Herlin Setyorini

Faculty of Law, Universitas 17 Agustus 1945 Surabaya, Indonesia

*Email: dewaagungdhika.martha@gmail.com

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Abstract

Prostitution is the activity of sexual intercourse for livelihood, there are several goals to be obtained, such as money, goods or gifts and also the satisfaction of inner desires so that it includes not only copulation but some to be achieved or owned. Prostitution activities are included in the form of sexual deviance, which deviate from the social, religious, polite and moral values of the Indonesian nation. In other words, it also injures or abuses the values contained in Pancasila. Therefore, the urgency of criminalization in prostitution in the current Indonesian criminal law and the concept of criminalization of prostitution in the context of renewing Indonesian criminal law. This research uses a normative type of legal research. The urgency of criminalization in prostitution in Indonesian criminal law can be seen in four foundations, namely philosophical, juridical, sociological, and human rights foundations. Regulations on the practice of prostitution as a criminal act or against material law currently in Indonesian criminal law still do not reflect the principle of justice and the principle of expediency.

Keywords: prostitution; renewal of criminal law; the concept of criminalization

I. INTRODUCTION

Living in this community, there are always social problems that continue to develop in line with the times, especially those related to the problem of prostitution. Talking about prostitution is the same as talking about problems in ancient civilizations but because of the need to solve them, it always becomes relevant to every human development anywhere. According to Kartono, prostitution or what is often referred to as prostitution or sex lust suppression, is a type of work that is as old as the age of man himself (Kartono, 2009).

Prostitution is the activity of trafficking in sexual services, such as oral sex or sex, for money. A person who sells sexual services is called a prostitute, which is now better known as a commercial sex worker. as the opinion of James Inciardi in the book Topo Santoso that what is said to be prostitution is the offering of sexual relations for monetary or other gains so that what is meant by prostitution is the activity of sexual intercourse for a living, there are several purposes to be obtained, such as money, goods or gifts and also the satisfaction of inner desires so that it includes not only copulation but there is something to achieve or have (Dirdjosisworo, 2012).

Prostitution, Dirdjosisworo's opinion is the carnal surrender of a woman to the gratification of a man whoever wants her with payment. When viewed from the definition of prostitution said by Dirdjosisworo there are three elements, namely the self-rectification of a woman, to many men who want her services to vent the desires of the men with pay of

course in this case as a substitute for the woman's wages in work (Dirdjosisworo, 2012). Prostitution is a form of perversion of sexual exploitation that is used to produce material needs or spiritual needs or under another name a form of offering sexual relations between married couples in order to obtain money or other benefits. Prostitution is a form of phenomenon that has existed for a long time throughout the history of the world, including in Indonesia. Similar to the development of government in the world, prostitution in Indonesia dates back to the time of the great kingdoms in Java that used women as part of the commodity feudal system (Kartono, 2011).

In Indonesia, prostitution is considered a deviant act, because it is incompatible with the social system of values and norms adopted by the Indonesian people. The practice of prostitution is an activity of sexual exploitation prepared through the consent of both parties with commercial purposes. The commercialization of the body for sexual intercourse is considered degrading to human dignity or is classified as an act that violates Human Rights which injures the sacred value of the meaning of marriage. In addition, prostitution also injures or harasses the values contained in Pancasila, namely in the first precept that reflects religious norms, the second precept reflects moral norms and the fifth precept the view of politeness norms.

The rampant occurrence of the phenomenon of prostitution that occurs in Indonesia today is very concerning so why is it necessary to criminalize prostitution as a criminal act even though in Indonesia's positive law regulations there are arrangements related to prostitution but the arrangement is only to provide a deterrent effect to pimps or pimps only while prostitutes are still considered victims and connoisseurs of prostitute services have never been touched by criminal sanctions. This overlap of legal regulations causes the absence of fulfillment of the principles of justice and legal expediency for the Indonesian people based on Pancasila. In fact, in order to overcome the problem of prostitution activities, an approach oriented towards criminalization policy is needed which is part of criminal policy using the means of criminal law (penal), and therefore includes part of the "criminal law policy" (penal policy). With the criminalization policy, which is a policy in determining an act that was not originally a criminal act into a criminal act, it can lead to a penal law reform to overcome the problem of prostitution in the future (Arief, 2015).

Moving from there, the concept of criminalization, which is a policy in determining an act that was not originally a criminal act into a criminal act, can lead to a criminal law reform to overcome the problem of prostitution in the future by reconstructing the regulation in the Criminal Code where before it only ensnares pimps or pimps and people or business entities that facilitate the possibility of activities Prostitution becomes more specific by making acts of prostitution that were previously only considered non-criminal acts into criminal acts so that prostitutes and connoisseurs or users of prostitute services can be subject to criminal sanctions.

In connection with the legal issues contained in the background of this problem, the researcher will formulate several legal problems as follows; 1) What is the urgency of criminalizing prostitution as a crime, 2) The concept of criminalization of prostitution as a legal instrument for the renewal of Indonesian criminal law in the future. In every research always has a goal to be achieved, the purpose of research in this legal journal is so that the public can know the urgency in the need for a criminalization policy against prostitution as a criminal act in Indonesian criminal law in the present so that later it is hoped that this research can contribute knowledge that can be used as a consideration in future legal renewal in order to achieve the value of justice, expediency, and legal certainty.

II. METHOD

The method used in solving problems in this research is the normative legal research method. Where the assessment carried out in this journal is the position of legal norms in a regulation either in an equal or stratified manner In this study, the position of the norms that occur in these acts is the existence of a void of norms which results in the inability to ensnare all legal subjects of prostitution acts with criminal sanctions. Especially for commercial sex workers (prostitutes) and users of their services who cannot be criminally held accountable for their actions. The approach applied in this journal is a statutory

approach, namely the technique of reviewing the relevant laws and regulations on the theme of this legal research, namely criminalizing prostitution as a criminal act, where the laws and regulations to be reviewed by the Criminal Code as primary legal material, law journals, law books, legal papers, and Wikipedia on the internet.

The collection of legal materials used in this study is by means of a literature study carried out by reading, analyzing and then citing the legal materials previously mentioned. Furthermore, in analyzing the legal material contained in this study using descriptive analysis techniques which means data presentation techniques that are carried out according to conditions as they are and systematically to obtain conclusions that contain scientific truth values.

III. DISCUSSION

The Urgency of Criminalizing Prostitution as a Crime

Prostitution as a temporary social problem is seen from relationships cause and effect and its origin cannot be known with certainty, but until now prostitution is still prevalent in everyday life and exists in almost every territory in Indonesia, both overtly and hiddenly. The problem of prostitution is a structural problem, a fundamental problem that what happens in society is still understanding the problem of prostitution as a moral problem. Unaware of this moral perception will result in a "victim-blaming" attitude that the end makes the victim even more oppressed (Soedjono, 2007).

Prostitution is a form of criminality that is very difficult to deal with and this type of criminality is widely supported by economic factors in people's lives, where in society itself gets the fulfillment of needs in Humane. This arising desire is the result of human biological lust that simple. Forms of prostitution such as the practice of selling sexual services or what is also called Commercial sex workers should be considered one of the ills of society that has a long history, it is even considered one of the forms of deviance to the sacred norms of marriage (Soedjono, 2007).

Mudjijono prostitution is a social symptom when women providing himself for sexual acts as his livelihood. Mudjijono argues that prostituso is a social symptom at a time when women are peddling himself for sexual acts as his job or livelihood (Soedjono, 2007). Soedjono, prostitution is an act in which a woman trafficked or sell her body, to obtain payment from the man who comes to pay her and the woman had no other livelihood in her life except that which obtained by having intermittent relationships with many people. Paul Moedikdo Moeliono also argues "prostitution is the surrender of a woman's body for receiving a fee, for the gratification of the sexual appetite of those people Based on the foregoing, it can be concluded that there are at least four main elements in the definition of prostitution that can be enforced, namely (Anwar & Andang, 2013); pay, infidelity, emotional indifference, and livelihoods.

Prostitution is etymologically derived from the word *prostitutio* which means thing to put, confronted, things offer. There are also other meanings of selling, hawking, but in general defined as surrender to many kinds of people by obtaining a reply services for the sexual gratification of the person. The lives of the perpetrators of prostitution are very primitive. Crimes against decency regulated in the Criminal Code (Penal Code) book II chapter XIV, from Articles 281 to 303. So that every raid and the regulation of prostitution by the state apparatus, almost never any guest visiting the prostitution was arrested.

Existing regulations in Indonesia that are related to the current acts of prostitution, namely the Regulation in the Criminal Code on decency issues such as in articles 281 to 303, In particular, Article 296 and Article 506 do not ensnare users, but only entangle to brothel owners, pimps and realtors or scalpers of prostitution. Meanwhile, laws outside the Criminal Code, namely Law Number 21 of 2007 on the Eradication of Trafficking in Persons can only criminalize someone who benefits from trafficking in persons (pimping). Law Number 35 of 2014 concerning Amendments to Law Number 23 of the Year 2002 on Child Protection only criminalizes users from child sexual exploitation. However, when viewed from the point of view of the subject of law, the perpetrators of prostitution are not only pimps or pimps and other facility providers who must be held legally accountable as clearly outlined in the regulatory regulations that the author described earlier.

Based on the description above, judging from the perspective of justice, this is very untrue fair. Not all parties involved in prostitution activities are punished by statute. In this case, users of prostitution services are only used as witnesses even though service users are parties who participate in sexual exploitation towards his victims. But so far the act of prostitution is included in adultery which is classified as a complaint delik not as a general offense, so this is a legal loophole that causes the development of prostitution in Indonesia to be increasingly rapid so that according to the author which equates the act of prostitution as a crime without a victim (delik complaint) must be reviewed again.

titled in terms of criminal law liability, Criminal liability in theory explains that liability a criminal can only apply if a person has previously committed a criminal act. As Moeljatno said that, people are impossible to account for (sentenced to a criminal offense) if not to commit a criminal act. Examining from various parties who play a role in this crime of prostitution, only a few parties are responsible for their actions. Criminal liability for parties involved in acts of prostitution has not been able to ensnare the law of all parties, including commercial sex workers and users of their services. There is no clear regulation that regulates this as if the act is not a despicable thing, while when viewed from various aspects the act of prostitution has been categorized as a crime.

So that it was born due to demands for a sense of justice and legal certainty from the community who questioned the criminal liability of perpetrators of prostitution based on applicable law in Indonesia. In addition to not fulfilling the principle of justice, criminal liability only to pimps or other facility providers in the practice of prostitution also injures the principle of human beings who are moral and dignified and civilized indirectly as well as violations of human rights and harassing practices in Pancasila so this is why criminalizing prostitution as a crime is currently very urgent.

The concept of criminalization of prostitution as an instrument of criminal law enforcement

The problem of prostitution is a structural problem, the fundamental problem that occurs in society is that it still understands the problem of prostitution as a moral problem. Not realizing this moral perception will result in an attitude of "blaming the victim" which in turn makes the victim even more oppressed. Prostitution is a form of criminality that is very difficult to deal with and this type of criminality is widely supported by economic factors in people's lives, where in society itself gets the fulfillment of needs humanely (Pisani, 2010).

Another interesting phenomenon in recent times is a form of prostitution that does not expect material rewards. In this condition, commercial sex workers are willing to perform sexual services due to consensual factors. In the cosmopolitan life that pervades freedom, this phenomenon is increasingly encountered. Material in this case money is no longer the main motivator. Freedom and fun are reasons that are always the answer in this type of situation (Purnomo & Siregar, 2010).

So far, in the Criminal Code and laws outside the Criminal Code, it can only ensnare the provider of the place and or the pimp while for users and for workers it cannot be subject to criminal sanctions because there is no specific regulation but strangely there are in some local regulations that regulate the prohibition of the practice of prostitution, but not all regions have this bylaw and it is intended to be in the category of violations of public order. And it must also be questioned the effectiveness of this bylaw, because so far it has not had any effect on the practice of prostitution.

For this reason, it is necessary as soon as possible to regulate the criminalization related to acts of prostitution in Indonesia. Criminalization is a criminological study, namely criminalization is a process that shows behavior that was not originally categorized as a criminal act but was later classified as a criminal act by society. It is based on this context that the notion of "criminalization" has a place to study and study human behavior, which at first the act has not been formulated in the form of a norm, but only based on the values of societal propriety, according to Herbert Lionel Adolphus Hart, calling it still within the limits of primary law, not yet a secondary legal norm. According to Moeljatno, there are three criteria for the nature of criminalization in the process of forming criminal law. First, the designation of an act as a prohibited act (criminal act) must be in accordance with the legal

feelings that live in society. Second, whether criminal threats and criminal convictions are the main avenues to prevent the violation of these prohibitions. Third, whether the government, by bypassing the tools of the state concerned, is really capable of actually carrying out criminal threats if it turns out that someone is violating (Tampi, 2010).

The act of prostitution according to the author has been in accordance with the description of the nature of criminalization above has met the three criteria in question, therefore it needs to be classified as a "criminal act" through the formulation in the norms so that people who are considered to have committed prohibited acts in accordance with the fundamental principle in criminal law, namely the principle of legality, can be sentenced to a criminal offense. More than that, criminalization as a process of formulating acts into criminal acts is not solely in the model of forming new statutory norms. But it can also be in the form of adding or increasing and/or imposing pre-regulated criminal penalties.

Indonesia's criminal law that regulates decency in the current Criminal Code still has moral weaknesses considering that the establishment of decency deliberations does not use the basic values or "the living law" of Indonesian society. To form the concept of criminalization policy on prostitution in Indonesia in the context of renewing the criminal law system, it must pay attention to Pancasila or the philosophical values of the Indonesian nation. Pancasila, which is also contained in the soul or spirit of the Indonesian people in the 2nd (second) precept, has given a mandate that every citizen upholds fair and civilized human values in the life of the nation and state. Article 28I of the 1945 NRI Constitution states that everyone has the right not to enslave which is a human right without being reduced in the slightest.

As contained in the provisions of Article 296 and Article 506 of the Indonesian Criminal Code which currently regulates prostitution can only ensnare intermediaries in the practice of prostitution, namely pimps and pimps and other facility providers (hotels and inns). The specific provisions governing commercial sex workers (prostitutes) and their service users are not contained in the Criminal Code or legal regulations outside the Criminal Code, but if the user of his service already has an official spouse (on the basis of marriage), and then the spouse complains about the actions of his spouse who uses the services of a prostitute, then the person who uses the services of a prostitute can be entangled with the Adultery article regulated in Article 284 of the Criminal Code but the prostitute is not subject to criminal sanctions (Simangunsong & Kusuma, 2014)

The difference in connotations between adultery and the relationship between prostitutes and their service users is what has resulted in Indonesia still not being able to ensnare these two perpetrators (only ensnaring pimps) because they do not have a strong legal umbrella and often view the context of prostitution as a form of victimless crime, the occurrence of a vacuum of norms in the Indonesian Criminal Code that continues to be allowed will have an impact on the difficulty of disciplining the practice of prostitution in Indonesia, in the absence of strict arrangements in the Indonesian Criminal Code.

Therefore, the author focuses more on the renewal of substations, namely the renewal of the materiel criminal law regarding the liability of parties involved in prostitution. So that later the concept of criminalization of prostitution in the renewal of criminal law can be a manifestation of the fulfillment of just and civilized human values which states that humans are not a commodity that can be traded so that it is necessary to give equal respect and treatment to every human being without prejudice to the principle of certainty and expediency of the law

IV. CONCLUSIONS

The urgency of criminalizing prostitution as a crime, prostitution is contrary to the values in the practice of Pancasila precepts as the source of all sources of law and contrary to the Preamble to the 1945 Constitution of the Republic of Indonesia as in the first precept of violations of religious norms, then in the second precept of violations of norms of decency and decency and the fifth precept on violations of human rights. The act of prostitution so far has not specifically regulated it clearly both in the Criminal Code (KUHP) and in regulations outside the Criminal Code so that this is where there is a vacuum of legal

norms and the absence of applicable legal rules.

The regulation of the practice of prostitution as a criminal act or against the current material law in Indonesian criminal law still does not reflect the principle of justice and the principle of expediency where only pimps or pimps are subjected to criminal sanctions even though the participation of commercial sex workers and users of commercial sex worker services is also important because the practice of prostitution will not occur if there is no participation of commercial sex workers and sex users of commercial sex workers (as buyers of services) here researchers assess the existence of a vacuum in legal regulations related to the criminal provisions of commercial sex workers and users of commercial sex services their participation as perpetrators of criminal acts of prostitution, In addition to prostitution intermediaries, namely pimps and other facility providers (hotels or inns) so that it requires the concept of criminalization of prostitution in the context of updating the criminal law, namely in the form of penal policies by reformulating norms in the form of laws with legal reconstruction of articles 296 and 506 based on justice and legal expediency.

For The House of Representatives of the Republic of Indonesia (DPR RI) as the institution that forms the law (legislative) along with the President (executive), taking into account and considering the comparison of regulatory regulations from other countries which make commercial sex workers and users of commercial sex services as perpetrators of criminal acts of prostitution without prejudice to the principle of justice and the principle of expediency, to compile criminal provisions related to commercial sex workers and sex service users commercial also as a criminal offender by reconstructing the law on the decency.

For law enforcement, the implementation of the concept of criminalization in prostitution in Indonesia in the context of renewing the criminal law system in the future must pay attention to Pancasila or the philosophical values of the Indonesian nation so that criminal responsibility for perpetrators of prostitution crimes (prostitutes, pimps and service users) in order to fulfill fair and civilized human values is not just the principle of legal certainty and the principle of premium remidium.

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