

Criminal Responsibility System Against Online Criminal Acts of Prostitution in Indonesia



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ABSTRACT: The criminal responsibility system for the crime of prostitution in Indonesia is partial and discriminatory. There is no guarantee of legal certainty and a legal vacuum for Commercial Sex Workers and their service users. This study aims to analyze and find the criminal responsibility system for prostitution according to positive criminal law in Indonesia and the weaknesses of the criminal responsibility system for prostitution based on the value of Pancasila justice. The paradigm in this research is post-positivism, which aims to produce new thoughts, understandings or ideas and theories in Indonesia's material criminal law system. The method of normative juridical approach, with secondary data sources obtained through literature studies both on primary, secondary and tertiary legal materials, the data were then analyzed by qualitative descriptive methods. The study results show that the construction of positive criminal law in the Indonesian Criminal Code and the Electronic Information and Transaction Law (UU ITE) cannot be used to impose criminal liability on all parties involved in this crime. The provisions are partial and discriminatory. Weaknesses can be seen from the aspect of substance, structure, and culture so that the ideal reconstruction of the policy is needed to reconstruct Article 296 and Article 506 of the Criminal Code as well as Article 27 paragraph (1) and Article 45 paragraph (1) of the ITE Law which is based on non-discrimination and equality before the law that comes from extracting living values, In society.

KEYWORDS: Criminal; Liability; Prostitution; Indonesia; Pancasila

I. INTRODUCTION

Indonesia's national development is an effort to improve the quality of humans and society based on national capabilities by utilizing advances in science and technology and considering global development challenges. The philosophical reference in implementing national development is the nation's personality and universal noble values.

Moral offences are offences related to (problems) decency. However, determining how far the scope is is difficult because the understanding and boundaries of morality are quite broad and can vary according to the views and values prevailing in society. This condition shows a close relationship between criminal law and norms that live in society, especially people who still highly uphold religious norms or customary norms. Mardjono Reksodiputro sees that the criminal law (law) that aligns with or supports the moral code can be influenced by people's emotions (Franjić, 2020).

Prostitution is seen as contrary to the values of decency that exist and live in society. This condition may be the basis for the makers of the Criminal Code to include prostitution as a decency offence. In the Indonesian Criminal Code, decency offences are formulated in Book II Chapter XIV on "Crimes against Morality", which is regulated in Articles 281-303. Meanwhile, Book III on Violations also contains "Violations of Morals", which are regulated in Chapter VI Articles 532-547. It is known that prostitution is very close to sexual intercourse outside of marriage, which in Islam can be regarded as adultery.⁴ In the Qur'an itself, the act of adultery is classified as an unlawful act. It is stated, among other things, in Surah Al-Isra verse 32: "And do not ever commit adultery. Indeed, adultery is an act that is heinous, disrespectful and a bad way."

Surah An-Nur verse 2 also stated, "Women and men who commit adultery, lash both, one hundred times each. Do not pity them in carrying out the law of Allah's Religion if you truly believe in Allah and the Hereafter and let a group of believers witness the punishment for both."

From a religious perspective, prostitution is considered an illegal act, based on the letters in the Quran, namely Surah Al-Isra verse 32 and An-Nur verse 2, which talk about adultery. In the verse above, there is a prohibition that explains that Allah forbids a servant who forces someone to commit prostitution and take advantage of it. So, suppose prostitution is related to adultery, defined as sexual intercourse outside the marriage bond. In that case, prostitution can also be considered related to the provisions of Article 284 of the Criminal Code, which also regulates adultery. In the provisions of the article, the act of adultery is defined

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more narrowly than the previously mentioned definition of adultery. The definition of adultery in the provisions of Article 284 of the Criminal Code is narrowed by the provision that intercourse outside the marriage bond must be carried out by someone married to another person who is not married (Koto, n.d.).

So far, the government has only regulated the issue of prostitution, which is confirmed in the criminal law, only prohibiting those who assist and provide illegal sex services as formulated in two articles of the Criminal Code (KUHP), namely Article 296 and Article 506, which define prostitution as a crime. Crime against the intermediary.

People's lives are now influenced by the development of information and communication technology, not only having a positive side as a tool to facilitate daily activities but also having a negative side, including in the field of decency, which is currently often encountered such as online prostitution, the use of the internet for sexual purposes, or using a computer for sexual expression or gratification (cybersex) (Franjić, 2020).

With internet access and easy ways to communicate, transactions in terms of commercial sex are also easier to obtain. The Indonesian government has regulated in Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, called the ITE Law (Octaviana, 2019).

From the juridical aspect outside the Criminal Code relating to online prostitution, it is formulated in Article 27 paragraph (1) jo. Article 45, paragraph (1) of the ITE Law, formulates prohibited acts by mentioning the word decency concerning things that contain pornography. The difference between decency and online prostitution. Article 27 paragraph (1) jo. Article 45, paragraph (1) of the ITE Law does not explain criminal sanctions for service users for online prostitution. And perpetrators of commercial sex service users of online prostitution cannot be subject to criminal liability, which this article can charge not for their direct prostitution activities but rather for uploading or uploading content containing prostitution into cyberspace.

The handling of prostitution on the issue of legal substance as regulated in the Criminal Code and the ITE Law as special legislation made to tackle prostitution does not appear to be regulated by customers or users of commercial sex services who can be charged with criminal sanctions. This condition means that criminal liability in prostitution cases is only aimed at pimps or pimps as providers of prostitution services. The ITE Law only prohibits service providers, funders, and commercial sex workers as objects in online prostitution. So that those who use the services of commercial sex workers can freely without fear of being trapped by criminal sanctions, starting from the description above, efforts or policies to tackle prostitution both in its conventional form (offline) and online prostitution can be carried out through criminal liability to the parties involved in prostitution cases. There is perceived injustice and lack of legal certainty so far because service users in prostitution cases have not been subject to criminal sanctions (Block & Williams, n.d.).

Meanwhile, perpetrators, namely people who facilitate transactions using prostitution services (pimps) and people who peddle themselves or provide sexual services, are arrested, and then sentenced to criminal sanctions. Does the question arise whether Indonesian regulations only prohibit the occurrence of prostitution or only commercial sex workers and their providers? While people become commercial sex workers because there must be users of their services.

Thus, there must be a strengthening of ideology and the state's role, which will have implications for the magnitude of the state's role in planting the Pancasila ideology in carrying out the reconstruction of the criminal responsibility system in cases of prostitution. The values of Pancasila must be the main reference in reconstructing criminal liability in cases of prostitution. It is not precisely the character and values of colonialism that are still inherent in the Criminal Code. The reform of criminal law in terms of criminal liability for users of prostitution services, as stated at least, is aimed at protecting the community and the welfare of the Indonesian people.

This is in line with what was conveyed by Erfandi, that: Community protection (social defense) with law enforcement in criminal and criminal reforms carried out with the aim of: (1) protecting the community from anti-social acts that harm and endanger the community, then the purpose of punishment is preventing and tackling crime, (2) protecting the community from the dangerous nature of a person, then the criminal/punishment in criminal law aims to improve the perpetrators of crimes or try to change and influence their behavior so that they return to obey the law and become good and useful citizens of society, (3) protection of the community from abuse of sanctions or reactions from law enforcement and from citizens in general, the purpose of the crime is formulated to prevent arbitrary treatment or actions outside the law, (4) protection of the community from disturbances in the balance or harmony of various interests and consequences If there is a crime, then criminal law enforcement must be able to resolve conflicts caused by criminal acts, be able to restore balance and bring a sense of peace in society (di Ronco, 2022).

The actualization of Pancasila values in a comprehensive criminal law reform relating to criminal responsibility for the parties involved in prostitution cases, in which it regulates the balance between the public interest and the interests of the state with individual interests, between the protection of perpetrators of criminal acts and victims of criminal acts, between elements of actions and mental attitudes, between legal certainty and justice, between written law and the law that lives in society, between national values and universal values, and between human rights and human obligations, are things that must be realized as soon as possible. This means that the law that grows and develops from society by integrating noble values in its community, in turn, will be able to produce aspirational and accommodative laws following the mainstream of society.

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In line with this, Sri Endah Wahyuningsih argues that "The values that live and develop in society in the form of customary law and religious law are values that have been believed and applied since before the Dutch colonial period, and their existence is still recognized until now.

Still related to this, Sri Endah Wahyuningsih argues that "The source of the development of Indonesian criminal law can be from various sources, both taken from the law that lives and develops in society (local wisdom) and from foreign law by conducting comparative studies (international wisdom). " With the hope of contributing comprehensively to the development of criminal law in Indonesia, this study will analyze prostitution and its criminal liability system in Indonesia (S. E. Wahyuningsih, n.d.; S. E. jawade ha Wahyuningsih, 2017).

II. RESEARCH OBJECTIVES

II.1. To analyze the regulation of the criminal responsibility system on the crime of prostitution in positive criminal law in Indonesia, which has not been fair.

II.2. How are the weaknesses of the regulation of the criminal responsibility system on the crime of prostitution in positive criminal law in Indonesia so that it is not yet fair to Pancasila.

III. RESEARCH METHOD

The paradigm in this research is post-positivism because the researcher wants to produce a new thought, understanding or idea in the criminal law system in material criminal law. The approaches used are the statutory, conceptual, case, comparative, and analytical approaches. The research specification is descriptive-analytical. Secondary data sources as the main data in this study include primary legal materials, secondary legal and tertiary legal materials, and Data Analysis Methods. The data analysis that the researcher uses is descriptive qualitative.

IV. RESULTS AND DISCUSSION

A. Regulation of the Criminal Accountability System for the Crime of Prostitution in Positive Criminal Law in Indonesia, which Pancasila has not justified

The system for formulating criminal liability for prostitution relates to who can be held accountable as the subject of a criminal act of prostitution or is closely related to the perpetrators of criminal acts, which in this case are individuals. The Criminal Code still uses the subject of the crime as 'person' in a natural biological connotation (*natuurlijke persoon*). In the Memorandum of Explanation of the Criminal Code, it is stated that a criminal act can only be committed by an individual (*natuurlijke persoon*), and in general, as stated in Article 59 of the Criminal Code, the subject of a corporate crime is not yet known, and what is recognized as a subject in a criminal act, in general, is 'person'.

The system for formulating criminal liability in criminal acts is based on errors. Whereas if explored further, prostitution in the form of online itself is an act that is closely related to corporations, in this case, ISPs (Internet Service Providers) as service providers to communicate with other servers in different places. At the same time, the Criminal Code is the parent of all legislation. Criminal law in Indonesia does not recognize the subject of corporate law (Endah Wahyuningsih & Iksan, 2019).

In the Criminal Code, which is the parent of every criminal law, it turns out that it does not regulate corporations as subjects of criminal law. The formulation of the articles that use the phrases "Whosoever...", "Everyone...", "One..." and others indicate that the Criminal Code only adheres to natural persons (humans) as subjects of criminal law. The Criminal Code still adheres to the principle of "sociates delinquent non-potest", where a legal entity or corporation is deemed unable to commit a crime. So in the formulation of the articles relating to prostitution, it is only accountable to people/humans, not to corporations that may carry out the practice of prostitution. This is based on the formulation of the article that uses the phrase "Whoever..." as stated in Article 296 of the Criminal Code and 506 of the Criminal Code. And the phrase "...A man and/a woman as mentioned in Article 284 of the Criminal Code. It means that those subject to criminal responsibility in online prostitution from the perspective of the Criminal Code are humans (Søndenaa et al., 2019).

In several articles related to prostitution, including Article 284, Article 296 and Article 506 of the Criminal Code, From the three articles, it is known that the perpetrators can be held accountable for adultery, committing or facilitating obscene acts, and taking advantage of obscene acts are people/humans.

Whereas the characteristics of online prostitution are that one of them involves an internet service provider, the internet service provider can take the form of a corporation/legal entity which is a collection of people. Of course, is a problem. In addition, the element of error is also a condition of criminal responsibility for the perpetrator.

In Article 284 of the Criminal Code, there are the words: "...doing gendak (overspel) even though it is known that Article 27 of the Civil Code (monogamy principle) applies to him." This is an intent element on the perpetrator's (men's *rea*). The article does not explicitly define the word "intentionally".

The element of intent by the perpetrator to make obscene acts or actions that violate decency as a livelihood is also contained in Article 296 of the Criminal Code and Article 506 of the Criminal Code. Formulation of Article 296 of the Criminal Code firmly

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formulates the element of "deliberate", where the perpetrator commits or facilitates obscene acts with other people and uses obscene acts as a habit or livelihood. Meanwhile, Article 506 of the Criminal Code is also not explicitly formulated. Still, by looking at the formula "taking advantage of a woman's obscene act, making it a livelihood", meaning that the perpetrator's actions are carried out repeatedly and continuously (continuously), there is an element of intent.

Regulation of the Criminal Accountability System on the Crime of Prostitution based on Law no. 11 of 2008 concerning Information and Electronic Transactions as amended by Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) Legal regulations regarding the use of technology have been formulated in positive Indonesian law. This is aimed at ensuring greater legal certainty for the community. The Information and Electronic Transaction Law is a legal reform to keep pace with the development of science and technology. However, due to the rapid developments in the community, and the law was deemed insufficient to accommodate legal interests in the community, in 2016, it was partially revised to become Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (Thapa & Gurung, n.d.).

The amendment aims to ensure the recognition and respect for the rights and freedoms of others and to fulfil fair demands by considerations of security and public order in a democratic society to realize justice, public order and legal certainty, as formulated in the preamble of the law. Regarding the criminal provisions in the ITE Law, it is regulated in Chapter XI Article 45 to Article 52. Of the several provisions mentioned in Chapter XI, there are several articles relating to the crime of online prostitution, namely as formulated in Article 27, paragraph (1) of Law No. 11 In 2008, Article 45, paragraph (1) of Law No. 19 of 2016 and Article 52 paragraph (1) in conjunction with 27 paragraph (1) of Law No. 11 of 2008. This law does not mention the word prostitution, except in Article 27, paragraph (1) UU no. 11 of 2008. There is the word "violating decency. Regulations regarding online prostitution in Indonesia can be seen in Article 27 paragraph (1) of Law no. 11 of 2008 concerning ITE, which formulates prohibited acts, namely: "Every person intentionally and without rights distributes and transmits or makes accessible Electronic Information and Electronic Documents that have content that violates decency".

Based on the formulation of Article 27 paragraph (1) of Law no. 11 of 2008 concerning ITE, every crime element does not stand alone and always has a relationship with other elements, consisting of a. Everyone b. Intentionally and without rights c. Distribute, transmit, or make accessible d. Electronic Information and Electronic Documents e. Violating decency (Jamal Mohamed Barrow et al., n.d.).

These elements can be described as follows: The element of Everyone can be interpreted that the legal subject of the article is an individual or a legal entity (Rechtspersoon). The element of intentional and without rights, first needs to be explained about the intentional element. According to the Dutch MvT WvS, "in general, punishment should be imposed only on those who commit prohibited acts, willingly and knowingly". In short, deliberately means to will (Willens) and know (widens). Based on the information in the Dutch MvT WvS,

Jan R Emmelink stated that how the element is intentionally placed in criminal provisions will determine the relation of this understanding to the elements of other offences: what follows this word will be influenced by it. In the formulation of Article 27 paragraph (1) of Law no. 11 of 2008 concerning ITE, the element intentionally precedes the element without rights and needs so that the perpetrator must first have the will before committing the act prohibited in the article. This also applies to the element without rights, which means that the perpetrator has known or realized that he did not have the right to carry out the acts referred to in the article. The element without rights in the article is intended so that people who have the right to commit the same acts as criminal acts formulated by law are not punished. In other words, this prevents those who exercise their rights or authorities from being punished immediately.

The elements of distributing, transmitting, or making it accessible are as follows: 1) Distributing is disseminating information or electronic documents through electronic media. 2) Transmitting sends, transmits, or forwards information through telecommunications equipment. 3) Making Accessible allows electronic information or document to be accessed by others, such as creating a link or link or notifying the password of an electronic system (Harmanto et al., 2022).

Elements of electronic information and electronic documents listed in the general provisions of Article 1, paragraph (1) and paragraph (4) of Law Number 11 of 2008 concerning Electronic Information and Transactions whose formulation is as follows:

1) Electronic information is one or a group of electronic data, including but not limited to writing, sound, pictures, maps, designs, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, Access Codes processed symbols or perforations that have meaning or can be understood by people who can understand them.

2) Electronic document is any electronic information created, forwarded, sent, received, or stored in analogue, digital, electromagnetic, optical, or similar forms, which can be seen, displayed, and heard through a Computer or Electronic System, including but not limited to writing, sound, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who can understand them (Wahyono, 2021).

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The element of violating decency in Article 27 paragraph (1) of Law no. 11 of 2008 concerning ITE has a broad meaning. It can be observed that the formulation of the offence in the article can be used to reach acts of internet abuse for sexual purposes (e.g., cyberporn, cybersex, cyberprostitution, or virtual adultery), all of which are part of illegal content in cyberspace. Simons, for example, says that violating decency is "an act directed towards sexual life, arouses or stimulates sexual desire." Furthermore, regarding the element of violating decency in Article 27 paragraph (1) of the ITE Law, violating decency is the act of someone who violates moral norms, including the definition of violating decency is the act of spreading the content of images, sketches, illustrations, photos, writings, sounds, sounds, , moving pictures, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and public performances, which contain obscenity or sexual exploitation that violates the norms of decency in the society (Aiffah & Religia, 2020).

It should be emphasized that this article can be trapped by not direct prostitution activities but rather the activities of uploading or uploading content containing prostitution into cyberspace. If someone fulfils the elements of these articles, namely distributing, transmitting, or making accessible electronic documents or information in the form of words, writings and images through the form of communication media or public performances that contain obscenity or sexual exploitation that violates norms of decency in a society where online prostitution is included in these elements, the perpetrators of uploading online prostitution content can be threatened with a crime as stated in Article 45 paragraph (1) of the ITE Law. The ITE Law also does not clearly define the qualifications for the offence. Whether it is a crime or a violation, it can be interpreted that the qualification/type of crime is qualified as a crime. Article 27 paragraph (1) of Law No. 11 of 2008 formulates prohibited acts, while the criminal provisions are separate as contained in Article 45 paragraph (1) of Law No. 19 of 2016 (Aputri & Hasuri, 2021).

Based on the provisions of Article 27, it can be identified that the prohibited acts are: a. intentionally and b. without the right to distribute and transmit and make accessible Electronic Information and Electronic Documents that have content that violates 'decency' While the elements of Article 45 of Law No. 19 of 2016 in conjunction with Article 27 paragraph (1) of Law No. 11 of 2008 are a intentionally and b. without the right to distribute and transmit and make accessible Electronic Information and Electronic Documents that have content that violates decency. Criminal responsibility leads to an understanding of punishment for perpetrators of criminal acts. A criminal act is an act that can be subject to criminal penalties, where the act refers to both the perpetrator and the consequences of his actions. This relationship is so close, as a causal relationship, where if a person commits an act that is punishable by a crime, then he must bear the consequences of that act in the form of punishment. This understanding of bearing the consequences of punishment is what is meant as criminal responsibility. In other words, criminal liability is intended to determine whether a person can be held accountable for a crime that occurred (Welner et al., 2018).

Moeljatno said people couldn't be held accountable if they did not commit a crime. This means that criminal liability will only occur if someone has previously committed a crime. In the context of legislation, it is also said that whether there is a crime is determined by legislation, which is interpreted as no criminal liability without the rule of law that regulates it first. The system for formulating criminal liability in online prostitution is related to who can be held accountable as the subject of an online prostitution crime or is closely related to the perpetrator of a crime. In this regard, several parties are the subject of this online prostitution crime, namely:

a) Service users or buyers or better known as "man mashers", are people who open, download, access, or various other activities that smell pornographic about the purchase of sexual services carried out using website media from the internet or other media. Other.

b) Commercial Sex Workers, namely people who are the object of buying and selling sexual services offered online by pimps or by themselves.

c) Pimps, or in this case, the understanding as owners of online prostitution websites, forums, or owners of accounts on social media, namely people who provide online prostitution services via their websites or who connect sex workers with users of online prostitution services offered.

d) The server owner (internet service provider) is the person who provides a place for prostitution website owners to store their data so everyone can access it. The issue of criminal liability is closely related to the perpetrators of criminal acts. However, in the legal provisions in Indonesia, not all parties involved in prostitution can be trapped by the law. Article 27 paragraph (1) of Law No. 11 of 2008 states, "Every person intentionally and without rights distributes and transmits and makes accessible Electronic Information and Electronic Documents...." so that it should be the subject in this law, people who are required to be held criminally responsible are people.

In the provisions of Article 1 point 21 that what is meant by "Persons are individuals, whether Indonesian citizens, foreign citizens, or legal entities. So that the person referred to in this law is a legal entity. For articles beginning with the word "...everyone...", as in Articles 27, 45 and Article 52, what is meant by the perpetrators in the sense of this sentence are individuals and legal entities/corporations. Regarding the parties involved and the subject of online prostitution crimes, if it is related to the provisions of the article, those who can be held accountable as prostitutes are only owners of online prostitution

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websites or forum owners, or account owners on social media, namely as people who distribute or transmit or make accessible sites that contain violating decency or online prostitution content (Peters, 2018).

Article 1 number (21) of the ITE Law stipulates that: "Persons are individuals, whether Indonesian citizens, foreign nationals, or legal entities." From the use of the phrase "... as well as legal entities" proves that criminal responsibility for perpetrators of online prostitution from the perspective of the ITE Law can be imposed on humans and legal entities. This is evidenced in Article 27 paragraph (1) of Law No. 11 of 2008 which stipulates that: "Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency. "From the formulation of the article above, the elements of the perpetrator's guilt must be proven by distributing and/or transmitting and/or making Electronic Information and/or Electronic Documents accessible that have content that violates decency. The phrase "and/or" indicates an alternative crime, so it is called *leer van het materiele feit*. Whereas the Criminal Code itself does not provide an explanation of what is meant by the principle of "geen straf zonder schuld", but this principle can be said to be an unwritten principle and applies in Indonesia. Therefore, in a criminal liability there are two things that must be considered, namely the criminal act (*daad strafrecht*), the perpetrator of the crime (*dader strafrecht*). Analysis of criminal liability in theory explains that criminal liability can only occur if someone has previously committed a crime (Forry et al., 2019).

B. Weaknesses of Prostitution Regulations and Its Criminal Liability in Indonesia

In the Criminal Code, there is no official definition of prostitution, and it does not prohibit prostitution. Article 296 of the Criminal Code and Article 506 of the Criminal Code can be used to tackle online prostitution crimes. This provision prohibits all forms and practices of prostitution of other people and obtaining profits or making a living and threatening punishment to pimps, pimps or owners and or managers of brothels. Meanwhile, prostitutes and users of sexual services are only positioned as witnesses. So that the recognition of this type of crime is still incomplete because the regulation is partial, unclear and tends to be more discriminatory.

There is no synchronization and harmonization between laws and regional regulations. In some regions, local regulations have been drafted to criminalize prostitutes and users/buyers of sexual services, while the Criminal Code, as a national law, does not regulate it. Article 284 of the Criminal Code can be used to tackle types of online prostitution crimes, especially for sex workers and users of sexual services/buyers, but it is required with certain qualifications. The Criminal Code does not recognize the internet as a tool/means/media that can be used to commit crimes. At the same time, online prostitution has a specificity, where the action is carried out using the internet network/information technology facility as a medium to carry out its actions.

The Criminal Code does not provide limits or definitions for acts that violate decency, so its meaning is very broad, depending on which community embraces values. The crime of prostitution is related to the violation of the national moral values of the Indonesian nation. The Criminal Code does not recognize corporations as the subject of criminal acts, even though corporations are closely related to online prostitution. Corporations, in this case, are ISPs (Internet Service Providers) as service providers to carry out internal communication with other servers in different places (S. E. jawade ha Wahyuningsih, 2017).

In the view of legal system theory, some of the things stated are weaknesses because criminalization is not aimed at all parties involved. So that its reach is limited in law enforcement, and it is also a criminogenic factor in fostering prostitution in Indonesia, both online and offline. From the aspect of legal structure, law enforcement agencies only form special units and procedures to handle cases of involuntary prostitution, namely cases of prostitution that occur due to elements of coercion, intimidation or exploitation so that sex workers are in a position as victims, including exploitation of minors, which can be qualified as trafficking which is resolved by using other legal provisions/regulations, namely the Trafficking in Persons Law or the Child Protection Law. So, in law enforcement, the apparatus does not provide special units and procedures for handling voluntary prostitution cases.

The prostitutes are only used as witnesses in examining their pimps. PSKs and their service users are only used as witnesses for the actions of pimps who help sell/offer their services. In the context of online prostitution, the limited number of law enforcement officers controlling cybercrime is also a problem. The limited number of cyber patrol officers also hampers prevention and countermeasures. Meanwhile, in terms of legal culture, Indonesian society is moral and religious, but some people stigmatize sex workers as victims. This is because there is no comprehensive understanding of prostitution, especially in the form of voluntary prostitution. Some people and law enforcement consider/position sex workers are victims. This is because the existing regulations position it that way. Whereas typology based on the style of prostitutes in carrying out their actions can be done voluntarily (voluntary prostitution) or prostitution that is carried out based on coercion (involuntary prostitution) (Ronco, 2018).

In voluntary prostitution, the position of the parties who cause prostitution is the same. Both prostitutes, pimps and their service users are perpetrators. They have formed an orderly scheme, and each other has an equal position and position in carrying out their crimes. Prostitution is a sexual activity prepared with both parties' consent for commercial purposes. This means that the parties involved assume that no one is harmed by each other. Their actions form a mutually beneficial scheme as a symbiotic mutualism. All benefit from their actions according to their respective roles. So that in this position, no victim is harmed. The

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formulation of policies that are only aimed at pimps proves that the formulation of the article on prostitution is not based on the pattern of relations or commercial relations in its formulation, while what is regulated in the Criminal Code so far is only based on the pattern of relations when women become victims or the pattern of consensual relations even though it is an offence. Complaints so they cannot be used to trap prostitutes and prostitution service users.

Substantially, in Indonesia, there are no provisions that specifically and specifically regulate the practice of online prostitution. This causes unclear rules that strictly regulate this type of crime. In general, there are provisions in positive criminal law in Indonesia that can be used to cover this type of crime. Still, it is difficult because it contains weaknesses that have not been able to trap all parties involved in this crime, so it can be said that Indonesia has not fully regulated the problem of prostitution. Thus, the recognition of this type of crime is still incomplete because the regulation is partial, unclear and tends to be more discriminatory (Wismayanti et al., 2019).

Article 296 of the Criminal Code and Article 506 of the Criminal Code can be used to tackle online prostitution crimes. Still, the provisions only prohibit all forms and practices of prostitution of other people and gain profits or make a living and threaten punishment to pimps, pimps or owners and or managers of brothels. Meanwhile, prostitutes and users of sexual services are positioned only as witnesses/victims. 5. Even though online prostitution is categorized as an act of adultery, from the perspective of legal norms, it seems difficult to apply it to prostitutes and their service users because of its qualifications in Article 284 of the Criminal Code as a total complaint offence. The spouse of the prostitute or the buyer of the service does not file a complaint, so it cannot be snared because certain qualifications require it.

The Criminal Code distinguishes legal consequences on the qualifications of acts between crimes and violations. At the same time, the provisions related to prostitution in the Criminal Code are regulated in Book II (Article 296), and some are in Book III (Article 506). Regarding criminal liability against perpetrators, the Criminal Code recognizes people who can be held accountable. Related to online prostitution, which is part of cybercrime in the field of decency, corporate actors are very closely related to online prostitution. The corporations referred to in this case are Internet Service Providers (ISPs) as service providers to communicate in the commercialization of sexual services with other servers in different places. Advertisements for online prostitution services often found online are closely related to corporations. This can be difficult at the application stage because special provisions outside the Criminal Code are bound by the general provisions of the Criminal Code as a unified criminal system. Thus, it can also be seen that there are no guidelines for implementing the punishment (*strafmodus*), so the provisions in the Criminal Code, which are closely related to the understanding and elements of online prostitution, are also not fully used to capture decency offences carried out using internet facilities (Rofiq et al., 2019).

The existence of the internet is not known in the Criminal Code as a tool or means that can be used to commit crimes. The provisions in the Criminal Code can be used to overcome this online prostitution crime. However, it has not been able to effectively trap all the perpetrators involved so that they can use the provisions in the ITE Law as the *lex specialist* that regulates activities using internet facilities.

Article 27 paragraph (1) of Law no. 11 of 2008 can be used to eradicate types of online prostitution crimes. Still, this article prohibits distributing or transmitting content that violates decency only. This is related to the prohibition of content only, while the characteristics of prostitution are acts of sexual commercialization. So, in the context of online prostitution, this provision can only be applied to pimps and prostitutes who are proven to distribute and transmit content that violates decency. Meanwhile, customers/service buyers cannot be trapped by this provision because there is no prohibition on the use and purchase of pornographic content/content that violates the decency in these provisions (Lussier et al., 2019).

CONCLUSIONS

1. The Indonesian Criminal Code regulates Prostitution in Article 296, Article 506, and Article 284 of the Criminal Code. This provision is only intended for any activities related to prostitution, such as brothel owners, pimps and brokers or brokers of prostitution. Besides these two articles, an article can be applied, namely Article 284 of the Criminal Code concerning adultery. Prostitution is an act that qualifies as adultery. Article 284 of the Criminal Code contains the intent that adultery (sexual intercourse outside of marriage) is only a crime (adultery offence) if the perpetrators or one of the perpetrators are people who have been bound in marriage with other people. So, if the relationship is carried out by a person who is not bound by marriage, this article cannot apply. In prostitution, this article can be applied to prostitutes and their service users. However, the provisions are conditional because Article 284 is formulated as an "absolute complaint" offence. This means to trap anyone who commits adultery. A complaint must be made by the husband/wife who is at a loss. So, if there is no complaint from the husband/wife, the prosecution cannot be carried out. The emergence of law. ITE is a progressive step by the government in accommodating crimes committed using information technology facilities. Provisions in the Act. ITE that can be imposed on online prostitution crimes is Article 27, paragraph (1) of the law. No. 11 of 2008, while the criminal provisions are regulated in Article 45 of the Law. No. 19 of 2016. In online prostitution, there are prostitution promotion activities in the form of offering sex services for sex workers through pimps through online media. The act of promoting/offering services in online prostitution is a violation of decency and propriety. So that referring to this provision, anyone who creates status, provides links or uploads electronic information in the

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form of writing, images, animations, conversations, sketches, audio, or video containing obscene content for the promotion of prostitution can be charged with criminal sanctions as formulated in Article 45 paragraph (1) of Law No. 19 of 2016. Meanwhile, legal subjects which can be subject to criminal liability in this ITE Law are people, including legal entities (Article 1 point 21), which in this case are the owners of websites, forums or social media accounts and owners of applications that use them as a means of crime, or Internet Service Providers (ISPs) as pimps.

2. The Criminal Code does not prohibit prostitution. Still, it only prohibits acts related to prostitution or facilitating the occurrence of prostitution and people who profit from these acts (pimps), which are classified as crimes against decency. This is generally regulated in Article 296 and Article 506 of the Criminal Code. No provisions regulate the criminalization of prostitutes/prostitutes and users/buyers of sexual services. So, punishment is only aimed at brothel owners, pimps and brokers or brokers from acts of prostitution. Meanwhile, the ITE Law as *lex specialis* only aims at acts related to the prohibition of spreading pornographic content/materials/violating decency, as regulated in Article 27 paragraph (1) of Law No. 11 of 2008. Acts of pimps or sex workers who distribute and transmit as well as the accessibility of content that violates decency, is manifested in the form of advertisements/prostitution offers in the form of images, writing, audio, video, conversation, animation, or other forms. In online prostitution, only pimps and prostitutes can be charged as owners of websites/forums and application owners, while users/buyers of services are not penalized.

SUGGESTION

1. An in-depth study of victims of crime is needed because there is a paradigm shift regarding victims. Mainly because in victimology, prostitution is categorized as a crime without victim/victimless.
2. It is necessary to conduct a scientific study on prostitution that is carried out using internet technology facilities more intensely, including, among others, the legal limits, and definitions of online prostitution. Because the internet is the main supporting factor that allows this crime to occur, the policy to overcome it must also involve a technological approach (techno prevention).

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