

LAW ENFORCEMENT OF ONLINE CRIMINAL ACTIONS ONLINE REVIEWED ON ACT NO 19 OF 2016 CONCERNING AMENDMENT TO ACT NUMBER 11 OF 2008 CONCERNING ELECTRONIC INFORMATION AND TRANSACTIONS

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Abstract: *The crime of prostitution has developed along with the progress of internet technology in the form of online prostitution. The enactment of Act Number 19 of 2016 concerning amendments to Act Number 11 of 2008 concerning information and electronic transactions becomes the legal umbrella for dealing with online prostitution. The legal gap is that not all Regional Police institutions are able to reveal the practice of prostitution online. The purpose of this study is to explain law enforcement efforts against prostitution using online media, and obstacles to overcoming prostitution using online media. The problem approach used is normative juridical. Research data was collected through literature and internet studies. Then the data analyzed is done qualitatively. Law enforcement that can be enforced by paying attention first to the cause of the online prostitution, so that law enforcement efforts exist. However, the law enforcement effort is the need for strict sanctions both in terms of criminal law and traditional sanctions against perpetrators. So that with a strict sanction, the perpetrators will feel a deterrent to these actions. Barriers to overcoming criminal acts of prostitution can be seen in the factors of the practice of prostitution, namely economic, environmental, and family factors, which can also be seen in the obstacles that are obtained by Law Enforcement Officials. It is recommended to law enforcement officials to be able to carry out improvements in the institution by always increasing the professionalism and quality of investigators, and thoroughly processing the perpetrators of criminal acts of prostitution, also strengthening the rule of law or prohibiting online media for any publication that leads to pornography.*

Key Words: *Law Enforcement, Crime, Online Prostitution.*

1. INTRODUCTION:

The era's development is full of the influence of rapid technological progress, coupled with a lack of awareness of religious norms and legal norms that have a negative impact on society, such as the shifting of social values that were once considered sacred by most people, such as the nightlife, premarital sex, promiscuity and others. The existence of a shift in social values is considered a natural thing for most people in big cities, so that there arises an indifferent attitude, not concerned with social deviations in the form of sex transactions in the community.[1] In addition to the above economic crisis, the problem of urbanization and an increase in various basic needs greatly affect the lives of the wider community, both those who live in big cities, where in order to meet their needs there are not a few certain groups of people who practice deviations from religious norms, moral norms and violations of the law such as sexual transactions. This sex transaction includes prostitution transactions that are full of debate because it stands on an understanding of the two basic principles of human life behavior, the first is the economic principle of law of supply and biological principles of sex increasingly fused without limit.[2] This triggers the emergence of social problems that exist in Indonesia, especially in big cities at this time. One of the things that stands out is the practice of prostitution carried out from among teenage women to middle-aged women.

According to data obtained as much as 10-15 percent of young people aged 15-24 years have had sex with prostitutes, and 50 percent have had sex before marriage. [3] One of the actions of young people who have sex with Commercial Sex Workers (CSWs) is motivated by the development of the world of technology, especially information and communication technology. The rapid advancement of technology is often misused by certain parties, especially the perpetrators of prostitution in carrying out their work by offering themselves through more practical online media. This online prostitution practice has three components which form the basis of prostitution, including commercial sex workers or prostitutes, pimps and customers (users of prostitution services). [4]

The practice of prostitution online, a prostitute can not work if there are no customers who need the services of prostitutes and then to facilitate the prostitution process, pimps take part in finding customers, arranging meetings. A pimp is an important aspect of the practice of prostitution because the majority of prostitution cases in Indonesia,

especially in big cities, are run by pimps. The use of internet-based technology makes it easy for pimps to run their businesses, usually used online media such as Whatsapp (WA) or Facebook (FB), pimps often use amoral content to attract customers.

Criminal law enforcement for online prostitution is often subject to Act No. 19 of 2016 concerning amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions and Act Number 44 of 2009 concerning Pornography especially Article 27 paragraph (1), which states: "*Everyone intentionally and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents that have content that violates decency.*"

Chairman of the Indonesian Cyber Law Community Teguh Arifiyadi said that online prostitution cannot be imposed by the Electronic Information and Transaction Law which will be mentioned by the ITE Law, but rather by using the Criminal Law Code which will be mentioned by the Criminal Code. The application of Articles 296 and 506 of the Criminal Code threatens people whose income is obtained from obscene acts committed by women. Pimps are people who play the role of caretakers, intermediaries, and / or owners of commercial sex workers, and their income is derived from obscene acts committed by women and their customers. The police cannot indeed ensnare the users of the prostitutes or the prostitutes themselves given the provisions in Article 296 with Article 506 of the Criminal Code only ensnare providers of PSK or Pimps.

Imposition of the Pornography Law and the ITE Law on online prostitution compared to articles in the Criminal Code based on the principle of *lex specialis derogat legi generali*, namely the principle of legal interpretation which states that the special law (*lex specialis*) in this case the Law on ITE and Pornography overrides general law (*lex generali*), namely the Criminal Code. Legislation that regulates law enforcement against perpetrators of online prostitution does not result in the loss of the act, because there are still arrests by the police of the perpetrators of prostitution online.

2. CONCEPTUAL FRAMEWORK:

a. Law enforcement

According to Jimly Asshiddiqie, law enforcement is the process of making efforts to uphold or function of real legal norms as guidelines for behavior in traffic or legal relations in social and state life. [5]

b. Sex Transactions

Sex transactions are the sale of sexual services, such as oral sex or sex to someone who needs sexual services whose purpose is to get money. Someone who sells sexual services is called a prostitute, which is now often referred to as commercial sex workers (CSWs). [6]

c. Prostitution / Prostitution

According to the Encyclopedia Britannica, prostitution is a practice of sexual relations which is more or less done with anyone (*promiskuitas*), in return for wages. Thus prostitution is identified with three main elements: payment, promiscuity, and emotional indifference. [7]

d. Online Prostitution

The practice of prostitution carried out with or through the internet or online media as a means of transaction for those users and users who want to use their services. [8]

3. THEORITICAL FRAMEWORK

a. Law Enforcement Theory

In a broad sense, the process of law enforcement involves all legal subjects in every legal relationship. In a narrow sense, in terms of the subject, law enforcement is only interpreted as an effort by certain law enforcement officials to guarantee and ensure that a rule of law runs as it should. [9]

b. Legal Effectiveness Theory

Effectiveness theory is a theory that studies and analyzes how successes, failures and factors influence the implementation and application of a law. [10]

4. LITERATURE REVIEW:

Law enforcement is the process of making efforts to uphold or functioning of legal norms as a real guideline for behavior in traffic or legal relations in the life of society and the state. in the broadest material sense, as a guide. According Jimly Asshiddiqie, behavior in every legal act, both by the legal subjects concerned and by law enforcement officials who were officially given the task and authority by law to ensure the functioning of legal norms that apply in social and state life. [11]

Online prostitution as a cybercrime is a crime of buying and selling of human trafficking in bargaining case activities which is based on the connoisseurs of services whose services are related to cyberspace or the internet network as a connecting medium in rectifying the crime. Experts provide definitions of prostitution, among others: [12]

- a. According to Bonger the notion of prostitution is: "*Prostitution is a social phenomenon, where women surrender themselves to sexual acts as a livelihood*"
- b. According to Mudigno, interpreting prostitution is "*Prostitution is the surrender of a woman's body by accepting payment to many people in order to satisfy that person's sexual appetite*".
- c. Paul Moedikno said prostitution was "*Prostitution is the surrender of the body by receiving payment, to many people for the gratification of sexual desires of these people*".

The parties involved in the practice of prostitution, are: [12]

- a. Pimps, is a person who plays the role of caregiver, intermediary, and "owner" of commercial sex workers (CSWs).
- b. Prostitute, a commercial sex worker (CSW) is someone who sells services to have sex for money.
- c. Service Users, people or groups of people who use the services of CSWs in exchange for money.

Handling prostitution issues

- a. Preventive is carried out by: [13]
 - Sex education in schools;
 - Counseling about the dangers of Siphilis and Gonorrhoe as a direct result of perpetrators of prostitution;
 - Provision of advice is broadened in the care program for teenage girls;
 - Psychological and psychiatric help for adolescent girls who show symptoms of maturity towards sex life and care for children in school;
 - Provision of funds for Social Worker activities;
- b. Repressive efforts are carried out by: [14]
 - To exercise strict control over the health and safety of prostitutes;
 - Carry out rehabilitation and resocialization, so that they can be returned as members of the community. Rehabilitation and resocialization are carried out through moral and religious education, vocational training, vocational education with the aim of making them creative and productive;
 - Guidance to WTS in accordance with the talents of their respective interests;
 - Provide new jobs for those who are willing to leave the prostitute profession,
 - Carry out an approach to the family and the community of prostitutes so that they are willing to accept the return of former prostitutes.
 - Involving WTS women to participate in the framework of equal distribution of the population in the country and expanding opportunities for women.

5. METHOD:

This research uses normative legal research. Normative legal research is library law research. In this normative study, the approaches used are:

- a. Case Approach, is carried out by examining cases related to the legal issues at hand. The cases examined are cases that have obtained a court decision of permanent legal force.
- b. Conceptual Approach, this approach moves from the views and doctrines that develop in the science of law.

6. DISCUSSION:

Early in 2019 there was an arrest at a hotel by the police of two women who worked as artists. The arrest was made because the two women advertised themselves with the intention of serving paid sexual relations through online media. In handling a number of cases of online prostitution, the police are a bit disturbed by the identity problem of the perpetrators and victims, because every time they operate they always use a pseudonym identity so that their tracks are not known by the authorities. In the case of prostitution through online social media, it is a little difficult to carry out an investigation process to determine which victims are actually captured by the perpetrators' tricks or pimps, and which ones voluntarily join the prostitution network, because not all girls are victims of the prostitution business network, sometimes they themselves decide to join the prostitution network, so that if they are caught as if they are on the victim's side, even if further investigation they are happy to join the prostitution network and consider it a style their lives to get a lot of money. In addition, from the results of the authors' data collection, one of the factors inhibiting the operation of online prostitution law is the lack of supporting infrastructure to enforce online prostitution crimes. That currently not all police units have a cybercrime subunit, it is still limited to the level of the Central Police (*Police Headquarters*) and

the Provincial Police at the City / Regency level. In addition to the limited facilities and infrastructure, law enforcement also contributed to the less effective enforcement of this crime law. [15]

In addition to the police, law enforcement institutions that play an important role in assessing the effectiveness of the operation of the law are the Attorney General's Office. The prosecutor as the public prosecutor has an important role because it plays the role of the party submitting the case submitted by the police as an Investigator to the court. Before being submitted to court, the prosecutor conducts further research and "corrections" if there is data such as the article being applied incorrectly, according to the direction of the public prosecutor. If it is not met then the case cannot proceed to the court.

Online prostitution in Indonesia is becoming increasingly widespread because Indonesia has become a very potential market share plus gadget users in Indonesia are already very high. The role of the programmer in the IT field is also very decisive if a site can be applied to pornographic and sexual content. One of the other important policies, namely the Information and Electronic Transaction Law or Act number 19 of 2016 or the ITE Act, is the Law governing information and electronic transactions, or information technology in general. The ITE Law, which took effect in 2008, is indeed a breakthrough for the legal world in Indonesia, because for the first time cyberspace in Indonesia has the tools. Because of its nature which contains rules in cyberspace, the ITE Law is also known as Cyber Act.

Even though the ITE Law has been enacted in the community, it still cannot achieve the stated goals. One proof is related to cases that are being viral in the community that is the circulation of pornographic content on the internet. Even though there is already a public policy that prohibits individuals from spreading pornography. The policy is in the form of Act No. 19 of 2016, better known as the ITE Act. Article 27 paragraph 1 of the Law provides sanctions for anyone who disseminates pornography. In general the public views the ITE Law as still only a formality, in which the rules and regulations that are drafted only apply if a case arises. In daily life both the general public and educated people do not fully comply with this ITE Law. Evidenced by the still level of cyber violations, fraud, or cheap access to porn sites.

7. ANALYSIS:

A. LAW ENFORCEMENT OF ONLINE PROSTITUTION REVIEWED FROM INDONESIA COUNTRY NO 19 OF 2016 CONCERNING AMENDMENT TO INDONESIAN COUNTRY NO 11 OF 2008 CONCERNING ELECTRONIC INFORMS AND TRANSACTIONS

Law enforcement is the process by which efforts are made for the establishment or functioning of legal norms as a real guide to behavior in traffic or legal relations in the life of society and the state. [16] Law enforcement in the Criminal Code of prostitution is now beginning to be abandoned, because it has been switched to the ITE Law, the Pornography Law and the Criminal Act on Trafficking in Persons. Law enforcement for online prostitution activities, there are several laws that regulate online prostitution activities, including:

- Criminal Code Articles 296 and 506

Article 296 of the Criminal Code states as follows:

"Anyone who intentionally causes or facilitates obscene acts by others with others, and makes it a search or habit, is threatened with a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiah".

Article 506 of the Criminal Code states as follows :

"Anyone who benefits from the obscene acts of a woman and makes the search threatened with imprisonment for a maximum of one year".

The essence of the two articles above is the same, which only punishes those who seek profits in the practice of prostitution, namely pimps. This Criminal Code does not regulate parties such as website owners.

- Article 27 paragraph (1) of the Act ITE

Article 27 paragraph (1) of the ITE Law states *"Every person 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."* Sanctions imposed under Article 45 paragraph (1) ITE Law is a maximum imprisonment of 6 years and or a maximum fine of Rp. 1,000,000,000 (one billion rupiah)

- Act No. 44 of 2008 concerning Pornography

Article 1 Paragraph (1), namely:

"... drawings, sketches, illustrations, photographs, writing, sounds, sounds, moving pictures, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication and / or public media, which contain obscenity or exploitation sexually violating the norms of decency in society".

Article 4 Paragraph (1), is stated as follows:

"Everyone is prohibited from producing, making, multiplying, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting or providing explicit pornography ..." Criminal sanctions imposed on violations of Article 1 paragraph (1) and Article 4 paragraph (1) of the Pornography Law are imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and / or a criminal fine of at least Rp. 250,000,000, 00 (two hundred fifty million rupiah) and a maximum of Rp. 3,000,000,000.00 (three billion rupiah) "

Prostitution both done online, and conventionally in this case is not much different, the difference only lies in the use of the internet as a means to carry out practice. There are no specific regulations regarding online prostitution, but in its application to ensnare perpetrators of online prostitution pimps can use Article 296 and Pasal 506 of the Criminal Code (*general offense*), and can be added weighting with the use of other laws

- Acts without the right to distribute and / or transmit and / or make access to information and / or documents that are electronic in nature.
- The electronic information and / or document contains elements of violation of decency.
- Performed intentionally and consciously that the act he did was an act that violated the law.

Article 45 paragraph (1) of Act Number 11 of 2008 in conjunction with Act Number 19 of 2016 Regarding Information and Electronic Transactions, can only ensnare people who "distribute and / or transmit and / or make information and / or documents accessible. of an electronic nature which contains violations of decency ". In the case of online prostitution are pimps who act to do the action by using social media to bring or carry out activities that contain decency.

B. EFFORTS IN LAW ENFORCEMENT OF ONLINE PROSTITUTION

During this time in the Criminal Code and the act outside the Criminal Code can only ensnare providers and / or pimps only while for users and for workers can not be ensnared. In addition there are regulations that regulate the prohibition of the practice of prostitution, but not all regions have this regulation. Efforts to tackle prostitution, local governments use regulatory policies that are realized in the form of localization or legal prostitution. This localization aims to collect the place of prostitution activities and their negative impacts in a place. The existence of the localization policy indirectly the government legalized the practice of prostitution that is contrary to religious norms, trafficking in persons, especially women and also Article 296 of the Criminal Code related to someone who takes advantage of a house or room rented for the purpose of prostitution. This localization policy is tantamount to giving someone the opportunity to commit adultery that is legal according to the rule, so that every subject in prostitution who has a connection can be held accountable for their actions.

Criminalization only pimps does not reflect a sense of justice, because in the act of prostitution there are related subjects namely pimps, users and CSWs. Prostitution committed as part of adultery is categorized as (crime without victim) that CSWs and users are victims but also as perpetrators in their actions so that the current positive Indonesian criminal law still does not provide fair legal certainty and the same treatment before the law as mandated in the 1945 Constitution Article 28D. Based on the above matters, it is needed a legal rule that can ensnare all parties involved in prostitution, one of which is CSW. Reform of the criminal law system is needed to address the problem of prostitution.

Renewal of criminal prostitution can be done by imposing penalties against CSWs. Criminalization of commercial sex workers aims to prevent and forbid someone to sell or exploit their sexual organs in order to benefit from unlawful acts, but that does not mean that commercial sex workers must be sentenced to imprisonment, but instead be given rehabilitation and or restoration to restore their psychological and mental condition to normal before becoming CSWs, because not all CSWs want this job. Sometimes because of persuasion someone, even trapped or cheated so they have no other choice. Rehabilitation is an important process in restoring human rights both physically and psychologically.

In addition to commercial sex workers who are subject to punishment, users must also be criminalized for participating in the benefits of enjoying the body of commercial sex workers. During this time there are no rules that ensnare, criminal charges against users aimed at humans to control their sexual instincts and prohibit the distribution of sexual needs in the form of commercial adultery. Another goal is the criminalization of Users and CSWs is an embodiment of the fulfillment of fair and civilized human values which states that humans are not a commodity that can be traded so that it needs to be given the same respect and treatment for every human being.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- a. Factors that become obstacles to law enforcement against online prostitution as criminal acts of prostitution consist of legal factors, law enforcement factors, facilities and facilities factors in law enforcement, community

factors and cultural factors. Lack of control mechanism of the criminal justice component in each case examination process, law enforcement lack of cyber units in law enforcement institutions, lack of technological mastery, inter-state law enforcement cooperation that has not been effective, obstacles in mastering foreign languages and legal languages by law enforcement which complicates communication in law enforcement, and the low commitment of law enforcement agencies to work together in tackling online prostitution

- b. Inadequate facilities and infrastructure, Human Resources (law enforcement) are less qualified in the field of information technology, crime that is developing so fast with a mode that is so sophisticated, many online prostitution ads are used as a mode of fraud, high costs of law enforcement related to enforcement of prostitution crime online, in terms of information technology filter system made by the government is still weak because it is still general and the culture of the Indonesian people, especially family control is very lacking.

9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- a. Law enforcement agencies are more assertive in preventing and overcoming online prostitution, as one of the cyber crimes in the field of decency. The implementation requires special legal regulations considering that online prostitution is a crime committed through cyberspace. The rule must also be able to ensnare the four actors who form a scheme in online prostitution, so that it can provide a deterrent effect on the offender.
- b. The need for government control to block sites that provide prostitution online and conduct surveillance of existing media such as pornography sites, whatsapp twitter and facebook. Blocking of personal data containing prostitution elements and photographs related to pornographic images in the personal data of internet site users.

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