

The Historical Study of Prostitution Practices and Its *Fiqh* Analysis

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Article	Abstract.
<p>Keywords: Historical; Prostitution; Sharia; Social.</p> <p>Article History Received: 2022-03-23; Reviewed: 2022-06-14; Accepted: 2022-06-21; Published: 2022-06-24.</p> <p>DOI: http://dx.doi.org/10.30659/jdh.v5i2.20827</p>	<p>The practice of prostitution in Indonesia occurred from the time of the kingdom until after independence. In this country, prostitution is illegal, and the practice still exists today; prostitution is sexual activity between sellers and buyers in pleasure in the form of money or goods. This study will explain the historical study of prostitution in Indonesia. Through a qualitative approach, collecting relevant sources of books, articles, and online media supported by a historical-sociological approach This research results in that prostitution has long appeared, including during the time of the Prophet Muhammad. In the Prophet's time, there was still a practice of adultery narrated in the hadith that a woman complained to the Prophet that she committed adultery and wanted to be punished. The practice of sexual exploitation also occurs during the working period of Islamic Mataram through the King's concubine, who religiously must not exceed the four legal wives. Likewise, in the Dutch and Japanese, there was also prostitution. Several factors cause women to get caught up in the world of prostitution that is the most powerful there are economic factors. In normative boxing, all scholars or ulama agree that the practice of adultery through anything including localization or illegal prostitution, but in the view of the social jurisprudent, KH Sahal Mahfudz argues that localization can be a way out by eliminating it gradually and minimizing the greater negative impact.</p>

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1. Introduction

Islam and prostitution seem to be two things that are contradictory and cannot be united. Islamic literature itself clearly records the practice of prostitution in ancient times, although, in other terminology, adultery is prohibited. This proves that prostitution is as old as the times and a social reality that cannot be denied its existence¹. Then the place of prostitution is now often called localization. When people hear the word localization, it will always occur in mind is a place of maximum that must be shunned, the place of the bad guy with a striped nose who likes snacks carelessly. So, it is possible to be attacked by a kind of deadly HIV AIDS, which is said to have not been known the vaccine until now.

Ideally, Islam appears as a solution to the social problems that plague. With the provisions of the law of the Qur'an and its hadith, all issues in social reality can be resolved to ensure mutual benefit. The practice of legalized adultery, which is called prostitution, is a big and complex problem that must be addressed with wisdom. For example, even if religion strictly prohibits the practice of adultery, it does not mean that with the standard rules, the problem can simply disappear. The practice of adultery in prostitution is prohibited by religion. But this is becoming an increasing complex social problem, and prostitution is not easily eliminated. Even those who used to pay on the spot are now more sophisticated with by request or online system. This illustrates that prostitution cannot be limited by time and space.

Under these conditions, we are faced with two *mafsadah* (two destructive things), namely, allowing uncontrolled prostitution. So, of them, according to KH Sahal Mahfudh, localization policy can be seen as an option against the lightest of the two risks that squeeze. The rules of law used in this case are: *irtikābu akhaffu adh-dhararain* (taking the lightest *harm* from the dilemma of two *harms*).² In the time of the Arab *jahiliyyah*, slavery occurred, so many of them set aside the independence of a captured mid-way if she is a beautiful woman used as a prostitute to satisfy the enslaver to earn income. So many at that time by making their female slaves prostitutes, so many women marketed themselves. So, if she was a woman, they could put a flag in front of her house to show that she was willing to serve lust. So, people came and came so that the woman would earn an income. This is where it becomes very important the role of Islam in answering various social problems that are increasing complex, especially prostitution in formulating the best formula that is compatible and *harmonious* with the specifications of the times. This research will discuss the historical study of prostitution practices both in pre-Islamic (*jahiliyyah*), during the time of the Prophet Muhammad, the period of the Islamic Mataram kingdom, and the colonial period of both the Netherlands and Japan. In addition, it will be studied in a sociological approach on localization policy based on

¹ Lestari, Made Diah., Sulistiowati, Ni Made Dian., & Natalya, Ni Putu. (2016). Kesehatan Seksual dan Reproduksi Serta Fasilitas Kesehatan di Lokasi Prostitusi: Community Based Participatory Research dengan Photovoice pada Pekerja Seksual di Gunung Lawu Bali. *Jurnal Psikologi Universitas Diponegoro* Vol.15, (No.1), p. 78 see too Nanik, S. (2012). Fenomena Keberadaan Prostitusi dalam Pandangan Feminisme. *Jurnal Wacana*, Vol.15, (No.4), p. 25

² Sahal Mahfudh. (1994). *Nuansa Fiqih Sosial*, Print-I . Yogyakarta: LkiS. p.xv.

the *Fiqh-Social* approach of KH Sahal Mahfudz, one of the leading jurists of *Fiqh* ulama (scholars)³.

2. Research Methods

According to Danandjaja, reference sources in library research can be done by analyzing articles, books, and writing sources that are still relevant to the theme.⁴ Then, to get the accurate analysis results, interpretation analysis can reveal the purpose and answers to the research problems raised. This paper uses library research with an analytical approach to historical-comparative studies by comparing each book's historical studies and content. To discuss the historical study of prostitution can use a library study approach, where each source in the form of books, articles, or another explains the history of prostitution over time. It was to see the practice of adultery of the Prophet's time can be a reference to one of the Prophet's hadiths that explain the adultery behavior carried out by women and then report it to the Prophet Muhammad. To read the study of *Fiqh-social*, one can use the perspective of KH Sahal Mahfidz to provide solutions to community problems. In this case, it is a case of prostitution, where it must also get the right solution and *maslahah*. Therefore, Kiai Sahal prioritizes his *Fiqh-Social* to provide a middle ground related to localization⁵.

3. Result and Discussion

3.1. Prostitution and Adultery in the Time of the Prophet

Prostitution (*al-bighā'*) has occurred since *jahiliyyah* or pre-Islam. At that time, having sex with prostitutes was not an abject act. There is even pride for a free man (*hurr*) because it is considered a symbol of his manhood. Several actors were involved in prostitution at that time, namely enslaved people/servants *sahaya* (*'ammah*), the class most affected by prostitution that was sexually exploited by the *sayyid* (employer). But for women who are not slaves (*hurrah*), the act of prostitution is considered an abject thing because it is commonly done by slave girls (*'ammah*). In addition, commercial sex workers at that time were termed *al-qahbah*, which has the meaning of cough⁶. The transaction process between the two adulterers is marked with a cough code until an agreement is finally reached.⁷

In other terms, in pre-Islamic Arabic times, the term prostitution is often referred to as *al-musā'ah*. It is almost similar to prostitution in Indonesia because the practice of *al-musā'ah* is like a pimp as (*mālik al-ammah*) or enslaver who prostitutes, then the

³ Jones, A. (2010). Human Trafficking, The Japanese Commercial Sex Industry and The Yakuza: Recommendations for the Japanese Government. *Student Pulse Journal Quest* Vol. 3, (No. 2), p. 1

⁴ James Danandjaja. (1997). *Folklor Indonesia: Ilmu Gosip, Dongeng, Dan Lain-Lain*. Jakarta: PT. Pustaka Utama Grafiti, p. 87.

⁵ Katjasungkana, Soka H. (2016). Narasi Perempuan dan Kekerasan Seksual dalam Hukum Indonesia. *Jurnal Perempuan*. Edition 89, Vol.21, (No. 2, Mei 2016). p. 131

⁶ Nazemi, N. (2011). Legalizing Prostitution Means Legitimizing Human Rights Violation. *International Journal of Humanities and Social Science*, Vol. 1, (No.9), p. 114

⁷ Jawwad Ali, *Al-Mufashal Fi Tarikh Al-'Arab Qabl Al-Islam*, Vol. V (Baghdad: Universitas Baghdad, n.d.), 133.

enslaver will give wages to prostitutes (enslaved people). If the enslaved person is pregnant and then gives birth, then automatically *nasab* (generation) his child and follows the status of his mother's slave and is made an enslaved person *sahaya*.⁸ Furthermore, as *Ikrimah* says, in Makkah and Medina, many prostitutes fly the flag, the most famous *Umm Mahzul* (prostitutes belonging to al-Sa'ib bin Abi al-Sa'ib al-Makhzumi), *Umm 'Ulaith* (prostitutes belonging to Shafwan bin Umayyad). Then, *Hannah al-Qibthiyyah* (prostitutes belonging to al-'Ash bin Wa'il), *Muznah* (prostitutes belonging to Malik bin Amilah bin al-Sabbaq), *Jalalah* (prostitutes belonging to Suhail bin Amr). Thus, *Umm Suwaid* (prostitutes belonging to Amr bin Uthman al-Makhzumi), *Suraifah* (prostitutes belonging to Zam'ah bin al-Aswad), *Farasah* (prostitutes belonging to Hisham bin Rabi'ah bin Habib bin Hudzaifah bin Jabal bin Malik bin Amir bin Lu'ay), *Quraiba* (prostitutes belonging to Hilal bin Anas bin Jabir bin Namir bin Ghalib bin Fihri), *Fartana* (prostitutes belonging to Hilal bin Anas).^{9,10}

أقول: ما أشبه جاهلية ((القرن العشرين)) في زماننا بتلك الجاهلية الأولى حيث تنظم بيوت الدعارة تحت حماية القانون، و تحميها الشرطة و يقصدها الراغبون بأجر معلوم، و ليس فيها ما يختلف عن الأولى إلا أنها (أشنع و أفظع) لأنها في (الحرائر) و بشكل فاضح مكشوف، قد قال صلى الله عليه وسلم (ما ظهرت الفاحشة في قوم فعملوا بها إلا أصيبوا بالأمراض و الأوجاع التي لم تكن في أسلافهم) !! وهذا من أعلام النبوة وإنا لله وإنا إليه راجعون

Shaikh Ali As-Shobuni said: "*Perhaps it makes no difference what happened in the Jahiliyah era with this 20th-century jahiliyyah model, where brothels today, built legally protected by law and supervised by the police following the tariffs that have been determined Even if we compare with the tradition of prostitution in the Jahiliyah contemporaries, prostitution in our time is much more heinous and disgusting because the perpetrators are actually free people and almost done in the open. So obviously, this is a disaster.*"

There are almost similarities between the style of prostitution in ancient times (*jahiliyyah*) and the present. According to Ali Shobuni, then the practice of prostitution in this day and age is much more concerning if judged by its social status. It was considering that in ancient times the practice of prostitution mostly exploited enslaved people as its object, in contrast to the current era of independence, which should be the practice of prostitution in slavery is no longer relevant.

Prostitution existed in the time of the Prophet, marked with a red flag. In front of their camps as a sign for the place of prostitution can be known. The Prophet established the women after the liberation of the city of Mecca among the items of its contents is not to commit adultery. Hearing the sound at this time, Hindun bint Uthbah, the honorable woman of Abu Sufyan's wife who also converted to Islam, immediately commented whether from the Freedom there was adultery because it was a profession commonly carried out by enslaved people. Imam Ibn Jarir ath-Thabari above even mentioned the names of famous amoral women in the *Jahiliyah* era such as Um Mahzul,

⁸ Ibid., 137.

⁹ Abu al-Hasan Ali Al-Naisaburi. *Asbab Nuzul Al-Qur'an*, n.d., 325; Muhammad bin Jarir Al-Thabari, *Jami' al-Bayan 'an Ta'wil Ayi Al-Qur'an*, Vol. XVII, n.d., 154.

¹⁰ Muhammad 'Ali Ash-Shobuniy. (2004). *Tafsir Ayat Al-Ahkam Min Al-Qur'an*. Beirut: Dar al-Kutub al-Ilmiah. p.143.

Hanna, Mariya and others. After the layer explaining this noble verse was revealed regarding the case of Abdullah bin Ubay bin Salul a figure and leader of the hypocrites in Medina. He had a slave girl named Muazah when he came as a guest, and then he sent his slave girl to the guest so that we would commit adultery with him for the purpose that He would benefit from you and honor. In the Qur'an, it is affirmed by Allah in His word surah An-Nur Verse 33:

وَلَيْسَتَغْفِرَ الَّذِينَ لَا يَجِدُونَ نِكَاحًا حَتَّى يُغْنِيَهُمُ اللَّهُ مِنْ فَضْلِهِ وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَأَنْتُمْ مِنْ مَالِ اللَّهِ الَّذِي أَنْتُمْ وَلَا تُكْرَهُوا فَتَيْتَكُمْ عَلَى الْبِعَاءِ إِنْ أَرَدْنَ تَحَصُّنًا لَتَبْتَغُوا عَرَضَ الْحَيَاةِ الدُّنْيَا وَمَنْ يُكْرِهْنَهُنَّ فَإِنَّ اللَّهَ مِنْ بَعْدِ إِكْرَاهِهِنَّ غَفُورٌ رَحِيمٌ

"And do not force your slaves to commit prostitution, while they themselves covet holiness, for you seek worldly gain and whoever forces them then Allah is the Most Merciful (to them) after being forced." (QS. 24:33).

The *mufassir* (interpreter) says this verse came down to six enslaved people belonging to Abdullah bin Ubay who forced his slaves to prostitute themselves. Abdullah bin Ubay took the payment of his prostitution. The six slaves were Mu'adzah, Musaikah, Umaimah, 'Amrah, Arwa, and Qutailah. Then one day, one of them came with a dinar from prostitutes, and the other with a striped cloth. Then Abdullah ibn Ubay said to the two, "Go back to prostituting." Then the two sahaya servants said: "By Allah, we will not prostitute anymore. Allah has brought Islam to us and forbids adultery." Then the two went to the Prophet and complained to him. Then God sent down the above verse.¹¹

Historically, the tradition of adultery also existed in the time of the Prophet. It is said in the hadith that there was a woman who complained to the Prophet that she committed adultery while the woman was pregnant. The woman wanted to be sanctified again, asking to be tried by *Rasulullah*. So, seeing the woman's earnestness who wanted to repent, *Rasulullah* declared a fatwa for the woman to isolate herself until the baby she was carrying was born. After that, the woman also isolated herself until the baby was born and revisited *Rasulullah* to be *hadd* (punished). She saw that *Rasulullah* issued another fatwa until the baby was breastfed. Finally, after everything was finished, the woman was stoned to death.

Here is the reference in Muslim Shohih, which means:¹² *Buraidah tells us that at one point, Ma'iz bin Malik al Aslami went to see the Prophet (SAW) and said, "O Prophet, I have indeed wronged myself because I have committed adultery. Therefore, I want you to be pleased to cleanse myself." Hearing Ma'iz's confession, the Prophet refused and did not suppress it. But the next day, Ma'iz came again to the Prophet saying, "O Messenger of Allah, I have committed adultery." The Prophet refused his confession. To ensure that Ma'iz's mentality and condition were normal, the Prophet sent someone to meet his people and ask about Ma'iz's condition. "Do you know that in his wits, Ma'iz, there is something wrong that you deny?" asked the Prophet's messenger to the Ma'iz. They then replied, "We are not sure if Ma'iz disturbed his mind. As far as we know, he is a good person and still reasonable." For the third time, Ma'iz came to see the Prophet to be willing to cleanse himself of the sin of adultery that he had committed. The Prophet refused. For the second time, the Prophet sent someone to meet his people and ask about the condition of Ma'iz's intellect. But they answered as the first answer. When Ma'iz ibn*

¹¹ Al-Naisaburi. *Asbab Nuzul Al-Qur'an*, 332; Al-Thabari, *Jami'al-Bayan 'an Ta'wil Ayi Al-Qur'an*, 336–37.

¹² Abu Husain Muslim. (1992). *Shahih Muslim*. Beirut: Dar al-Kutub al-Ilmiah. 320.

Malik came a fourth time to the Prophet to be willing to purify himself of the sin of adultery, he ordered to make an execution hole for Ma'iz. Finally, he ordered the friend to stone him, and the punishment of stoning was carried out.

3.2. The Tradition of Mistresses in the Kingdom

The King is considered the holder and symbol of power with all the luxury facilities. Very reasonable and worthy to be loved by women who want a social promotion from the mutualistic relationship, either to be the concubine of the King let alone inaugurated as empress. It is implied that the King had many mistresses who also referred to the practice of adultery. The practice of disputes is caused by the concept of the King's power that is majestic, noble, and infinite, thus obtaining many concubines¹³. There is also the assumption, that the more concubines the King has, the stronger the position of the King in the eyes of the people. The feudal system did not fully demonstrate the existence of the commercialization of the sex industry like this modern society, although what was done in those days could form the foundation for the development of the sex industry today.¹⁴ The more concubines kept, the stronger the king's position in the eyes of the people. In terms of physical toughness, taking many concubines means speeding up the reproduction process of the kings' power and proving the existence of spiritual glory. Only kings and nobles in society have concubines.¹⁵ The best offering to the King is women, for everything in the King's domain belongs to the King, and so the women who live in the King's domain belong to the King. Because it belongs to the King, the King has the right to use it.¹⁶

For example, the Kings of Mataram and their successor kingdoms adhered to the polygamous marriage system. Some had the main wife, called an empress; others had more than an empress. In addition to the empress, the King had many concubines, also referred to as *garwa ampeyan*, *garwa pangrembe*, *garwa paminggir*, or *priyantun dalem*. For example, Paku Buwana VII has only an *ampeyan garwa*, R. Retnadiluwih; Paku Buwana VIII had no concubines, and Paku Buwana IX had 51 concubines, 5 of whom used the name R. Ayu because they were still the King's grandsons.¹⁷

3.3. Dutch and Japanese Colonial Age Prostitution

A more organized form of the sex industry developed rapidly during the Dutch colonial period. This condition is seen by the traditional slavery system and the arrangements implemented to meet the sex needs of European people. Generally, this

¹³ Prior, J. (2014). Kehadiran, Kesabaran, Ketekunan: Misi dalam sebuah Pusat Perdagangan Manusia. *Jurnal Ledalero*, Vol.13, (No.1), p. 13 see too Ramadhani, Widya Suci, Sulastri, Sri., & Nurhaqim, Ahmad Soni. (2017). Proses Rehabilitasi Sosial Wanita Tuna Susila di Balai Rehabilitasi Sosial Karya Wanita Palimanan Kabupaten Cirebon. *Jurnal Penelitian dan PKM*, Vol.4, (No.2), p. 244

¹⁴ T. H Hull, Sulistyaningsih, and G.W Jones. (1997). *Pelacuran Di Indonesia: Sejarah & Perkembangannya* (Jakarta: Pustaka Sinar Harapan), p. 60.

¹⁵ Koentjaraningrat. (1994). *Kebudayaan Jawa* . Jakarta: Balai Pustaka. p.265.

¹⁶ Jones, Op. Cit., p. 60.

¹⁷ Darsiti Soeratman. (2000). *Kehidupan Dunia Keraton Surakarta 1830-1939*. Yogyakarta: Yayasan untuk Indonesia. p.220.

activity develops in the areas around the port in the archipelago. The gratification of sex for soldiers, merchants, and envoys became the main issue informing foreign cultures that entered the archipelago.¹⁸

On July 15, 1852, the colonial government issued a regulation approving the commercialization of the sex industry, but with a series of rules to avoid crimes arising from this prostitution activity. The regulation states, among other things, that health workers are responsible for checking the health of public women. These health workers in the third rank of employment (not equivalent to the current echelon III of bureau chiefs in government organizations) are obliged to visit and examine public women every Saturday morning. While the officers at the higher rank (rank II) are responsible for arranging containers intended for women generally who are sick and further care.¹⁹ Based on reports in general, despite many regulations, prostitution activity still increased drastically in the 19th century, especially after the reform of agricultural law in 1870. At that time, the colony's economy was open to private investors.²⁰

The commercialization of sex in Indonesia continued to grow; during the Japanese occupation (between 1941-1945), all women who were enslaved as comfort women were collected and made one in embroidered houses. Not only women who used to be comfort women who entered the embroidery house, but many women were also deceived or forced to do this during the Japanese government.²¹ At first glance, it looks more organized about prostitution in the colonial era. Perhaps it is not only to meet the market's needs but also to nail slavery and colonization of the natives. Moreover, the colonialists deliberately sacrificed the poor woman to meet the biological needs of her soldiers as a physical supplement to the invaders.

3.4. Historical Normative Arguments of Prostitution: The Qur'anic View of Adultery

Legalizing prosthetic activities, which is the oldest profession on earth, in a country or a region will inevitably cause pros and cons; here's the explanation: Religion and sexuality have a unique relationship. So important is sexuality in life. It has always been a discussion of scripture. Islam has a set of rules governing the relationship between men and women. According to religious rules, bonds that are considered valid have been exceeded by marriage.²²

Unlike the legal bond mentioned above, sex outside marriage is called adultery. Then this is prohibited. In the practice of prostitution, it is clear that there is an element of adultery, so both have the same linearity of legal implications. In terms of law, it is clear that prostitution or prostitution according to Islamic teachings, is illegal. Haram means that it should not be done. And if it continues to be done, it will get legal sanctions, both in the world and in the afterlife.

¹⁸ Jones, Op. Cit., p. 3.

¹⁹ Moch. Dimas Galuh Mahardika, "Prostitusi Di Surabaya Pada Akhir Abad Ke-19," *Sejarah Dan Budaya : Jurnal Sejarah, Budaya, Dan Pengajarannya* 14, no. 1 (2020): 24, <https://doi.org/10.17977/um020v14i12020p22-30>.

²⁰ Jones, Op. Cit., p. 3.

²¹ Ibid., p. 13.

²² Nur Syam. (2011) *Agama Pelacur; Dramatugi Transendental*. Yogyakarta: LkiS. p. 24.

Concerning the legal issue of prostitution or adultery, Allah SWT explains the Qur'an as follows:

وَلَا تَقْرُبُوا الزَّانِيْنَ إِنَّهُ كَانَ فَجِيْشَةً وَسَاءَ سَبِيْلًا

*"And do not approach adultery, indeed adultery is a heinous act. And a bad road."*²³

In another verse explains the punishment of an adulterer:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوْهُمَا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِيْنِ اللّٰهِ اِنْ كُنْتُمْ تُؤْمِنُوْنَ بِاللّٰهِ وَالْيَوْمِ
الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِيْنَ

*"Adulterous women and adulterous men, then take every one of them a hundred times, and do not be merciful to both preventing you from (practicing), the religion of God if you believe in Allah, and the day afterlife, and let them (exercise) their punishment be witnessed by a group of believers."*²⁴

From the two verses, the scholars agreed that the law of prostitution is haram because it indirectly legalizes the practice of adultery and if it is judged more than its benefits. The existence of localization cannot be justified religiously. The reason is the legalization of localization is equivalent to the legalization of adultery. If localization is legalized, then there will be a lot of adultery. Adultery is a great sin, and the culprit will go to hell. Therefore, those who go to this hell must be minimized by eliminating the place of prostitution.

In this argument, creating a sinful habitat is not a wise solution. Let alone gathering those who have already desecrated somewhere not to make more severe damage is similar to localizing an epidemic. It is a problem and deviates from its purpose if the localization makes it easier for people to fall into prostitution. Guiding prostitutes and providing skills to work in the halal sector is good, and it has been done. However, the supply of new prostitutes will continue to grow during difficult work and low morality. So, following this argument, the legalization of prostitution is the wrong policy because it can legalize and allow the systematic destruction of people's morals that will affect society's character, character, and culture.

3.5. Sociological Review in Prostitution Countermeasures

Prostitution is an increasingly complex social reality and social problem; in addition to using the theological arguments above, prostitution can be seen from a sociological point of view. According to Purnomo and Siregar: Prostitution, prostitution, or prostitution is an event of handing over women's bodies to many men in exchange for payment to be and as an abuser of the payer's sex drive is carried out outside of marriage.²⁵ According to Kartini Kartono: Prostitution is a form of sexual deviance, with patterns of organization of impulses or sex urges that are unnatural and not integrated, in the form of venting sex desires without binding rules (promiscuity), accompanied by exploitation and commercialization of sex, which is impersonal without affection of its nature.²⁶

According to Kartini Kartono, prostitution has been a problem and social pathology since human life history. Countermeasures are tough because they have to go through a long process, time, and high costs. Kartini Kartono explained that in outline, the effort

²³ (QS Al-Isra': 32).

²⁴ (QS An-Nur: 2).

²⁵ Bagong Suyanto. (2010). *Masalah Sosial Anak*. Jakarta: Kencana Prenada Media Grup. p. 160.

²⁶ Kartono Kartini. (2011). *Patologi Sosial*. (Jakarta: Rajawali Press. p. 185.

to overcome this prostitute problem could be divided into two, namely:²⁷ First, Preventive efforts (prevention), and the second, Actions of a repressive and curative nature. Usaha is intended as a repressing (removing, oppressive) activity and an attempt to heal women from their decency to bring them to the right path. Along with the pace of public awareness, the practice of slavery has been removed. Yet, women sex peddlers in the historical space of its presence have always existed and spread everywhere. Therefore, the question worth throwing is the main factor that makes him rent his body to be enjoyed by the striped nose men. The main factor that leads a person to become a prostitute is economic demands. They want to work but do not have skills. At the same time, the competition of life increasingly erodes the economy of the lower society, so inevitably, to get a plate of rice, he must give up his body to be enjoyed in exchange for property.

These economic demands factors usually don't stand alone. Still, other factors precede them, such as a broken home, a childhood that parents pay less attention to, sexual abuse, and virginity lost before marriage. From the factors that become a minor premise (*muqaddimah shughra*), then when economic demands press the victim, that becomes the premise of the major (*muqaddimah kubra*). They choose to work prostituting than others because they do not have the skills) to work lawfully and decently, which is considered easier and faster to bring in a lot of money.²⁸

Prostitution, as one of the diseases of society, has a long history since the existence of human life. The norms of marriage have regulated there is already prostitution, as one deviation from the norms of marriage, and there is no break, which is found in all countries of the world. Social norms clearly prohibit prostitution, the world of health shows, and warn of the dangers of terrible venereal diseases due to prostitution. Still, centuries of society have never succeeded in eliminating these symptoms. Various means of countermeasures ranging from cruel punishment of prostitutes to localization for rehabilitation have not shown tangible results. The drama of prostitution continues to this day on the face of the earth in any country.²⁹

The terms localization and resocialization in passing have similar meanings but have different meanings. Localization has a connotative meaning that means just limiting the development and limiting the practice of prostitution to not develop more in society. Suppose the government uses the term localization. In that case, it can be interpreted that the government recognizes the practice of prostitution and trafficking of women to commercialize sex services.³⁰ Places such as nightclubs, massage parlors, dance venues, and even beauty salons are used as brothels.³¹

Based on the above description, according to the sociological view, it can be understood that the more unique forms of prostitution, the more difficult it is for prostitution to be overcome, let alone eliminated. The handling of prostitution

²⁷ Ibid., 184.

²⁸ Endah Sulistyowati. (2007). *Hetero-Normativitas; Membongkar Seksualitas Perempuan Yang Terbungkam*, ed. I . Jakarta: Kartini Network. p. 83.

²⁹ Soedjono. (1974). *Pathologi Sosial: Gelandangan, Narkotika, Alkoholisme, Pelacuran, Penyakit Jiwa Dan Lain-Lain*. Bandung: Alumni. p. 9.

³⁰ Koentjaraningrat and A.A. Loendin, *Ilmu-Ilmu Sosial Dalam Pembangunan Kesehatan* (Jakarta: Gramedia, 1995), 61.

³¹ Soedjono. op.cit. p. 2.

localization in a social perspective is dotted from the view that the perpetrators of prostitution are humans who have social diseases, so it needs to be quarantined in a certain complex so that the disease does not spread to other communities in the environment. Handling this model is nothing more than handling endemic physical diseases where the patient is quarantined in a certain place that can only interact with certain people until he recovers. In Indonesia, one of the efforts to suppress the development of prostitution by localizing prostitution outside the city with regular health control as a rehabilitation step. Localization efforts in major cities in Indonesia include Dolly, Jarak in Surabaya (although finally closed), Sunan Kuning in Semarang, Flower Market in Jogjakarta, Saritem in Bandung, and so on.

3.6. Localization of Prostitution in the Perspective of *Fiqh-Social* K.H. Sahal Mahfudz

The term *Fiqh-Social* here refers to K.H. Sahal Mahfudz's concept of Kiai Sahal *Fiqh-Social*, which alludes to prostitution. In an excerpt from one of Kiai Sahal's books about how his *Fiqh-Social* responds to localization. When viewed from its legal status, prostitution is adultery, and the law is haram. But that view has also attracted a lot of controversies. Regarding *Fiqh-Social* about localization, many misunderstand. The most subjective is the assumption of the abandonment of prostitution which is logically impossible for Kiai Sahal to think of it that way.³²

To straighten out the wrong understanding, it is necessary first to explain how localization is according to the science of *Fiqh* itself and, of course, the *Fiqh-Social*. There are 2 (two) ways of view of *Fiqh-Social*: *First*, *Fiqh* not only learns about Islamic law but also problem-solving in the real world. According to Kiai Sahal, *Fiqh* cannot be black and white alone but must consider the complexity of existing social realities. *Second*, *Fiqh-Social* aims towards the empowerment of people and communities. That is why it is called *Fiqh-Social*. So, *Fiqh-Social* not only learns what this law is but how the solution is, how to make society squeeze from its problems. Especially if you look at the capacity of Kiai Sahal, who is very good at Islamic law and methods, his views on Social Jurisprudence do not contradict the essence of sharia. One of the cores of Shariah is to uphold *maslahat* and eliminate *harm/mafsadah*.³³

How does *Fiqh-Social* respond to localization? Ideally, prostitution should disappear. But like it or not, prostitution has always existed in real-world social realities. According to K.H. Sahal Mahfudz, clearly illegal prostitution is present as a complex social problem that is difficult to eliminate. Then how to deal with it? There are two attitude options, according to Kiai Sahal. *First*, clamp down on prostitution regardless of its social complexity. But this can give birth to new problems. Prostitution that is difficult to lose is so wild, underground, can enter the middle of society. HIV and other diseases

³² Mahfudh, Op. Cit., p. 98.

³³ Ibid., p. 97.

are transmitted without control.³⁴ *Second*: localizing prostitution so that it can be controlled and supervised to not spread wildly to the community.³⁵

According to Kiai Sahal, there are two best ways to tackle prostitution. *First*, through the centralization of prostitution locations, namely, localizing prostitution from somewhere far from the population's contact. *Second*, through a causative-sociological approach. The first approach is intended as a middle ground of two currents of thought, namely those who still want prostitution as it is and those who insist on abolishing prostitution. Kiai Sahal recommends Nusakambangan and Karimunjawa as places to minimize the negative effects of prostitution professionally. Kiai Sahal's opinion is based on the rule *akhaff adh-drārain*, which is to take a stance that risks the least of the two kinds of dangers. The second way is by tracing the perpetrators' background and efforts to distance the causes that result in the emergence of adultery and sexual freedom.³⁶

This method gets the focus of attention from Kiai Sahal so that it is easy to analyze with the framework of research the factors that make deviant acts mushroom. Kiai Sahal also uses contextual *Fiqh* patterns by optimizing the *ushul Fiqh saddu adz-dzāri'ah* rule (closing the path to forbidden deeds). According to Kiai Sahal, the two choices are the same, containing *mafsadah*/damage. How to respond to the dilemma between the two *mafsadah*, then in such a situation, there is a rule of *Fiqh* (legal maxim): *idzā ta'āradha mafsatātāni ru'iyā a'dzhamuhumā dhararan bi irtikābi akhaffihimā*. Meaning: When faced with two *mafsadah*, take the degree of *mafsadah* is smaller than both. Prostitution is completely prohibited, but so wild uncontrolled, it contains more *mafsadah*. On the other hand, the localization of prostitution is also *mafsadah*.

According to Kiai Sahal, of the two options, *mafsadah* or the impact of localization losses is actually smaller because it is easier to control. Therefore, localization can be accepted with conditions. Kiai Sahal's attitude above is in line with the decision of the N.U. Health Institute on Hiv Localization and prevention. Kiai Sahal's view can be understood as follows: *First*, *Fiqh-Social* who wrestle with the real social world, not the ideal world imagined. Ideally, the choice is between *maslahat* and *mafsadah*. Obviously, we have to choose *maslahat*. But in the real world, it is often not that simple.³⁷

Among them, the greater danger is eliminated with a milder danger.³⁸ Another proposition also mentions, *Inkar*, against the *Munkar* case, there are four levels. *First*: things that are lost and replaced by the opposite good (*ma'ruf*); *second*: things are reduced even if they do not disappear as a whole; *third*: the lost *Munkar* thing is replaced with another hypocrisy whose arrogance rate is the same. *Fourth*: the lost *Munkar* thing is replaced by a greater arrogance. The first two levels are commanded by *shara'*, the third level is the realm of *ijtihad*, and the fourth level of law is *haram*.

In the real world, the choice is often between the *mafsadah* and the more *mafsadah*. That's where *Fiqh* is required to provide concrete solutions, especially about

³⁴ Sri Mindayani and Hilda Hidayat, "Hubungan Karakteristik Dan Tekanan Sosial Dengan Perilaku Berisiko Penularan HIV/AIDS," *Jurnal Riset Hesti Medan Akper Kesdaam I/BB Medan 4*, no. 2 (2020): 88, <https://doi.org/10.34008/jurhesti.v4i2.140>.

³⁵ Mahfudh, Op. Cit., p. 99.

³⁶ Zubaedi. (2007). *Pemberdayaan Masyarakat Berbasis Pesantren : Kontribusi Fiqh Sosial Kiai Sahal Mahfudh Dalam Perubahan Nilai-Nilai Pesantren*, ed-I. Yogyakarta: Pustaka Pelajar. p. 176.

³⁷ Mahfudh, Op. Cit., p. 100.

³⁸ Ibn Nujaim Al-Hanafi, *Al-Asybah Wa an-Nazhair*. Beirut: Dar al-Fikr, n.d.. p. 96.

this prostitution problem. Keep in mind that Kiai Sahal is a cleric and an NGO activist, diligently *blusukan* (observation) of the lower community. He wants religion to provide the best and most ideal solution for them. Another thing we need to understand from Kiai Sahal's view: the acceptance of localization as a solution is very different from the disobedience of prostitution. Kiai Sahal certainly knows that adultery and prostitution are *haram*. But prostitution as a social problem will not disappear by simply being declared *haram*. As long as there are still social problems (poverty, social inequality, etc.), prostitution will always exist. Religion must be present to offer social solutions.

Social fiqh who are not only about halal haram but also think of solutions and social empowerment want religion to be a transformative force. It should be noted that there is always *khilafiyah* or dissent in *Fiqh*. Kiai Said Aqil strongly rejects localization as a solution; differing such opinions are legitimate and healthy. The most important thing is how to see social problems. Religion is not only normative to punish black and white but also able to provide the best solution. And in the search for solutions, the choice is often between *mafsadah* and *maslahah*, but between *mafsadah* and *mafsadah*, which is more severe. Kiai Sahal's view of localization can certainly be criticized and questioned. But most importantly, the search for this kind of solution should not be tabulated to dim the progressive intellectual tradition because *Fiqh* stops at this law and thinks of solutions and empowers the community. Suppose that if you use contemporary language, *Fiqh* becomes an inspiration, not an aspiration. Every human being has a different affinity to his God, at least in the form of spiritual expressions arising from the course of his life. A doctor or a street vendor certainly differs in understanding piety to the values of divinity. This can be seen to what extent they understand God and the role of God that they ask for every day in prayers.³⁹ There is a very aprioristic presumption that prostitutes are fringe people or marginalized from religious acts.⁴⁰

In short, unlike the claims made against prostitutes, namely the garbage man of society, the black valley man, the moral destroyer man, and the sinful man, prostitutes are also human beings like other humans. They meet physical needs and require the spiritual needs of divinity and affection. The spiritual form of divinity is usually manifested in various confessions. Their actions in rituals, prayers, and studies are often held around localization or others, especially before the coming month of Ramadan. The prostitutes will melt themselves and return home.

Prostitution cases never stopped; even though Indonesia was independent in about 1950, there was massive urbanization of men and women flocking to move to much larger cities. Because of the lack of skills, these women usually become sexual workers in big cities. Many enthusiasts and comfort women feel comfortable working like this, which is easy to make big money. The house that is used as a place of prostitution there is always a landlady or pimp who manages it when localized comfort women when making themselves enough to sit mingling with fellow comfort women in the alleys or in the living room even displayed in a storefront provided by the owner of the house. The role of third parties or intermediaries as marketing is also very helpful for this business to spread this third party offers its merchandise in hotels. Its prey is for

³⁹ Huston Smith. (2001). *Agama-Agama Manusia, Terj. Saafroedin Bahar*, ed. terj. Saafroedin Bahar (Jakarta: Yayasan Obor Indonesia. p. 283.

⁴⁰ Syam, *Agama Pelacur; Dramatugi Transendental*, 7.

men who are married but unfaithful to lonely bachelor men, even honorable people who are on work visits and staying in hotels. To eradicate this business is not an easy matter of closing localization will be a problem for its workers will even be spread and difficult to control, making the spread of venereal disease even uncontrollable. Although some localization has been closed, prostitution still exists especially in today's digital age. Prostitution exists everywhere beyond real space and even tends to be uncontrollable. Online prostitution is spreading; it is difficult to stop it because they work in a virtual space room.⁴¹

4. Conclusion

The culture of prostitution is an old culture that has existed since the time of *jahiliyyah* or even before that. If the *jahiliyyah* era is identical to the practice of exploitation of slavery by the employer and if withdrawn in this day and age is similar to the relationship between the pimp and his prostitute. In the archipelago, including the kingdom of Mataram, the practice of prostitution indirectly indicates the legalization of adultery. Thus, it also continues to grow in the exploration era of both the Netherlands and Japan. Comfort women are collected and used as one in embroidered houses. At first glance, it looks more organized about prostitution in the colonial era. Perhaps it is not only to meet the market's needs but also to establish the slavery of colonization against the natives.

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