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Legal Analysis of Criminal Responsibility of Perpetrators of the Criminal act of Pimping Based on Justice (Decision Study Number: 28/Pid.B/2017/PN Dps)

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Abstract. *Pimping is an activity regulated in the Criminal Code and is very contrary to morality, it is stated that the term pimp is classified as a crime against morality regulated in CHAPTER XIV Book II of the Criminal Code. In essence, criminal liability is a form of mechanism created to react to violations of a certain act that has been agreed upon. The element of error is the main element in criminal liability. This is because the pimp was not directly involved when the raid was carried out by the authorities, while the perpetrators of prostitution were directly involved when the arrest was made, and could be proven immediately because they had been caught red-handed. The approach method used is normative juridical, namely a library legal research conducted by examining library materials or secondary data only using deductive thinking methods. The writing specifications use descriptive analysis, the sources and types of data used are secondary data. The data collection method is by collecting data using secondary data collection methods. The problem is analyzed with the theory of criminal responsibility, the theory of the legal system and the theory of justice.*

The responsibility of the perpetrator of the crime of theft under aggravating circumstances in the decision Number 28/Pid.B/2017/PN Dps that the panel of judges decided his actions stated that defendant I KR, defendant II IMS and defendant III WT were legally proven and guilty of committing a crime of facilitating indecent acts by others with other people and making it a livelihood with a prison sentence of 4 (four) months 7 (seven) days each. In the regulations of each regional government that takes policies with certain actions that can be categorized as repressive actions, in the sense of taking action against prostitution in society, by not implementing criminal law that is still in force or an operational policy.

Keywords: *Criminal; Justice; Responsibility.*

1. Introduction

Nowadays, many people take illegal jobs, either to meet their living needs or to get a luxurious life, and all means are used to get a luxurious life. One of them is prostitution.

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Prostitution is a sexual crime, which is caused by 'low self-control' in pursuing 'personal gain'.¹

One type of this crime is prostitution via the internet or called online prostitution. In the big dictionary of the Indonesian language, "prostitution" means an agreement between a man and a woman to have sexual relations, in which the man pays a sum of money as compensation for fulfilling the biological needs given by the woman, which is usually done in localizations, hotels, and other places according to the agreement. Furthermore, etymologically prostitution comes from English, namely "prostitute or prostitution" which means prostitution, prostitute, or living as a prostitute.²

Pimping is an activity regulated in the Criminal Code and is very contrary to morality, the term pimp is mentioned as a crime against morality regulated in CHAPTER XIV Book II of the Criminal Code. However, the term of understanding needs to be interpreted clearly and can be accepted as to why the term pimp is included in a crime against morality. The definition of a pimp is a man or woman whose life is as if funded by a prostitute, who in prostitution helps find customers from the results of which he gets his share and makes a profit from the work done by the prostitute. What is meant by the person who makes a profit here is the pimp.³

As in the case that will be examined by the author who has been tried in the Semarang District Court with Decision Number 28/Pid.B/2017/PN Dps - That the defendant I KRS together with the defendant II IMS and the defendant III WST alias NITA on Friday, November 11, 2016 at approximately 18.30 WITA or at least at some time in November 2016 at Alexa Spa precisely on Jl. Gelogor Carik, Gg. Panda No.4 Kec. South Denpasar, Denpasar City or at least at a place that is still included in the jurisdiction of the Denpasar District Court, those who did, who ordered to do, and who participated in doing the act, intentionally caused or facilitated indecent acts by others with other people, and made it a search or habit charged by the Public Prosecutor with the first charge, namely violating Article 296 Jo Article 55 paragraph (1) to 1 of the Criminal Code. As a result of the actions committed by the defendants, the judge sentenced Defendant I. KRS, Defendant II. IMS and Defendant III. WST alias NITA therefore with a prison sentence of 4 (four) months and 7 (seven) days respectively.

In essence, criminal liability is a form of mechanism created to react to violations of a certain act that has been agreed upon. The element of error is the main element in criminal liability. In the sense of a criminal act is not included in criminal liability, a criminal act only refers to whether the act is against the law or prohibited by law, regarding a person who commits the crime and is then punished depending on whether the person who commits the crime has an element of error or not.

In the field, it is seen that the punishment for pimps is lighter than for victims or perpetrators of prostitution. This is because pimps are not directly involved when raids are

¹Frank E. Hagan, 2013, Introduction to Criminology (Theory, Methods, and Criminal Behavior), Seventh Edition, Kencana Prenadamedia Group, Jakarta, pp. 239-240.

²Abdul Wahid and Muhamad Irfan, 2001, Protection of Victims of Sexual Violence, PT. Refika Aditama, Bandung, pp. 7-8.

³Caswanto, 2016, Criminal Acts of Prostitution Attempted and Provided by Hotels in Indramayu in the Perspective of Indonesian Criminal Law, Thesis, Faculty of Law, Pasundan University, pp. 47-48

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carried out by the authorities, while perpetrators of prostitution are directly involved when arrests are made, and can be proven immediately because they have been caught red-handed. However, the pimps are actually the ones who provide the prostitution place, and pimps should be punished more severely, but in the Criminal Code they are only given a criminal sentence of 2 (two) years.

Based on the problems above, regarding the many phenomena of criminal acts of pimps so that people who do not know the rules for society are careful and vigilant, such as the case registered at the Denpasar District Court Number 28/Pid.B/2027/PN Dps, it has become a special attraction for the author to study this in more depth by conducting research, for writing a thesis entitled "JUDICIAL ANALYSIS OF CRIMINAL RESPONSIBILITY OF PERPETRATORS OF CRIMINAL ACTS OF Pimps AGAINST MINORS BASED ON JUSTICE".

2. Research Methods

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations and literature related to the problems being studied. Data collection is carried out through library studies by reviewing literature related to research problems. The data analysis technique is qualitative analysis in the form of exposure, description, and description of the research results.

3. Results And Discussion

3.1. Criminal Accountability for Perpetrators of Criminal Acts of Pimping Based on Justice

Criminal liability for someone who commits a violation or a criminal act requires the principles of criminal law. This basis is about someone being held accountable for the actions they have committed. This means that someone can only be held accountable if the person makes a mistake or commits an act that violates the laws and regulations.⁴

Sexual exploitation is those involved in prostitution, services or sex workers or become objects of pornographic activities caused by threats, coercion, kidnapping treated wrongly, becoming people who are sold or victims of fraud. As for exploitation by prostituting others is an activity to obtain money and other benefits from the activity of prostituting others in prostitution activities or sexually.⁵

In criminal law legislation, the principle of legality is known, which is contained in Article 1 paragraph (1) of the Criminal Code, namely: "No act can be punished except under existing statutory provisions, before the act is committed". If someone has committed a criminal act, then he can only be tried based on the criminal statutory regulations in force at the time the act was committed. So that if the act has been regulated, someone cannot be punished or held accountable if the regulation appears after the criminal act has occurred. To determine the existence of a criminal act, figurative language and rules may not be used. Prostitution in Indonesia is increasing rapidly. This is in line with the increasing demand for sexual services by users of prostitution services. A person who is said to be a user is referred to as

⁴Chairul Huda, 2006, From Criminal Acts Without Fault Towards No Criminal Responsibility Without Fault, 2nd Edition, Kencana, Jakarta, p. 68.

⁵Farhana, Legal Aspects of Human Trafficking in Indonesia, Sinar Grafika, Jakarta 2010, p. 24.

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a party involved in prostitution who is free, meaning that they are not yet bound by positive legal regulations. Meanwhile, the Indonesian government is not firm in prohibiting prostitution practices. Prostitution activities can involve many parties, such as pimps, brokers, commercial sex workers (CSWs) and service users, most of whom are men. However, this often escapes the attention of law enforcement officers, which makes it difficult to combat prostitution. The criminal law is not retroactive.⁶

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Criminal liability can distinguish between prohibited acts and acts that are not prohibited by criminal law. If there is a rule that is prohibited by criminal law, then the act may not be carried out. Likewise, if it is associated with the acts of users of prostitution services, whether the act is prohibited by law or not. If it is prohibited by criminal law, then the act of buying sex commercially is not permitted by law and must be criminally accounted for, because by being held accountable for acts that are prohibited by criminal law, it will determine the conditions for someone to be punished.

Meanwhile, to determine whether an act can be punished or not, it is based on the principle of legality. The main basis of criminal law is the principle of legality, namely that an act cannot be punished except by the power of previous criminal law regulations (before the act was committed), in Latin the principle of "nullum delictum, nulla poena sine praevia lege poenali" or abbreviated as "Nullum Delictum".⁷

Referring to the principle of legality, it is necessary to test whether the users of prostitution services are included in the criminal act or not. Then, in order for an act to be punished, it must fulfill all the elements of the crime formulated in the law. Referring to the principle of legality, if it is associated with the act of prostitution, especially against users of prostitution services, it can be seen from the legal side whether the users of prostitution services can be prosecuted or not.

The regulation in the Criminal Code only contains several Articles related to prostitution, namely Article 296 and Article 506: Article 296 states: Whoever intentionally causes or facilitates indecent acts by others, and makes it a livelihood or habit, is threatened with a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiah. While Article 506 of the Criminal Code states: Whoever benefits from the indecent acts of a woman and makes her a prostitute, is threatened with a maximum imprisonment of one year.

⁶Hanafi Amrani and Mahrus Ali, 2015, *Criminal Responsibility System: Development and Implementation*, 1st edition, Rajawali Pers, Jakarta, p. 21.

⁷Monang Siahaan, 2016, *Indonesian Criminal Law Update*, Grasindo, Jakarta, p. 180.

3.2 Weaknesses of Criminal Accountability of Perpetrators of Criminal Acts of Pimping Based on Justice

Regulations related to users of prostitution services in various countries, the most important insight into the problem of prostitution is that attention should be directed to the buyer. It is a matter of shifting perspective, which can be stated as in economic theory, namely the more demand/needs the more supply. So if there is no demand there will be no prostitution. In line with what was explained by Barda Nawawi Arief that in essence comparative law, including comparative criminal law, is a way or method in a study, comparative criminal law is not a branch of law and the like.⁸

In this regard, the comparison of criminal law that has been explained above, will be very important for consideration of criminal law reform against users of prostitution services better for the prevention of prostitution. As stated by Ridwan, that Comparative criminal law is a very important instrument for the deepening and renewal of criminal law, it is expected to be better in carrying out the processing and renewal of criminal law.

In efforts to criminalize users of prostitution services, Sudarto is of the opinion that in criminalization, the following things must be taken into account:

1. The use of criminal law must pay attention to the objectives of national development, namely to realize a just and prosperous society that is evenly distributed materially and spiritually based on Pancasila; in relation to this, the (use of) criminal law aims to combat crime and enforce the countermeasures themselves, for the welfare and protection of society.
2. The acts that are attempted to be prevented or dealt with by criminal law must be undesirable acts, namely acts that cause harm (material and/or spiritual) to members of society.
3. The use of criminal law must also take into account the cost and benefit principle.
4. The use of criminal law must also take into account the capacity or ability of the work force of law enforcement agencies, namely, there must be no excess of workload (overburdening).

Based on the above considerations, the criteria for criminalization in general must take into account the attitudes and views of society regarding the reprehensibility of a particular act. It is clear that this act of prostitution is disliked by society because of the many negative impacts that can be felt by society, such as causing and spreading venereal and skin diseases, giving a demoralizing influence to the environment, especially young teenagers, damaging the joints of family life, damaging the joints of morals, ethics, law and religion, there is exploitation of humans by other humans, and there are still many more negative impacts that can be felt by society and parties involved in prostitution.

Criminalization of prostitution service users is not only a justification for criminal punishment, namely retaliation for actions that are detrimental and violate norms, but must also consider what is to be achieved by the punishment. This punishment must be a warning to the community so that they have a fear of committing prostitution. This is reinforced from a criminal political perspective, one of the goals to be achieved through criminal law is

⁸Barda Nawawi, Anthology, p. 31.

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the prevention of criminal acts, both in the sense of special prevention (*spesiale preventie*) and general prevention (*generale preventie*).⁹

3.1. Judge's Consideration of Criminal Acts of Pimping Based on Justice

If the person is proven to have committed an unlawful act and meets the formulation of a crime in the law, but the person's actions must also have a mistake. A person who commits a criminal act can be punished if there is a mistake in the act. It must first look at the intention and will of the person's inner attitude whether the act was done intentionally (*dolus*) or due to negligence (*culpa*), because both affect the burden of criminal responsibility on the perpetrator. It can be concluded that the person must be able to be held accountable for the actions taken or seen from the perspective of the act, the act must be accountable to the perpetrator. Before determining the fault in the perpetrator, it must meet several elements, including:

- a. Having the ability to be responsible;
- b. The inner relationship between the maker and the action;
- c. There is no excuse for mistakes or no excuse for forgiveness or forgiveness.

Legal protection facilities are divided into 2 (two) types, namely preventive legal protection facilities and repressive legal protection facilities. Preventive legal protection is protection provided by the government with the aim of preventing a violation from occurring. Which is contained in laws and regulations with the aim of preventing a violation and providing limitations in carrying out an obligation. While repressive legal protection is the last protection that can be given, namely in the form of criminal sanctions such as imprisonment, fines and additional criminal sanctions given if a violation or act has occurred.

In accordance with the provisions of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection Article 59 paragraph (1) and paragraph (2) letter d, one of the obligations of the Government, Regional Government and other State Institutions is to have the obligation and responsibility to provide Special Protection to children who are exploited economically and/or sexually. Children who are victims of online or conventional prostitution or can be categorized as children who are exploited economically and/or sexually are required to receive special protection. Based on Article 66 of the Child Protection Law, special protection can be in the form of:

- a. Dissemination and/or socialization of provisions of laws and regulations relating to the Protection of Children who are exploited economically and/or sexually;
- b. Monitoring, reporting and imposing sanctions; and
- c. Involvement of various companies, trade unions, non-governmental organizations, and communities in eliminating economic and/or sexual exploitation of children

Prostitution business involving children, both conventionally and online, can be said to be a crime of sexual violence against children, if children are recruited and persuaded to become commercial sex workers to be consumed by pedophile sex customers. In general, children who are victims of sexual violence are reluctant to tell what they have experienced because

⁹Barda Nawawi Arief, "Anthology", p. 285.

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they are intimidated by the perpetrators and are also afraid of being disgraced if society finds out that they are prostitutes. This will certainly affect and disturb the children's psyche. Based on Article 69A in conjunction with Article 59 paragraph (2) letter j of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, special protection for child victims of sexual violence is carried out through efforts:

- a. Education about the importance of reproductive health, religious values and moral values;
- b. Social rehabilitation;
- c. Psychosocial support from the treatment stage to recovery; and;
- d. Provision of protection and assistance at every stage of the investigation, prosecution and examination in court.

4. Conclusion

Criminal Liability for Perpetrators of Criminal Acts of Pimping Minors is contained in the Regulations in the Criminal Code, there are only a few Articles related to prostitution, namely Article 296 and Article 506: Article 296 states: Anyone who intentionally causes or facilitates indecent acts by others, and makes it a livelihood or habit, shall be subject to a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiah. The weakness of Criminal Liability for Perpetrators of Criminal Acts of Pimping Minors lies in the regulations of each regional government which takes policies with certain actions that can be categorized as repressive actions, in the sense of taking actions against prostitution in society, by not implementing the criminal law that is still in force but with a PERDA or an operational policy. Criminal Liability for Perpetrators of Criminal Acts of Pimping Minors Based on Justice is by using legal protection facilities which are divided into 2 (two) types, namely preventive legal protection facilities and repressive legal protection facilities. Preventive legal protection is protection provided by the government with the aim of preventing a violation from occurring.

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