

The Criminal Responsibility In Prostitution Cases: Perspective Of National Penal Reform

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Abstract

The discussion and assessment are theoretically normative regarding the renewal of criminal law in the prevention of criminal acts related to the renewal in the subsystem of the substance of criminal law and is a development in the Indonesian legal system that is oriented towards the protection of the community. One of the rational efforts used to tackle prostitution activity is by approaching criminal law policy through the formulation of criminal sanctions as a concrete form of criminal accountability in prostitutes. The absence of provisions governing criminal accountability to service users in prostitution cases leads to the inmost response to prostitution cases themselves. If there is no national arrangement governing the subject, then users of prostitution services will feel safe and remain free to buy services for their satisfaction only and include women who provide commercial sex services (PSK), while this is contrary to various aspects of norms especially norms of decency in the society. Therefore, an update of criminal law is required, relating to criminal responsibility for both prostitution and female users who provide commercial sex services (PSK). Thus, this paper examines criminal accountability in prostitution cases through an approach to reforming national criminal law.

Keywords: *Criminal Responsibility, Prostitution Cases, and National Penal Reform.*

A. Introduction

In Criminal Law, two important things need attention, namely regarding the matter of committing a criminal act (actus-reus) relating to the subject or perpetrator of a criminal act and concerning mistakes (Mens-Rea) relating to the issue of criminal responsibility. Regarding the subject or perpetrator of a criminal act, in general, the law only recognizes a person as the perpetrator, while the principle of guilt is adopted regarding criminal responsibility, which means that to impose a sentence on the offender, in addition to fulfilling the elements of the offense formula, there must also be an error and the ability to be responsible.¹

Theoretically, in proving whether someone can be sentenced to crime, there are two systems adopted, the first system is called the monism system, which considers that someone who has committed a criminal

¹ Barda Nawawi Arief, *Criminal Law Bouquet*, (Bandung, PT. Citra Aditya Bakti, 2002), p. 85.

act can be convicted if his act has fulfilled the elements of the offense formula without having to see whether he has a fault or not. Meanwhile, the second system is called the dualism system, which sees that to impose a crime, two steps need to be done: first, it must be seen whether the alleged act has fulfilled the elements of the offense formula. If it has been fulfilled, then it will go to the second stage, which is to see whether the mistake is made and whether the perpetrator can be held accountable. If the perpetrator cannot be held accountable, even though his actions have fulfilled the elements of the offense formula, he must be released from all legal claims.

In social life, there are always social problems that continue to develop in line with the times, especially those related to the problem of prostitution.² Talking about prostitution is the same as talking about classical and ancient problems but because of the need to solve them, it always becomes relevant to every human development anywhere. According to Kartono, prostitution, or what is often referred to as prostitution or the satisfaction of sexual desire, is a type of work that is as old as the human age itself.³

The case of prostitution became a hot topic at the beginning of 2019. A VA artist was raided at a hotel in Surabaya for allegedly being involved in online prostitution. The great rate of Rp. 80 million for a single date has become viral among netizens. Regardless of whether the tariff is correct or not, from a legal point of view, it should be used as a material for discussion because many questions arise in the public regarding the criminal aspects of online prostitution.⁴ The emergence of the VA case exposed the weakness of the criminal law in ensnaring prostitutes, both those regulated in the KUHP and outside the KUHP.

Currently, Indonesia is one of the countries that has used and utilized information technology extensively and efficiently. So that the Government on April 26, 2008, passed the enactment of Law no. 11 of 2008 concerning Information and Electronic Transactions (ITE). Furthermore, on 27 October 2016 the government again passed Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions and comes into force on 28 November 2016, hereinafter referred to as the ITE Law. The ITE Law is intended to provide many benefits, including ensuring legal certainty for people conducting electronic transactions, encouraging economic growth, preventing information technology-based crimes, and protecting service users by utilizing information technology. This is in line with that stated by Bambang Sunggono, namely:

In its development, the law is not only used to regulate existing behavior in society and maintain existing habitual patterns but more than that, the law leads to its use as a means. To carry out the objectives that have been selected and determined so that they can be realized in society, several means are required. One of the adequate means is the law with various forms of existing statutory regulations.⁵

In the context of criminal law reform, tackling prostitution can be studied more deeply from various approaches, namely policy approaches, through social policies, criminal policies, and law enforcement policies. Also, with a value, approach, conducting a review and re-evaluation (orientation and re-evaluation)

2 F.X. Rudy Gunawan, *Drilling Hypocrisy: Inul, Sex and Power*, (Yogyakarta: Kawan Pustaka, 2003), page 21

3 Suyanto Bagong, *Daughter of Dilacurkan, Victim of Exploitation in Commercial Sexual Industry*, (Jogjakarta: Graha Ilmu, 2012), p. 39.

4 Abdul Gafur Sangadji, "Online Prostitution in Materiil Criminal Law", <https://nasional.sindonews.com/read/1370179/18/prostitusi-online-dalam-hukum-pidana-materiil>, retrieved 19 September 2020, at 19:05.

5 Law is the norm that directs society to achieve certain ideals and circumstances by not ignoring the world of reality. Therefore, the law is primarily made consciously by the state and used to achieve a particular goal. Bambang Sunggono, *Law and Public Policy*, (Jakarta: Sinar Grafika, without years), page.76.

of the sociopolitical, socio-philosophical, and sociocultural values that underlie and provide content to the aspired normative and substantive content of criminal law. The context of criminal law reform requires the exploration of laws that live in society, apart from Western law, customary law and Islamic law have an important role in the formation of national law so that laws will be created that is following the values and personality of the Indonesian nation.

The practice of the prostitution business which has become increasingly prevalent lately needs serious attention, considering that this practice does not have clear regulations so that the perpetrators cannot be charged with criminal threats. The birth of Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, hereinafter referred to as the ITE Law, is intended to provide many benefits, including ensuring legal certainty for people conducting electronic transactions, encouraging economic growth, preventing information technology-based crimes and protecting service users by utilizing information technology. However, it turns out that the regulation regarding online prostitution has not been covered in this law so that perpetrators of online prostitution are free to carry out their “business activities”. Existing regulations such as the Criminal Code, Law Number 44 of 2008 concerning Pornography have not been able to overcome this problem so that it is necessary to regulate the prevention of prostitution in both offline and online forms that look at the perspective of criminal law reform in Indonesia by exploring the values that live in society to obtain a legal substance that is more relevant and following the personality of the Indonesian nation.

Starting from this, the problem in this writing is related to criminal responsibility in cases of prostitution with a study based on the perspective of reforming the national criminal law.

B. Discussion

Criminal law is a legal system consisting of culture, structure, and legal substance, while the law is part of the substance of the law. Thus the reform of criminal law does not only renew criminal law legislation but also renew other sectors such as criminal law and criminal law ideas through educational processes and academic thinking.⁶ The scope of criminal law policy is wider than the reform of criminal law. This is because the criminal law policy is carried out through stages of concretization/operationalization/functionalization of criminal law which consists of:

1. Formulating /legislative policies, namely the stage of formulating/compiling criminal law;
2. Applicative/judicial policies, namely the stage of implementing criminal law;
3. Administrative/executive policies, namely the stage of implementing criminal law.⁷

In this case, the reform of criminal law is more related to the stage of formulating or making criminal law or relating to formulating policies. Criminal law policy cannot be separated from the criminal law system. In this case, Marc Ancel stated that every organized society has a legal system consisting of criminal law regulations and their sanctions, a criminal law procedure, and a criminal enforcement mechanism.⁸ In this case, A. Mulder argues that criminal law policy is a policy line to determine:

6 Barda Nawawi Arief, *Several Aspects of Criminal Law Enforcement and Development Policy, Revised Edition*, (Bandung : PT. Citra Aditya Bakti, 2005), page 11.

7 *Ibid.*, p. 29.

8 *Ibid.*, p. 28-29.

1. to what extent the applicable criminal provisions need to be changed or updated;
2. what can be done to prevent the occurrence of a criminal act;
3. the manner in which the investigation, prosecution, trial, and execution of crimes must be carried out.⁹

Thus, the use of criminal law as a means of criminal politics and social politics is intended to protect certain social interests and values to achieve social welfare.

Criminal law reform is part of the criminal law political policy (penal policy). Soedarto said as quoted by Barda Nawawi Arief, political law is:

- a. Attempts to create good rules according to the circumstances and situation at a time.
- b. The policy of the state through the authorized bodies to establish the desired regulations that are expected to be used to express what is contained in society and to achieve what is aspired.¹⁰

The problem of criminal responsibility is another aspect of the subject of a criminal act that can be distinguished from that of the maker (who commits the crime). This means that the definition of the subject of a criminal act can include two things, namely who commits the crime (the maker) and who can be held accountable. According to Roeslan Saleh:

Criminal responsibility is an act that is despicable by the society which must be accountable to the creator for the act committed. By taking responsibility for the disgraceful act to the maker, is the maker also being criticized or is the maker not being reproached. In the first case, the maker is certainly sentenced, while in the second case the maker is certainly not convicted.¹¹

Thus, error in its broadest meaning can be equated with the definition of responsibility in criminal law. It contains the meaning that the maker can reproach for his actions. So, if it is said that the person is guilty of something criminal, it means that he can be criticized for his actions.

In general, those who can be accounted for in criminal law are the makers, but this is not always the case. This problem also depends on the method or system of accountability formulation adopted by lawmakers. This means that the determination of the problem of criminal responsibility is who can be held accountable. This problem concerns the subject of criminal acts which have generally been formulated by legislators for the crime concerned. Determining a legal subject that can be held liable for a crime means that it must be based on the policy formulation of a criminal act and who is responsible. If it is based on this, in determining and reconstructing the subject responsible in the event of a criminal act of online prostitution, the legal basis or legal system is the basis for determining it.

In tackling the practice of prostitution, the laws in various countries are different, some categorize it as a criminal act, but some are silent with a few exceptions. Indonesia is one of those who are silent with the exception. The basis of Indonesian criminal law is the Criminal Code (KUHP) as what is called general criminal law. Besides that, there are also special criminal laws as spread outside the Criminal Code.

In connection with the practice of prostitution, several parties are the subject of this crime of

9 *Ibid.*

10 Barda Nawawi Arief, *Criminal Law Policy Development Drafting of the New Penal Code*, (Jakarta: Kencana Prenada Media Group, 2008), p. 25.

11 Roeslan Saleh, *Thoughts on Criminal Accountability*, (Jakarta: Ghalia Indonesia, 1982), pages 75-76.

prostitution, namely:

1. *Pimp*

Mucikari or in a large Indonesian dictionary refers to the word Mucikari as a landlady for prostituted women or pimps. However, the broad understanding of society is the people who act as caregivers, intermediaries, and “owners” of commercial sex workers (CSWs). In most sex businesses, especially those of a mass nature, sex workers do not usually have direct contact with service users. Pimpikari acts as a liaison for the two parties and will get a commission from the receipt of prostitutes, the percentage of which is divided based on the agreement. Pimps are usually very dominant in managing this relationship because many prostitutes “owe him a debt”. Many sex workers are lifted out of poverty by pimps, even though pimps can exploit their “foster children”. Like pimps in the world of online prostitution, they only act as a liaison between commercial sex workers and their masquerade men.

2. *Commercial sex worker (PSK)*

A commercial sex worker (PSK) is someone who sells his services to have sexual relations for money or is called a prostitute. A commercial sex worker, a subtle term for a prostitute, besides that there is also a term for prostitutes which also refers to commercial sex services. The practice of prostitution wherever commercial sex workers are the main objects of exploitation in the chain of prostitution practice. There are many kinds of sex workers in the online world, some are direct without pimps offering themselves and some are using other parties, in this case, are pimps.

3. *Other parties*

This is the difference between prostitution that generally exists and prostitution through online media. Other parties who indirectly support this immoral practice. These parties are those who provide the media used by commercial sex workers to promote themselves. Because it uses online media such as websites, forums, applications, and others, the owners of these websites or forums are the parties who indirectly support this online prostitution practice. Not only that, the owner of the server where the website or forum owners place their data so that it can be accessed by anyone. So it is very broad how the chain from the practice of online prostitution can happen.

4. *PSK Users*

Of all the parties that have been mentioned, this user is the point of how this online prostitution transaction can happen. Although of course the other party also encouraged the practice of prostitution. However, it is these service users who are the target for website owners or online prostitution forums to use prostitution services from him.¹²

So far the government has only regulated the prostitution problem which is confirmed in the criminal law, only prohibiting those who assist and provide sex services illegally as formulated in two articles of the Criminal Code (KUHP), namely Article 296 and Article 506. Article 296 of the Criminal Code states, “Anyone who deliberately causes or facilitates obscene acts by another person, and makes it a means of income or habit, shall be punished by a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiahs”. Meanwhile, Article 506 of the Criminal Code states, “Anyone who takes advantage of a woman’s obscene act and makes her a prostitute, is punishable by a maximum imprisonment of one year”.

As for Article 296 of the Criminal Code only regulates criminal sanctions for parties who deliberately organize or facilitate obscene acts with other people. The criminal threat in Article 296 of the Criminal Code is a maximum sentence of 1 year and 4 months or a maximum fine of Rp. 15 thousand.

From there it can be seen that the criminal law only formulates prostitution as a criminal offense against

12 <http://repository.uinjkt.ac.id/dspace/bitstream/123456789/2288/1/AHMAD%20ROSYADI-FSH.pdf> retrieved 8 April 2019 at 12:30 wib.

the intermediary. In this case, the police only have space to take legal action against intermediaries, if there is an intermediary (pimp or pimp). Prostitution activities will continue as long as there are still many customers, what is regulated in the Criminal Code so far is only the pattern of relations when women are victims or the pattern of consensual relations even though it is a complaint offense. Once entered into the realm of prostitution, the rules in the Criminal Code can only ensnare the pimp. This is the weak side of the prostitution regulation in the Criminal Code. For this reason, the article on prostitution is based on a pattern of commercial relations or relationships to ensnare users and providers of prostitution services.

From a juridical aspect outside the Criminal Code relating to online prostitution, it is formulated in Article 27 paragraph (1) of the ITE Law:

Anyone who knowingly and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have contents that violate decency will be punished with imprisonment of up to 6 six years and/or a maximum fine of IDR 1,000,000,000, 00 one billion rupiahs.

Article 27 paragraph (1) of the ITE Law above contains prohibited acts by mentioning the word decency which relates to things that contain pornography. The difference between decency and online prostitution. Article 27 paragraph (1) of the ITE Law does not explain criminal sanctions for service users for online prostitution crimes. And perpetrators who use commercial sex services online prostitution cannot be subject to criminal responsibility. It should be underlined that what this article can ensnare is not direct prostitution activities but rather uploading or uploading content containing prostitution into cyberspace. If someone fulfills the elements of these articles, namely distributing, transmitting, or making accessible a document or electronic information in the form of words, writings, and images through the form of communication media and/or public performances containing obscenity or sexual exploitation that violates norms morality in a society where online prostitution is included in these elements, the perpetrator who uploads prostitution content online can be subject to criminal penalties as contained in Article 45 paragraph (1) of the ITE Law, which is formulated as follows: “Everyone who fulfills the elements referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and / or a maximum fine of Rp1,000,000,000.00 (one billion rupiahs). “

The prevention of prostitution concerning the legal substance stipulated in the Criminal Code and special laws and regulations designed 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 means that criminal responsibility in cases of online prostitution is only aimed at pimps or pimps as providers of online prostitution services. The ITE Law and Law Number 44 of 2008 concerning Pornography only prohibit service providers, people who fund and commercial sex workers as objects in online prostitution crimes. So that even those who use the services of commercial sex workers can freely without fear of being caught in criminal penalties.

Prostitute women are considered as the only ones who bear the responsibility when prostitution practices thrive and thrive. So this further shows gender injustice that users of commercial sex services, who are mostly men, cannot be subject to criminal responsibility through positive law in effect in Indonesia.

Criminal responsibility based on offenses is mainly limited to acts committed intentionally (*dolus*). It can be found that *delict culpa* is only an exception (exceptional) when it is strictly determined by law, while the responsibility for certain consequences of a crime which by law is exacerbated by its criminal threat, is only imposed on the defendant when he should have been able to predict the possibility the occurrence of that consequence or when at least there is forgetfulness. So RKUHP does not adhere to the doctrine of

bearing the consequences purely but remains the oriented basis on error. This is seen in Article 36 RKUHP (2019) whose formulation is as follows:

1. Anyone can only be held responsible for criminal acts committed intentionally or due to negligence.
2. An act that can be convicted is a criminal act committed on purpose, while a crime committed due to negligence can be punished if it is expressly stipulated in the statutory regulations.

Furthermore, Article 37 of the RKUHP (2019) is formulated as follows:

If determined by law, everyone can:

- a. being convicted solely because the elements of a Criminal Act have been fulfilled without paying attention to any mistakes; or
- b. asked to be accountable for the criminal acts committed by other people.

Normatively, it has become the habit of every maker who commits a criminal act and his actions should be blamed and can be proven, so it is fitting for the maker to be punished or subject to punishment. In the 2019 RKUHP, the regulation regarding prostitution is formulated in Article 417 paragraph (1), namely: Every person who has intercourse with a person who is not a husband or wife is punished for adultery with a maximum imprisonment of 1 (one) year or a fine category II (Article 79 RKUHP Category II: IDR 10 million). Furthermore, in Article 417 paragraph (2), the criminal act as referred to in paragraph (1) is not subject to prosecution except for complaints from husbands, wives, parents, or children.

Prostitution offenses as formulated in Article 417 paragraph (1) of the 2019 RKUHP can be used to reach online prostitution activities because in the formulation of criminal acts it is formulated that materials related to prostitution activities are broadcast or distributed through printed mass media, electronic mass media and/or media communication tools. The internet is one of the electronic mass media, so it can be categorized as a medium that can be used to broadcast and spread prostitution activities as defined in the offense. Besides, concerning jurisdictional aspects, the 2019 RKUHP also formulates territorial jurisdiction to anticipate and reach information technology crimes, including prostitution as regulated in Article 4 of the 2019 RKUHP which states that the criminal provisions in Indonesian legislation apply to anyone who does:

- a. criminal offenses within the territory of the Republic of Indonesia;
- b. criminal offenses on Indonesian ships or aircraft; or
- c. a criminal act in the field of information technology which as a result was felt or occurred in Indonesian territory or on an Indonesian ship or aircraft.

Prostitution is a problem that does not only involve the prostitutes, but more than that, it is an activity that involves many people such as pimps, brokers, and service users, most of whom are men who often escape the attention of law enforcement officials. In the provisions of positive law that exist in Indonesia can only impose criminal responsibility on those who assist and provide sex services illegally, meaning that criminal responsibility is only given to pimps or pimps, brokers and prostitutes, whereas commercial sex service users themselves have absolutely no article. who set it up.

Recalling that accountability is a fundamental principle in criminal law, or what is more commonly known as the principle of “geen straf zonder schuld” (no crime without error). However, if the criminal responsibility is without fault on the perpetrator of the crime, it is called *leer van het materiele feit*. Meanwhile, the Criminal Code 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 responsibility there are two things to consider, namely the criminal act (daad strafrecht), the perpetrator of the crime (dader strafrecht).¹³

Referring to the principle of legality in Article 1 paragraph (1) of the Criminal Code, regarding prostitution through online media that online prostitution is a criminal act because there is a law that prohibits prostitution through online media, if the act is committed by a person or a corporation, it can be it is said that the act is a criminal act and is definitely against the law (tegen het objectieve rech) and must be held accountable for the criminal act committed from the subjective and objective elements of the criminal act he committed. There is also a difference between the notions of against formal and material laws. According to Pompe, against the law can be divided into 2 (two) namely:

- a. To violate the law formally is defined as contrary to the law if an act has matched the formulation of offense, then it is usually said to have violated the law formally.
- b. Against material law must mean only in a negative sense, meaning that if there is no violation of the law (material) then it is the justification for the imposition of a sentence that must be used only against formal law, meaning that is contrary to written positive law, because of the nullum delictum principle noela poena sina praevia relieved poenali stated in Article 1 paragraph (1) of the Criminal Code.¹⁴

Society widely views prostitution as a form of deviation/crime, because it is against the laws and norms that exist in society. Words, writings, pictures, and behavior as well as products or media with immoral contents are considered contrary to moral values and a sense of public morality. The nature of pornography which only displays sensuality, sex, and exploitation of the human body is considered very taboo by people who still uphold moral and religious values. Sexual issues are very private space and not to be displayed or disseminated and trafficked to everyone for any reason.

Every member of society has the right to protection for himself and his existence from anything that is considered immoral, whether it is simply contrary to existing moral standards (such as pornography, prostitution), or that is feared that it can have fundamental consequences for the values and social relations order. still recognized (eg demands to legalize homosexuals, same-sex marriage).

Article 2 paragraph (1) of the 2019 RKUHP regulates the enactment of laws that exist in the society which determine that a person should be sentenced even though the act is not regulated in statutory regulations. Meanwhile, paragraph (2) regulates the enforcement of laws that live in society as long as it is following the values contained in Pancasila, human rights, and general legal principles recognized by the nation's society.

Exploration of laws is intended to fill in and realize the ideal national legal system (ius constituendum), therefore legal exploration should aim to establish a national legal system. This means that there must be a common understanding of what is meant by a "national legal system" and therefore the assessment should be the main points of strategic thinking in national development, especially in the field of law. In the framework of reforming the national crime that prioritizes religious values, laws that originate and are rooted in cultural, moral, and religious values must be explored and utilized. This awareness was born because of the tendency of dissatisfaction, concern, and a crisis of trust in the legal system and legal policies so far.

In its implementation, the prevention of prostitution is mostly done by curbing and arresting female prostitutes by law enforcement officials, while male clients or users of commercial sex services are rare and never even arrested or unnoticed by law enforcement officials. This way of controlling shows gender

13 Thomas Aquinas, *Prostitution and society*, (Surabaya: Grafika Persada, 2005), p. 35.

14 Andi Hamzah, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2010), p. 141.

injustice, because there is discrimination against women. The existence of gender injustice can make it difficult to overcome prostitution because prostitutes are a paradigm of interaction between women and men outside of marriage. In this interaction, women are likened to the hired party, while men (service users) are the renter.

Only the prostitution against prostitution as the hired party is subject to criminal sanctions, while the renting party cannot be sanctioned. Normatively, discrimination against women has been eliminated based on the Women's Convention (CEDAW) which has been ratified by Law Number 7 of 1984. However, in reality, there are still discriminatory cultural values of society. This can hinder the realization of gender equality and justice in law enforcement related to tackling prostitution. Yet if we refer to economic law, people will provide services/goods due to demand. Thus, prostitutes appear because someone is in need. If there is a term prostituted woman (WTS) as a seller of commercial sex services, there should also be a term prostitute male (PTS) as a user of commercial sex services as an appropriate equivalent, so that both men and women who are involved in prostitution have the equal position to be blamed, including being labeled the same as an immoral act.

Other provisions that may be used to ensnare the practice of prostitution are Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking and / or Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to the Law. -Law No. 23 of 2002 on Child Protection (UU PA). When looking at Law Number 21 of 2007, which includes the issue of prostitution. However, the PTPPO Law can only convict someone who benefits from trafficking in persons (pimps). Meanwhile, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection only penalizes users of child sexual exploitation. At present, the regulation on prostitution is regulated in local regulations (hereinafter referred to as Perda), but not all regions have them. The effectiveness of this regional regulation is also questionable, considering that until now there are still many prostitution practices in various regions in Indonesia.

Seeing the formulation of articles in the Criminal Code, the ITE Law, the Child Protection Law, Law No. 44 of 2008 concerning Pornography, and the PTPPO Law has not been effective in ensnaring and overcoming the prostitution business, it does not regulate criminal responsibility for prostitution service users so that users of prostitution services themselves cannot be held criminally responsible and are charged under the existing positive law. in Indonesia. It should be specified in the ITE Law and Law No. 44 of 2008 concerning Pornography can ensnare the whole subject of prostitution.

Users of prostitution services are normal people and can be responsible. Criminal liability for prostitution service users is deemed necessary in-depth analysis and positive law is not sufficient for that. The discussion on criminal rules has warned legislators regarding regulations that do not yet exist and are likely to exist and then apply nationally. The analysis of criminal liability, in theory, explains that criminal liability can only occur if someone has previously committed a criminal act. Moeljatno said, "a person can't be held responsible (sentenced to a criminal) if he or she has not committed a criminal act".¹⁵ This means that criminal liability will only occur if someone has previously committed a criminal act. In the context of legislation, it is also said that the existence of a crime is determined by statutory regulations, which is interpreted as no criminal liability without a legal rule that regulates it in advance.¹⁶

Users of prostitution services cannot be convicted because the aforementioned elements describe

15 Moeljatno, Principles of Criminal Law, (Jakarta: Bina Aksara, 1987), p. 155.

16 Chairul Huda, From No Criminal Without Wrongdoing to No Criminal Liability Without Wrongdoing, (Jakarta: Ken-cana Prenedia Media Group, 2011), pages 20-21.

the weaknesses of current criminal law. Then in the thought of the upcoming law or *ius constituendum*: the law that is aspired to by society and the state, but has not yet become a law in the form of other laws or regulations, namely the 2019 RKUHP has not regulated criminal matters against them. In Chapter XV concerning the Crime of Decency, the 2019 RKUHP has not regulated it. The idea of the need for rules that regulate social symptoms against prostitution, especially for service users, is a strong basis because this action has been commonplace and is a phenomenon of deterioration for the community at large and, the law, especially criminal, is expected to regulate this. This user party is the point of how this online prostitution transaction can happen. Although of course the other party also encouraged the practice of prostitution. However, it is these service users who are the target for website owners or online prostitution forums to use prostitution services from him.

Related to the reform of the criminal law in terms of criminal responsibility for prostitution service users, as stated, at least it is intended for the protection of the community and the welfare of the Indonesian people.¹⁷ This is in line as stated by Erfandi, that:

Protection of the community (social defense) by enforcing the law in crime and reforming the crime which is carried out with the aim of: (1) protection of the community from anti-social actions that harm and endanger the community, the purpose of punishment is to prevent and overcome crimes, (2) protection of the public from the nature of a person is dangerous, then the criminal / punishment in criminal law aims at correcting the perpetrator of the crime or trying to change and influence his / her behavior so that they are again obedient to the law and become good and useful citizens of society, (3) protection of the community from abuse of sanctions or reactions from law enforcers or of the community 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 values resulting from the existence of crimes, so the enforcement of criminal law must be able to resolve conflicts caused by criminal acts, can restore balance and bring a sense of peace in society.¹⁸

There are at least 3 main problems in criminal law, namely: (1) criminal acts, (2) criminal liability, and (3) criminal and criminal penalties, each of which are subsystems and at the same time the pillars of the entire criminal system building that must internalize the values of Pancasila. As understandable, the criminal code in the Criminal Code (WvS) is not only aimed at people who have committed a criminal act, but also against those who have committed acts in the form of trials, conspiracy, inclusion, concursus, and recidive. It's just that in the Criminal Code, evil and recidive consensus is not regulated in the General Rules of Book I, but in Special Rules (Book II of Book III).

Seeing the various regulations regarding the practice of prostitution that do not protect the community, a more in-depth study is needed on how to create a set of regulations that can provide certainty with more specific regulations on the practice of online prostitution. In essence, the practice of prostitution through the media or conventional is the same, namely as a form of adultery, there are only differences regarding the media used in the practice. The development of national law that currently underway includes reform of criminal law, so this study of prostitution is interesting to study in relation to the culture of the Indonesian

17 Barda Nawawi Arief, *Funding Objectives and Guidelines*. (Semarang: Diponegoro University Publishing Board, 2009), page 45.

18 Erfandi, "Implementation of Pancasila Values in the Development of Criminal Legal System in Indonesia", *Scientific Journal of Pancasila Education and Citizenship*, Th. 1, Number 1, June 2016, pages 29-30.

people or the local wisdom of the Indonesian nation. The exploration of laws that live in the society in addition to western laws that are still guided by the Indonesian nation is the three sources of law that need to be used as a basis in forming a statutory regulation.

Overcoming prostitution must be done immediately by revising existing laws and regulations or issuing new laws in the spirit of reforming criminal law with a policy approach, namely social policies to address social problems (including humanitarian problems) to achieve /support national goals (public welfare and so on), criminal policies, part of community protection efforts (especially efforts to combat crime), and law enforcement policies because criminal law reform is essentially part of an effort to renew the legal substance to improve the make law enforcement effective. Also, with a values approach, namely conducting a review and re-evaluation (reorientation and re-evaluation) of the sociopolitical, socio-philosophical, and sociocultural values that underlie and provide content to the aspired normative and substantive content of criminal law.

By paying attention to the value approach, it is important to explore laws that live in society. This prostitution gives a lot of harm to both the perpetrators of the institution itself and the children who are likely to be born. Besides, prostitution has an impact on the spread of various venereal diseases. The formation of new laws and regulations or a revision of legislation by determining the act of adultery as an offense / criminal act in the national criminal law is a necessity in overcoming this prostitution. Because a clear regulation will minimize the practice of prostitution which will cause more unrest for the community. The formation of new laws and regulations that can provide strict sanctions not only for the landlady of the prostitution business but also for the perpetrators of prostitution. So that it will create the use of technology wisely.

C. Closing

Prostitution articles are based on a pattern of commercial relations or relationships to ensnare users and providers of prostitution services. Overcoming prostitution must be carried out immediately by revising existing laws and regulations or issuing new laws in the spirit of reforming criminal law with a policy approach, namely social policy, criminal policy, and law enforcement policies. Also, with a values approach, namely conducting a review and re-evaluation (reorientation and re-evaluation) of the sociopolitical, socio-philosophical, and socio-cultural values that underlie and provide content to the aspired normative and substantive content of criminal law. It is necessary to explore the laws that live in society, in addition to western laws. This can be done by establishing an act of adultery wrapped in prostitution as an offense or a criminal offense in the national criminal law. Three things that can be taken into consideration for reforming criminal law relating to criminal liability in cases of prostitution are: first, prostitution is against religious values. Second, prostitution is contrary to the values of the Indonesian nation, namely the values of Pancasila, and third, that in prostitution, women do not enter because of their willingness, but rather because of compulsion. Women who in this case are the party providing commercial sex services (PSK) are victims of violence, they are marginalized victims and ultimately choose to enter the prostitution area.

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