

VICTIMOLOGICAL DIMENSIONS REGARDING LEGAL PROTECTION OF WOMEN IN ONLINE PROSTITUTION CASES

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ABSTRACT

This paper is the result of an idea that examines normative theoretical regarding legal protection for women in prostitution cases that is studied based on the victimization dimension. In order to realize and promote a just, prosperous and prosperous life which is the right of every citizen, every citizen is protected under Article 27 paragraph (2) of the 1945 Constitution to have the right to work and a livelihood that is for humanity. The Indonesian state has a strong foundation in protecting human rights above human dignity by recognizing them in work and a decent life or in accordance with human dignity. There should be a criminal law relating to the formulation of prostitution policies that are in line with the development of the community's needs for crime. The current Criminal Code is sociologically and juridically incompatible with the values that live and develop in society, and this adds to legal inconsistencies in the enforcement and prevention of prostitution which has an impact on the social, human rights, health and religion fields. Taking this into account, this paper is expected to be able to respond to the development of community needs for the development of decency as well as to contribute to criminal law in providing legal protection to women in cases of online prostitution.

Keywords: Legal Protection, Women, and Online Prostitution.

A. INTRODUCTION

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

Law in its development is not only used to regulate behavior that already exists in society and maintain existing habit patterns, but more than that, the law leads to its use as a means. To carry out the goals that have been chosen and determined so that they can be realized in the community, several facilities are

needed. One of the adequate means is law with various forms of existing statutory regulations.¹

Starting from the description above, efforts or policies to deal with online prostitution as part of a crime in the field of information technology can be carried out through criminal liability for online prostitution actors using the "penal" (criminal law) means, it is necessary to study the material / substance (legal substance reform) current online prostitution, especially those related to criminal liability to perpetrators.

Starting from this, it is clear that the scope is very broad, in order to prevent the extent of the coverage, and to facilitate the discussion, it is necessary to limit the problem. The problem in this paper is "what is the victimization dimension of legal protection for women in online prostitution cases?"

Based on the formulation of the problem above, this paper has a novelty from other writings related to the same theme and topic regarding prostitution and the protection of women, especially in the framework of the criminal law order in Indonesia. Thus, it aims to determine the victimization dimension of legal protection for women in online prostitution cases.

B. DISCUSSION

1. Regulation of Online Prostitution in Indonesian Positive Criminal Law

Online prostitution comes from two words, each of which can stand alone, namely prostitution and online. Prostitution comes from the Dutch language, namely prostitutie, and in English it is prostitution which means prostitution. Prostitution is the same term as prostitution. Prostitution according to Soerjono Soekanto can be interpreted as a job that is surrendered to the public to perform sexual acts for wages. Prostitution or prostitution is the provision of sexual services performed by men or women for money or satisfaction.

From several formulations of prostitution as put forward by several experts above, it can be concluded that what is meant by prostitution is workers both male and female who surrender or sell services to the general public to perform sexual acts by getting wages in accordance with what previously agreed.

From the juridical aspect, the regulation regarding prostitution as a crime at this time, apart from being regulated in the Criminal Code, is also regulated in Article 27 paragraph (1) of the ITE Law:

Any person who knowingly and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing content that violates decency shall be punished with imprisonment for a maximum of 6 and six years and/or a fine of a maximum of Rp. 1,000,000,000.00 one billion rupiah.

Article 27 paragraph (1) of the ITE Law above confirms that there are acts that violate decency, namely displaying a collection of electronic data in the form of photos, and distributing, as well as accessing electronic documents on the suspect's website. As contained in Article 5 paragraph (1) of the ITE Law which states that "Electronic information and/or electronic documents and/or their printed results are valid legal evidence". The article confirms that the act committed by the perpetrator of prostitution can be proven to have committed a crime, by displaying photos of comfort women, and if the electronic document in the form of photos obtained from the suspect's website has printed results. The printout is an extension of legal evidence in accordance with the

¹ Law is a norm that directs people to achieve certain ideals and conditions without ignoring the world of reality. Therefore, the law is mainly made consciously by the state and is used to achieve a certain goal. Bambang Sunggono, Law and Public Policy, (Jakarta: Sinar Graphic, undated), p.76.

applicable procedural law in Indonesia, as described in Article 5 paragraph (2) of the ITE Law, stating "Electronic information and/or electronic documents and/or their printed results as referred to in paragraph (2) (1) is an extension of valid evidence in accordance with procedural law in force in Indonesia".

The last word of the term online prostitution describes the place where this activity is carried out. Online is a term that people use to express something related to the internet or cyberspace. Thus, online prostitution is an activity to offer sexual services through cyberspace. Online prostitution can be defined broadly as the practice of prostitution or prostitution using the internet or online media as a means of transaction for those who are Commercial Sex Women (CSWs) and who want to use their services. Although if we want to deepen the meaning, the notion of online prostitution is a prostitution transaction that uses the internet as a means of connecting between prostitutes and those who want to use their services. So the internet is only as a means of support or liaison only. Unlike in general, PSK transactions are waiting for their customers on the side of the road. All the definitions mentioned have their own problems because they are defined from different societies which basically have different social and moral standards regarding prostitution or prostitution.

2. Dimensions of Victimology on Legal Protection of Women in Online Prostitution Cases

According to Satjipto Raharjo, legal protection is an effort to protect a person's interests by allocating a power to him to act in protecting his interests. Protection according to Law Number 13 of 2006 concerning Witness and Victim Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to victims that must be carried out by the Witness and Victim Protection Agency (LPSK) or other institutions in accordance with the provisions.

Mansour Fakhri, said that one type of violence due to gender bias (gender related violence) includes prostitution,² which is defined as a form of violence against women organized by economic mechanisms that are detrimental to women. Mansour Fakhri's opinion underlies the author's argument that, we cannot generalize to women as prostitutes, because not a few women who are involved as prostitution service providers are based on fear of reactions from pimps in the form of threats and even violence against them. when reporting his suffering due to the prostitution business.³ Article 1 point 3 of Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, explains the definition of a victim as "a person who experiences physical, mental, and/or economic loss caused by a criminal act". Likewise, Article 1 point 3 of the TIP Law defines a victim as "a person who experiences psychological, mental, physical, sexual, economic, and/or social suffering, as a result of the crime of trafficking in persons". Barda Nawawi Arief defines victims as people who, individually or collectively, have experienced suffering including physical or mental suffering, emotional suffering, economic loss or substantial reduction of human rights, through acts or omissions.⁴

Based on these two juridical and doctrinal formulations, the author defines a victim as someone who bears the consequences of a crime, in the form of psychological, sexual, physical, social suffering; and/or suffering and/or economic loss. Victims can have a functional role in the occurrence of a crime, consciously or unconsciously, directly or indirectly. The role in question is the attitude and condition of a person who will become

² Moerti Hadiati Soeroso, *Domestic Violence (KDRT) in Juridical-Victimological Perspective*, Jakarta: Sinar Graphic, 2010, p. 18.

³ G. Widiartana, *Victimology Perspective of Victims in Crime Management*, Yogyakarta: Cahaya Atma Pustaka, 2014, p. 131

⁴ Wessy Trisna and Ridho Mubarak, "The Position of Victims in Cases of Criminal Acts of Corruption", *Journal of Public Administration*, vol 7, No1, December 2017, p. 117-126

a potential victim or attitudes and circumstances that can trigger someone to commit a crime. The author cites Hentig's opinion which provides an overview of the role of the victim in the emergence of crime, namely:

- a. The crime was intended by the victim to occur;
- b. Crime is made the victim in order to obtain greater profits;
- c. The losses incurred are the cooperation between the perpetrator and the victim;
- d. Crime does not actually occur if there is no provocation from the victim.⁵

Not much different from Hentig, Mandelshon⁶ who sees the "victim" from the side of his guilt, namely: first, the victim who is completely innocent; second, the victim because of his negligence; third, the victim whose fault is equal to the perpetrator; fourth, the victim is more guilty than the perpetrator; and the victim is the only one at fault. Women are latent or predisposed victims, because women are a vulnerable group based on the assumption that women are weak human beings who cannot carry out activities like men, so women tend to become victims such as rape, refugees, slave trade, prostitution, forced labor, and so on. so.⁷

Ezzat Abde Fatatah classifies latent or predisposed victims as part of the typology of victims in terms of victim involvement.⁸ When viewed from a cultural perspective, women are placed in an unequal position in relation to men, or which in the United Nations Declaration on the Elimination of Violence Against Women is referred to as a manifestation of the historical inequality of power relations between men and women, giving rise to the dominance of men over women. women, which gives rise to what is known as gender difference. Gender differences that have been going on for a long time, and are considered as a standard provision of God, have implications for one of the biological problems. Differences between men and women in the historical reality of all nations in the world, often these biological differences are translated too far into gender roles.⁹ Like men, they must be strong and aggressive compared to women, so this affects the emotional/psychic, physical, vision, and ideological development of women who are gentle¹⁰ Such conditions occur in almost all countries/cultures, not least in Indonesia, which in fact adheres to eastern culture.¹¹

Another thing that raises the potential to cause women to become victims from a psychological point of view, women are generally characterized as being emotional, easy to give up, passive, subjective, easily influenced, physically weak. ¹² The psychological characteristics of a woman in relation to being a victim begin when there is fear, which is then followed by an attitude of resignation. The meaning of "surrender" here is to accept as a fate for his suffering, where this thought can be said to be a fatalistic

⁵ Bambang Waluyo, *Victimology of Legal Protection Against Victims of Crime*, Jakarta: Sinar Graphic, 2011, page 9,

⁶ Rena Yulia, *Victimology of Legal Protection Against Crime Victims*, Yogyakarta: Graha Ilmu, 2013. p. 52.

⁷ Majda El Muhtaj, *Dimensions of Human Rights Outlining Economic, Social and Cultural Rights*. Jakarta: Rajawali Pers, 2008, p. 235. 21 Sri Suhartati Astoto, "The Existence of Victimology in Settlement of Compensation", *Journal of Law*, No. 18, Vol 8, October 2001, p. 212-224.

⁸ Sri Suhartati Astoto, "The Existence of Victimology in Settlement of Compensation", *Journal of Law*, No. 18, Vol 8, October 2001, p. 212-224.

⁹ Ali Murfi, "Gender Bias in Islamic and Christian Education Textbooks", *Journal of Islamic Education*, Vol III, No 2, December 2014, pp 267-287

¹⁰ Moerti Hadiati Soeroso, *Domestic Violence (KDRT) in Juridical-Victimological Perspective*, Jakarta: Sinar Graphic, 2010, p. 15-16

¹¹ *Ibid.*, p. 16.

¹² Eti Nurhayati, *Understanding Psychology of Women (Integration and Intercomplementary Psychology and Islamic Perspectives)*, paper, Batusangkar International Conference I, West Sumatra, 15-16 October 2016, p. 245-258.

culture.¹³ The surrender condition of women will further open up the potential to become victims in the helpless phase, which then becomes the potential for perpetrators to seek profit from it. The condition of "surrendering" of women after experiencing fear resulting in exploitation of the victim will further open the potential of becoming a victim in the powerless phase, which then becomes the potential for the perpetrator to seek profit from it. The condition of fear followed by resignation, by Von Hentig due to biological factors, categorizes women as victims as the female, so that women in the world of prostitution are very vulnerable to becoming victims because they are physically weaker.¹⁴

Taking into account the description above, as well as by looking at the reality in Indonesia, the author views women in the practice of prostitution not only from the perspective of the perpetrator, but also from the perspective of the victim. Based on several criminological theories regarding the reasons why someone commits a crime, the author describes several factors that cause a woman to be involved in prostitution. That is:

- a. Women provide prostitution services for money to meet urgent needs. The criminological study recognizes the sociological perspective of the birth of crime, the context of women becoming prostitution service providers in order to earn money, the theory of strain views economic problems as triggering crime (a social) to achieve economic stability;¹⁵
- b. Women provide prostitution services for the purpose of luxury or just to fulfill worldly prestige in their social environment. According to Merton, the means must exist to achieve the goal (luxury), the limited means to achieve the goal (luxury) make people who are basically law abiding become depressed and then commit crimes (a social). The goal (luxury) is the cause or pressure for women who do not have access to it, so they are short-minded to peddle their bodies.¹⁶

C. CLOSING

Prostitution has brought women into a disadvantaged position, this is compounded by the bias of the paradigm of when women are victims and when they are perpetrators. Meanwhile, Article 486 of the Criminal Code Bill concerning the offense of prostitution, which regulates women providing prostitution services, places her as the perpetrator. Based on the study that the author has done, it can be concluded that there is a possibility that a woman is a victim, or a perpetrator, or even as a victim as well as a perpetrator of prostitution. If women are involved without pressure from outside parties to enter into the practice of the crime of prostitution, it can be said that women are perpetrators because these actions injure people's sense of decency. If a woman due to coercion from a party outside herself is involved in prostitution, then she is called a victim.

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¹³ G. Widiartana, *Viktimologi...*, Loc.Cit., p. 132.

¹⁴ *Ibid.*, p. 31.

¹⁵ Topo Santoso and Eva Achjani Zulfa, *Criminology*, Rajawali Press: Jakarta, 2014, p. 61-62.

¹⁶ *Ibid.*

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