

# *The Uncertainty of Regulating Online Prostitution in Indonesia*

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**Abstract-** Online prostitution in Indonesia is developing along with advances in information technology. Indonesian society is religious and moralist. However, there are no regulations that can prosecute prostitutes, except only for pimps. Especially if it is associated with online prostitution. The study was conducted with a normative juridical approach through the legislation approach, case approach, fact approach and legal concept analysis approach. The conclusion found that the development of online prostitution in Indonesia did not get a serious legal response. Online prostitution arrangements are still conditional, there are no laws governing them with certainty. Uncertainty about the regulation of online prostitution can be seen from the lack of definition and harmonization between regulations both horizontally and vertically.

**Keywords-** *Uncertainty of Regulating, Online Prostitution, Policy*

## I. INTRODUCTION

Indonesian society is a religious society, where morality becomes one of the guidelines for life. Prostitution is seen as an act that is immoral and degrading human dignity. Along with the development of information technology, prostitution also experiences adjustments in the way of communication between the perpetrators. The phenomenon of online prostitution emerged. Communication is carried out utilizing virtual world networks. Society and law enforcement eventually react to the emergence of this phenomenon.

The phenomenon of online prostitution has caused moral panic [1]. Various media coverage shows the existence of anger, cynicism and criminal prosecution of prostitutes online. The lack of certainty in regulating online prostitution will cause several problems including: making human trafficking increase, the spread of HIV / AID, degrading women, the emergence of many places of prostitution, the occurrence of shifts in the view of prostitution, the hidden crime that occurs in sexual workers. [2] Although this prostitution both online and offline has provided a large income for a country. There are 12 countries that obtain large revenues from this prostitution business, and Indonesia is included in the revenue of 2.25 billion US dollars or around 32 trillion rupiah [3]. The Ministry of Social Affairs as the state agency responsible for the eradication of prostitution has rehabilitated 5,000 ex-female sex workers from various brothels throughout Indonesia. In 2019 it is targeted that

all prostitution brothels in Indonesia have been completely closed [4].

The disclosure of several cases of online prostitution reported in relay by various media in Indonesia turned out to have similarities in the mode of operation. The perpetrators market themselves and the women they sell through the internet, both by using websites and social networks such as Facebook, Twitter, Blackberry Messenger, and so on. In contrast to offline prostitution that requires a certain place or localization to 'peddle' himself [5]. Sporadic legal responses in various parts of Indonesia occur when online prostitution involves famous figures such as artists or involves minors.

Legal certainty is a fundamental element of the formal concept of a legal order [6]. Online prostitution is a phenomenon that is seen as damaging to morale, disturbing order and opening up opportunities for sexual exploitation to the point of psychological and social harm. Strict arrangements are needed to ensure certainty, fairness and usefulness of the law. In the context of legal modernity, the principle of legal certainty – the idea that the law must be sufficiently clear to provide those subject to legal norms with the means to regulate their own conduct and to protect against the arbitrary exercise of public power – has operated as a foundational rule of law value [7].

## II. RESEARCH METHOD

This research study is normative juridical as the main approach [8] bearing in mind that the discussion is based on legislation and legal principles that apply in matters of information technology crime, especially in the case of online prostitution. Juridical approach is carried out through the legislation approach, case approach, fact approach, legal concept analysis approach [9]. Through the literature method analyzed from library materials related to the problem above. The legal materials used in this study are secondary legal materials, in the form of legal text books, legal journals, legal papers or the views of legal experts contained in the mass media.

## III. FINDINGS AND DISCUSSION

There is no official definition for prostitution. The Oxford Advanced Learner's Dictionary defines 'prostitution' as the work of a prostitute and 'prostitute' as a person who has sex for money [10]. Judicially,

prostitution is defined as ‘the practice of offering the body for promiscuous or indiscriminate sexual intercourse with men, and this for the purposes of hire or payment [11].

**Prostitution has multiple faces:** they are victims of exploitation and networks, mothers in precarious situations, young female students, children, men.....who prostitute themselves on the street, on the internet, in bars, in saunas or massage parlors, on the side of highways...The circumstances are diverse. Yet, no matter the political, economic or cultural context, they are all linked to one phenomenon: **sexual exploitation** [12]

Define prostitution as a business transaction agreed upon by the parties involved as something that is a short-term contract that allows one or more people to get sexual satisfaction with a variety of methods. In line with this, Supratiknya [13]. stated that prostitution or prostitution is to provide sexual relations services in exchange for money. In the Indonesian context, prostitution has been going on for a long time even since the days of Mataram. The practice of prostitution at that time was done by surrendering women as tribute and becoming merchandise [14].

Describing the nature of prostitution is not an easy task divide prostitutes into these categories: a) Brothel prostitutes (operating from within a house, with a “madam” in charge); b) Escorts (conducted through an agency); c) “Call Girls” (generally advertised and run from their own home); d) Street prostitutes (these prostitutes share their revenue with their “pimps” or others who facilitate their livelihood) [15].

Research conducted by Williamson 2009 explains that there are several typologies of prostitution work styles, namely: pimp-controlled prostitution, renegade prostitution, and outlaw prostitution [16] Some of the sociological facts of prostitution shows that the variety of activities is increasingly varied. The assessment of the wider community, that prostitution is intercourse between men and women without being bound by a legal marriage certificate is seen as low in terms of morals and morals, sins according to religion, despicable and disgusted according to the assessment of people in Indonesia. Although prostitution is one of the professions and business fields for economic purposes [17]. Religious and moral considerations form the basis of the criminalization of prostitution in Indonesia.

Efforts to criminalize prostitution are seen in legislation such as Article 296 and Article 506 of the Criminal Code. Criminal sanctions provided by the Criminal Code only addressed to pimps. There are no criminal penalties and criminal fines for service sellers and service buyers in the world of prostitution. This results in a legal vacuum in the regulation of sex sellers and buyers, so that law enforcement against prostitution cannot be done comprehensively.

Regulations regarding prostitution carried out by various regional regulations such as in Jakarta [18], Pasuruan [19], and Kendari City [20] are far more strict than the Criminal Code. The level of regulation is only a regional regulation so the act of prostitution is only considered as an act that disturbs order, not as a crime. Wikipedia even includes Indonesia as a country which acts to legalize prostitution according to the laws of each region [21]

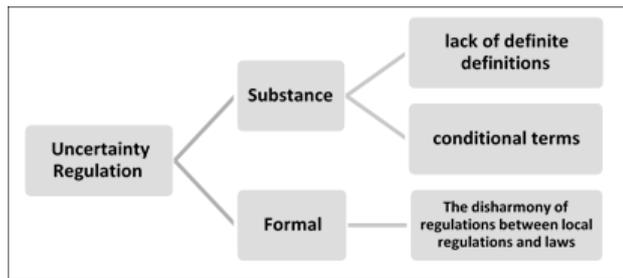
Prostitution is now a business that is advertised on the Internet, expanding the reach of pimps to a wider market of potential sex buyers. The Internet and computer technology have been developed and exploited by sex businesses to offer prostitution to men across the globe [22]. In this era, prostitution is not only happening in the area of localization, but has also penetrated the digital era, where the practice of prostitution is not only done by localization, but is carried out online, bearing in mind the progress of the times and to deceive law enforcement officers. Prostitution is now venturing into cyberspace or in other words, it is done online.

Internet websites provide contact information, specifics on sexual acts that will be performed, pornography of the woman to be sold for sex, coded prices, and reviews by sex buyers [23]. Technology, smartphones and other digital devices make it possible to conduct business, advertise, and increase earnings from women who have for the most part been trafficked or coerced by a combination of joblessness, poverty, racism, and sexism into sex businesses [24].

Online prostitutes who are caught, in this case pimps, are usually threatened with Article 2 of Law No. 21/2007 concerning the Criminal Act of Trafficking in Persons or Article 45 paragraph 1 Juncto Article 27 paragraph 1 of Law No. 11/2008 concerning Information, Electronic Transactions, or Article 296 of the Criminal Code [25]. The articles used are not articles which regulate definitive online prostitution. The arrangement here seems conditional and partial because the punishment is only applied to pimps.

The uncertainty about the regulation of online prostitution can be seen in two aspects, namely the substantial and formal aspects. The substantial aspect shows that there is no definitive article about online prostitution. While the formal aspect shows that there is no vertical harmonization between the laws and local regulations. Horizontal disharmony can be seen from the conditional interpretation of online prostitution, which must be related to the Electronic Information and Transaction Law, the Act on the Criminal Act of Trafficking in Persons, the Law on Child Protection and Article 296 of the Criminal Code. Uncertainty of regulations is shown in the figure below.

FIGURE 1. UNCERTAINTY REGULATION OF ONLINE PROSTITUTION



In the end, the state's attitude that online prostitution is illegal in the end can never solve the problem of prostitution. The eviction carried out by the government will only form new prostitution in a new place and only create prostitution models that are growing, more sophisticated, and increasingly detrimental to society and the government. Regulatory certainty is needed to build a good legal system.

#### IV. CONCLUSION

The Indonesian nation is known as a nation that has a high culture, good courtesy and high ethics and morals, but that does not make Indonesia a country that is completely clean of prostitution. Along with the development of technology, prostitution also uses this tool to carry out their transactions, commonly known as online prostitution. Activities in online prostitution involve sellers, buyers and facilitators. Law in Indonesia only punishes those who become facilitators (pimps), namely in Articles 296 and 506 of the Criminal Code. Uncertainty is seen in the criminal prosecution of prostitutes online. The existing the Electronic Information and Transaction Law only regulates the transmission of pornographic content by transmission. If the content does not explicitly mention things that are immoral then it will not be touched by the law. The law on online prostitution is conditional. Criminal law regulations only reach out if online prostitution is related to the crime of trafficking in persons, pornography, minors, pimps and disturbing order. The uncertainty of online prostitution arrangements in Indonesia can be seen from the uncertainty of the definition, conditional terms and disharmony between existing regulations both vertically and horizontally.

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