

Law Enforcement Toward Obscenity as Livelihoods Through Information Technology Media

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ABSTRACT

The current era of globalization is marked by the rapid development of technology. The presence of technology has given a new nuance to human life that touches all aspects of life. The development of technology makes it easy for people to carry out activities to meet their needs and interact with other people wherever they are. Technology besides bringing benefits such as making it easy for people to carry out their activities, it also causes losses. Crimes through misuse of information technology are increasingly being committed. The type and mode of crime itself continues to grow, for instance, the proliferation of obscene acts as a livelihood carried out through information technology. On the other hand, the success rate of disclosing perpetrators of crimes with information technology is still very low. Therefore, we need strict and consistent law enforcement which is able to create a deterrent effect. The purpose of this study was to analyze law enforcement efforts against perpetrators of obscene acts with others as their livelihood and / or pimps by taking advantage of female prostitutes carried out through the internet, using empirical juridical methods. As for the results that the perpetrators of obscene acts as a livelihood, there are several laws that regulate online prostitution activities, but it must be seen the elements of the acts committed by the perpetrators of obscene acts as a livelihood so that applicable legislative provisions can be applied more precise towards the perpetrators. However, for the legal basis in taking actions against the perpetrators, the provisions of Article 296 and Article 506 of the Criminal Procedure Code can be used, which specifically regulates crimes committed by a pimp and also Article 55 of the Criminal Procedure Code, which is considered as a person who participates in an act or entices to commit an act or facilitate obscene acts with others as a livelihood and habit.

Keywords: *law enforcement, obscene actions, livelihoods*

1. INTRODUCTION

Crimes through the misuse of information technology are increasingly being committed. The type and mode of crime itself continues to develop. On the other hand, the success rate of disclosing perpetrators of crimes using this information technology is still very low. This is certainly a very big concern for the society. The losses incurred due to this crime are significant. Nowadays, the development of crime has been increasing. It includes the advances in computer technology which does not cause crime to decrease but on the contrary. The crimes committed are more sophisticated and complicated, and not as simple as we imagine. Cyberspace, as a new development in the history of human civilization, makes it difficult to enforce the law in accordance with applicable procedures (criminal justice system).

Prostitution via the internet is now a trend in the prostitution business. There is a number of people who sell themselves by hitching a friendship site, Friendster, without anyone coordinating. The number is increasing day by day. For example on the Friendster site, after being traced, there are tens and possibly hundreds of Indonesian commercial sex workers located in Jakarta, Bogor, Bekasi and Tangerang.

The development of information technology including the internet presents its own challenges for the development of law in Indonesia. Indonesian law is demanded to be able to adjust to social changes occur. In line with what was stated by Soerjono Soekanto, social changes and changes in law or vice versa do not always take place together.[1]

It is visibly clear that law in Indonesia is still lagging behind the changes in society. Law in Indonesia does not recognize the terms internet, carding, e-commerce or other terms in the field of Information Technology. In other words the term commonly referred to as cyberlaw in Indonesia has not really materialized as expected by the society. Cyberlaw may be classified as a separate law, because it has multiple aspects such as criminal, civil, international, administrative, and intellectual property aspects.

With the enactment of Law Number 11 Year 2008 about Information and Electronic Transactions (Informasi dan Transaksi Elektronik/ITE) on April 21, 2008, a legal basis is created for electronic transactions and information that occur in the jurisdiction of Indonesia. Every activity dealing with electronic systems must base its relationship on the provisions contained in this Law. Hence, the Information and Electronic Transaction Law which is abbreviated as ITE Law regulates a new dimension that has never been regulated before. It creates new terms and characteristics that are in line with activities commonly referred to as cyber people.

Some of the new things found are the existences of a new and legally valid form of evidence, namely Electronic Information, Electronic Documents or even printouts of Electronic Information and Electronic Documents (Article 5 subsection (1) of the ITE Law). These three types of evidence are truly new in the world of law, given the absence of legislation that states and recognizes electronic evidence as legal evidence (Article 44 of the ITE Law).

Electronic documents in any form, whether in the form of e-mails, soft copies, CDs and so on, are some forms of electronic documents which contain electronic information from their owners, either the Provider (organizer) or individuals. Actually the existence of this electronic data has been known by the public. In the evidentiary law according to criminal procedure law, the evidence is still confusingly understood. Juridical recognition through Article 5 subsection (1) of the ITE Law on the three new evidences brings juridical consequences in the recognition of the three pieces of evidence as parts of the evidence that has so far been in force.

The recognition of electronic evidence is a step forward in the evidentiary law. If a case arises which disputes electronic documents, then the document can be used as a reference for the parties to settle the case or the judge who will decide the case.

2. RESEARCH AND DISCUSSION

A. The Responsibilities of Obscene Actors Through the Internet According to Law Number 11 Year 2008 About Information and Electronic Transactions

Indonesia is a developing country which is not left behind to enjoy the presence of internet technology to facilitate daily activities. However, the internet is somehow misused as in the online practice of prostitution or obscene acts.

Prostitution comes from the Latin language, namely *prostitutare*, which means allowing your selves to commit adultery, commit acts of sexual immorality, sexual immorality, and alteration. In English, it is called prostitution which means similarly to Latin, that is prostitution, prostitution or prostitutes.[2]

The existence of prostitution will have a bad impact on human's life. Prostitution is a blow to the household and family, weakens personality, may disrupt the public health, spread disease, contaminate the younger generation and encourage sexual crime for teenagers and the society.

In terms of regulating prostitution activities online, there are several laws that regulate online prostitution activities, stated below:

- a. Criminal Procedure Code Article 296 and Article 506, Article 296 is "Anyone who intentionally causes or facilitates obscene acts by another person with another person, and makes it a search or habit, is threatened with imprisonment for a maximum of one year and four months or a maximum fine of fifteen thousand rupiahs ". Article 506 of the Criminal Procedure Code is formulated as follows "Anyone who benefits from the obscene acts of a woman and makes it as a livelihood is threatened with imprisonment for a maximum of one year".
- b. Law No 11 of 2008 about Information and Electronic Transactions Article 27 subsection (1) are as follows "Everyone intentionally and without the right to

distribute and / or transmit and / or make access to Electronic Information and / or Electronic Documents which have a charge violating decency are sentenced to a maximum imprisonment of 6 (six) years and / or a maximum fine of 1,000,000,000.00 IDR (one billion rupiah).

- c. Law No. 44 of 2008 about Pornography Article 30 Junto Article 4 subsection (1), is formulated as follows "Everyone who provides pornographic services as referred to in Article 4 subsection (2) is sentenced to a maximum of 6 (six) months in prison and the longest 6 (six) years and / or fines of at least 250,000,000.00 IDR (two hundred and fifty million rupiah) and a maximum of 3,000,000,000.00 IDR (three billion rupiah) "
- d. Criminal Procedure Code Bill. Article 469 subsection (1) formulates that "Everyone who broadcasts, plays, displays, or attaches writings, sounds or sound recordings, films or which can be equaled to films, song poems, poems, pictures, photographs and / or paintings through printed mass media, electronic mass media and / or media communication tools that exploit sexual attraction in body parts, sexual activity, sexual relations between men and women or same sex, or sexual activity or relationships with animals or with bodies, convicted of pornography with a maximum imprisonment of 5 (five) years or a maximum fine of Category IV ”.

Regional Regulation No. 8 of 2007 about public order replacing Law No. 11 of 1988. Article 42: subsection (1) Everyone is prohibited from behaving and / or immoral behavior on the road, green belt, park or other public places; subsection (2) Every person is prohibited from: a. Telling, Facilitating, Persuading, forcing others to become commercial sex workers. b. Becoming a commercial sex vendor. c. Using commercial sex services. Article 43: Any person or entity is prohibited from providing and / or using a building or house as a place for immoral conduct.

In Article 282 of the Criminal Procedure Code, for example, it does not explain the limits of decency which is meant by decency itself. Mentioned in the explanation section, obscene nature (decency) must be determined based on public opinion. Each event must be reviewed individually and highly dependent on local customs. From this point, it can be seen that there are no definite limits regarding pornography or obscene acts. The limit depends on the circumstances and development of the local community.

In general criminal law, the issue of prostitution is regulated only in 1 article, namely Article 296 of the Criminal Procedure Code. This article prohibits and revokes the right to make a living as a livelihood or habit and takes advantage of obscene activities carried out by other people and the maximum criminal threat is 1 year 4 months. This article is interpreted by Indonesian criminal law experts as an article that threatens the criminal conduct of pimps.

Obscene acts (*ontuchtige handelingen*) are acts in any way and form, whether done to others or yourself regarding and relating to the genitals or other body parts that can stimulate sexual desire.[3]

The obscene acts included into criminal acts Article 27 subsection (1) of the ITE Law is an obscene act towards another person. It goes the same with rape for intercourse. Rape as obscene acts can occur through force with the threat of violence directed at others. The threat of violence can be done through electronic media systems as regulated in Article 29 of the ITE Law.

Thus this article prohibits all forms and practices of prostitution activities of others and gets benefit or makes a living. In a number of court decisions, not only a pimp who was convicted but also someone who rents out his room for prostitution though the person was not a pimp. He was just benefited from an obscene act committed by prostitutes with the customer.

Prostitution between prostitutes (commercial sex workers) and their customers is not a crime according to the Indonesian Criminal Procedure Code, so that all forms of prostitution which are managed or managed by themselves and their customers cannot be categorized as offenses threatened with punishment including online prostitution which is self-managed with customers.

The Electronic Information and Transaction Law (UU ITE), namely Law No. 11 of 2008 does not provide criminal threats for an act of prostitution online managed by the prostitute to its customers. Article 27 subsection (1) of the ITE Law only threatens acts of distributing, transmitting or making electronic information accessible in violation of decency. Electronic information that violates decency based on interpretations from Criminal Law Scientists are images, videos, conversations, animations, sketches that contain content of sexual immorality, sexual intercourse, sexual violence, genitals. The object of this decency must also be disseminated to the public through electronic media (email, social media, or short message services). Referring to the provisions of UU-ITE, if the act carried out contains a message to prostitute itself but is not disseminated to the public, then it does not meet the elements of article 27 subsection (1) of the ITE Law.

The Criminal Procedure Code does not question customers who buy sex in a prostitution activity. This shows that the sex buyer in a prostitution activity is not an offense or an unlawful act, unless the object is under 18 years old. If this is done, then this act could be threatened with the Child Protection Act (Law No. 23 of 2002 Juncto Law No. 35 of 2014). Likewise, if the sex buyer is a man or woman who has a husband / wife, it may be subject to adultery as stipulated in Article 284 of the Criminal Procedure Code with a maximum penalty of 9 months. But this adultery offense is a complaint offense, so there must be complaints from a legitimate partner, namely the husband or wife of the adulterer. If there is no complaint, then the sex buyer cannot be said to have committed a crime as regulated in Article 284 of the Criminal Procedure Code.[4]

Thus, sex buyers cannot be convicted if they do not meet the above qualifications, nor can prostitutes (commercial sex workers) be convicted. Their positions are only as witnesses if the constitution involves pimps or other parties who benefit from the ongoing sexual transaction.

B. Process of Proving Obscene Actions Through the Internet According to Law Number 11 Year 2008 About Information and Electronic Transactions

Proof law is part of Criminal Procedural Law that regulates various types of evidence that are valid according to the law, the system adopted in the evidentiary system, the conditions and procedures for submitting the evidence and the judge's authority to accept, reject and assess a proof.

The discussion about the evidence will not be separated from the evidence. What is meant by evidence is anything that has to do with an act. Where with the evidence, it can be used as a tool to create a judge's confidence in the truth of a criminal offense has been committed by the defendant.

The strength and evaluation of the evidence is contained in Article 185 to Article 189 of the Criminal Procedure Code. The meaning of the strength of the evidence is how far the value of the evidence is in the evidentiary law as stated in:

- a. Article 185 of the Criminal Procedure Code, regulates the assessment of witness statements.
- b. Article 186 of the Criminal Procedure Code, regulates the evaluation of expert statements.
- c. Article 187 of the Criminal Procedure Code, regulates the assessment of letters.
- d. Article 188 of the Criminal Procedure Code, regulates the evaluation of instructions.
- e. Article 189 of the Criminal Procedure Code, regulates the evaluation of the defendant's information.

The theory of proof system in Indonesia adheres to the theory of the system of proof of legislation negatively or the system of proof of negativity (negative bewijstheorie) which can be seen in the formulation of Article 183 of the Criminal Procedure Code reads as follows.[5]

"Judges must not impose a punishment on a person, except if with at least two legal pieces of evidence he obtains the conviction that a crime has actually taken place and that the defendant is guilty of committing it."

From this sentence, it is evident that the proof must be based on the law (Criminal Procedure Code), which is the legal evidence mentioned in Article 184 of the Criminal Procedure Code, accompanied by the judge's conviction obtained from the evidence.

The minimum evidentiary are the two pieces of evidence which are listed in Article 184 but in the explanation of Article 184, one proof can be in the case of a quick case review provided for in Article 205 to Article 216 of the Criminal Procedure Code. So according to the explanation in Article 184 of the Criminal Procedure Code, a quick case examination is sufficient to be proved with one piece of evidence and the judge's conviction.

According to Article 184 subsection (1) of the Criminal Procedure Code, as follows:

(1) Valid evidences are:

- witness statement
- expert statement
- letter
- a clue
- defendant's statement.

With the enactment of the ITE Law, there is one thing that becomes specificity and a new breakthrough. In this law where the recognition of new evidence outside Article 184 of the Criminal Procedure Code, namely Electronic Information and / or Electronic Documents and / or printouts are valid legal proofs which in the provisions of Criminal Procedural Law constitutes evidence. The ITE Law here has been added a new type of legal evidence that was determined in Article 5 of the ITE Law, namely:

- 1) Electronic Information and / or Electronic Documents and / or their prints are valid legal evidence.
- 2) Electronic Information and / or Electronic Documents and / or printouts as referred to in subsection (1) are

extensions of valid evidence in accordance with the applicable Procedure Law in Indonesia.

- 3) Electronic Information and / or Electronic Documents shall be declared valid if using the Electronic System in accordance with the provisions stipulated in this Law.
- 4) Provisions regarding Electronic Information and / or Electronic Documents as referred to in paragraph (1) do not apply to:
 - a) a letter which according to the Law must be in written form; and,
 - b) a letter along with the documents which according to the Law must be made in the form of a notarial deed or deed drawn up by the official making the deed.

Judging from the description above, a very striking difference is seen between the evidence in Article 184 of the Criminal Procedure Code and the new evidence according to Article 5 of the ITE Law, namely Electronic Information and / or Electronic Documents and / or the printed results where the evidence is a confiscated item and seized in the investigation of information and telecommunications criminal acts because the form of the evidence is an information system that is stored electronically in the form of Electronic Information and / or Electronic Documents and / or prints, which does not preclude the possibility of being prepared, produced and used as a means in committing a computer crime as stipulated in Article 39 of the Criminal Procedure Code which reads as follows:[5]

- 1) Foreclosures are subject to:
 - a) objects or bills of suspects or defendants that are all or partly suspected of being obtained from criminal acts;
 - b) objects that have been used directly to commit a crime or to prepare it;
 - c) objects used to prevent criminal investigations;
 - d) objects specifically made to be intended to commit a crime;
 - e) Other objects that have a direct relationship with a criminal offense.
- 2) Objects that are in confiscation due to grading cases or because of bankruptcy can also be confiscated for the purpose of investigating, prosecuting and exploring criminal cases, as long as they meet the provisions of paragraph (1).

However, it should be noted that according to Article 5 subsection (3), the validity of Electronic Information and / or printouts as valid evidence is only when using an electronic system in accordance with the provisions stipulated in the ITE Law. According to Article 1 number 5, what is meant by an electronic system is:

"Electronic Systems are a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit and / or disseminate Electronic Information".

The grant of electronic information and / or electronic documents and / or print results as legal evidence is not without exception. Based on Article 5 subsection (4) electronic documents and / or printouts cannot be accepted as valid evidence if:

- a) In a law it is determined that the letter specified as evidence must be in a written form; what is meant by written form is a letter that was traditionally made with

non-virtual writing such as on paper. According to the explanation of Article 5 subsection (4), the letter according to the law must be made in writing but not limited to securities, securities and a letter used in the process of law enforcement in civil, criminal and State administration procedures.

- b) In the law, it must be made in the deed made by the deed official, the deed made by the deed-making official other than a notary is a deed made by the Land Deed Official.

In addition to information and electronic documents declared legal if using an electronic system in accordance with the provisions set out in this law as determined by Article 5 subsection (2), it has also met the requirements that electronic information and or electronic documents are considered valid as long as the information listed in within which can be accessed, displayed, guaranteed integrity and can be accounted for so as to explain a situation, that is as determined by Article 6 which reads:

"In the event that there are provisions other than those regulated in Article 5 subsection (4) indicates that information must be in written or original form, Electronic Information and / or Electronic Documents is considered valid as long as the information contained therein can be accessed, displayed, guaranteed intact, and can be accounted for so as to explain a situation."

In addition to the recognition of new legal evidence in the form of electronic information and / or electronic documents and / or printouts that are legal evidence in the ITE Law, there are other specificities stated in the procedural law. The procedural law that is used to conduct investigations, investigations and prosecutions, as well as hearings in courts and convictions is carried out based on the provisions of the Criminal Procedure Code. Even though it is not explicitly determined according to the ITE Law, but considering that the ITE Law is not otherwise determined, it must be interpreted that the Criminal Procedure Code applies to criminal acts that apply in the ITE Law unless it is explicitly stated otherwise by the ITE Law.

In line with the above mentioned principle, specifically regarding to the investigation of Article 42 of the ITE Law stipulates that:

"Investigation of criminal offenses as referred to in this law is carried out based on the provisions in the Criminal Procedure Code and the provisions in this law".

Article 42 above must be interpreted that the Criminal Procedure Code is a *Lex Generalis* while the procedural provisions in the ITE Law are *lex specialis*. In other words, Article 42 must be interpreted as long as there is no other stipulation in the ITE Law. In this case, the provisions referred to in the Criminal Procedure Code apply. In the ITE Law there are provisions of criminal procedure which are different from the Criminal Procedure Code.

According to Article 6 of the Criminal Procedure Code which reads:

- 1) Investigators are:
 - a. State police officer of the Republic of Indonesia
 - b. Certain civil servant officials given special authority by law
- 2) The official rank requirements as referred to in subsection (1) will be further regulated in the government regulations.

According to Article 43 of the ITE Law, not only State Police Investigators are authorized to conduct investigations but also certain Civil Servants in Government circles whose scope of duties and responsibilities are in information technology and electronic transactions given special authority as investigators as referred to in the Criminal Procedure Code for investigating criminal offenses in information technology and electronic transactions as intended by the ITE Law.

So it can be seen that Article 43 of the ITE Law refers to Article 6 subsection (1) b which gives specificity, whereby investigators of Civil Servants Officials who may become investigators must be those whose scope of duties and responsibilities are in the field of information technology and electronic transactions given special authority as investigator.

In the case of a search and / or confiscation by an investigator, the investigator must comply with the provisions of the criminal procedure law as regulated in the provisions of Article 43 paragraph (3) of Law No. 19 of 2016 about Amendments to Law No. 11 of 2008 about Information and Electronic Transactions. If arrests and searches are carried out in a very necessary and urgent matter without first obtaining permission from the Chairperson of the local District Court, the search, evidence finding, and confiscation of evidence, including confiscation of electronic systems related to the crime can be used as evidence before the court by first reporting to the local District Court Chair for approval.[6]

Investigators, according to Article 43 subsection (6) of the ITE Law, cannot conduct arrests and detention based on their own authority or authority but must comply with the provisions of the Criminal Procedure Code (KUHAP).

3. CONCLUSIONS

This research produces two conclusions. First, Prostitution through information technology media can occur because of a very easy and free access with a website or forum specifically in the world of prostitution. This point confirms that the practice of prostitution has been very organized. Positive law in Indonesia responding to the problem of prostitution through information

technology media is quite satisfying to the public by using three laws namely Republic of Indonesia Law Number 11 Year 2008 as amended by Law of Republic of Indonesia Number 19 Year 2016 about Amendments to Law Number 11 Year 2008 about Information and Electronic Transactions, Republic of Indonesia Law Number 44 of 2009 about Pornography and the Criminal Procedure Code which have ensnared perpetrators of criminal acts. Second, the process of proving criminal acts of prostitution includes the expansion of evidence as regulated in Article 5 of the ITE Law. Article 5 subsection (2) of the ITE Law states that the evidence of Electronic Information and Electronic Documents is no other evidence and is separated from the evidence in Article 184 of the Criminal Procedure Code, but rather as an extension of the evidence contained in Article 184 of the Criminal Procedure Code. In this case, it is the expansion of evidence of a letter or position and its function as evidence of a letter if used as material to form evidence.

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