

COMPARISON OF PROSTITUTION LAWS IN INDONESIA AND SWEDEN

Rr.Dijan Widijowati

Universitas Bhayangkara Jakarta Raya

Email: dijan.widijowati@dsn.ubharajaya.ac.id

*Correspondence: dijan.widijowati@dsn.ubharajaya.ac.id

Abstrak. Prostitution is one of the social problems that occur in Indonesia. Currently the perpetrators of prostitution have been among teenagers, students, students, housewives, and various other circles. The problem of prostitution is clearly not an easy problem to solve, and it cannot be denied that it continues to emerge with various modus operandi in society and develops along with the progress of the times, science and technology. The purpose of this study is to find out how the criminal law policy is against the parties that involved in the prostitution crime in Indonesia and to figure out how the criminal law policy is against prostitution services users in Sweden. The method used is normative legal research. This research approach uses a comparative approach. Source of data comes from secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The conclusions in this study indicate that the current regulation of criminal law against the crime of prostitution has not been able to accommodate the problems of prostitution in Indonesia and it is necessary to establish new rules governing the crime of prostitution. The regulations regarding prostitution in Sweden are different from those in Indonesia. considering that the Swedish state enforces laws and regulations governing the crime of prostitution as contained in the Sex Purchase Law, and the Swedish government has also established a special investigative agency in the field of prostitution.

Keywords: Criminal Law, Prostitution, Comparative Law

INTRODUCTION

In the development of human civilization, various social problems will always be present along with increasing social interaction between humans, nations and States. Various social problems that arise do not occur suddenly but are a series of causal intersections between various triggering factors, including social strata that are vertical and horizontal from various fields of life, including economics, politics, race, culture, religion, and various other areas of life. One of the social problems that arise and can be said to be one of the oldest social problems in the world is prostitution or also known as prostitution.

Prostitution or prostitution has been growing in society even since the beginning of human civilization as in the days of Ancient Greece. Prostitution flourished in Ancient Greece, even prostitution activities were common in various circles from the lower class to the noble class. In addition to Ancient Greece, Japan in the imperial era had given an honorable position to women involved in prostitution by providing special training to prostitutes to provide professional services to the nobility, as this was known as Geisha.

However, prostitution did not always find a place among the public, as was the case with one of the Roman emperors Emperor Justian in the 5th century who forbade his citizens to engage in prostitution, where the perpetrators were severely punished by the Emperor.

Prostitution not only affects those who do it, namely the perpetrators and users of its services, but also affects the wider community. Not a few efforts have been made by the government, and have

also been carried out with various patterns of social approaches to reduce the level of prostitution as well as the act of closing localization whose data by the Ministry of Social Affairs of the Republic of Indonesia is the closure of 118 (one hundred and eighteen) prostitution areas spread across Indonesia from 2013 to 2017 (Sahara, 2021).

The closure of prostitution areas is a manifestation of the government's firmness and commitment in eradicating prostitution, but new problems that are the result of the closure of prostitution areas have begun to emerge where one of these problems is the undirected action against Commercial Sex Workers (PSK), especially related to the availability of job opportunities so as to provide targeted solutions and ensure the return of these prostitutes to the prostitution circle (Koesbardiati, 2017).

The closure of the prostitution area without a solution to the consequences caused, especially regarding employment, will result in ineffective measures. Because if prostitutes are not also given solutions to their economic problems, they will return to prostitution activities which are considered the easiest way out to earn income as this is in accordance with Rational Choice Theory (Wittek et al., 2013).

Economic deprivation and unfulfilled living needs are reasons that are often put forward by prostitutes. In addition, the reasons for low education, compulsion, disappointment with the past are also other reasons for these prostitutes so that they cannot think far and are easily deterred from their involvement in the

world of prostitution. However, from the many reasons stated, seeing the development of the current era of association and free lifestyle has become one of the main reasons for the involvement of teenagers into the world circle of prostitution, especially with the lure of ease in earning income.

There is a view that the occurrence of prostitution is due to the will of men, where the desire to be able to release sexual desires from men makes them willing to spend some money to get it, where this opinion is conveyed by George Ryley Scott in his book entitled *History of Prostitution* (Kairupan, 2016).

In the current conditions itself, criminal law policies in Indonesia in reaching perpetrators of prostitution practice are still very limited. The practice of prostitution as stipulated in Article 296 of the Criminal Code. In this provision, only service providers (places) where prostitution is carried out can be threatened with crime, so the current provision is considered insufficient regarding the target of reducing the number of prostitution (Kristiyanto, 2019).

Of the many countries in the world, one example of the application of criminal law policies that can be applied in efforts to eradicate and prevent prostitution is Sweden. This European country has built a foundation that is used as a law enforcement tool, namely the Anti-Prostitution Law passed in 1999. This can certainly be an inspiration for Indonesia which is currently struggling with the rapid growth of prostitution in the country, so that the comparison of criminal law between Indonesia and Sweden is expected

to provide input for Indonesia to form a regulation that can be applied effectively and significantly reduce prostitution that occurs.

Based on the description above, it is necessary to explore further about how the criminal law policy towards parties involved in prostitution crimes in Indonesia based on the applicable positive law and how the criminal law policy towards perpetrators involved in prostitution crimes in Indonesia. The purpose of this study is to determine the policies and legal rules governing prostitution in Indonesia and compare the policies and legal rules governing prostitution in Sweden so that it can be an example and reference in building an ideal legal system related to prostitution in the future.

METHODS

This study used normative legal research. Therefore, the data collection technique in this study is a library study technique (Library Recessarch). The legal material used in this study is secondary legal material consisting of primary legal material in the form of laws and regulations related to prostitution. The data sources used are secondary data sources consisting of primary legal material sources in the form of books and journals related to the research theme. The data sources used are secondary data sources consisting of primary legal material sources in the form of books and journals related to the research theme. In addition, this study also looks at phenomena that occur through a statutory approach (statute approach) and a comparative approach (comparative approach). Data presentation techniques in

this study are presented descriptively-analytically. Data analysis techniques are carried out qualitatively, and deductive conclusion-making techniques.

RESULTS AND DISCUSSION

A. CRIMINAL LAW POLICY TOWARDS PERPETRATORS OF PROSTITUTION CRIMES IN INDONESIA

Policies are general principles formed to direct, manage, regulate, solve problems within the scope of society at large, compile rules imposed in society, in order to realize the welfare and prosperity of the community (Algifari, 2021).

In accordance with the description above, it can be concluded that criminal law policy is a legal instrument used by the state to direct the current legal situation (*ius constitutum*) to be in accordance with the aspired law (*ius Constituendum*). Thus, criminal law policy is related to criminal law reform, where the application of legal rules in the form of legal culture, legal structure, and legal substance becomes the basis for ideal law enforcement in criminal law science.

Etymologically, prostitution comes from the Latin *Protituo* and in its terminology can be interpreted as a behavior that voluntarily commits adultery in return. Bonger defines prostitution as a social phenomenon involving women wanting to have intercourse with someone other than their husbands as a livelihood. In Prostitution there are perpetrators who are termed Sexual Workers. This sale of sexual services is identified as a form of work to do what he wants on his body to earn income (Dirkareshza et al., 2022). In its development, prostitution currently by

Surtees has been classified into 2 (two) forms, namely traditional prostitution and non-traditional prostitution. Traditional prostitution is prostitution carried out within the scope of the localization area, while Non-traditional Prostitution is prostitution that is carried out covertly and spread in areas in general, where the perpetrators cannot be easily identified because it can be carried out by various groups, with various social statuses and occupations and carried out outside the localization area.

The limitations of regulations, as well as the imperfect ability of the criminal law to reach service users and prostitutes as part of criminal law enforcement need special attention from a criminal point of view, especially regarding the ability to be legally responsible for prostitution perpetrators, both service users, prostitutes, and service providers of the practice of prostitution. So that with a formulation regarding criminal responsibility, it is hoped that a criminal law regulation can be realized to provide a deterrent effect and education for prostitutes in the form of a conviction.

In a punishment is inherent in it Criminal liability. Criminal liability as a principle and provision in the realm of criminal law policy is an instrument to be able to distinguish between prohibited acts and acts that are not prohibited in criminal law. As in the view of expert Chairul Huda, who stated that related to the rule of law regarding criminal responsibility has a function as a determinant of the conditions that must exist in a person so that it is valid to be sentenced to a crime. Determine whether a person deserves reproach for his

actions, where the reproach is punishment. Thus, the rules regarding criminal liability are a filter for criminal imposition, which can only be applied to those who have mistakes and the crime imposed is limited to their guilt (Chairul Huda, 2015).

With regard to criminal liability, it is directly related to the conviction of the perpetrator, if proven to have committed a criminal act and has fulfilled all elements of punishment in accordance with the law. A person will be held criminally liable for acts of an unlawful nature (Juita et al., 2017). So loose provisions in the Criminal Code against users of prostitution services can certainly provide a large space for users of prostitution services to continue to engage and use prostitution services. Even in some cases of online prostitution that came to light, criminal charges can only be applied to pimps (service providers) from the practice of prostitution without being able to target service users or prostitutes. This is clearly a provision that is not right on target, the absence of crimes against users of prostitution services and prostitutes has caused no deterrent and educational effect for the community so that such things that occur and become the spotlight for the mass media will make the perpetrators of prostitution practice more courageous.

In the Criminal Code (KUHP), not all perpetrators in the practice of prostitution are charged with punishment. Because, the Criminal Code does not prohibit prostitution or online prostitution, but the Criminal Code only prohibits pimping and can be charged with punishment both criminal confinement and fines. The prohibition on pimping is contained in Article 506 of the Criminal Code. In

addition, in another article, namely Article 296 of the Criminal Code.

Only these two articles of the Criminal Code can ensnare prostitution activities in Indonesia. The problem is that Article 296 and Article 506 of the Criminal Code only impose penalties on pimps who sell someone who is engaged in prostitution. There are no legal provisions that can be used to ensnare users or users of prostitution services, either criminally with or imprisonment.

As discussed earlier, the practice of prostitution which is currently developing and is non-conventional in nature has also been endangered to be entangled with criminal law rules, especially in Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law), although various regulations in the Law are far from perfect and effective.

Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law) does not mention the word prostitution in all its articles. Except in article 27 paragraph (1) which contains prohibited acts, mentions the word decency which concerns matters that smell of pornography.

In addition to the provisions in the ITE Law mentioned above, the problem of prostitution has also been included in Law No. 44 of 2008 concerning Pornography where the provisions of the legislation mention it with the word pornographic services contained in Article 1 paragraph (2) which contains: "Pornographic services are all types of pornographic services provided by individuals or corporations through live performances, cable television, terrestrial

television, radio, telephone, internet, and other electronic communications as well as newspapers, magazines, and other printed goods."

The practice of prostitution regulated in this Law is clarified in article 4 paragraph (2) letter (d) which contains prohibitions and restrictions. The provisions of sanctions in the pornography law are also specifically regulated to refer to the parties involved. As in Article 30 of the Pornography Law. In connection with these legal provisions, in order to improve the effectiveness of the criminal law related to the crime of prostitution, a criminal law policy related to prostitution is needed. The criminal law policy must be able to include: First, Reform of the substance of criminal law which includes material criminal law reform (KUHP and laws outside the Criminal Code), formal criminal law (KUHAP) and criminal implementation law related to prostitution, Second, Renewal of criminal law culture, which includes, among others, legal awareness issues, legal behavior, legal education and criminal law science related to prostitution.

The implementation of this criminal law policy certainly needs to meet the requirements of legal rules both juridically, sociologically, and philosophically in the formation of criminal law policies related to prostitution. The application of this rule is necessary so that the criminal law policy established regarding efforts to eradicate prostitution can achieve its objectives as Nonet and Selznick's views on responsive law.

The arrest of pimps with the initials AA involving artists in 2015 has exposed online prostitution rings. This has certainly

opened the views of law enforcement officials where the development of Non-Traditional Prostitution in its latest form, namely through social media, has become a means of prostitution that needs special handling.

The development of the method of prostitution mentioned above, has made the positive criminal law in Indonesia currently incompatible with the values that exist in society. Therefore, positive criminal law in Indonesia needs to be updated, because if it is related to prostitution, both conventional and non-conventional (cyber prostitution), there is no law that can provide strict sanctions for prostitutes, especially for commercial sex workers and consumers.

B. CRIMINAL LAW POLICY AGAINST PROSTITUTION IN SWEDEN

The criminalization of prostitution itself has also been imposed by the Swedish state. Although Sweden is included as one of the countries in Europe and is thick with western culture and promiscuity, the adverse effects of prostitution remain a frightening thing for the country because it can have an impact on the spread of sexually transmitted diseases, increasing crime rates, decreasing human morals, trafficking in persons, and other things.

The magnitude of the adverse effects due to the existence of prostitution has encouraged Swedish authorities to be able to take preventive and countermeasures against the crime of prostitution. Where in 1999, the Swedish State enacted laws and regulations contained in the Sex Purchase Law.

In the provisions stipulated by the

Sex Purchase Law, the act of buying or attempting to purchase sexual services becomes a criminal offense punishable by a maximum fine or imprisonment of 6 months. The Swedish state considers that the enactment of this provision has had a very significant impact on reducing the number of prostitution in Sweden.

The effectiveness of the regulation was eventually increased by the Swedish Government by including provisions regarding punishment for buyers of sex services into the Swedish Criminal Code with criminal sanctions increased to 1 (one) year in prison (Månsson, 2017). In Article 6 paragraph (11) of the Swedish Criminal Code. The provisions as mentioned above, we have never found in the Indonesian Criminal Law. Moreover, there has been no renewal of the Indonesian Criminal Code since the Dutch colonial era.

The application of sanctions against buyers of sex services in Sweden is not only criminal, but there are additional penalties in the form of reporting in the mass media against perpetrators. This is certainly very surprising, because the imposition of such punishment will certainly greatly cause fear to the perpetrators so that they will stay away from the practice of prostitution considering that with the reporting of perpetrators in the mass media as buyers of sex services, it will cause shame and social sanctions among the community. This provision is certainly very suitable with eastern cultured Indonesia, because legal sanctions related to social sanctions will have a deterrent effect on perpetrators (Amalia, 2018).

In order to increase the effectiveness of the enactment of laws and

regulations regarding prostitution, the Swedish government has also established a special investigation agency in the field of prostitution so that with this institution the handling of prostitution cases can be carried out properly and can be monitored in order to obtain evaluation results on the effectiveness of laws and regulations regarding prostitution (Utami et al., 2020).

The enactment of this law also has resulted in a decrease in the number of human traffickers in Sweden, due to the lack of interest so that national and international crime networks in human trafficking avoid Sweden as a target for sale.

This arrangement is called the Swedish Model or Nordic Model, which means that the approach that posits prostitution is a series of male violence against women. It's an approach that criminalizes sex buying and pimping, but decriminalizes prostituted people in Sweden (Holmström & Skilbrei, 2017).

Based on the description above, it can be compared how the application of criminal law policy can provide a broader view in the formation of national law, where the comparison of criminal law itself is not a branch of law and the like (AZKIA, 2023).

Punishment of prostitution service users is not only a basis for justification from crime, namely retribution for harmful acts and violations of norms, but must pay attention to what is to be achieved by the punishment. This punishment must be a rebuke to the community to have a fear of committing prostitution.

This is strengthened from the point of criminal politics, one of the goals to be achieved through criminal law is the

prevention of criminal acts, both in the sense of special prevention (special preventie) and general prevention (generale preventie) (MULYADI & SH, 2023).

Based on the above, it is very appropriate if Indonesia imposes criminalization for buyers of sex services to prevent and overcome the spread of prostitution in the midst of Indonesian society. Because in the norms of law, religion, and decency that this act of prostitution is a very despicable thing. There is no reason for the government to ignore the practice of prostitution, which is still ongoing.

CONCLUSIONS

1. The application of criminal law policy is closely related to the implementation of applicable values of a State because this criminal law policy must be able to be a reflection of the nation's national ideals, just like Indonesia whose values are based on Pancasila where the moral formation of Indonesian people upholds God, Unity, culture, and diversity, so the Criminal Law Policy approach must be carried out with a humanist method. This is important in the direction of Indonesia's Criminal Law Policy, because not only is crime essentially a humanitarian problem but also because in essence crime itself is also a system of rules that can have an impact on humanity. In this regard, where prostitution as a social phenomenon and currently so prevalent in Indonesia both in conventional and non-conventional forms is a crime that cannot be left alone and damages the joints of Indonesian life. Moreover, the magnitude of the impact of the practice of prostitution both in the health, social, and economic

fields, requires a range of criminal law policies in the future to increase the effectiveness of prevention and control of prostitution crimes. The limitations of regulations, as well as the imperfect ability of the criminal law to reach service users and prostitutes as part of criminal law enforcement need special attention from a criminal point of view, especially regarding the ability to be legally responsible for prostitution perpetrators, both service users, prostitutes, and service providers of the practice of prostitution. So that with a formulation regarding criminal responsibility, it is hoped that a criminal law regulation can be realized to provide a deterrent effect and education for prostitutes in the form of a conviction. In the Criminal Code there are not many articles that can ensnare prostitution activities in Indonesia. The relevant articles only exist in Article 296 and Article 506 of the Criminal Code only impose penalties on pimps who sell someone who is engaged in prostitution. There are no legal provisions that can be used to ensnare users or users of prostitution services, either criminally with or imprisonment. In connection with the above legal provisions, in order to improve the effectiveness of the criminal law related to the crime of prostitution, a criminal law policy related to prostitution is needed.

2. The criminalization of prostitution has been enforced by the Swedish State by enacting the laws and regulations contained in the Sex Purchase Law. In the provisions stipulated by the Sex Purchase Law, the act of buying or attempting to purchase sexual services becomes a criminal offense punishable by a maximum

fine or imprisonment of 6 months. The effectiveness of the regulation was eventually increased by the Swedish Government by including provisions regarding penalties for buyers of sex services into the Swedish Criminal Code with criminal sanctions increased to 1 (one) year in prison. The application of sanctions against buyers of sex services in Sweden is not only criminal, but there are additional penalties in the form of reporting in the mass media against perpetrators. With the implementation of such punishments, it will certainly greatly cause fear to the perpetrators so that they will stay away from the practice of prostitution considering that with the reporting of perpetrators in the mass media as buyers of sex services, it will cause shame and social sanctions among the community. This provision is certainly very suitable with eastern Indonesia, because legal sanctions related to social sanctions will have a deterrent effect on perpetrators. The Swedish government has also established a special investigation agency in the field of prostitution so that with this institution the handling of prostitution cases can be carried out properly and can be monitored in order to obtain evaluation results on the effectiveness of laws and regulations regarding prostitution. The enactment of laws and regulations and the establishment of this special institution made the number of prostitution decrease dramatically.

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