Online Prostitution in the Perspective of Law of the Republic of Indonesia Number 44 Of 2008 On Pornography

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Abstract: Law of the Republic of Indonesia No. 44 of 2008 on pornography does not explain online prostitution service users online specifically, because positive legal arrangements in Indonesia for service users have not been effective in trapping and tackling online prostitution, in this case the law of the Republic of Indonesia No. 44 of 2008 on pornography can not ensnare service users in the field of the practice of online prostitution, so that the law of the Republic of Indonesia number 44 of 2008 on pornography only limits the parties that may be subject to sanctions, namely sanctions against service providers contained in Article 30, sanctions for server owners contained in Article 33, sanctions for commercial sex workers contained in Article 34, and sanctions for pimps contained in Article 35.

Abstrak: Undang-undang Republik Indonesia Nomor 44 tahun 2008 tentang Pornografi tidak menjelaskan mengenai pengguna jasa prostitusi online secara khusus, dikarenakan pengaturan hukum positif di Indonesia terhadap pengguna jasa belum berlaku efektif dalam menjerat dan menanggulangi prostitusi online, dalam hal ini Undang-undang Republik Indonesia Nomor 44 tahun 2008 tentang Pornografi tidak dapat menjerat pengguna jasa dalam praktek prostitusi online, sehingga Undang-undang Republik Indonesia Nomor 44 tahun 2008 tentang Pornografi hanya membatasi pihak-pihak yang dapat dikenakan sanksi yaitu sanksi terhadap pelaku penyedia jasa terdapat dalam pasal 30, sanksi bagi pemilik server terdapat dalam pasal 33, sanksi bagi pekerja seks komersial terdapat dalam pasal 34, dan sanksi bagi mucikari terdapat dalam pasal 35.
INTRODUCTION

In the Republic of Indonesia, there is already a policy related to the law of Information Technology (law of information Technology) which was ratified in the provisions of the law of the Republic of Indonesia No. mor 11 of 2008 on information and electronic transactions (UU ITE) on April 21, 2008 by the Minister of Law and Human Rights. Undang-Undang The ITE (cyber space) law is considered necessary to provide protection and legal certainty in the use of Information Technology, media and communication in order to develop optimally.

Before the promulgation of the law of the Republic of Indonesia No. 11 of 2008 on information and Electronic Transactions (UU ITE) which regulates specifically on the use of Information Technology, in Indonesia at that time in the issue of cyber crime where there is a legal vacuum, law enforcement officers at that time specifically have not found rules regarding cybercrime whose rules it's inthe law. (Warsiman 2014).

The Internet has even been used by school-age children for learning activities in the network (online) all circles in supporting their daily activities. Interactive digital communication Media is able to connect the Information society (information society) quickly, easily and without knowing the boundaries of the region. Over time comes the problem of lawlessness or by another name "crime " which is the responsibility of every element of society. Thus, the punishment or sanction adopted by criminal law is a characteristic that distinguishes criminal law from other areas of law. Punishment in criminal law is aimed at maintaining security and regular life relationships. (Marpaung 2010).

Advances in technology and information today have an impact on social, economic and cultural changes that lead to the formation of modern society. The impact of technology in the field of information and communication can certainly change a country into a developed if the country can process, utilize the media wisely and responsibly. But what will happen if a country that owns this media cannot utilize and process it wisely and responsibly. So the development is like a double-edged knife, the development of internet-based interaction media internet also has a negative side if the country cannot process and use it properly. (Goddess Of Flowers 2015).

Cybercrime is one of the forms or new dimensions of today's crime that received widespread attention in the international world, Cybercrime has a dark side of the era of progress of the current era that has a very wide negative impact on all areas of modern life today. (Barda Nawawi 2015).

In Indonesia, the government does not explicitly prohibit the practice of prostitution. It is said that it is not firm because the regulation on the crime of online prostitution does not regulate the provisions on punishment for users of commercial sex services. So that those who use the services of commercial sex workers can freely without fear of being entangled in criminal law sanctions. Therefore, the conviction of the perpetrators of criminal acts is a dynamic process that includes a continuous and
careful assessment of the objectives to be achieved and the consequences that can be chosen from certain decisions on certain matters at a time. This fosters the thought that the collection-of materials in this problem will support solving the problem in the best way. (Setiady, T 2012).

In the Criminal Code the provisions relating to the problem of prostitution are very few and simple, namely Article 290, article 297 and Article 506 of the Criminal Code. This provision cannot be used against users of prostitution services expressly, because this provision only applies to perpetrators and users who are married, facility providers and beneficiaries or so-called pimps. Therefore, a person can be sentenced if the person has fulfilled the elements of the criminal act that have been formulated in the Criminal Code, because in general, the articles in the Criminal Code consist of elements of criminal acts. This is in accordance with the statement Lamintang, that, " even so every crime contained in the Criminal Code in general we can describe into elements that basically we can divide into two kinds of elements, namely subjective elements and objective elements". (P.A.F Lamintang 2015).

**RESEARCH METHODS**

To be able to find out and discuss existing problems by using certain scientific methods using normative legal research (juridical normative), it can be used more than one approach (Jhony Ibrahim 2016). In this study used the approach of legislation and comparative approach.(Abdulkadir Muhammad 2013). By containing a description that is researched based on a careful and in-depth literature review.

**Legal Material Collection Techniques**

The technique of collecting legal materials in this study is by means of literature studies, namely collecting and researching library materials consisting of primary legal materials in the form of legislation, secondary legal materials in the form of books, articles, internet and tertiary legal materials in the form of dictionaries, encyclopedias related to online prostitution service users online in Indonesia.

**Legal Material Analysis Techniques**

Data analysis is carried out in a qualitative normative manner, namely the discussion and elaboration of research data that is based on the norms or rules of law and doctrines that are relevant to the problem. (Soemitro 2003). Prescriptive analysis is an analysis based on the purpose of law, the values of justice, the validity of the rule of law, legal concepts and legal norms that are intended to find answers to problems.

**DISCUSSION**

The Indonesian state has made a policy related to the law of information Technology (law of information Technology) after making provisions in the law of the Republic of Indonesia No. mor 11 of 2008 on information and electronic transactions (UU ITE), in essence the presence of laws in a country that serves to regulate and to protect its people. Because the country that controls the internet in the millennium era is certain to be a developed country if the internet is used wisely , especially in the fields of research, education, administration, socialization, networking and business. (Warsiman 2014).
The positive law that regulates online prostitution is the Criminal Code, Law No. 11 of 2008 on information and Electronic Transactions and Law No. 44 of 2008 on pornography. Furthermore, legal products related to ruang siber (cyber space) or mayantara are considered by the government to be necessary to provide security and legal certainty in the use of Information Technology, media and communication in order to develop optimally. Article 27 paragraph (1) and Article 34158 of Law No.11 of 2008 concerning information and electronic transactions, the penalties that can be imposed for internet prostitution are imprisonment and/or fines.

So far, the government only regulates prostitution, which is emphasized in the criminal law, only prohibits those who help and provide illegal sex services as stated in the Criminal Code (KUHP) Article 296, article 297 of the Criminal Code, Article 506 of the Criminal Code also prohibits the trafficking of women and underage children. These articles in the Criminal Code only prohibit those who help and provide sex services illegally, meaning that the ban is only given to pimps. However, criminal law remains the basis of regulations in the sex industry in Indonesia.

Based on the formulation of Article 27 paragraph (1) and Article 34158 of Law Number 11 of 2008 concerning information and electronic transactions, the crime that can be imposed on cyber prostitutes is imprisonment and/or a fine. Then in the implementation of countermeasures against the problem of prostitution substance of the law set forth in the Criminal Code and special legislation made to tackle prostitution is not visible regulation of the parties customers or users of commercial sex services that can be charged with criminal sanctions. Law No. 11 of 2008 on information and Electronic Transactions and Law No. 44 of 2008 on pornography only prohibits service providers, financiers and commercial sex workers as objects in the criminal act of online prostitution.

Regarding online prostitution, Law No. 44 of 2008 on pornography does not directly mention the word online prostitution, but in this law more fully and in detail describes the practice of online prostitution compared to Law No. 11 of 2008 on information and Electronic Transactions (UU ITE). In Law No. 44 of 2008 on pornography in each article and verse does not mention clearly the word prostitution as in Law No. 11 of 2008 on information and Electronic Transactions (UU ITE), let alone specifically mention the word online prostitution.

Website owners can also be convicted in accordance with the provisions of Article 4 and Article 7 of Law No. 44 of 2008 on pornography for offering commercial sex workers on their websites who are also pimps, by facilitating commercial sex workers for commercial sex service users. The provisions of the sanctions in the pornography law are also set specifically referring to the parties involved. As in Article 30 of Law No. 44 of 2008 on pornography, the contents of which are:

""Any person who provides pornography services as referred to in Article 4 paragraph (2) shall be punished with imprisonment of at least 6 (six) months and at most 6 (six) years and/or a fine of at least Rp250,000,000.00 (two hundred and fifty million rupiah) and at most Rp3,000,000,000.00 (three billion rupiah)."

This article threatens the imposition of punishment for everyone who commits a crime under Article 4 paragraph 2, specifically the practice of online
prostitution, namely Article 4 paragraph 2 letter d with a maximum imprisonment of 6 years and/or a fine of 3 billion. The word "any person" in this article does not apply to anyone, whether an Indonesian citizen or not, who is the owner of a website or forum that facilitates the practice of prostitution. For pimps who are also website Owners, Article 35 is also imposed, because pimps are people who make others as Sex workers, with criminal provisions stipulated in Article 35 of Law Number 44 of 2008 concerning pornography, namely, “every person who makes others as objects or models that contain pornographic content as intended in Article 9 shall be punished with imprisonment of at least 1 (one) year and a maximum of 12 (twelve) years and/or a fine of at least Rp500, 000, 000.00 (five hundred million rupiah) and at most Rp6, 000, 000, 000.00 (six billion rupiah)”. The maximum penalty for pimping according to Article 35 of Law Number 44 of 2008 on pornography is a maximum prison of 12 years and or at most 6 billion. Another party who would also be punished in this law is the owner of the server, the article that can trap it is Article 33 as a party that facilitates the practice of online prostitution practices as described in Article 7 of Law Number 44 of 2008 on pornography.

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<th>March 2022</th>
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<td>Terrorism / Radicalism</td>
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<td>Separatism / Dangerous Organizations</td>
<td>separatism / Dangerous Organizations</td>
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<td>IPR</td>
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<td>information security violations</td>
<td>information security violations</td>
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<td>negative content recommended by sector agencies</td>
<td>content that unsettles the public</td>
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<td>content that violates social and cultural values</td>
<td>content that violates social and cultural values</td>
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March 2022 Statistics Overall

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<th>March 2022</th>
<th>Statistics Overall</th>
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<tbody>
<tr>
<td>Statistics Pornography</td>
<td>5,071Pornography 1,142,010</td>
</tr>
<tr>
<td>Gambling</td>
<td>10,921Gambling 540,410</td>
</tr>
<tr>
<td>Slander</td>
<td>0Slander 17</td>
</tr>
<tr>
<td>Fraud</td>
<td>203Fraud 16,461</td>
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<tr>
<td>Sara</td>
<td>0Sara 189</td>
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The legal subject to criminal liability under this law is only the "owner" of the online prostitution website, that is, the person who distributes or transmits or makes accessible such pornographic or online prostitution websites online. Then what is meant by "who has a charge of violating decency" in the article is if it meets the elements (Lutfan Muntaqo 2013), as follows: (a) It has no value except that it contains elements that arouse lust for those who see, see or hear. (b) Contrary to the values or norms prevailing in society.

CONCLUSION

The Prevention of prostitution against the problem of legal substance regulated in the Criminal Code and special legislation made to tackle prostitution is not seen in the regulation of the parties customers or users of commercial sex services that can be charged with criminal sanctions. Law No. 11 of 2008 on information and Electronic Transactions and Law No. 44 of 2008 on pornography only prohibit service providers, people who fund and commercial sex workers as objects in the crime of online prostitution. However, in the provisions of Law No. 44 of 2008 on pornography does not explain about users of online prostitution services specifically, so in this case the law can not ensnare service users in the practice of online prostitution. That's because policymakers don’t seem to be sitting down with experts who really understand the discussion of the law. It should be expected that the law can ensnare subjects in online prostitution as a whole, in order to create a justice and legal certainty.

BIBLIOGRAPHY


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<tr>
<td>fake news / hoax</td>
<td>fake news / hoax</td>
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<tr>
<td>extortion</td>
<td>extortion</td>
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<tr>
<td>content that facilitates access to negative content</td>
<td>content that facilitates access to negative content</td>
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<tr>
<td>normalization</td>
<td>normalization</td>
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<tr>
<td>Total</td>
<td>16,370</td>
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<td>Overall</td>
<td>1,713,103</td>
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[https://www.kominfo.go.id/statistik](https://www.kominfo.go.id/statistik)

Table 1. Data tahun 2022 Tentang Pornografi


Sulthani, *Dinil Abrar, & Thoifah, I.* (2022). Urgency of Stakeholders in


**Legislation**

Criminal Code Pidana

Law of the Republic of Indonesia number 44 of 2008 on pornography


Law Of The Republic Of Indonesia Number 21 Of 2007 On Combating Trafficking In Persons. State Gazette Of The Republic Of Indonesia Year 2007 Number 58. Supplement To The State Gazette Of The Republic Of Indonesia Number 4720.

Law of the Republic of Indonesia number 11 of 2008 on information and Electronic Transactions. State Gazette Of The Republic Of Indonesia Year 2008 Number 58. Supplement To The State Gazette Of The Republic Of Indonesia Number 4843. Law