

Reconstruction of legal policy on online prostitution crime in Indonesia based on justice value

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Abstract

The focus of this research is what are the weakness of the policy on the formulation of criminal law against online prostitution in positive law in Indonesia so that it does reflect the value of justice and how to reconstruct the criminal law formulation policy on online prostitution in Indonesia based on the value of justice. The research use constructivism paradigm, which aims to produce a reconstruction of thinking, understanding or new ideas and theories in the criminal law system in material criminal law with a normative juridical approach, as the main approach and carried out through the legislative approach, case approach, fact approach, legal concept analysis approach and comparative study.

The results showed that the weakness of the formulation contained in the Criminal Code and the Electronic Information and Transaction Law is that it cannot be used to ensnare all parties involved in online prostitution crimes because the provisions are partial and discriminatory, thus becoming a criminal factor for the development of this type of crime. Therefore the ideal reconstruction of the policy is to reconstruct Article 27 paragraph (1) of Law No. 11/2008 and Article 45 paragraph (1) of Law No. 19/2016 which is based on non-discriminatory and the existence of equality before the law which is sourced from the norm or values that lives in the community and comparative studies. From the findings of the research it is recommended that online criminal acts of prostitution need to be regulated more firmly to ensure legal certainty and as a complete recognition of this type of crime so as to be able to resolve the problems that arise in the field.

Keywords: reconstruction, penal law, *Online Prostitution*, justice value

Introduction

Online prostitution is a specific problem and is not yet understood by the wider community. Even though the matter of sex crimes on the internet is a very serious crime for the Indonesian government, considering that this crime is very disturbing to the public, damaging the morale of the nation's next generation, and is also difficult to catch the perpetrators of the crime as the existing laws are still not felt able to ensnare the perpetrators. This crime can also involve other countries or several countries, namely regarding its *locus delicti* and *tempus delicti* because the perpetrators of sex crimes on the internet can commit crimes not in one country^[1].

Seen from the perspective of criminal policy, efforts to overcome decency crime using internet facilities (cybersex) which are part of cyber crime certainly cannot be carried out partially with criminal law (penal means) either by way of modernization / reconstruction of material or formal criminal law, criminalizing cyber crime or harmonization of existing laws, but must also be taken with an integral / systemic approach. As one form of "hitech crime", it is natural that cybersex prevention efforts must also be pursued with a technological approach (techno prevention). In addition, a cultural / cultural approach, a moral / mental / educational approach (especially for moral offenses requires mental / moral reform), and even a global approach (international cooperation) because this crime transcends national boundaries (transnational / transborder nature). The law enforcement Sector must also pay attention to the

harmony between legal justice, legal certainty, and legal usefulness. Because, the purpose of law is to guarantee the creation of legal justice, legal certainty, and equality before the law (equality before the law). Criminal law regulations only cover cases of moral offenses committed by the internet if online prostitution is related to pimping or makes it obscene to use the provisions in the Criminal Code, if it relates to trafficking in persons with coercion and exploitation using anti-trafficking laws and protection laws children if the victims are children. All of which form prostitution schemes in the form of coercion (unvoluntary prostitution) or use the Law on Information and Electronic Transactions if there is proven distribution and transmission of content that violates decency (pornographic).

While in the the cases that are discovered shows that the prostitution perpetrators perform their actions voluntarily without coercion so as to bring up prostitution in the form of voluntary (voluntary prostitution). In terms of legal provisions it is also seen that it still tends to be discriminatory. Criminalization can only be done to the pimps whereas prostitutes and service users / customers (clients) themselves cannot be subjected to criminal acts^[2]. All parties involved in the online prostitution activities cannot be ensnared by criminal regulations in Indonesia. This shows the existence of injustice and the occurrence of legal vacuum which results in legal uncertainty. For cases that have been revealed are still limited in big cities. Even those who have been sentenced are still far from a sense of justice especially when compared with cases of

¹ M. Arif, Dikdik, (2005), *Cyber Law Aspek Hukum Teknologi Informasi*, Bandung, Refika Aditama.

² Baker, L. M., Dalla, R. L., & Williamson, C. (2010). *Exiting prostitution: an integrated model. Violence Against Women*, 1

prostitution carried out conventionally. If you see the impact it is even more dangerous that is done online so that regulations are needed that can provide legal certainty and justice in society. Reconstruction of existing regulations is a must, both the reconstruction of norms and the reconstruction of values because they are related to the values of national decency. This condition requires a progressive role from policy makers and law enforcement officers. This is the background of the researchers to conduct research with the main issues examined as follows:

1. What are the Weaknesses of the Criminal Law Formulation Policy Against Online Prostitution Criminal Acts According to Positive Criminal Law in Indonesia Currently?
2. How to Reconstruct Policy Formulation of Criminal Law Against Crime of Online Prostitution in Indonesia Based on Justice Values?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge^[3]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (approach) the research is to use the approach of *Socio-Legal*^[4], which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation

As for the source of research used in this study are:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data^[5]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

Weaknesses of the Criminal Law Formulation Policy Against Online Prostitution Criminal Acts According to

Positive Criminal Law in Indonesia Currently

If seen from the view of the enforcement of laws against prostitution in general, there are many weaknesses that should be a concern, but the need to get the attention more is the policy law criminal who does not seen as equivalent (*equal*) where the position of the perpetrator (*Offender*) and the victim, or the position of an offender itself really does not reflect the principles of fairness, especially when seen from the terms of the perpetrator given the occurrence of prostitution (especially in prostitution voluntary / *voluntary prostitution*) in essentially based on an intent to interest along that involve multiple parties among prostitutes, the services and the provider of the service services both of the pimps and the *service providers are* (in Prostitution online), the form of guilt not because of negligence (*culpa*), while for someone can be sentenced to a criminal then apart proved their act (*actus reus*) also must be contained the intent of evil (*mens rea*), and which should be remembered that in the case of *voluntary prostitution* offender is not a victim as *unvoluntary prostitution* because those who are volunteering ,even with happy heart, sells her body to the man's. While in the case of *unvoluntary prostitution*, they sell services sex on the basis of exploitation and intimidation, so they should also be called as a victim^[6].

In *voluntary prostitution*, sexual activities that occur have been prepared in advance through the agreement of both parties for commercial purposes. It is characterized by the payment of the services of the prostitutes either through pimps or without intermediary in directly to the Prostitute. All parties were involved in getting the advantages of acts that. The Prostitute obtain money / goods / reward others within their with the goal, the service user in exchange get pleasure / gratification of sexual appropriate that they desire, while pimps get a percentage part of the money which are received by Prostitute. In fairness distributive give to every person serving in his achievements. Or give to each person what that become part of. All were involved in the crime of prostitution plays the role of each for the realization of the crime of prostitution is in accordance with the portions. Scheme relations they are as a relationship symbiotic mutualism. Each individual is voluntarily perform his actions and each mutual gain advantage over the actions of their one each other. So that based on distribution justice, accountability for their actions should also be borne by all parties, open to pimps only. Yet without the pimp, the prostitute and service user can still remain able to realize their actions. So, it is not disproportionate when the burden of responsibility it is only charged to the pimps, meanwhile the perpetrators of the commercialization of the crime (the service user) in fact not be convicted. All who engage in acts that are actors, so it does not appear the elements of the victims here. Voluntary prostitution is the act of a criminal without no casualties. The only parties that are harmed is the public morality. The community is the victim in this case. Prostitute is not a victim because they gain advantage over the deeds of this.

Besides, it is also in order to fulfill a sense of justice Pancasila which is based on Article 27 paragraph (1) of the 1945 Constitution which mandates that should be the treatment of the same for each person in front of the law and

³ Faisal, (2010), *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.

⁴ Johnny Ibrahim, (2005), *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Surabaya.

⁵ L. Moleong, (2002), *Metode Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung.

⁶ Walter Benjamin, 2006, *Is Cyberprostitution Prostitution? New Paradigm, Old Crime, Dissertation*, www.ics.uci.edu/~johannab/sexualinteractions.2006/papers/BrookeChambpell-sexualinteractions2006.

Article 28 D Paragraph (1) of the 1945 Constitution that each person is entitled on the recognition, assurance, protection and certainty of law that is fair as well as the treatment that is equal in front of law. So, in the context of this online prostitution responsibility must be borne by all those involved without discrimination.

So it is not fair presumably if the policy law criminal who just looked prostitute / prostitutes as victims only and that meshes only provider of services only (pimps), while prostitutes and lovers / buyer services too loose not be in a noose by law. Justice includes the obligation of each person to act with justice towards neighbor by guaranteeing their rights and treat anyone without discrimination in a situation that is similar. In the justice of Pancasila, it is defined as implementing the rights and obligations are proportionate and balanced. The fact this makes the law look like letting the action commercialization of sex in prostitution, without no sanction criminal for all the actors.

Whereas in a voluntary prostitution, pimps offering prostitutes to the buyer also upon request from the prostitute's own. So in essentially the activities are based on the relationship of commercial among fellow party are involved. And already supposed relationship that there is an element of the commercial was in the noose by law, as in the trade of people. While that is regulated in the Criminal Code for this is only the pattern of relationships when women become victims or patterns of relationships like the same love even though the offense complaint. Once entered into the realm of prostitution, the rules in the Criminal Code can only ensnare the pimp. So it should be the formulation of article about prostitution is based on the pattern of relationships or relationships commercial to be ensnare users and providers of services of prostitutes.

In the study victimology ^[7], Prostitution entered in the category of victimless crime or a crime without victims. According to the Penal Code, sex workers and people who use the services of prostitutes is not threatened with punishment for the act is entered in the category of victimless crime or a crime without victims. Because the activity of prostitution not be determined who's who became actors and anyone who becomes a victim. Except if relations sexual that is done by coercion either by violence or threat of violence, or if someone forced prostitutes perform intercourse sexually or by trickery power makes a person entangled in the practice of prostitution, or the services of the service sexually do with children in the underage either by force or without coercion. These acts can be punished for committing rape, trafficking in persons for the purpose of sexual exploitation, obscene acts or child prostitution. In situations of the Prostitutes can be categorized as victims.

But this view is not entirely correct. Acts of prostitution at odds with the values of decency nationally among others injure the institution of marriage that is legally formulated in the law of marriage. So that whenever prostitution occurs, it is the community that is harmed.

The Penal Code already feasibly revised this, because the provisions of Article 296 of the Criminal Code and the provisions of Article 506 of the Criminal Code in addition to be discriminatory and partial so it does not guarantee the certainty of the law, the articles is also contrary to the sense of justice of society and in sociological opposed to

traditional oriental and norms that exist in religions practiced in Indonesia,

But it Must be first to understand that "*the sacred mission*" of the institution of justice in Indonesia is not to enforce the law for the sake of the law it itself, as proposed by Oliver Wendell Holmes, "*The Supreme court is not a court of justice, it is a court of law*" , but to enforce the law for justice, both for individuals and for society, nation and state; even the justice that is referred to is fairness sake of God the Supreme Godhead, so that the creation of the atmosphere of the life of a society that is safe, quiet, peaceful, and orderly. The thought of punishment in its development then moves towards a new orientation where the settlement of criminal cases is a matter that benefits all parties and brings justice to all parties.

From the analysis of the overall discussion of the formulation policy in the provisions of positive criminal law in Indonesia relating to online prostitution, it can be concluded that:

1. Substance of law-speaking, in Indonesia there are no general provisions / laws that are made specifically to govern the practice of online prostitution. So that it causes unclear rules that explicitly regulate this type of crime.
2. In general, there are provisions in positive criminal law in Indonesia that can be used to reach this type of crime, but have difficulties because it contains weaknesses that have not been able to ensnare all parties involved in this crime, so it can be said that Indonesia has not fully regulated the problem of prostitution.
3. Thus the recognition of this type of crime is still incomplete because the regulation is partial, unclear and tends to be more discriminatory.
4. Article 296 of the Criminal Code and Article 306 of the Criminal Code can be used to tackle online prostitution crimes, but the provisions only prohibit all forms and practices of prostitution of others and make a profit or make them livelihoods and threaten crimes against pimps, or owners and or the manager of the brothel. While sex workers and user of sexual services are positioned as witnesses / victims only.
5. Although this online prostitution when viewed from the moral, religious and moral aspects is categorized as an act of adultery, but in terms of legal norms it seems difficult to apply if applied to prostitutes and their service users, because of their qualifications in Article 284 of the Criminal Code as an absolute offense, so that when spouses of the prostitutes or buyers of services do not complain so they cannot be snared because they are required with certain qualifications.
6. The Criminal Code distinguishes the legal consequences of qualifying acts between crime and violations, while regulations related to prostitution in the Criminal Code are regulated in Book II (Article 296) and in Book III (Article 506)
7. With regard to criminal liability against perpetrators, the Criminal Code only knows people naturally and can be held accountable. In fact, related to online prostitution which is part of cybercrime in the field of decency, corporate actors are very closely related to online prostitution. Corporations referred to in this case are Internet Service Providers (ISPs) as service providers to communicate in the commercialization of

⁷ Frank E., Hagan. (1989). *Introducing Criminology Theories, Method and Criminal Behavior*, Chicago; Nelson-Hall Inc.

sexual services with other servers in different places. Even though online prostitution service advertisements that are often found on the internet are very closely related to corporations. This can be difficult in the application stage, because special provisions that are outside the Criminal Code are bound by general provisions contained in the Criminal Code, as a single unit of the criminal system. Thus it can also be seen that there is no guideline for the implementation of criminal punishment (*strafmodus*), so that the provisions in the Criminal Code that are closely related to the understanding and elements of online prostitution are also not yet fully used to capture the offenses of decency which are committed by using internet facilities.

8. The existence of the internet is not known in the Criminal Code as one of the tools or means that can be used to commit crime. Provisions in the Criminal Code can be used to overcome these online prostitution crimes, although they have not been able to effectively ensnare all actors involved so that they can use the provisions in the Information technology Law as their specialist lex that regulates activities using internet facilities.

Article 27 paragraph (1) of Law No. 11 of 2008 can be used to eradicate types of online prostitution crime, but this article contains a prohibition on distributing, transmitting content that violates decency. This is related to the prohibition on content only, while the characteristic of prostitution is sexual commercialization. So that in the context of online prostitution crime this provision can only be applied to pimps and commercial sex workers who are proven to distribute and transmit content that violates decency. While for customers / buyers of services can not be snared by this provision, because there is no prohibition for the use and or purchase of pornographic content / content that violates the decency in the provision.

In accordance with the theory of the legal system, in substance several of the things put forward are its own weaknesses. Because criminalization is not aimed at all parties involved. So that its scope is limited in law enforcement. This also becomes a factor to foster prostitution in Indonesia both online and offline.

From the aspect of legal structure, law enforcement agencies only form special units and procedures to deal with prostitution cases that are involuntary prostitution, namely prostitution cases that occur because of the elements of coercion, intimidation and exploitation so that Prostitutes are in a position as victims including the exploitation of minors, which can be qualified as trafficking resolved by using other legal / regulatory provisions, namely the Trafficking in Persons Act or the Law on Child Protection. So that in law enforcement, the authorities do not provide special units and procedures in handling cases of voluntary prostitution. Prostitutes are only used as witnesses in the process of examining their pimps. The prostitute and his service users are only used as witnesses for the actions of pimps who help sell / offer their services. In the context of online prostitution, the limited number of law enforcement officers who control cyber crime is also a problem. The limited number of officers who carry out cyber patrol also blocks prevention and mitigation measures.

While in terms of legal culture, Indonesian people are moral

and religious, but some people stigmatize prostitutes are victims. This is because there is no comprehensive understanding related to prostitution, especially in the form of voluntary prostitution. Most communities and law enforcement consider / position that Prostitutes are victims. This is because existing regulations position this way. Whereas typology based on the style of Prostitutes in carrying out their actions can be done by voluntary (voluntary prostitution) and prostitution which is done on the basis of coercion (involuntary prostitution). In voluntary prostitution the position of the parties causing prostitution is the same / equal, both prostitutes, pimps and service users are perpetrators. They have formed an orderly scheme and each other has an equal position and position in realizing their crimes. Prostitution is a sexual activity prepared by the agreement of both parties for commercial purposes. This means that the parties involved in it assume there is no mutual loss, their actions form a mutually beneficial scheme as a symbiosis of mutualism. all gain benefits for their actions according to their respective roles. So that in this position there are no casualties.

The formulation of policies aimed only at pimps proves that the formulation of articles on prostitution is not based on the pattern of relations or commercial relations in its formulation, while those stipulated in the Criminal Code so far are only based on the pattern of relations when women become victims or the pattern of same-like relations even though it is an offense complaints, so they cannot be used to ensnare commercial sex workers and users of prostitution services.

Reconstructing a Policy Formulation of Criminal Law Against Crime of Online Prostitution in Indonesia Based on Justice Values

The weaknesses, as mentioned above when compared with some countries in relation to prostitution such as France, for example, proves that criminalizing the purchase of sexual services can reduce the rate of prostitution.

Countries in Europe that are identified as free and liberal countries, but instead are aware of the dangers of the practice of prostitution, as they build enthusiasm and awareness to fight it. on the other hand, Indonesia who uphold the moral values and Pancasila, can learn from their success in suppressing prostitution cases. It is not impossible that Indonesia can also adopt the Nordic model to overcome this problem. this system must be adopted in Indonesia.

Based on the principle of distributive justice and Pancasila justice, in order to protect the interests of society at large by departing from the idea of a balance between individual interests and the interests of the community, as well as from the results of legal excavations that live and develop in Indonesian society, and based on comparative studies, the authors recommend to ensnare all parties involved in this crime includes the buyer of sexual services by reconstructing the contents of Article 27 paragraph (1) of Law No. 11 of 2008 which initially reads:

"Everyone intentionally and without the right to distribute and / or transmit and / or make access to Electronic Information and Transactions and / or Electronic Documents that have contents that violate decency."

To reflect the values of justice in the rule of law state of the Pancasila philosophy, the writer will make a comparison by presenting the formulation of online prostitution crime

according to the Criminal Code and the Information and Electronic Transaction Law with the ideal formulation of online prostitution crime, so as to achieve a sense of community justice, with the ideal formulation as follows:

"Everyone intentionally and without the right to distribute and / or transmit and / or make access to and / or access for commercial purposes Electronic Information and Transactions and / or Electronic Documents that have contents that violate decency, whether as Commercial Sex Workers, Pimps or Commercial Sex Worker Service Users."

Whereas related to the formulation of criminal sanctions as formulated in article 45 paragraph (1) of Law Number 19 of 2016 which is formulated as follows:

"Any person who intentionally and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents that have contents that violate decency as referred to in Article 27 paragraph (1) shall be liable to a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp1,000,000,000.00 (one billion rupiah). "

Given the type of crime is growing rapidly along with the development of information technology that is anonymous and globalized without boundaries (borderless), and the changes are also very detrimental to the community so as to provide a deterrent and deterrence effect, then the sanctions need to be realized in the burdensome manifested in the criminal sanction formulation model that must be changed with the cumulative formulation model combines two types of sanctions imprisonment and fines which were originally formulated alternatively-cumulative (and / or) so that the ideal formulation is marked with the word "and" in its formulation. It is hoped that the perpetrators will be deterred and afraid of committing this crime.

Besides that, the formulation of the length of criminal formulation (*strafmaat*) also not only uses the formulation model with special maximum threats, but needs to be formulated as a special minimal threat, so that the apparatus will not impose the criminal under a particular minimal threat. With the specific minimum provision of imprisonment in an ideal formulation is for a minimum of 1 (one) year a maximum of 6 (six) years and a minimum special penalty of Rp100,000,000 (one hundred million rupiah) a maximum of Rp1,000,000,000.00 (one billion rupiahs). So that the ideal formulation of criminal sanctions against online prostitution crime becomes:

"Any person who intentionally and without right distributes and / or transmits and / or makes it accessible and / or accesses for commercial purposes Electronic Information and / or Electronic Documents that have contents that violate decency either as Commercial Sex Workers, Pimps, or Users Commercial Sex Worker Services as referred to in Article 27 paragraph (1) shall be sentenced to a minimum imprisonment of 1 (one) year for a maximum period of 6 (six) years and a minimum fine of Rp 100,000,000 (one hundred million rupiahs) at most Rp1,000,000,000 , 00 (one billion rupiah). "

In addition to, the reconstruction as mentioned above was also followed with the formulation of article 52 of Law No. 11 of 2008, related to criminal charges in his actions carried out in connection with sexual exploitation of children whose formulation was originally as follows:

Article 52 paragraph (1) of Law No. 11 of 2008:

"In the case of a criminal offense as referred to in Article 27 paragraph (1) relating to decency or sexual exploitation of

children is subject to weighting of one third of the principal crime."

Then in order to meet the writing conventions and update the meanings contained in the previous erroneous formulation, the ideal formulation can be formulated as follows:

"In the case of a criminal offense as referred to in Article 45 paragraph (1) concerning decency or sexual exploitation of children is subject to a third weighting of the principal crime."

For the purpose of deterrence for perpetrators of online prostitution crimes, given the nature of the danger and the impact of their crimes, the related types of criminal witnesses (*strafsoort*) in the ideal formulation of the Information and Technology Law are formulated to be of two types namely imprisonment and fines which are formulated cumulatively. Where the formulation model of criminal sanctions with the cumulative formulation model is marked with the word "and".

Likewise with the Formulation System for the length of a criminal (*strafmaat*) which refers to article Article 45 paragraph (1) of Law No. 19 of 2016, but in an ideal formulation amended by the need to formulate special minimum limits both specific minimums for imprisonment and special minimums for criminal fines, which is determined in the ideal formulation are:

1. A Specific of minimum Prison sentence to be formulated to at least 1 (one) year.
2. The maximum sentence for imprisonment is to be formulated to a maximum of 6 (six) years, or if there is a additional charge to be added plus 1/3 (one-third) of the principal in the article.
3. A Minimum Special fine are formulated to at least Rp 100,000,000 (one hundred million rupiah).
4. The maximum fines penalty is to formulate a maximum of Rp 1,000,000,000 (one billion rupiah).

This relates to the deterrence and deterrence effects, so that both the *strafmaat* and *strafsoort* are weighted with a special minimum and special maximum formulation model and the formulation of criminal sanctions with a cumulative model. Besides that it is also necessary to review the formulation related to additional crimes, for example:

1. There is an obligation for Internet service providers to block offensive content for the purpose of prostitution as implemented in regulations in France.
2. Additional penalties for buyers of sexual services in the form of awareness training about attempts to not make sex purchases. This is also applied in Sweden^[8] but is done voluntarily, whereas in France it is required according to law.
3. The existence of social services such as education, training, and empowerment for the Prostitutes to be able to return to the community, as well as rehabilitation as applied in Sweden and France.

Using the formulation presented above, it is expected that efforts to tackle online prostitution crime will be more effective, achieving the goal of punishment in order to pursue certainty, justice and benefits for the wider

⁸ Claude, Kajsa, (2010), *Targeting The Sex Buyer: The Swedish example: Stopping Prostitution and Trafficking Where it All Begins*, the Swedish Institute.

community.

But the prevention of online prostitution crime cannot be done by the Government alone, it requires the support of all people, both preventive and repressive. The public must also be educated about online prostitution crime. Telematics observer Roy Suryo^[9] called the online prostitution business later revealed by law enforcement officials to be called the mafia, and the existence of the business is difficult to eliminate 100%. Even though it is not possible to lose 100% because of its mafia-like characteristics, on the other hand efforts can be made to prevent it to suppress as much as possible by making clear regulations and efforts in terms of technology in the form of blocking online prostitution business sites through websites / forums in the website. According to Roy, current technology is able to stem it with a particular system. So that in terms of technology, the emphasis is on its online dissemination, by implementing a policy of blocking obligations on websites intended for this activity. In addition, technology can also guarantee, one of them with protection.

When compared, there are similarities between cases of prostitution and drugs. Both of these cases provide legal action for drug dealers and their pimps. The difference is that in drug cases, the wearer can be free from criminal legal action on the condition that he is obliged to carry out the rehabilitation process until recovering from drug addiction. As for prostitution cases, commercial sex workers and their service users are exempt from criminal acts on condition that they "only" must report to the police. In this case, there is a possibility that perpetrators of prostitution will do their actions again because they feel protected, as long as there are no regulations that regulate them. So that with the existence of clear regulations, it is expected to reduce this crime rate.

Just as Sweden did through the Swedish Anti-Prostitution Law, the Government even provided a comprehensive social funding scheme as a social service fund to help prostitutes who wanted to retire. So that the Prostitutes are no longer confused in fulfilling their needs when they are out of the trap of prostitution^[10].

As the implementation of the principle of balance between protecting the interests of victims and the idea of criminal individualization is reflected in the regulation of criminal and criminal justice. At present, the sense of justice of victims (in this case the community) of criminal acts is often ignored by the criminal justice system, particularly the regulations in material criminal law. To fulfill this aspect, a type of sanction should be held in the form of rehabilitation measures for accessing content that violates immorality or in this case prostitution, both for Prostitutes, pimps and users of Prostitutes services.

This type of sanction is included as an additional type of crime, because in reality it is often revealed, that the formal juridical resolution of the problem by imposing only the basic criminal sanctions on the perpetrators cannot be felt by the community as a complete solution to the problem. With the imposition of a crime against the perpetrators of crime does not necessarily mean that the government has protected

its citizens and fulfilled a sense of justice for victims (the public). The fact is that the victim (community) has never felt the benefits that can be taken directly from the conviction of a criminal. With rehabilitation measures, it is hoped that the protection of victims (the community) will be realized because the perpetrators will understand their actions as being wrong so that they become deterrent and not repeat their actions. The balance between protecting the interests of victims and the idea of criminal individualization is expected to achieve the principle of justice, certainty and usefulness.

The government should be expected to provide attention through rehabilitation measures for prostitution, both for Prostitutes, pimps and users of Prostitution services. Among other things through the provision of awareness training for them through religious, spiritual / psychological guidance, and legal norms. Religious guidance is the main thing given in this process. By providing knowledge about religion, it is hoped that the perpetrators realize that prostitution is prohibited so that the deterrent will do it again. Just as was the case with the Swedish government which provided funds specifically allocated for social services in the context of helping prostitutes which in the Indonesian context could be realized through this rehabilitation activity.

The aim is that the perpetrators must not repeat prostitution activities again because they feel safe from the bondage of the law. As a result of the lack of this law, prostitutes easily "offer" themselves, even without the need for pimps' help and are not afraid of criminal sanctions.

Overcoming the problem of Online Prostitution is a complex problem and is related to many aspects, both social, cultural, economic, political and moral and religious aspects. It is not enough to do just through a moral and religious approach, but must be viewed in an integrated manner from all related aspects, in order to solve the problem. In an effort to tackle these crimes, a criminal / political policy (Criminal Policy) is carried out, which includes an integrated policy between criminal and non-criminal efforts that can be integrated with one another.

There is a close relationship between formulation policy, law enforcement and crime eradication, but conceptually and from a realist standpoint, crime prevention policies cannot be carried out solely by improving / renewing the means of the law alone. Even though changes / improvements to the law are not a guarantee for crime prevention efforts, an evaluation is still needed if there are weaknesses in the formulation policy in the existing legislation. This evaluation and review needs to be done, because there is a close relationship between the law formulation policy (law enforcement policy) and the crime eradication / crime policy. Weaknesses in criminal law formulations will affect criminal law enforcement policies and crime prevention policies.

Crime prevention efforts need to be taken with a policy approach, in the sense that there is integration (integration) between criminal politics and social politics and there is integration between efforts to tackle crime with penal and non-penal. To resolve and answer the problem of prostitution in Indonesia comprehensively, the Government together with elements of the community are expected to use an integral approach in addition to the moral and religious approach, but including a technological approach and a global approach. In general, efforts to tackle online crime prostitution can be achieved in two ways, that is:

⁹ <https://www.liputan6.com/news/read/2234031/roy-suryo-keberadaan-prostitusi-online-seperti-mafia> Accessed on May 2017.

¹⁰ Svanström Y (2004), *Criminalising the john – a Swedish gender model?* In: Outhoorn J (ed.) *The Politics of Prostitution: Women's Movements, Democratic States and the Globalisation of Sex Commerce*. Cambridge: Cambridge University Press,

- a. By Preventing it, namely the attempt to prevent the occurrence of prostitution, among others in the form of:
 1. The preparation and or improvement of policies that firmly and clearly that is associated with the ban on the organization of prostitution both offline and online, are among others to conduct studies comparing against the regulations in other countries.
 2. Expansion of employment opportunities in order to prosper the community
 3. Understanding/ promoting healthy and responsible internet usage.
 4. Intensification of giving guidance and education of morality, religion and spirituality, as well as the education law and psychological
 5. Provision of education related to education of sex are healthier and dangers of unprotected sex.
 6. Formation Board or Team Coordination of All Enterprises Prevention of Prostitution The Guide By Some Agencies Simultaneously Including Potential Society locally.
 7. Cross-sectoral cooperation as a function of control in the community.
 8. Cyber patrol and blocking of internet sites that provide means and information that are contrary to the norms of decency and the business of prostitution on the internet
 9. Giving education community that buy services of sex are violations of the right to basic human and does not have the stigma negatively against the prostitutes and former prostitutes.
- b. By repressing it, among others in the form of:
 1. Applying the rules to the offenders who are proven to violate and giving commensurate punishment in order to create a deterrent effect
 2. Facilitate a means of rehabilitation and resocialization for the perpetrators of prostitution, both prostitutes, pimps and the services of prostitutes, so they can be returned as a citizen of society are moral.
 3. Provides a new field of work.
 4. The blocking of Internet sites that provide all the things that contains element of pornography and of prostitution.
 5. Make a protection / filter on the use of healthy internet in Indonesia.

Conclusion

1. The main obstacle in handling online prostitution cases is the absence of specific laws governing the practice of online prostitution even though the principle of prostitution both online and offline is the same principle, not much different, only marketing is different. The perpetrators formed an increasingly neat and organized scheme through internet media both pimps (website owners), Prostitutes, service users and service providers (Internet service providers). They have an equal position and position in realizing their crimes. So as a progressive step related to the criminalization of the crime and criminal responsibility must also include all those involved in the occurrence of prostitution. If the buyer (demand side) is punished, then automatically the seller (supply side) will also be reduced. Or vice versa when the seller (supply side) is punished, the buyer (demand side) will also be reduced because of difficulty finding a service producer.

- Actually, the factors that contribute to online prostitution itself are rooted in three things namely the demand, supply and catalyst factors which are all related to social, economic, political, cultural, information technology development, and globalization.
2. The ideal reconstruction of the Online Prostitution countermeasure policy is by reconstructing Article 27 paragraph (1) of Law No. 11/2008 and Article 45 paragraph (1) of Law No. 19/2016 which is based on non-discriminatory and the existence of equality before the law sourced from the living values in the society and comparative studies. From the findings of the study it is recommended that online criminal acts of prostitution need to be regulated more firmly to ensure legal certainty and as a complete recognition of this type of crime so as to be able to resolve the problems that arise in the field.

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