



## Law enforcement reconstruction in the implementation of the prostitution management policy

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### Abstract

This study aims to find the truth in law enforcement through the implementation of policies and countermeasures in the closure of prostitution with local government regulation number 7 of 2011 enforcement action by applying the law in the closure of localization in Tegal Regency. To counter this issue, the research method used is a research method with the perspective of legal sociology. This type of research uses empirical legal research or field research, which is a legal research carried out based on empirical research to find theories regarding the process how the law works in society and be studied and researched as a study of law in action – a non-doctrinal and empirical social science study. The application of law or law enforcement can be applied in order to implement policies and countermeasures in enforcing local government regulations and the actions of law enforcement officials because implementing countermeasures policy of a localization closure must be in accordance with local government regulation number 7 of 2011 in the Tegal Regency. The implementation of the policy to tackle the closure of localization in Tegal Regency has prioritized finding sex workers compared to looking for the perpetrators or buyers. The perpetrator or temporary buyer is only treated to be subject to administrative fines which do not deter the perpetrator or the buyer. The policy of the Tegal Regency government should provide progress on proposals in law enforcement that are firmer deterring by increasing fines and longer criminal imprisonment so that order and security are more guaranteed and better in city planning, especially in the tourism environment of the Tegal Regency.

**Keywords:** implementation of prostitution policies, prevention, and law enforcement

### Introduction

Until today, most countries in the world have face problems with prostitution implementation policies in tackling prostitution. Likewise, in Indonesia, prostitution has hit this country for a long time and almost touches all aspects of people's lives. This phenomenon is a problem that is very difficult to overcome. Prostitution is no longer perceived as something that only costs human resources and / or state order and security, but it should also be considered violating social rights and degrading morals in society. Therefore, prostitution is said to be an extraordinary crime <sup>[1]</sup>.

The logical consequence is that prostitution is an extraordinary crime, namely the need for handling from the aspect of extraordinary law enforcement and extraordinary legal instruments, because conventional methods have not been able to eradicate and overcome prostitution. Even, transactions are now increasingly sophisticated in both on-line and conventional modes <sup>[2]</sup>. Unlike conventional crimes, prostitution is a crime that develops dynamically over time. Along with the development of technology, *the on-line mode of sex workers* has also become increasingly sophisticated and varied. On the other hand, legal developments do not see the reality of laws that exist in society that are relatively left behind with existing factors because law is created from events that already exist in

society <sup>[3]</sup>.

Enforcing local government regulations and statutory regulations is not an easy matter. Law enforcement prostitution is classified as a white-collar crime, namely law enforcement carried out by people with large capital, occupying important and respectful positions in government and in the world of the economy <sup>[4]</sup>. Harkristuti Harkrisnowo said prostitution business actors or pimps are not random people because they have access to carry out prostitution by abusing their authority, opportunity or means <sup>[5]</sup>.

Law enforcement on prostitutes is focused on three main issues, namely: closure, empowerment, criminal law enforcement or fines <sup>[6]</sup>. This means that law enforcement not only lies in efforts to empower and train skills for prostitutes and empowerment but also includes the act of returning or repatriating their respective regions by providing empowerment and training according to the talents and interests of prostitutes. In addition, in the context of closure, countermeasures, and law enforcement on perpetrators and buyers, it turns out that only punishing the perpetrator, not criminalizing the buyer, is not sufficient to deter the buyer. It must be followed by other important steps, namely criminalizing the buyer and the seller of the sex and providing a deterrent effect to perpetrators of

<sup>1</sup> Mia Amalia, "Analysis of the Criminal Act of Prostitution Related to Moral Ethics and Countermeasures in the Cisarua Area of the Arab Village", *Mimbar Justitia: Journal of Legal Studies*, December, 2016, 862.

<sup>2</sup> Sumiyanto, "Kecenderungan Wanita Menjadi Korban Tindak Pidana terhadap Kesusilaan", *Jurnal Hukum dan Pembangunan*, Oktober 1991, 33.

<sup>3</sup> Siska lis Sulistiani, "Kejahatan dan Penyimpangan Seksual dalam Persepektif Hukum Islam dan Positif di Indonesia", (Bandung: Nuansa Aula, 2016), 124.

<sup>4</sup> Kristian, "Corporate Criminal Liability System Execution Policy", (Jakarta: Sinar Grafika, 2018), 10.

<sup>5</sup> Veny Humaira, "Law Enforcement on the Crime of On-line Prostitution in territory of jurisdiction Pekanbaru City police precinct", *Journal of Legal Studies*, Volume 3 Nomor 2, October 2016, 11.

prostitution crimes. Law enforcement on prostitutes and buyers is the most important issue today because prostitution is detrimental to the nation's future generations and the destruction of human resources, the spread of HIV and other diseases from the existence of prostitution, which Indonesia needs to reconstruct the laws and regulations of prostitution. Rehabilitation of society through the development of smart, productive and healthy sustainable human resources becomes the basic principle of development in Indonesia.

However, law enforcement efforts regarding prostitution only use the ITE law, the human trafficking law, regional regulations or regional regulations and implement policies on the prevention of prostitution through closure and provide training according to regional regulations that have made regional regulations on prostitution have not been massively optimal in enforcement. According to Eddy OS Hiariej, fair law through criminal acts tends not to be easy to do because the perpetrators of sex workers, pimps, and even buyers have extraordinary access and are difficult to reach in hiding the result of their crimes or because many perpetrators now use technology.

In Local Government Regulation Number 7 of 2011 concerning public order in Tegal Regency, the implementation of the crime of prostitution is only to service providers or intermediaries and pimps who are included in the realm of criminal law. In responding to legal prostitution in different countries, some categorize it as a criminal act, but some are silent with some exceptions, including Indonesia which is silent with exceptions. The basis of Indonesian criminal law is the Penal Code (KUHP) as what is called general criminal law. Apart from that, there are also special criminal laws listed in various other laws. With regard to prostitution, the Criminal Code regulates it in two articles, namely Article 296 and Article 506. Article 296 states "whoever deliberately causes or facilitates obscene acts by another person, and makes it a means of livelihood or habit, shall be punished with imprisonment of one year and four months or a maximum fine of fifteen thousand rupiahs". Meanwhile, Article 506 states "whoever takes advantage of the immoral act of a woman and makes her a prostitute, shall be punished with a maximum imprisonment of one year".

Thus, it can be seen that the criminal law only categorizes prostitution as a criminal offense against the intermediary. In this case, the police only have space to take legal action against the intermediary, if there is an intermediary (a pimp). Prostitution activities will continue as long as there are still many customers. Other provisions that may be used to ensnare the practice of prostitution are Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons and / or Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection whenever looking at Law Number 21 of 2007, which includes prostitution. Prostitute is a profession that sells services to satisfying customer's sexual needs. This service is usually in the form of renting out the prostitutes' body.

Law No. 11 of 2008 concerning Information and Electronic Transactions and Law No. 44 of 2008 concerning Pornography can ensnare the problem of prostitution crime in Indonesia. The implementation of Local Government No. 7 of 2011 concerning public order in the Tegal district made the author's idea to conduct field research in accordance with the reality in the field that the government has

optimized massive and firm law enforcement in policing by the government. However, the local government regulation in article 77 is less deterring because this rule for offenders can be redeemed or can be paid by the violator of these regulations because of the lack of administrative fines and short criminal penalties, so the reconstruction in this research should be able to propose criminal acts that are heavier in imprisonment and the duration. The weak law enforcement on prostitutes in Indonesia can be seen from the development through social media that is used by prostitution. This proves that currently there has been a very significant development, but the disclosure and detention by the authorities are very small. Yet, the existing regulations have not been optimal for criminalizing perpetrators and buyers. The government and stakeholders can only provide countermeasures and social rehabilitation on the actors of the prostitution. Local government regulations, as the spearhead of implementing policies in the regions regarding public order, are the regulations that can determine the implementation and countermeasures of prostitution in the regions and especially in Indonesia.

Crime is a bad act, derived from the word 'evil' which means very bad. Juridically, crime is defined as an act that violates the law or which is prohibited by law. Crime is an act of an act which in general means an act that is not in accordance with the applicable law. Based on Indonesian Big Dictionary (KBBI), '*kejahatan*' or crime comes from the word '*jahat*' or evil which has the prefix "*ke*" and gets the ending "*an*" which means very bad, bad, very bad (in behavior, character, action) <sup>[7]</sup>. It means that in language, crime is an evil act, an act that violates the law, behavior that is contrary to the prevailing values and norms that have been legalized by written law. There are several definitions of crime. Juridically, crime is all human behavior that is against the law, punishable under the criminal law. While, among criminologists, crime means certain actions or actions that are not approved by society.

Sue Titus Reid stated that a crime is an intentional act or omission that violates the written criminal law or a judge's decision by a person who is not a defense or justification and is threatened with sanctions by the State as a crime or a violation. Sue stated the characteristics of crime are as follows:

- a. Crime is an act that is done deliberately. In this sense, a person cannot be punished just because of his thoughts, but there must be also an act or negligence in acting. Failure to act can also be a crime, if there is a legal obligation to act in certain circumstances. Besides, there must also be malicious intent.
- b. Is a violation of criminal Law.
- c. Conducted without any legal defense or justification.
- d. Is sanctioned by the State as a crime or offense <sup>[8]</sup>.

Sutherland also revealed about crime. He proposes crime means a behavior that is prohibited by the State because it is detrimental to it. The State reacts with punishment in an effort to prevent and eradicate it <sup>[9]</sup>. In accordance with its

<sup>7</sup> Suharso dan Ana Retnoningsih, "*Kamus Besar Bahasa Indonesia*", (Semarang: Widya Karya, 2011), 196.

<sup>8</sup> M. Ali Zaidan, "*Kebijakan Kriminal*", (Jakarta: Sinar Grafika, 2016), 11-12.

<sup>9</sup> Yermil Anwar Adang, "*Kriminologi*", (Bandung: PT. Refika Aditama, 2010), 179.

development, Hoefnagels also stated that crime, just behavior, is not enough to be considered a crime. According to him, crime is human behavior which is marked as more understandable than simply seeing crime as a label or etiquette. For example, the names of the behaviors referred to namely, commercial sex workers, pimps, and so on. Crime from another point of view, for example from a sociological point of view, is seen as an act that deviates from the values or norms prevailing in society. The norms in this society are the consensus of the community members with the sanctions for those who deviate from the consensus. Thus, the conviction means reaffirming to the wider community that they are bound by a set of common norms and values – that crime is synonymous with social deviation<sup>[10]</sup>. Abdulsyani explained that crime can be seen in various aspects, namely: juridical aspects, social aspects, and economic aspects. The juridical aspect means that a person is considered to have committed a crime if he or she violates criminal regulations or laws and is found guilty by the court and sentenced with punishment. The social aspect means that a person is considered to have committed a crime if he or she has failed to conform or deviates consciously or unconsciously from the norms prevailing in society so that his actions cannot be justified by the community concerned. The economic aspect means that an individual is considered to have committed a crime if he/she harms others by imposing his economic interests on the surrounding community so that he/she is considered to be an obstacle to the happiness of others<sup>[11]</sup>.

Crime, in the view of criminology experts, generally means human behavior that violates norms (criminal law / crime / criminal law) is detrimental, annoying, causes victims, so that it cannot be tolerated. Meanwhile, criminology pays attention to crime, namely:

1. Perpetrators who have been found guilty by the court;
2. In white collar crimes, including those that are non-penally resolved;
3. Descriminalized behavior;
4. Population of detained offenders;
5. Actions that violate norms;
6. Actions that get social reactions<sup>[12]</sup>.

In criminology theory, this situation is actually considered very important because poverty is a form of structural violence with very many victims. One of the reasons for crime in Indonesia is the economic crisis, including income inequality and economic injustice<sup>[13]</sup>. Urbanization can also affect the occurrence of crime. The more people move from villages to cities, the more crime will occur in a city due to densely populated city. Criminal areas and slums can

actually be the cause of crime. A certain area that has its own characteristics tends to cause crime, for example a densely populated area that is not good in its security system will become a target for people to commit crimes<sup>[14]</sup>.

### Theory Prevention of The Crime of Prostitution

The government are responsible to combat crime. The efforts that can be made is influencing the pattern of community life through systematic efforts to build public awareness of the consequences of criminal acts and the impact of punishment. For example, a convicted person will be limited in his political rights for several years after completing several years of serving his sentence. Other parties who can also tackle crime through pre-emptive efforts are community leaders. Community leaders can influence the surrounding community through efforts to build their spirituality. Although these activities have been carried out frequently, such activities should be seen as necessary as an effort to raise awareness of the dangers of crime against oneself, family and society. On the other hand, efforts that can be done by other parties, namely educators, are revitalizing and re-actualizing character education, intervention education and habituation education, and building awareness of moral intelligence and values<sup>[15]</sup>.

#### a. Preventive

These preventive measures are a follow-up to pre-emptive efforts which are still in the preventive stage before the occurrence of crimes. Preventive efforts that are emphasized are eliminating opportunities to commit crimes of promiscuity or behavior that violates immorality. Preventing the crime of prostitution is better than allowing the spread of the HIV virus, sexual abuse and even sexual violence and human trafficking as the slogan in criminology, namely efforts to improve and overcome prostitution need to be considered and directed so that sexuality abuses do not occur again. The police and regional law enforcers, namely the civil service police unit in this effort provide legal counseling related to on-line prostitution crimes and human trafficking crimes, sexual abuse, even rape. By providing lessons on legal arrangements related to crimes of information and electronic transactions, human trafficking laws and local regulations that prohibit the establishment and service of commercial sex via on-line or localized localization, the perpetrators can be minimized to commit crimes of on-line prostitution. In addition, the Ministry of Social Affairs and the Social Service cooperate with the police law enforcement and regional regulation enforcers, namely the civil service police unit to provide information to the public about actions that can lead to commercial crimes or crimes of prostitution, human trafficking, sexual abuse and rape. For example, the community must be careful in educating and supervising children from a social and playing environment and always providing religious guidance so that they can apply local rules and culture. Realizing that there is a need to develop social drives or social and economic pressures, cultural and environmental pressures can influence a person's behavior to selling oneself or in immoral relationships such as peddling oneself as a prostitute. Furthermore, focusing attention on

<sup>10</sup> Anang Priyanto, "Kriminologi", (Yogyakarta: Penerbit Ombak, 2012), 77.

<sup>11</sup> Ende Hasbi Nassarudin, "Kriminologi", (Bandung: Pustaka Setia, 2016.), 115.

<sup>12</sup> Abintoro Prakoso, "Kriminologi dan Hukum Pidana", (Yogyakarta: Laksbang Grafika, 2013), 78-79.

<sup>13</sup> *ibid.*, 98-101.

<sup>14</sup> I.S. Susanto, "Kriminologi", (Yogyakarta: Genta Publishing, 2011), 80-94.

<sup>15</sup> M. Ali Zaidan, "Kebijakan Kriminal", 112-114.

individuals who show the potentiality of family or social problems, even if the potential is due to biological or psychological disorders or lack of sufficient socio-economic opportunities, can form a harmonious unity. After perceiving the description above, we know that the crime of prostitution in this world, especially in Indonesia – a developing country that is easy to enter from various European cultures – can be overcome if economic conditions or social conditions that affect a person towards criminal behavior in the field of sex adultery and human trafficking can be returned to a good direction. In other words, there must be an absolute improvement in economic factors. Meanwhile, biological, psychological, and social factors are only secondary. The community has also an important role in this prevention stage. The community can do action that can prevent the occurrence of prostitution crimes by minimizing the occurrence of prostitution crimes through efforts, for example, parental and environmental supervision systems in social and educational situations. By doing this action, at least the community takes preventive measures the occurrence of prostitution crimes in the neighborhood or outside the neighborhood.

Efforts to tackle prostitution or preventive crimes are usually carried out by two methods, namely the moralistic and abolitionism method. Moralism method is done by fostering mental spirituality that can be done by scholars, educators, and so on. Meanwhile, the abolitionism method is a conceptual method of countermeasures that must be planned on the basis of criminological research, and explore the causes of various interrelated factors. The most common way to be done is combining various elements related to the criminal justice mechanism and community participation.

To strengthen the operational capacity of the countermeasures, it is necessary to combine 3 wills; political will, social will, and individual will. The will of the government (political will) with various efforts needs to be supported by a social image (social will) through various media to launch the will of the government. And a force that must not be forgotten is human or individual will, in the form of awareness to obey the law and always try to avoid oneself not to do crime<sup>[16]</sup>. The right effort to combine the three wills is by:

1. The enhancement and reinforcement of law enforcement officials includes the reinforcement of the organization, personnel, and infrastructure for the settlement of criminal cases.
2. Legislation that can function to canalize and stem crime with outreach to the future.
3. An effective criminal justice mechanism that meets the requirements which are fast, precise, cheap and simple.
4. Coordination between law enforcement officials and related government officials, to increase efficiency and effectiveness in tackling crime.
5. Community participation to help smooth the implementation of crime prevention<sup>[17]</sup>.

#### b. Repressive

This effort is made when a crime has occurred, the action of which is law enforcement by imposing a sentence. The prevention that is done is by taking action against the

perpetrators of crimes according to their actions and bettering them so that they are aware that their actions are illegal and detrimental to society. This effort can also be accompanied by fairly decisive actions from law enforcers, especially the police and civil service police units as law enforcement for prostitutes, the state of regional law enforcers and regional criminal law enforcers. This is done to provide a deterrent effect to every immoral crime such as human trafficking, obscenity, and sexual abuse of underage children in order not to commit crimes again. In this case, the government must provide a severe punishment to the perpetrators of immoral crimes in Indonesia and physical contact is indeed permitted as long as under certain circumstances. For example, the perpetrator tries to escape when the process of arresting the perpetrator is recorded and subjected to articles that can be burdensome for the perpetrators. If the perpetrator tries to run away and does not want to be returned to the place of domicile of origin, then the local law enforcers and law enforcers will sentence perpetual imprisonment forever.

This repressive effort is the last resort that must be done because this effort has the character of providing lessons to the perpetrators of crimes not to repeat their actions, even though this effort seems to be an effort to provide a deterrent effect. If the prosecution efforts carried out by law enforcers have run well, it is expected that crimes under the guise of entertainment and SPA massage places, where karaoke can then be tackled. Eventually, it is hoped that the prosecution of good crimes will have a deterrent effect on every perpetrator of this prostitution crime. Efforts started from investigations, continued with investigations, prosecutions, trial examinations in court, and the sentence was determined by the judge<sup>[18]</sup>.

It is necessary to comprehend that the proceeds of crime are the "life blood of crime", which means that the proceeds of crime constitute the "blood flow" that feeds the crime and at the same time becomes the weakest point of the crime chain so that it is easy to detect. Efforts to cut this chain are carried out by enforcing the law.<sup>19</sup> Based on this background and problems, the authors are interested in discussing further, namely how the implementation of law enforcement policies in opening the business of prostitution. Legal instrument in this enforcement is to use the optimization of local government regulation number 7 of 2011 to enforce the law in the localization place of Tegal Regency.

#### Legal Research

This type of research uses empirical legal research, a legal research conducted based on field research on law enforcement and the implementation of local regulatory policies that exist in the Tegal Regency government and library materials, which are known as secondary materials. Related to this type of research, the approach used is an empirical approach or field data study as well as a conceptual approach<sup>[20]</sup>. This approach is carried out by reviewing Regional Regulation Number 7 of 2011 concerning Handling and Implementation of Prostitution Crime policies and the ITE Law Number 11 of 2008 in only one article 289. Local Government Regulation Number 7 of 2011 concerning the Implementation of Prostitution Crime,

<sup>18</sup> M.Ali Zaidan, "Kebijakan Kriminal", 109

<sup>20</sup> Peter Mahmud Marzuki, "Revised Edition of Legal Research, (Jakarta, Kencana Prenada Media Group, 2014). 93-95.

<sup>16</sup> Abintoro Prakoso, "(Kriminologi dan Hukum Pidana)", 170.

<sup>17</sup> *Ibid*, p. 171

which is related to with ongoing problems is discussed in this study.

### Finding and Discussion

In regional regulation number 7 of 2011 concerning public order, there are at least 3 (three) possible processes for closing and implementing regional regulations, namely:

- a. The closure was carried out in collaboration with the central and local governments,
- b. The central government facilitates local government in ex-prostitution rehabilitation, and
- c. The Government of the Social Service and the Civil Service Police Unit, Tegal Regency Police in the prosecution of sex traffickers and pimps with criminal acts and fines according to regional regulations.

It can be seen from the three possible processes for implementing the local government regulation policies above, at point (a) The process of concurrent closure by several central (Indonesian Ministry of Social Affairs) and regional officials (b) measures after the closure by the central and local governments facilitating rehabilitation and working capital training (Skill), and sending home prostitutes who do not want to be given skills to their home area. (c) The Tegal district government and all stakeholders implement the provision of venture capital for ex-prostitutes and prostitutes. With the judicial operation to the closed brothel localization and providing outreach to the localization community, the location of the brothel and prostitution in *peleman*, *wandan*, and narrow alleys as well as stalls on the side of the road will be dealt firmly and strongly warned.

The system for implementing regional regulations and law enforcement mechanisms for the crime of prostitution is different from law enforcement through local government regulations. Disclosure of criminal acts and perpetrators of criminal acts of prostitution is more focused on pimps and sex peddlers and combing criminal law enforcement actions for those who do on-line and direct transaction. The regulations in Local Government Regulation number 7 of 2011 clearly prohibits transaction, sexual peddling in the Tegal Regency Government environment. Therefore, the government provides a new breakthrough regarding the closure of localization and the handling process even to the empowerment stage by providing business capital and social rehabilitation for ex-prostitutes who are recorded in the data base of the social services and civil service units of the Tegal Regency.

### Reference

1. Adang, Yermil Anwar "*Kriminologi*". Bandung: PT. Refika Aditama, 2010.
2. Amalia, Mia, "Analysis of The Criminal Act of Prostitution Related to Moral Ethics and Countermeasures in the Cisarua Area of the Arab Village", *Mimbar Justitia: Journal of Legal Studies*, December, 2016.
3. Kristian. "Corporate Criminal Liability System Execution Policy". Jakarta: Sinar Grafika, 2018.
4. Marzuki, Peter Mahmud. "Revised Edition of Legal Research. Jakarta: Kencana Prenada Media Group, 2014.
5. Nassarudin. Ende Hasbi. "*Kriminologi*". Bandung: Pustaka Setia, 2016.
6. Prakoso, Abintoro. "*Kriminologi dan Hukum Pidana*". Yogyakarta: Laksbang Grafika, 2013.
7. Priyanto, Anang. "*Kriminologi*". Yogyakarta: Penerbit Ombak, 2012.
8. Retnoningsih, Suharso dan Ana. "*Kamus Besar Bahasa Indonesia*". Semarang: Widya Karya, 2011.
9. Sulistiani, Siska lis. "Kejahatan dan Penyimpangan Seksual dalam Persepektif Hukum Islam dan Positif di Indonesia". Bandung: Nuansa Aula, 2016.
10. Sumiyanto, Kecenderungan Wanita Menjadi Korban Tindak Pidana terhadap Kesusilaan", *Jurnal Hukum dan Pembangunan*, 1991.
11. Susanto IS. "*Kriminologi*". Yogyakarta: Genta Publishing, 2011.
12. Veny Humaira. "Law Enforcement on the Crime of On-line Prostitution in territory of jurisdiction Pekanbaru City police precinct", *Journal of Legal Studies*, 2016:3:2.
13. Zaidan, M Ali. "*Kebijakan Kriminal*", Jakarta: Sinar Grafika, 2016.