



Argumentation of Criminal Liability Law for Commercial Sex Workers (*PSK*)

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Abstrak

Salah satu yang masih menjadi *trend* atau permasalahan di negeri ini adalah Prostitusi. Prostitusi merupakan sebuah tindak pidana yang seharusnya di proses hingga akar-akarnya, karena prostitusi juga merupakan suatu permasalahan yang struktural yang sudah mendasar dan sering ditemui di masyarakat karena hingga hari ini masih menjadi sebuah permasalahan moral. UU No. 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual menjadi harapan untuk semua kalangan agar dapat terlindungi hak-haknya terutama terhadap Perempuan dan anak yang kerap kali menjadi korban dari peredaran Bisnis Prostitusi. Jenis penelitian yang digunakan oleh penulis adalah penelitian normatif. Penelitian normatif tersebut adalah merupakan suatu jenis penelitian hukum yang berasal dari prosedur penelitian ilmiah tujuannya demi mendapati kebenaran berlandaskan objektif hukum dari sisi normatif. Pasal 12 Undang-Undang No12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual ternyata belum mampu menjerat PSK sebab belum adanya ketentuan yang mengatur bahwa perbuatan yang dilakukan oleh PSK melanggar ketentuan hukum pidana.

Kata kunci: Pekerja Seks Komersial (*PsK*), Prostitusi, UU No.12 tentang Tindak Pidana Kekerasan Seksual

Abstract

One that is still a *trend* or problem in this country is prostitution. Prostitution is a crime that should be processed to its roots, because prostitution is also a structural problem that is fundamental and often found in society because to this day it is still a crime. moral problem. UU no. 12 of 2022 concerning Crimes of Sexual Violence is the hope for all groups so that their rights can be protected, especially for women and children who are often victims of the circulation of the prostitution business. This type of research used by the author is normative research. This normative research is a type of legal research that originates from a scientific research procedure whose aim is to find the truth based on legal objectives from a normative perspective. Article 12 of Law No. 12 of 2022 concerning Crimes of Sexual Violence has apparently not been able to ensnare PSK because there is no provision that regulates that the actions committed by PSK violate the provisions of the criminal law.

Keywords: Commercial Sex Workers (*PsK*), Prostitution, Law No.12 concerning Crimes of Sexual Violence

A. Pendahuluan

Sexual violence is a form of crime that is being discussed a lot lately, because its cases continue to increase over time. Crimes of sexual violence are crimes that are hated by all levels of society, because this is something that is considered to damage human dignity.

Sexual violence against women and children in 2022 in the period from 1 January to 20 May there were 1,803 cases with 1,866 victims. As many as 45% of victims of violence against adult women are victims of domestic violence, while for victims of sexual violence there are 323 people, which means that 17.3% are victims of sexual violence. This figure is still relatively high.¹

The crime of sexual violence itself can be interpreted as all acts that fulfill the elements of a crime as regulated in this law and other acts of sexual violence as regulated in the law as long as it is determined in this law, elucidation of Article 1 point 1 of Law No.12 of the Year 2022 Concerning Crimes of Sexual Violence.

One that is still a *trend* or problem in this country is prostitution. Prostitution is a crime that should be processed to its roots, because prostitution is also a structural problem that is fundamental and often found in society because to this day it is still a crime. moral problem.²

In addition to prostitution which is considered deviant and has a negative impact on society, Kartini Kartono believes that: Prostitution is also a form of social disease that must be stopped from spreading. Without neglecting prevention and improvement efforts. Prostitution or prostitution comes from the Latin word *pro-stituere* or *pro-stauree*, which means allowing oneself to commit adultery, commit prostitution, fornication, and rape. While *prostitutes* are prostitutes or prostitutes. Known as WTS or prostitutes. Then the prostitute is a woman whose behavior is inappropriate and can bring harm and disease, both to other people who associate with her, and to herself.³

Soedjono D, argues that: In Indonesia the term prostitution is known as "prostitution" which is generally formulated in this way: "prostitution" can

¹ Sumber materi sosialisasi UU No,12 Tahun 2022 tentang tindak pidana kekerasan seksual, Maharani Indrianingtyas,SH

² Elizabeth.Pisani, 2008, Kearifan.Pelacur: Kisah Gelap di Balik Bisnis Seks dan Narkoba, Serambi, Jakarta, hlm. 69

³KartiniKartono, PatologiSosial, PT Raja GrafindoPersada, Jakarta, 2005, hlm. 207.

be interpreted as the surrender of a woman's body with payment, to men to satisfy their sexual desires. In Europe it is often said that there are "male prostitution" (who are willing to satisfy lonely women). But this is not common in Asia and Indonesia.⁴

The legal provisions in the matter of prostitution are regulated in the criminal law code (KUHP) contained in Article 296 and also Article 506. In the content of Article 296 it stipulates that any person who intentionally or unintentionally facilitates obscene acts by another person as his occupation is threatened imprisonment for a maximum of one year and four months or a fine of up to fifteen thousand rupiahs, and in the content of article 506 it stipulates that anyone who collects fees from women who are employed as prostitutes is threatened with imprisonment for a maximum of one year. It can be traced that here only classifies prostitution, only the intermediary, namely (the pimp and the pimp) which is stated as a criminal act.

Article 298 of the Criminal Code. This article prohibits anyone who makes it

a livelihood or habit and takes advantage of obscene activities carried out by other people with a maximum penalty of 1 year and 4 months. This article is interpreted by Indonesian criminal law experts as an article that threatens the punishment of pimps, pimps or owners and or managers of brothels. "An act of prostitution between a prostitute or a prostitute and a customer is not a crime according to the Indonesian Criminal Code, so any form of prostitution that is managed by a person and his customer cannot be categorized as a delict which is punishable, including online prostitution that is managed by a person and a customer.

If we review the Indonesian Criminal Code there are no specific provisions that regulate and provide a deterrent effect regarding users of prostitution services. Based on a criminological study, in terms of the crime of prostitution itself, it can be said that it is a victimless crime.⁵

The following is data on cases of prostitution crimes in 2020-2022 in the jurisdiction of the Batu State Prosecutor's Office:

⁴LedenMarpaung, *Kejahatan Terhadap Kesusilaan Dan Masalah Prevensinya*, Sinar Grafika, Jakarta, 2008, hlm.7.

⁵ AS-Alam, 1984, *Pelacuran-dan Pemerasan-Studi Sosiologi-tentang Eksploitasi-Manusia oleh Manusia*, Penerbit Alumni, Bandung, hlm.160.

Number of Prostitution Crime Cases at the Batu District Prosecutor's Office	
Year	Number of cases
2020	7
2021	3
2022	1
Total	11

Table 1 Number of Prostitution Crime Cases at the Batu State Prosecutor's Office

Based on Table 1 a total of 11 prostitution criminal cases at the Batu District Prosecutor's Office were all handled by pimps, the perpetrators were pimps. This shows that criminalizing pimps does not decrease prostitution cases based on data which the author obtained through data at the Batu State Prosecutor's Office, moreover no service user has ever been punished even though the service user participated in the crime of prostitution, and any raids for law enforcement in the case of prostitution itself, the service user is usually just let alone and not get a deterrent effect.

If you look at the economic theory of *supply and demand*, that if there are no customers or service buyers then there will be no sellers, likewise if there are no sellers

then there are no buyers for the service, if there is no offer from the seller then there is no demand and vice versa, So to break the chain of prostitution cases in the country of Indonesia, more specifically in Surabaya, to eradicate the chain of prostitution practices, it should be given a deterrent effect, not only for intermediaries or service providers, but also for services and users of prostitution services, they must be dealt with strictly because in the future the values of decency and morals of the nation where prostitution is an illegal act that must be eradicated from its roots.

UU no. 12 of 2022 concerning Crimes of Sexual Violence is the hope for all groups so that their rights can be protected, especially for women and children who are often victims of the circulation of the prostitution business.

Article 12 Law no. 12 of 2022 states "Any person with violence or by abusing one's position, authority, trust, abuse arising from deception or a relationship of circumstances, vulnerability, inequality, powerlessness, someone's dependence, debt bondage or giving payments or benefits with the intention of gaining profit, or make use of sexual organs or other organs of that person aimed at sexual desire with him or

with another person, shall be punished for sexual exploitation, with a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of Rp. 1,000. 000,000.00 (one billion rupiah).”

In this article there are several elements aimed at perpetrators or users of prostitution services so that they can be given criminal sanctions, these elements include:

1. Giving payments or benefits (elements that can be imposed on *CSWs* and pimps)
2. Giving payments or benefits with the intention of obtaining profit, or using sexual organs or other organs of that person which is aimed at sexual desire with him or with other people (elements that can be imposed on *PSK*)
3. Which is directed against sexual desire with him or with another person.

However, until now this article has not been implemented so that users of prostitution services can still go free without being given any sanctions. Therefore, researchers feel interested in

examining the problem with the title **"Argumentation of Criminal Liability Law for Commercial Sex Workers (*PSK*)"**.

B. Metode Penelitian

This type of research used by the author is normative research. This normative research is a type of legal research that originates from a scientific research procedure whose aim is to find the truth based on legal objectives from a normative perspective. In this normative legal research, it is based on logic which is compiled based on scientific knowledge by the workings of normative legal science, namely the science of law whose object is law itself.⁶ *The output* of normative legal research itself is a recommendation which explains the need for the development and formation of law in a broad sense, both law in *system*, law in the sense of a good system of norms, law in a scientific conceptual system, law in system that is positive systematic, synchronous both vertically and horizontally (*law in Books*) Even the possibility of discovering new legal principles.⁷

⁶Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2008), hlm. 57.

⁷Nurul Qamar dan Dkk, *Metode Penelitian Hukum (Legal Research Methods)* (Makasar: CV. Social Politic Genius, 2017), hlm. 6.

The approach method used by the author in this research includes:

1. Approach to Legislation (*Statue Approach*)
2. Conceptual *Approach*
3. Case approach (*Case Approach*)

The *staute approach* is an approach in the process carried out by analyzing all the rules of a law and regulations closely related to a legal issue that the author is currently researching.⁸

C. Pembahasan

1. Element of the crime of prostitution under the law on crime of sexual violence

The crime of prostitution is an act related to the act of prostitution, which is basically a social problem, because prostitution is a symptom of society in which a woman sells herself to someone to have a relationship. organization which then receives wages from these activities. The dangers of the practice of prostitution for all aspects of people's lives are already in a very dangerous stage, even though this has been realized by the parties in practice, however, in reality,

prostitution still exists and is all around us. This is because there are still many members of the public, both from the lower, middle and upper classes who do not realize that the crime of prostitution is an act that carries great danger and is a great sin. In order to deal with developments in the criminal act of prostitution that has mushroomed in Indonesia, Indonesian positive law contains and regulates all acts related to the criminal act of prostitution in the Criminal Code.

The Criminal Code cannot be used to ensnare prostitutes, because in the Criminal Code it can only be imposed on pimps, while users and prostitutes are considered victims and buyers. This is not enough to eradicate or stop the crime of prostitution which is still rife in Indonesia. Law No. 12 of 2022 has just been passed, and it contains one of the articles which contains legal protection regarding the crime of prostitution as stated in article 12 which reads:

"Any person with violence or by abusing their position, authority, trust, arises from trickery or relationship

⁸Terry Hutchinson, *Researching and Writing in Law* (Pymont NSW: Lawbook Co.,2009), hlm.7.

circumstances, vulnerability, inequality, powerlessness, dependence of a person, debt bondage or giving payments or benefits with the intention of obtaining profit, or using sexual organs or other organs of that person aimed at sexual desire with him or with another person, convicted of sexual exploitation, with a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)."

If the word "everyone" is identified in the Article as an element that refers to a person, the person in question is a person who commits an act, then there is the word "abusing position, authority, trust," if we take a closer look at this word it is shown to someone who has authority or the position can be as a conglomerate or a person is referred to as a user or consumer, then in this article there are several elements aimed at perpetrators or users of prostitution services so that they can be given criminal sanctions, these elements include:

1. Giving payments or benefits (elements that can be imposed on pimps)
2. Giving payments or benefits with the intention of obtaining

profit, or using sexual organs or other organs of that person which is aimed at sexual desire with him or with other people (elements that can be imposed on PSK)

3. Which is directed against sexual desire with him or with another person.

The first element is "everyone", this word indicates a person, whether male or female, if the person is proven to have fulfilled all the elements of the crime referred to in the criminal provisions stipulated in Article 12 then that person can be called the perpetrator of a crime. criminal act. The second element is "Giving payment or benefits (an element that can be imposed on pimps)" The law explains benefits with the intention of "to gain profit, or use sexual organs or other organs of that person aimed at sexual desire with him or with other people "what is actually meant in the criminal provisions regulated in Article 12 of the Sexual Violence Act, what is meant is seeking money or income by exploiting the human body or trading, the third

element is "That which is aimed at sexual desires with him or with other people", this element can be interpreted that the act committed by a prostitute is aimed at a pimp or pimp and the wearer is a form of action that is carried out or takes place continuously continuously so that it is used as a habit to benefit from the results of the practice of prostitution.

If examined from his actions in the article, the word prostitution is not found, what is there is the sentence "utilizing sexual organs". Regarding obscenity, R. Soesilo said that obscenity is an act that violates decency (decency) or an act that is considered heinous, all of that in the realm of sexual lust. The word heinous in a definition of obscenity indicates the existence of a cruel psychological atmosphere. Meanwhile, acts of prostitution that do not originate from acts of trafficking or trafficking in persons are sexual acts or activities that are not committed with an abomination, and are even always accompanied by a financial transaction on purpose. Unlike the case with acts of prostitution

related to the crime of trafficking in persons, in which an element of coercion is found, disapproval of a woman to carry out a sexual activity, even though it is accompanied by a money transaction, but the transaction is shown to benefit the pimp. Furthermore, "Making it a livelihood or habit", can be interpreted as an act carried out by a pimp is an act that takes place continuously so that it is made as a habit in obtaining profits from the results of prostitution practices.

Article 12 of Law Number 12 of 2022 concerning Crimes of Sexual Violence cannot be used as a lex specialist article to impose criminal penalties for commercial sex workers, this is because Article 12 does not fulfill the elements of a crime that can sentence prostitutes. And the article is still focused only on the pimps.

2. Analysis of the Elements of the Crime of Prostitution that Can Be Affected by Commercial Sex Workers

In the crime of prostitution, of course there are parties involved,

these parties are pimps, commercial sex workers (PSK), then service users. Pimps are people who act as caregivers, intermediaries, and owners of commercial sex workers (PSK). A commercial sex worker (PSK) is someone who sells their services for sexual relations for money or is called a prostitute. Commercial sex workers are euphemistic expressions of the term prostitute, apart from that there are also names that mention prostitutes, which clearly refers to commercial sex workers (PSK). Service users are people who use the services of commercial sex workers (PSK) to fulfill their desires, who then pay the prostitutes and pimps. PSK is the main key in the crime of prostitution as an object of trade. An act that belongs to a criminal act, in Indonesia is regulated in the Criminal Code (KUHP) and several special criminal laws for actions that are classified as criminal acts after the stipulation or ratification of the Criminal Code in Indonesia. The problem of commercial sex workers in Indonesia is very much against legal norms, especially religious norms, decency and decency norms. The Indonesian Criminal Code does

not specifically regulate Commercial Sex Workers (PSK) or the punishment for these CSWs. The Criminal Code can only ensnare and impose criminal penalties on prostitutes or pimps or pimps. The form of accountability for the case above needs to study the elements of the crime. Elements of the article suspected of the actions of the suspect Article 12 Law No. 12 of 2022 concerning Crimes of Sexual Violence, Elements of Every Person Elements with the intent to gain profit, or use sexual organs or any other organ of that person directed against sexual desire with another person” Which can be described as follows:

1. Everyone As an Objective Element of PSK including being involved in the criminal practice of Prostitution The word Everyone is shown to people (pimps), whether a person is a man or a woman if the person is proven to fulfill all the elements of the crime referred to in the provisions of Article 12 Law Number 12 Year 2022

Concerning Crimes of Sexual Violence, then that person can be said to be the perpetrator.

2. Giving payment or benefits Taking advantage (element of error as a form of negligence or intentional) From sexual acts to gain profit aimed at obtaining sexual desire for a woman herself Withdrawing profits from the actions of a woman which in this case means a woman is a commercial sex worker (PSK),. The profit must be in the form of material gain in the sense of depending on the money generated from the obscene acts of a prostitute to finance most of his needs.
3. Someone's dependency, debt bondage or giving payments or benefits with the intention of getting profit, or making use of sexual organs Making it a livelihood in obtaining profits from the proceeds of prostitution for the

necessities of life, paying debts and so on.

Indonesia itself should have started to see prostitution as a crime and the way to stop this act of prostitution is to impose criminal penalties on the perpetrators of prostitution, which in this case are Commercial Sex Workers (PSK). The perpetrators of prostitution, in this case, are prostitutes, deserve to be included in our criminal law because they meet the three criteria for criminalization as stated by Moeljatno.

1. It is clear that working as a prostitute is an act that should be prohibited because it is not in accordance with the norms in Indonesia.
2. Criminal imposition of prostitutes is a way to reduce existing prostitutes and reduce the crime of prostitution itself.
3. The imposition of a sentence against a sex worker can of course be carried out if a prostitute is caught later because her actions violate norms and disturb the community.

From the three criteria above, it is clear that Commercial Sex Workers (PSK) deserve to be sanctioned. Until now, Indonesia considers commercial sex workers to be victims who are helpless and forced to become part of prostitution and work as prostitutes because of coercion from the service provider (pimp or pimp), so that these prostitutes cannot be convicted and working as prostitutes is not a crime. crimes contained in the Criminal Code. In addition, the causes of this prostitution include economic problems experienced by prostitutes.

Law Number 12 of 2022 Concerning the Crime of Sexual Violence which is touted as an article or a lex specialist law still does not fulfill the elements to be able to ensnare prostitutes as persons who are part of the crime of prostitution in Indonesia, in addition to questioning the laws and regulations in Indonesia concerning prostitution can also be seen in the Criminal Code in articles 296 and 506 of the Criminal Code where the two articles basically provide criminal provisions for the actions of a person who provides and facilitates other people in committing

obscene acts by providing prostitutes services to certain people, and it is used as a source of income rather than someone (pimp).

Another rule in Law no. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) in article 27 paragraph (1). The same thing is also stated in the provisions of Law no. 44 of 2008 concerning pornography in article 4 paragraph (1) which is addressed to those who provide pornographic services which also contain criminal provisions. When viewed from the perspective of acts of prostitution as a criminal act of trafficking in persons (human trafficking), Law no. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (PTPPO Law) also provides criminal provisions for those who provide, trade and facilitate someone in carrying out actions that violate moral values.

However, when examined further, from the various sounds and provisions of the article mentioned above, in essence, punishment can only be carried out against pimps or pimps, while prosecuting prostitutes and users of the services of PSK

cannot be criminally charged. Therefore, the punishment provisions are more focused on pimps/pimps as service providers who make it easier for other people to take actions that violate decency. Despite the fact that many people make prostitution their livelihood. The criminalization of commercial sex workers will only be an additional burden for law enforcement officials, because there are many reasons and considerations behind a person's life before finally deciding to prostitute himself.

Penutup

Article 12 of Law No. 12 of 2022 Concerning Crimes of Sexual Violence It contains criminal elements that can ensnare perpetrators of prostitution, these elements include, Giving payments or benefits (elements that can be imposed on Pimps), Giving payments or benefits with the intention of gaining profit , or make use of sexual organs or other organs of that person aimed at sexual desires with him or with other people (elements that can be imposed on *PSK*) Which are aimed at sexual desires with him or with other people.

Commercial Sex Workers (*PSK*). The first three criteria for criminalization have been met. Working as a sex worker is clearly an act that should be prohibited because it is not in accordance with the norms that exist in Indonesia. Third, the imposition of a sentence against a sex worker can of course be carried out if a prostitute is caught later because her actions violate norms and disturb the community. However, Article 12 of Law No. 12 of 2022 concerning the Crime of Sexual Violence does not fulfill these elements which can ensnare a prostitute.

Referring to the principle of legality, Commercial Sex Workers in the context of criminal responsibility cannot be criminalized, because there are no provisions that explicitly stipulate that the actions committed by CSWs violate criminal law provisions. Although morally and ethically, this act is not justified.

The role of the government and law enforcement officials is very important in terms of criminal liability, therefore it is important to formulate laws and regulations that are oriented towards protecting vulnerable groups (*PSK*, abandoned children and the homeless) that must be oriented towards eliminating all forms of discrimination and violence against those who are vulnerable. The

criminalization of prostitutes is not a way out for alleviating the problem of prostitution in the country, but the government should provide skills training and work incubators to reduce the level of prostitution in the country. The eradication of all paradigms and discrimination against them is something that must be realized, because in essence no one wants to prostitute themselves, but circumstances and economic factors are the reasons for those who decide to work on the dark side of the world tonight.

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