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Legal politics countermeasures of prostitutions criminalization policy perspective in Indonesia

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Abstract. Prostitutions is one of the eldest phenomenon, ones that occurs in Indonesia, Penal Law in Indonesia did not regulate the prostitution activities in case of these 3 (three) components; the pimps or brothel keepers and sex workers or the prostitutes. In this research these are the problems that occurs: 1.) why prostitutions are classified as social problems in the community? 2.) How is the legal politics to countermeasures prostitutions from Policy Perspective? This research was conducted with Normative method. Prostitutions is classified as social problems in the community it is because of the negative consequences impacted by the prostitutions. Social consequences from prostitutions are crimes and narcotics, whereas both of them are correlated with prostitutions, from the medical perspectives are also impacted, such as HIV-AIDS. Legal politics of Prostitutions Countermeasures is to Criminalize the prostitutes and their consumers, this can be asked to the legislatives of legislator who choose and decides the options to countermeasures this phenomenon from every alternatives that available in the process of the legal formulating that corresponding with the constitutions and Pancasila as the base of Indonesia Legal System.

Keywords. Legal Politics, Prostitutions, Criminalization Policy

Introductions

Prostitutions are not only about morale violations for those involved, but also from medical perspective, free sex could also give the perpetrators diseases such as HIV-AIDS that could transmitted onto their children. Ministry of Health mentioned that 427.201 citizens are infected with HIV-AIDS on 2021. Prostitutions that has been said by Dirjodjosisworo is a self-submission from a woman for men's satisfactions, whoever wants them with transactions involved, as seen from Dirjodjosisworo's explanation about prostitutions there are 3 (three) elements involved, such as; a.) self-submission from a woman; b.) to one or more men who wants their services; and c.) there are transactions involved for the exchange of their services. (*Penanggulangan Kejahatan: (Crime Prevention)*. - Soedjono D. (Soedjono Dirdjosisworo) - Google Buku, n.d.)

Prostitutions is one of the eldest phenomenon ("Encyclopedia of Evolutionary Psychological Science," 2020), there are also occur in Indonesia, same thing as the growth of the governments in the rest of the world. Prostitutions in Indonesia, started from the feudalism

era at Java that uses women as part of commodities, Prostitutions nowadays also spread in community all around the world. Apart from the governments already knew or not, this activity claimed unethical. Prostitutions is a social phenomenon that spread in the community and almost every part of the world considered this activity is unethical.

Problem about prostitutions that spread controversies that just barely caught governments attentions to be solved. There are renewals needed, such as legalizing or forbid it, but, Indonesia is an example of a nations that ban prostitutions, not just about unethicality but also considered crime. This problem need attentions from the governments and need to be solved and needed to given legal certainty to forbid this activity in the community. Indonesia with Pancasila ideology, prostitution has given scar to our identity as a nation that have a great honor and upholding norm values. So it has been said, prostitution could disrupt and obstruct even a threat for our national ideology and socio-culture.(Heryanto, n.d.)

Indonesian Penal Law has not been regulate about prostitution as involved in 3 (three) components (*THE CRIMINAL RESPONSIBILITY IN PROSTITUTION CASES: PERSPECTIVE OF NATIONAL PENAL REFORM* | Juita | *The 2nd International Conference And Call Paper*, n.d.); Pimps, Prostitutes and their Consumers, as in Criminal Codes or other regulations, regulations in criminal codes about decency offenses such in Criminal Codes article 281 through article 303, especially criminal codes article 296 and article 506 they are not bound to the prostitutes or their consumers. Those articles only bound to the pimps of the prostitutes, and the brothel itself. Therefore, the law enforcers cannot apprehend the consumers and the prostitutes, because based of article 296 in criminal codes, said “whoever with full consent made or facilitate those who wanted to or already facilitate dissolute acts for and/or to other people, and make them into full time job and habit, convicted to imprisonment for one year and 4 months or fined for maximum fifteen thousand rupiah.”

Criminalization could be explained by a process of establishment on an act that classified as criminal acts. That process ended with a fully formed legal articles, whereas that deed can be convicted. Penal acts only referring to their characteristics on an act that forbidden by the law and penal accountability (faulty), pointing to a person who violate that could be charged with penal law. Acts that have been formulated should be corresponding how the social life works and consistent with how the acts that are forbidden and those who violated the rules who should be penalized. Based by the acts insisted by the criminal codes and reality in case of abolishment of prostitution, so, approach that based by criminalization policy that using penal law as the basis are needed, therefore it is considered in penal policy, with the existence of criminalization policy is one of the policy in determining one act that was not considered as a criminal act to be considered as one, can be a law reform for penal law to reduce the prostitution problem in the future.

Legal Issues

- a. Why Prostitutions are classified as a social issue in the community?
- b. How are the Legal Politics for countermeasure prostitution from the perspective of criminalization policy for the prostitutes and their consumer themselves?

Research Methods

This research was using Normative Legal Research method, in this case, researcher was using Legislation Approach method and Conceptual Approach Method. For explaining the legal material that have been collected in this research the researcher was using some (Furqania

& Michael, 2021) techniques, such as; Descriptive Technique, Interpretation Technique, Evaluation Technique and Argumentation Technique.

Results and Discussions

The Problematic of Prostitutions Acts as a Social Issue Phenomenon

Prostitutions is one of many social issues in community it could be in metropolis or even countryside. There are so much loss that caused by prostitutions itself, such as, spreading sexual and skin diseases, destroying families and even destroying moral codes itself. (Konchakovskaya, 2020) But, prostitutions are still exists and still become a commodities in community. Obscenity norms are forbidding prostitutions, but, not every areas has the same custom and some of them has unwritten norms. Violations about prostitutions are based by these reasons: Lowering women's value and themselves, insult for their wives and those men who sells themselves, disrespecting the sacredness of sex that cause of disease transmission and disrespecting marriages.

Prostitutions is one form of a "community disease" that has to be stopped, without ignoring the prevention and rebuilding. (Gunawan et al., 2020) Prostitutions is "*pro-stauree*" in latin that means self-letting for committing adultery, committing fornication, harlotry and ordure. And prostitute are the one who committed it, also known as WTS or *Wanita Tuna Susila*. *Tuna Susila* is interpreted as uncivilized because the royalty of the sexual relations in form of self-letting for some men for their sexual satisfaction in exchange of money. (Article et al., 2019)

Development of prostitution in Indonesia, can be seek since the prostitution from Javanese Kingdom era that used women as a part of commodities in Feudalism system. Until now, prostitutions are still an unsolved problem. In feudalism era, prostitutions are conducted as form of custom and king's authority. King's authority is massive, one of them could be seen as many mistresses owned by them, women that used as mistresses owned by king are originated from several areas that until now are still considered suppliers of prostitutes from every city in Indonesia. Although Feudalism with mistresses are not commercialized sexual system as known in modern society, prostitution are occurred in the past, directly or not, forming a base for prostitution industries until now. (*COMPARATIVE LAW AGAINST ONLINE PROSTITUTION ACCORDING TO INDONESIAN AND DUTCH LAW* | Ridho | Al-Adl : *Jurnal Hukum*, n.d.)

Sociology consequences from prostitutions is a consequence in form of a criminality and narcotics, whereas both have correlations with prostitutions. Extortions is one of a crime that have connection and often occurred in prostitutions. Extortion that occurred in prostitutions are often conducted by the prostitute themselves, local pimps and the "conqueror". (*What Is the Crime of Extortion? What Are Examples of Extortion?* | *CriminalDefenseLawyer.Com*, n.d.) Extortion that occurred by the prostituted are in the form of cooperation between themselves or another person. Right after the consumers using their services, extorter will always works with themselves or other prostitutes. Right after the consumer stripped their clothes, then the extorters will appear and make claims that the prostitute are their wife (or husband if the prostitutes are male). (Estévez-Soto et al., 2021)

Negative consequences that occurred by prostitution that happened with the perpetrators or the victims, forced the legal system to form some solutions that could reduce and hopefully abolish prostitution itself. The solution of prostitutions is a part of social engineering that has to be done by the society or the government, so in the study of social engineering in the prostitution problem need to be seen from sociological perspective and juridical.

Legal Politics of Prostitutions Countermeasures from Criminalization Policy Perspectives for Prostitutes and Their Consumers

Criminalization of prostitutes and their consumer are severely needed because the perpetrators in prostitutions are form as a system.(Lutnick & Cohan, 2009) Pimps, prostitutes and their consumers are perpetrators. Prostitutes and their consumers are also have their own responsibilities as the same as the pimps so the offense could be formed in this case. There are some perspectives said that prostitutions is a victimless crime, this is not true because the main victim is the community themselves. Although the perpetrators in this context are also the victims, mainly the prostitutes, prostitutions abolishment must been started from the legal substance, next step is from the Legal Structure and Legal Custom whereas the Legal System Theory from Lawrence M. Friedman. Legal Substance that regulating prostitution must be enforced, one in Criminal Code as National Penal system and legal source in penal system. The legal politics especially penal legal politics are needed in this case.(Friedman, 1975)

Prostitution is heavily contradictive with eastern custom ideas that put respect in women's value and regarding morality in society. To achieve the *ius constituendum* legal renewal in penal law system is important to achieve in order to produce an effective and responsive law. As now Criminal Code and other Law aside of it only could detain the pimps as to the consumer and the prostitute itself cannot be charged. The Regional Law that regulation about the restriction of prostitutions are not effective as it should. Because not every regions has this kind of law, law enforcement cannot be achieved by regional law itself because of its territorial characteristics. To countermeasure prostitution itself the regional governments are using policy that could be achieved by the form of the local brothel. These brothels are formed to gather the prostitution into one area.

From Legal Politics, legislative board or the legislators choose and determine on every deeds and every alternatives that available for formulating the law in accordance to our constitution and Pancasila as Indonesia's paradigm. (Chumairo' et al., 2021)This acts also must determined with heavy consideration for the sake of the community, not for certain groups. These law renewal are expected to represents the community interest so the national legal development can be achieved for the community equity. Law Forming or Law Renewal in base of legal politics also must be applied in accordance to national constitution and Pancasila as Paradigm of Indonesia.

Pancasila as a Paradigm of Law (Suyadi, 2018) making that decides the certain principle of law making, this also be a consequence that Pancasila is a sum of every existing law. About the standing point, Pancasila has the highest position, that is a purpose and main viewpoint of United Nations of Indonesia. In accordance of legal politic, abolishment of prostitution need to have renewal in penal law with synchronizing from Criminal Code Concept with criminalizing or construct a regulation about penalizing the prostitutes and their consumer.

As in now, Penal Law along with technology development, penal law renewal have an important role to reforming and developing penal law to a better way. This renewal needed to reorient and reforming penal law that including values inside the community that appropriate to *Volk Geist* that determining justice, benefits and legal certainty. As we know Indonesian Criminal Code that still exist in Indonesia, as inheritance from colonial era that apparently not suitable enough with Indonesia this time, prostitution is not in accordance with Indonesian custom.

In focusing of prostitution matters, it is needed to reconstruct the law by criminalized and penalized the prostitutes and their consumers. Penal law renewal also including 3 (three) sub-system such as: 1. Legal Substance; 2. Legal Structure; and 3. Legal Custom, whereas in

Theory System from Lawrence Friedman. Has been said on Chapter II, has been known that explanation from Lawrence M. Friedman relating that legal system (Legal Substance, Legal Structure and Legal Custom) could be known that legal system contains legal sub system that interacts with each others.

This kind of criminalization is important with Criminal Code layout because criminal code until this day are inherited from Colonial Era that is not accordance with Indonesian custom. Criminalization is also important with criminal code, because criminal code is a material for other penal law. Criminal code also have values that comparable to the high-known law in Indonesia, not just making regional law that ineffective and even contrary with criminal code.

Conclusion

Prostitutions are classified as social issue in community because giving negative consequences. Sociology consequences from prostitutions are in form of criminality and narcotics, both of them are having correlations with prostitutions cause, from medical side also having some consequences with one of them is HIV-AIDS that could be transmitted into unborn babies. Those negative consequences that experienced by the perpetrators or that experienced by the community, so that the community demanded solutions to reducing or even abolish prostitution itself. The solutions itself is a part for social engineering by community or even the government so in the study of social engineering as the problem of prostitution that can be seen from sociology and juridical approach.

Legal politic for prostitution countermeasure from the perspective criminalization policy to the prostitutes and their consumers, striving from the legislative board and legislator chosen and determined on every decision on every alternatives that available for constructing law that corresponding constitution and Pancasila as paradigm of this country. Pancasila as paradigm legal construction that decided the rules for legal construction. This is also a consequence that Pancasila as the base for every law in Indonesia. Criminalization is important to constructing in Criminal Code, because of the Criminal Code that available at this time was inherited by the Colonial system that is not accordance with Indonesian custom. Criminalization is needed in Criminal code because Criminal code is a material that become a source of another law. Criminal law is also have values that comparable with the higher-ups law if compared to making regional law that ineffective and even contrary with the criminal code.

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