

**Decency Norms in Law Enforcement to Online Prostitution in
Indonesia: An Islamic Law Perspective**

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Abstract

This study aims to describe Islamic law norms as living Law are offered decency norms for law enforcers against online prostitution as Article 27 of Information and Electronic Transaction (IET) law, and the factors that prevent the enforcement of the decency norms under Article 27 against the massive development of online prostitution. This research was conducted in four provinces: Jakarta, West Java, East Java, and South Sulawesi. The interviewees are investigators from the Indonesian National Police and District Court judges in four cities of four provinces. The method used is a qualitative approach. The research subjects were selected by purposive sampling, and the data were analysed using descriptive analysis. The findings of this study show Islamic Law as decency norms or living law can be a priority for law enforcement to online prostitution by using Article 27 of the IET Law, where decency norms can be imposed on perpetrators, pimps, sex workers, and buyers. Sex services, as well as intermediaries. This study also shows the reluctance of law enforcers at the investigation and court levels to enforce Article 27 more strictly and maximally because it is not a cybercrime priority that must be enforced to prevent the massive development of online prostitution.

Keywords: Online Prostitution; Act of IET; Decency Norms; Adultery; Islamic Law

Introduction

Prostitution is an undeniable reality in our society.¹ It has been around for a long time and is practiced widely in almost all places and regions in Indonesia. Historically speaking, prostitution has existed since the beginning of Dutch colonialism in Indonesia. Terence H. Hull stated that organized prostitution began in the Dutch colonial era, even though Muslims and Hindus widely opposed it.² Up to now, prostitution has kept growing and developing in society with new modes and methods challenging to recognize³, because it now operates on the internet or cyberspace. The state also takes a "silent" and "helpless" attitude. Prostitution always involves men and women as providers of prostitution services or vice versa, but in many cases, only women are considered actors. Men buying sex services are often unpunished. This treatment is clearly against the principle of Law that guarantees equality before the Law.

A heated debate on whether or not prostitution service users should be legally responsible for the crime raises several reflexive yet paradoxical questions. We should ask these questions to ourselves, families, groups, communities, religions, and even the government. To what extent does criminal Law's politics respond to prostitution, especially in qualifying which "act" is prostitution? Does prostitution qualify as an act against the Law because it is prohibited in criminal Law, or is it a lawful act?

However, it is challenging to enforce the Law on the online prostitution business since the authority has limited control over social media sites such as Facebook, Instagram, WhatsApp, WeChat, and others. One example showing how difficult to ensnare the client of online prostitution services is the actress VA in Surabaya, where VA was subject to the crime while the service buyer, allegedly a man, Mr R, was free.⁴

In the lack of regulation, law enforcers should be able to use Article 27, paragraph (1) of Law Number 11 of 2008, amended by Law Number 19 of 2016. Nevertheless, in reality, the enforcement of this regulation cannot be carried out for all those involved in online prostitution without discrimination. Why do law enforcers seem hesitant to enforce this regulation? Are not the norms of decency derived from religious teachings, including Islam as the majority religion in Indonesia, vehemently opposed to prostitution?

¹ See Stuart P Green, "What Counts as Prostitution", *Bergen Journal of Criminal Law and Criminal Justice*, Volume 4, Issue 1, (2016), pp. 184-202.

² See Terence H. Hull, "From Concubines to Prostitutes: A Partial History of Trade in Sexual Services in Indonesia", *Moussons* [Online], 29 | 2017.

³ See Riswanda, Janet McIntyre, Yvone Corcoran-Nantes, "Prostitution and Human Rights in Indonesia: A Critical Systemic Review of Policy Discourses and Scenarios", *Systemic Practice and Action Research* 80, No. 30 (2017): pp. 213-237.

⁴ <https://www.bbc.com/indonesia/indonesia-46862244>.

Noor Fajar Roziq stated that it is necessary to explore the concept of philosophical, sociological, and juridical fundamental values so that the state to have legal certainty in society in the Criminal War draft stage. So digging into the philosophical value of the 1st Pancasila, The One Godhead (Ketuhanan yang Maha Esa), the five religions apply in Indonesia, including Islam, Christianity, Catholicism, Hindu, Buddha, and Confucian, has asserted that the practice of prostitution is legally prohibited.⁵

Ida Bagus Galih Gumilang and I Made Arjaya noted that the absence of regulations that can ensnare perpetrators of prostitution practices, especially users of prostitution services, shows the government's inconsistency in combating prostitution practices.⁶

Supardin and Abdul Syatar stated that the spirit of adultery sanctions in Islamic criminals is expected to be an alternative to renew Indonesia's criminal law system in the future. Although some elements of the nation may not expect the form of adultery sanction in Islamic penalties, its spirit aims to have solid legal certainty and maintain human life.⁷

Specifically regarding law enforcement against online prostitution, Wardah Yuspin and others describe the comparison of online prostitution law in Indonesia and Egypt. The results of this study found that the comparison of the two countries has similarities, namely the lack of legislation on online prostitution and the existence of a police specialty that investigates cases of prostitution in Egypt, namely "Good Moral Police", while in Indonesia; there is a policy available. Novelty/Originality of this study: The novelty value of this study is the comparison of the Law with the specificity of the police in the case of prostitution in Egypt.⁸

Meiliana Nurcahyani and Anang Doni Irawan analyzed the extent to which the Law provides legal protection for children involved in online prostitution by using the media of chat applications. They show that Law

⁵Noor Fajar Roziq, "Reconstruction of Prostitution Law In Perspective Of Religious Norms and Renewal Of Criminal Law", *Audito Comparative Law Journal*, Vol. 1, Issue 2, 2020: pp. 105-112.

⁶Ida Bagus Gumilang Gakih Sakti and I Made Arjaya, "Regulation of The Imposition of Criminal Sanctions against The Criminal Acts of Prostitution in Indonesian Positive Law", *Jurnal Hukum Prasada*, 9(1), (2022): Pp. 20-27.

⁷Supardin and Abdul Syatar, "Adultery Criminalization Spirit in Islamic Criminal Law: Alternatives in Indonesia's Positive Legal System Reform", *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, Vol. 5, No. 2, (2021): pp. 913-927.

⁸Wardah Yuspin, Aya Muhammad Yusuf Abd Allah, Kelik Wardiono, and Indah Maulani, "Law Enforcement Against Online Prostitution Providers In Indonesia and Egypt". *Jurnal Jurisprudence*, Vol. 11, Issue 1, (2022), pp. 114-128.

No. 11/2012 provisions concerning the Juvenile Criminal Justice System apply to child offenders.⁹

Nuzakiah Wasis stated that Indonesian Law still does not regulate online prostitution activities, even conventional prostitution. Seeing this legal vacuum and acts of prostitution that do not follow the values in society and advance in information and science, there are three reasons for the urgency of criminalization: philosophical, juridical, and sociological. Philosophically, online prostitution is against Pancasila, the first and second precepts, and the 1945 Constitution of the Republic of Indonesia. Due to juridical reasons, there is a legal vacuum and legal uncertainty. The sociological sense that online prostitution does not follow societal norms causes unrest and can cause various dangerous diseases.¹⁰

Based on the above explanation, the researchers post several research questions. This research will explain how the norm of decency, as referred to in Article 27 paragraph (1), should be interpreted from the perspective of Islamic legal norms as a law that lives in most Indonesian societies. What are the factors in enforcing the legal norms of decency under Article 27 against the massive development of online prostitution?

This research employs a qualitative approach. To gain sufficient information related to the abovementioned research questions, the researchers combined four techniques; in-depth interview, documentation, focused discussion, and literature study. Data collection by interview is aimed at cross-checking. With purposive sampling, the interview was conducted with some respondents, later called informants. The informants are experts, authorities, and stakeholders related to this research. The informants from the four provinces were the investigator of Ditkrimsus (the directorate of a particular criminal investigation) of South Sulawesi Regional Police (January 26 2020), the judge of Makassar district court (February 27 2020), the investigator of Ditkrimsus of West Java Regional Police (July 2 2020), the judge of Bandung district court (July 3 2020), the investigator of Ditkrimsus of East Java Regional Police (July 20 2020), the judge of Surabaya District Court (July 21 2020), the investigator of Ditkrimsus of Metro Jaya Police (September 14 2020), and the judge of South Jakarta (May 6 2020).

Data were tested using the triangulation method to validate the research data, in which the researchers shared the same understanding with the research

⁹Meiliana Nurcahyani and Anang Doni Irawan, "Protection of Children Involved in Online Prostitution Cases in Terms of Law of Children Protection", *Indonesia Law Reform Journal*, Vol 2, Iss 2, (2022): pp. 153-165

¹⁰ Nuzakiah Wasis, "The Need for Criminalizing Online Prostitution in Indonesia." *KnE Social Sciences*, Vol. 10, No. 4, (2022), pp 360-373

subjects. Meanwhile, reliability can be done by performing or implementing field note procedures to be determined later.¹¹

Data were then arranged and systematically analyzed. The data obtained from interviews, discussions, and documentation are organized into categories, described into units, synthesized, and arranged into patterns. The researchers then chose which ones were important to be studied, analyzed, and took conclusions.

Discussion

Online Prostitution in Indonesia's Positive Law

As with conventional prostitution, which is usually done on the sides of roads, online prostitution also directly or indirectly involves some persons.¹² Online prostitution has a slightly different process chain from conventional prostitution activities due to the different media used. The following is the chain of online prostitution practices in cyberspace: First, pimps. In a case of online prostitution in Jakarta in 2015, a pimp, RA, was charged with Article 296 of the Criminal Code regarding making it easier for others to commit obscenity, and the pimp makes it a livelihood. He was imprisoned for one year and four months.¹³ However, the judge did not use articles of the IET Law or Pornography Law to convict the person. Article 296 No. 506 of the Criminal Code reads:

"Anyone who deliberately causes and facilitates obscene acts with another person and makes it a means of living or custom shall be punished by a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiahs.

Article 506 reads:

"Anyone who takes advantage of the sexual activity of a woman and uses it for a living is punished by a maximum imprisonment of one year."

Meanwhile, some celebrities involved were left unpunished by the Law. Whereas in the VA case in Surabaya, the pimps consisting of 4 people were sentenced to 5 months in prison for violating Article 27 of the EIT Law, which regulates the spreading of social media content that violates decency, not with the criminal articles of pimping. Article 27, paragraph (1) reads:

¹¹Jerome Kirk and Mark L. Miller, *Reliability and Validity in Qualitative Research*, (London: Sage Publication, 1986), p. 41-42

¹² Neng Djubaedah, *Perzinaan Dalam Peraturan Perundang-undangan di Indonesia Ditinjau dari Hukum Islam*, (Jakarta: Kencana Prenada Media Grup, 2010), p. 78

¹³<https://tirto.id/kasus-artis-va-memang-hanya-muncikari-yang-bisa-dijerat-pidana-dduk>

"Anyone knowingly and without right distributes and transmits or makes accessible electronic information and documents that have content violating decency."

Meanwhile, the punishment is regulated in Article 45 paragraph (1): "Every person who meets the aspects as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) will be sentenced to a maximum imprisonment of 6 years and a maximum fine of Rp. 1,000,000,000.-"

Besides, pimps, according to positive Law in Indonesia, can also be charged under Article 1 of Law Number 21 of 2007. Pimps fulfil the elements of a human trafficker since the pimps recruit women, both adults and minors, by exploiting them as prostitutes either forcibly or unwillingly by sending them to customers. Pimps can be charged under Article 2 of Law Number 21 of 2007, which is subject to imprisonment of 3 years and a maximum of 5 years with a minimum fine of 120 million and a maximum of 600 million.

The second person is the commercial sex workers (CSWs). There are many kinds of CSWs in the online world; some directly promote themselves without pimps, and others use other parties or pimps.¹⁴ Online prostitution involving actresses generally involves pimps, as in some cases in Jakarta and Surabaya. One actress usually involves many pimps. Meanwhile, sex workers generally use social media such as WeChat, etc.¹⁵ In this case, prostitutes cannot be subject to articles of prostitution. However, if sex workers actively produce and distribute pornographic images sent to pimps or directly to prospective buyers, then the Pornography Law and IET Law can be imposed. Chapter XIV of the Criminal Code regulates crimes against decency but does not regulate the definition of decency as well as the IET Law. Article 27 Paragraph (1) of the IET Law regulates the prohibition of distributing, transmitting, and making accessible electronic information or documents violating decency.¹⁶

The third one is the other parties. This is the difference between conventional and online prostitution. Other parties indirectly support this immoral practice online. These parties provide the media used by commercial sex workers to promote themselves. Portals or servers that provide online prostitution services are subject to penalties under Article 296 of the Criminal Code in conjunction with 506 of the Criminal Code. Also, other parties who participate in providing prostitution online can be charged with the Trafficking

¹⁴Adami Chazawi, *Tindak Pidana Mengenai Kesopanan*, (Jakarta: Rajawali Pers. 2005), p. 99. Also see Agita Chici Rosdiana, "Online Prostitution in Media Social: How is the Victim Protection?" *Indonesia Media Law Review*, Vol 1, Iss 2, (2022): pp 145-164.

¹⁵ Interviews with investigators from the South Sulawesi Polda on 26th February 2020, East Java Polda on July 20 2020, and Polda Metro Jaya on September 14 2020.

¹⁶ We are doing Interviews with investigators from Polda Metro Jaya on 14th September 2020.

Law. In the case of prostitution, this third party commits acts of human trafficking and exploits prostitutes based on the provisions of Law Number 21 of 2007, namely Article 1 paragraph (1):

Human Trafficking is the act of recruiting, transporting, holding, sending, transferring, or accepting someone with threats of violence, force, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, bondage, or giving payment or benefits, to obtain approval from people who hold control over the other people, whether done within the country or between countries, for exploitation or causing people to be exploited.

The fourth is the users/customers of CSWs' services. All the above mentioned parties and customers play a pivotal role in how this online prostitution transaction can occur. Although, of course, the other parties also take part in the practice of prostitution, however, the customers are the target. In the provisions of the Criminal Code (KUHP), there are no articles that can be used to ensnare sex workers and prostitutes themselves. The provisions of the Criminal Code can only be used to ensnare sex workers and pimps based on Article 296 No. 506 of the Criminal Code.

So, can the buyers of CSWs' services be caught by the Law? Although there is no specific regulation on the buyers of prostitutes in the Criminal Code, if the customer of the sex worker already has an official partner (by marriage), and then the partner complains about the act of the spouse using the service of a prostitute, then the buyer of prostitute services can be charged with Adultery Law as regulated in Article 284 of the Criminal Code.

Regarding this article, R. Soesilo, in his *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, explains that adultery is sexual intercourse committed by a man or woman, who has been married, with another woman or man who is not his wife or husband. To apply this article to the prostitution case, the intercourse must be consensual; there should be no coercion from both parties.¹⁷

In this case, prostitution users may be subject to an offence of adultery. The spouse, namely the husband or wife, can only make the complaint. The offence for adultery referred to the provisions of Article 284 paragraph (1) letter b of the Criminal Code stating that a woman who has been married is punished for a maximum of nine months, while it is known that Article 27 BW applies to her according to *Van Dale's Groot Woordenboek Nederlanche Taag*. The word *overspel* means *schending ing der huwelijke straw* which more or less means a violation of marital fidelity. Meanwhile, Noyon-Langemayer emphasized

¹⁷Soesilo, R. *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, (Bogor: Politeia, 1988), p. 209.

that *overspel* can only be done by married people. While the *Hooge Raad* decision on May 16, 1946, emphasized that *overspel* was intercourse without the permission of the husband/wife.

Meanwhile, according to R. Soesilo, adultery is consensual sexual intercourse committed by a man or woman who is married to a woman or man with someone who is not his wife or husband. Then, to be more specific, sexual intercourse is a reproductive activity that is done by a man and a woman to have children, so the male's penis must penetrate the female's vagina so that they ejaculate. Article 284 is of complaint offence.

Since the imposition of Law No. 11 of 2008, which has been amended by Law No. 19 of 2016 concerning Electronic Information and Transactions, e-mail (electronic messages) and SMS as electronic information and/or electronic documents and the printed file are considered valid evidence as stated in Article 184 of the Criminal Procedure Code. Meanwhile, the wife's testimony can only be considered valid evidence if the wife has become a defendant and states what she did or that she knew or experienced herself. Those pieces of evidence must lead to the act of sexual intercourse.

In addition, prostitute users can be charged with regional regulations on criminal sanctions related to prostitution, such as article 42 paragraph (2) of DKI Jakarta Provincial Regulation Number 8 of 2007 concerning Public Order which reads:

Everyone is prohibited to:

1. Order, facilitate, cajole, and force others to become commercial sex workers;
2. Become a commercial sex worker
3. Use services of commercial sex workers.

Those who violate this regulation are liable to imprisonment for a minimum of 20 days and a maximum of 90 days or a fine of at least Rp. 500.000,- and a maximum of Rp. 30 million.

In addition, according to an investigator of the Jakarta Police Directorate of Criminal Investigation, users of prostitutes can be charged under the Child Protection Law if the prostitutes are minors.¹⁸ In the national legal literature, the criminal act of child sexual exploitation is a concept that has not been widely discussed, especially in criminal Law's scope. The Child Protection Law (Law No. 23/2002 as revised by Law No. 35/2014) only mentions two articles on the prohibition of sexual exploitation and economic exploitation of children, namely Article 76 letter I and Article 88, with a maximum prison sentence of 10 years and or a maximum fine of 200 million rupiahs.

¹⁸ Interviews with investigators from Polda Metro Jaya, September 14 2020.

Unfortunately, this Law does not provide a detailed explanation of the concept of sexual exploitation.

Challenges in Law Enforcement against Online Prostitution

Based on the research findings, there are no severe challenges. One common challenge is to find online crime evidence. Some public prosecutors' instructions are more on proving that the accused person indeed distributes immoral information or content electronically. Usually, many obstacles occur when the perpetrator distributes immoral content through electronic media, which, as soon as being caught, the suspect deletes and suspends the website. Police have made several efforts through the forensic laboratory to coordinate with several social media providers such as Facebook, Google, and other cyber labs to trace it and obtain to bring back the account. Under Article 5 of the IET Law, in addition to Article 184 of the Criminal Procedure Code, there are five pieces of evidence plus one equivalent to 184 KUHAP, namely digital evidence. It provides not only screenshots of the content but also the devices used, as well as printed documents. The obstacle is in the proving process, but the digital forensics team can resolve it.¹⁹

Another challenge other than finding evidence is the testimony of witnesses. In prostitution cases, witnesses usually worry about the crime and the stigma that the public will give when the case is related to prostitution. Prostitution is something embarrassing, so witnesses are usually reluctant to give some testimony. Three essential people play pivotal roles in managing online prostitution cases; 1. The distributors, 2. Women, men, and minors who are exploited 3. The witnesses and the users of prostitutes' services. Since they are reluctant to come and say the fact, we prefer to meet them in person without inviting or summoning them but with their consent.

Police have made various efforts to handle cases of online prostitution, whose number is constantly increasing, both repressive and preventive efforts. An investigator of the Special Crime Directorate of the South Sulawesi Regional Police (Makassar) said that in handling cases of prostitution crimes through electronic media or online prostitution, there are some challenges. The investigator/the unit head explained that the unit he formed to handle online prostitution cases had problems finding prostitutes online because prostitution through electronic media differs from conventional prostitution. Online prostitution is not practiced in certain places; instead, they change from one hotel to another in Makassar. They do not stay in one place as conventional prostitutes do.

¹⁹ Interviews with investigators from the Ditkrimsus Polda Sulsel on 26th February 2020, Polda East Java on 20th July 2020, Polda West Java on August 2 2020, and Polda Metro Jaya on 14th September 2020.

Furthermore, he explained that the mobile phone numbers used to conduct transactions constantly change. The phone numbers they use are no longer active, so it is difficult to trace the whereabouts of the perpetrators. He explained that another challenge is doing raids in the known locations by the tracking police team, who are specialized in online prostitution cases since the practices take place in some star hotels in Makassar City. Another challenge is how to collect witnesses since the witnesses are primarily working women who do not want to get involved in prostitution cases. They chose not to come to give some statements.²⁰ The other obstacle police have in tackling online prostitution is finding the identity of the perpetrators. Their identities constantly change, using different nicknames to decay and lose their traces. Therefore, the police find it difficult to arrest them.

Judges' Problems in Imposing Sentences to Online Prostitution

One of the judges' problems in deciding imprisonment sentences for perpetrators of online prostitution is that judges often face two difficult choices, namely justice and legal certainty, which, in this case, cannot work together. Ideally, the two principles should be in each taking decision. However, unifying justice and legal certainty is, in fact, a challenging task.²¹ Sometimes, justice and legal certainty are separated in two places; if we want to approach justice, we distance ourselves from legal certainty and vice versa. In such a case, the judge must disregard one to stand for the other. When a judge faces this position, he or she should make a decision that benefits the Law and society more. In other words, a judge is responsible for overcoming a case registered to him or her to decide a proper and fair decision to stand for Law and justice.

In making decisions, a judge must interpret several legal aspects. Legal here is not limited to legislation but also societal norms and rules. The abovementioned problems are some examples of how a judge must be fair. The decision he or she takes should give benefit all involved parties. The benefit can be in the form of criminal sanction or action. After conducting an interview, one of the problems faced by a judge in determining proper sentencing for the pimps is the assessment and information from doctors, police officers, and attorneys who state that defendant needs to be proven doing or not doing the crime of either prostitution or human trafficking which will impact on justice in society. Without the assessments and information from experts, it is unlikely that the defendant will be set free, and the judge will not impose sentencing other than the one charged by the public prosecutor.²²

²⁰Muladi, Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*, (Bandung: Alumi, 1998), p. 177.

²¹Kartini Kartono, *Patologi Sosial*, (Jakarta: Rajawali Pers, 1981), p. 86.

²²Hanafi Amrani, *Sistem Pertanggungjawaban Pidana Perkembangan dan Penerapan*, (Jakarta: PT Raja Grafindo Persada, 2015), p. 89

Suppose the public prosecutor does not indict the defendant by imposing a sentence. In that case, the judge will not decide on a heavier sentence even though the defendant has repeatedly committed the same criminal acts as a pimp in online prostitution. Therefore, one of the judges' considerations to decide if the pimping was convicted was the testimony of witnesses or IET experts who stated that the defendant was a victim of social media misuse.²³ The other obstacle experienced by the judge was the defendant himself. After receiving social sanctions from the community, the defendant was deterred.

According to the judges interviewed by the authors, another problem a judge faces is the public's negative stigma for the judges. Sometimes people did not believe that what the judge had decided was fair. Responding to the public's view of judges, the informant assumed this sometimes put pressure on them, but the judges would still make decisions following the applicable laws and their beliefs. In response to this problem, to create an independent judicial power, democratic judicial principles must be implemented.²⁴

This is done to prevent public interference that could suppress the freedom of judges. According to Bagir Manan, there are four principles of democratic justice, namely:

1. Presumption of innocence, as a consequence, it is prohibited to form a public opinion which suggests that the defendant is guilty;
2. Prohibition of trial by the press. Trial by the press often violates private rights, *civility mortuus*, and character assassination of a person or even the family;
3. Fairness does not only include the honest and impartial characteristics of the judge but also means that every party in a case (including the defendant) has the same opportunity to win. Justice is not only the rights of the public or the rights of victims but also of those who are suspected of being guilty or being tried;
4. The freedom of judges from public pressure, which can cause doubt and fear, either in the form of destroying the court or persecution referred to the judge. In the four points above, point (d) explains that judges must be free from all threats since the judge's profession is to decide a case. Independent judicial power also guarantees judges to decide a case without interference from parties outside of the court.²⁵

²³ Interviews with South Jakarta District Court judges on May 6 2020, and Surabaya District Court judges on July 21, 2020.

²⁴ Barda Nawawi, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, (Yogyakarta: Genta Publishing, 2010), p. 14

²⁵ Interviews with Makassar District Court Judge on February 27, 2020, Surabaya District Court on July 21 2020, and South Jakarta District Court Judge on May 6, 2020.

Judges with freedom and neutrality in criminal trials are a determinant factor in realizing the criminal justice system that characterizes the rule of Law. Another issue is that the regulation made is always outdated by the dynamic of society. Laws are formed and constructed based on the legal and social conditions at the time. When laws are passed and declared, the legal and social conditions have changed at the same time so that, in practice, many regulations are no longer relevant. Facing such conditions, judges should not be silent. Instead, they are required to present a social change by providing proposals based on legal discoveries.²⁶

The dynamics of society are a challenge for judges. Therefore, they should keep learning in terms of social changes. For judges, the electronic evidence listed in Article 5 remains problematic since sometimes the electronic evidence is printed out. The printed version of electronic evidence is not enough without other evidence as comparators, such as the testimony of witnesses or defendants. Consequently, printed evidence must be supported by testimonies of witnesses and perpetrators or other kinds of evidence as a comparison that can be used as a basis for legal consideration. Therefore, the Department of Research and Development of the Supreme Court researches the validity of evidence stipulated in Article 5 of the IET Law to help judges impose sentences.²⁷

The judge's consideration in sentencing online prostitutes was based on the provided evidence, which is regulated in the Criminal Code and Article 5 of the IET Law regarding electronic evidence. In this case, the prosecutor presents evidence, witnesses, experts, and electronic evidence (the means to distribute electronic documents containing pornography so that they can be accessed publicly). Case examination must be preceded by presenting related evidence. Concerning this, the Cyber Crime investigator is in charge of investigating immorality cases without a warrant because immorality cases are general offences. In carrying out legal considerations, judges are obliged to see all aspects from a social perspective and the benefit for society.

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²⁶ Ruslan Renggong. *Hukum Acara Pidana Memahami Perlindungan HAM dalam Proses Penahanan di Indonesia*, (Jakarta: Prenadamedia Group, 2014), p. 55

²⁷ Antonius Sudirman. *Hati Nurani Hakim dan Putusannya Suatu Pendekatan dari Prespektif Ilmu Hukum Perilaku (Behavioral Jurisprudence)*, (Bandung: PT Citra Aditya Bakti, 2007), p. 86.

²⁸ Interview with a Surabaya District Court Judge on 21st July 2020.

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Islamic Law as Decency Norms

In general, there are different definitions of adultery from the perspective of Islamic Law and Positive Law. Islamic Law qualifies any sexual intercourse outside the marriage contract or forbidden as an act of adultery.²⁹ The perpetrator gets sanctions and must be punished, whether the perpetrator is married or not. Meanwhile, positive Law does not consider every unlawful sexual intercourse as adultery. The crime of adultery is only imposed on married or married perpetrators. Therefore, apart from those already married or married, such acts are not considered adultery but intercourse or damage to honour.³⁰

From the perspective of Islamic Law, the practice of prostitution or prostitution³¹ whether done offline or online, it is an act of adultery. Every sexual relationship without a marriage contract or sexual intercourse which is forbidden is included in the category of adultery, which must be subject to legal sanctions, whether committed with consensual motives or not, whether for commercial purposes or not, whether committed by those who are married or not. Thus, prostitutes whose routine is synonymous with adultery are another form of sexual deviation in which sexual relations between men and women are not based on marriage.³²

Prostitution, whatever its form and motive, is an insult to humanity, especially to women. Therefore, the Al-Qur'an and Hadith, as *mashadir al-abkam*,

²⁹ Indrawan Fajar Bin Zaufi Amri and M. Dachran S. Busthami, "Adultery in the Perspective of Islamic Law and the Criminal Law Legislation a Comparative Study," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*, Vol. 23, Issue 2, Ver. 1 (February. 2018): pp. 51-55; Also see Mulyono, "Perkawinan Lesbian, Gay, Biseksual, dan Transgender dalam Perspektif Hukum Islam dan Hukum Positif," *Al Istimbath*, Vol. 4, No.1, (2019): pp. 101-124.

³⁰ Abdul Qodir Audah, *Ensiklopedi Hukum Pidana Islam*, (Bogor: Kharisma Ilmu, 2008), p.151; Abdel Salam Sidahmed, "Problems in Contemporary Applications of Islamic Criminal Sanctions: The Penalty for Adultery in Relation to Women", *British Journal of Middle Eastern Studies*, Vol. 28, Issue 2 (2021): pp. 187-204.

³¹ Prostitution comes from English prostitution, which means "prostitution". Meanwhile, in Arabic, prostitution or prostitution is defined as adultery. Adultery in Arabic is *bai'al-irdhi*, which means selling honour. So prostitution can also be called the selling of honour, and people who are prostitutes can be called sellers of honour. See Dian Andriasari, "Comparative Study of Adultery in Indonesian Law and Turkish Law", *Syiar Hukum*, Vol. XIII, No. 3 (November), 2011, p.12.

³² Heni Hendrawati, *Asas-Asas dan Upaya Mencegah Kemungkaran dalam Hukum Pidana Islam Dalam Perspektif Pembaharuan Hukum Pidana Nasional*, (Np.), p. 29. Also see Wahyu Abdul Jafar, "Analisis Asas Hukum Pidana Islam dan Asas Hukum Pidana di Indonesia," *Al-Istinbath Jurnal Hukum Islam*, Vol.1, No. 1, (2016): pp. 25-43.

the most important sources of Islamic Law, have prohibited the act of adultery and prostitution.³³ Even the text reads, " *Wala tagrabu al-zina*." "Do not approach adultery as an abomination and a bad way." (QS Al-Isra '17: 32). The text of the text, "*Wala tagrabu al-zina*", based on this verse contains the sentence "Do not approach the act of adultery!" The sentence approaching the act of adultery, where previously there was an indication that it is prohibited, means that there is a prohibition to approach the act of adultery. Thus the Law approaching the act of adultery is unlawful based on the texts. The legal logic of this text of the Qur'an is that even approaching adultery is prohibited, let alone committing adultery (prostitution).³⁴

Concerning prostitution, the primary sources of Islamic Law do not reveal much mention of the crime of direct rape or sexual exploitation, including this prostitution. Even though there are verses that already lead to the prohibition of acts of sexual coercion and sexual exploitation, as well as protecting victims of sexual violence, this narrative of legal logic can be understood through the confirmation of the Qur'an:

"Do not force your female slaves to practice prostitution, even though they want chastity, because you want to seek worldly gain. Moreover, whoever forces them, indeed Allah is Most Forgiving, Most Merciful (to those who are forced) after they are forced. (Q.S. al-Nisa: 33).

Based on this paragraph, two legal norms can be formulated, namely: first, the prohibition against all forms of coercion, prostitution, and sexual exploitation; second, legal advocacy and assistance to victims of sexual exploitation so they can feel safe and confident again.³⁵

Thus, all forms of sexual exploitation, be it coercion, prostitution, rape, or adultery, are prohibited, and the threat of legal sanctions is severe. Even the faith of an adulteress is revoked from his chest. This is confirmed in a hadith of the Prophet:

"There is no one who commits adultery while he is a believer, and no one drinks wine while he is a believer, and no one steals while he is a

³³ Adultery and prostitution have different meanings stressing that prostitution uses one's body as a means of sexual satisfaction for other people to achieve profit. In contrast, adultery is sexual intercourse carried out based on consensual. For further see Marzuki Wahid, *Fiqh Indonesia: Kompilasi Hukum Islam dan Counter Legal Draft Kompilasi Hukum Islam dalam Bingkai Politik Hukum Indonesia*, (Bandung: Marja, 2014), p. 38

³⁴ Legal, logical reasoning like this in Islamic jurisprudential terminology (*Ushul al-Fiqh*) is known as *qiyas Malawi*. *Qiyas* equates a case that does not have a textual reference with another case with a textual reference regarding its legal provisions when both have the same '*ut*'. See 'Abd al-Wahhab al-Khallaf, *Ilmu Usul al-Fiqh*, (Jakarta: Dar al-Sa'adah, 1990), p. 52.

³⁵ Helmy Boemiya, *Analisis Yuridis Tindak Pidana Perbuatan Zina (Perzinahan) Dalam Perspektif Hukum Islam*, (Np., nd.), p.123; See Budi Kisworo, "Zina dalam Kajian Teologis dan Sosiologis" *Al Istinbath : Jurnal Hukum Islam*, Vol. 1, No. 1, (2016): pp. 1-24.

believer, and no one robs the property of a rich man who is respected by a human being in a condition where he is a believer."³⁶

In Islamic criminal Law, provisions for adultery are formulated based on the status of an adulterer, namely: (1) adulterer *mbushan*, (2) adulterer chair *mbushan*, and (3) adulterer from a person with slave status. A person is said to be a *mbushan* adulterer if he commits adultery after lawfully having sexual intercourse (already married or has been married). According to most scholars, the punishment for adulterer *mbushan* is stoning.³⁷ *Ghairu muhsan* adulterer is a person who commits adultery but has never had halal sexual intercourse before. Hence, the punishment for him is 100 lashes and exile outside the village for one year. As for the punishment for the adulteress of an enslaved person, if the enslaved person is a woman and has been married (*muhsan*), then the *hadd* punishment is 50 lashes³⁸.

Based on this, it can be formulated that prostitution or prostitution is adultery because, in its occurrence, there are elements of adultery, namely sexual intercourse, which is forbidden, and intentional or unlawful intentions. Zina is committed periodically and expects a reward for their actions, even though, in general, they know that adultery is a lousy action prohibited by religion and norms adopted by society and has a significant negative impact on human life.³⁹

Sociologically, prostitution or prostitution is also contrary to the sociological definition of crime. After all, it is categorized as an evil act that is contrary to and violates the norms of social life because it is not only prohibited by religious norms and legal norms but also contrary to the norms of decency in every human conscience.⁴⁰

So, despite the lack of legal instruments and the politics of criminal Law which do not prioritize the problem of dealing with prostitution, investigators and judges try to prosecute perpetrators involved in online prostitution by using Article 27 of the IET Law, where decency norms can be imposed on perpetrators, both pimps, sex workers, buyers. Sex services, as well as intermediaries. Islamic Law as a norm of decency that lives in society or living

³⁶ It was narrated by Abdullah bin Abbas by al-Bukhari dan Muslim.

³⁷ Azman Bin Mohd Noor, "Stoning for Adultery in Christianity and Islam and its Implementation in Contemporary Muslim Societies," *Intellectual Discourse*, vol 18, no 1, (2010): pp. 97-113.

³⁸ Farah Idhar Khaerunisa, "Adultery in The Perspective of Islamic Religious Law and Positive Law In The Indonesian Community," *Hunafa Jurnal Studia Islamika*, Vol. 18, No. 2 (2021): pp. 158-213.

³⁹ Juhaya S Praja, *Filsafat Hukum Antar Madzhab-Madzhab Barat dan Islam*, (Bandung : Yayasan Juhaya Setyapradja, 2014), p. 108.

⁴⁰ Lucky Elza Aditya, "Urgensi Kriminalisasi Terhadap Pelacuran dalam Pembaharuan Hukum Pidana di Indonesia", *Jurnal Hukum*, (2016), p. 2-3.

law can be used as a reference for investigators and judges in applying Article 27 of the IET Law. Article 27, paragraph (1) IET Act reads:

"Anyone knowingly and without right distributes and transmits and makes accessible electronic information and electronic documents that have content violating decency."

Islamic Law, as decency norms that strongly oppose all forms of adultery, is the basis of decency norms that investigators and judges in law enforcement against online prostitution can apply. According to the author, this article is very effective in ensnaring perpetrators of online prostitution, both for providers, liaisons, and sex workers, as well as users or buyers, amidst the lack of regulation and ambiguous criminal law politics against online prostitution crimes. By applying the norms of decency based on Islamic legal norms, where the majority of the population is Muslim, law enforcement against perpetrators of online prostitution can be charged with applicable Law. Of course, by consistently enforcing Article 27 of the IET Law, the growth rate of online prostitution can be suppressed.

Based on the values of religious norms, decency, and humanity, all parties involved in prostitution must be punished according to their actions, according to the principle of *culpa poena par esto*, which is to impose a punishment commensurate with their actions. The criminalization of service users can provide benefits for public order. The threat of criminal sanctions is a deterrent effect against users, prostitutes, and providers of prostitution intermediaries. Because law enforcement problems in Indonesia often occur because there is no binding legal regulation on the actions of users of prostitution services. Moreover, there is the principle of *nullum crimen, nulla poena sine lege scripta*. That is, there is no criminal act, and there is no crime without a written law. The consequence of this meaning is that all criminal provisions must be written. In other words, both acts that are prohibited and penalties that are punishable by prohibited acts must be written explicitly expressively in the Law.

The ideals of just and civilized human Law will not be fully achieved as long as there is prostitution in Indonesia; this happens because prostitution has been a form of traditional slavery against humans for a long time. Humans involved in prostitution become commodities of sexual services that can be traded. The criminalization of service users is aimed at humans controlling their sexual instincts and prohibiting the distribution of their sexual needs in the form of commercial adultery. Another goal is the criminalization of users of prostitution services as a manifestation of fulfilling just and civilized human values, which states that humans are not a commodity that can be traded and therefore need equal respect and treatment for every human being.

Conclusion

Perpetrators of online prostitution, whether pimps, sex workers, users/customers, or other parties involved, can be sentenced under criminal article 27 of the IET Law. As far as we are concerned, at the level of investigation, investigators focused more on taking action against pimps or other helping parties. Meanwhile, sex workers and prostitutes users who actively post or share photos that violate decency are left unpunished. Article 27, which emphasizes the elements of crimes against decency norms, can be used as a basis for law enforcement against online prostitution because the norms of decency in question are religious law norms. Islamic Law, as decency norms that strongly oppose all forms of adultery, is the basis of decency norms that investigators and judges in law enforcement against online prostitution can apply. All forms of adultery, in the perspective of Islamic Law, are crimes that must be given severe sanctions up to the death penalty because of the adverse effects they cause. According to the author, this article is very effective in ensnaring perpetrators of online prostitution, both for providers, liaisons, and sex workers, as well as users or buyers, amidst the lack of regulation and ambiguous criminal law politics against online prostitution crimes. But law enforcement of all these normative provisions will not work well if investigators do not prioritize the fight against online prostitution at the investigation level and judges do not impose maximum penalties on perpetrators.

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