

CRIMINAL LAW POLICY TO FOREIGN PROSTITUTION IN THE PUNCAK AREA IN REFRIGERATION CRIMINAL LAW

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ABSTRACT

Foreign prostitution is one form of crime that is very difficult to handle. One of these prostitution problems arises because of the large number of tourists from Middle Eastern countries to the Puncak area in Cianjur regency and Bogor regency, followed by the many foreigners from Morocco who are called Maghribi women and from Pakistan called Pashtun. The purpose of this study is to analyze what factors that cause the occurrence of criminal acts of foreign prostitution in the region Puncak and how efforts made by the government in preventing and overcoming the occurrence of the crime of prostitution. The research method used in this article is a qualitative approach. Data collection techniques used is interview techniques conducted on 5 CSWs from Morocco and 5 CSWs from Pakistan. With analytical techniques developed by Straruss and Corbin. The conclusions in this study are the factors of prostitution due to economic factors, lack of strict legal arrangements, and the support of the local community. Efforts that have been made by the government to combat the practice of prostitution are: first, make arrangements as well as clear and clear sanctions in terms of migration for foreign nationals who became Commercial Sex Workers (CSWs). Second, change the legal system settings not only from the penal but also non penal. And thirdly, the government has budgeted funds for the economic empowerment of prostitutes so as not to fall back into the practice of prostitution.

Keywords: Legal Policy, Foreign Prostitution, Renewal of the Penal Code, Maghribi and Pashtun.

INTRODUCTION

Talking about prostitution is tantamount to discussing the most ancient problems on earth. The problem is old but feels new to be discussed. It is difficult to determine exactly when the emergence of the profession. However, it can be said that since the existence of the norm of marriage, since along with it also born what is called prostitution, prostitution is considered as a form of deviation from the norm of marriage in society. Sexual intercourse between the two different sexes that is performed outside of marriage and alternating couples either by receiving compensation for money or other materials or referred to as prostitution (Pisani, 2009).

The problem of prostitution is often referred to as a crime without a victim, the definition of a crime without a victim means that the crime does not cause any casualties, but the perpetrator as a victim. Evil that criminological defined as crime without victim is very difficult

to know its existence, because they can do the action with a very closed and only known to certain people, therefore it is very difficult to eradicate the crime (Nanik, 2012).

Life in the city of Bogor, Puncak, and Cianjur (Bopuncur) which has been developed in Indonesia is loaded with the influence of technological progress very rapidly, coupled with the lack of awareness of religious norms and legal norms have a negative impact on society, social values that were once considered sacred by most people, such as nightlife, premarital sex, promiscuity and others. In addition to the above economic crisis, the problem of urbanization and the increase of various basic needs lately greatly affect the life of the community at large, both people who live in the countryside even more people living in urban areas. Where to meet the needs of his life not least there are certain groups of people who practice the deviations of religious norms, morality norms, and violations of the law such as practice prostitution or provide a place or means of practice of prostitution in order to meet the demands of his life (Nik, 2016).

Puncak area in Cianjur regency is not only known as its agrarian territory but is included in the area known as religious city, Puncak is famous for its natural beauty and Cianjur regency is famous for its distinctive pandanwangi rice, but also its "*pure*" and "*refined*" Sundanese and arts his flute. "*Purity*" and "*subtlety*" because the area belongs to the Priangan area. In addition, it is possible that the climates and the natural environment exert influence on certain aspects of the language. This means that geographical is one of the factors that influence the existence of different cultural elements of a society, although the community is still part of the community of a tribe (Sundanese). In this context the Sundanese people are easy to accept (absorb) other cultural elements, then make it as part of the culture (Rusyandi, 2008).

The existence of tourists from Middle Eastern countries has for decades to come and go to Puncak. Culture of Arabian life is quite easy to see with the presence of Warung Kaleng area on Puncak highway, Villa Kota Bunga and other areas around Puncak. In the Warung Kaleng area, almost every building on the edge of Puncak highway is written with Arabic letters. These buildings include the grocery store needs of Arab citizens, money changer, ticket sales, cafe, restaurant, until the rental car. Middle East culture also seems familiar and mixed (acculturation) with local residents, both from language and social life.

The existence of prostitution in the midst of society today reaches 56,000 people spread across 164 localization throughout Indonesia (Ministry of Social Affairs of the Republic of Indonesia). While prostitution in Cianjur regency approximately 215 people spread in the location around Cianjur (Social Service of Cianjur Regency, 2017). In addition to affecting the health sector, prostitution in the community also brings social and economic impacts namely the influence of prostitution mingle with the social conditions that exist in the community, so that the activities of prostitution become a common and commonplace, while the economic impact that arises the benefits derived from the activities prostitution by both prostitutes and the people living in the prostitution environment (Pisani, 2009).

Cool and cool climate conditions and fresh natural scenery support the practice of prostitution that became a famous tourist area in Cianjur regency. One of the prostitution issues is not only domestic sex workers but also from abroad (Morocco, Pakistan and Uzbekistan), who come and go at Bogor, Puncak and Cianjur (Bopuncur). The occurrence of the practice of sex transactions not only with the prostitutes from Bopuncur (domestic prostitutes) but the prostitutes

from Morocco and Pakistan, known as Maghribi and Pashtun, with rates ranging from 5 million to 10 million rupiah with the estimated short time¹.

The mention of the term Maghribi is derived from the word Al-Maghrib which is the classic name of the royal territory which includes Morocco, Libya, Algeria, Tunisia and Libya, located on the western tip of the African continent. From an Arabic perspective, specifically to Morocco, the country is in the far west region (Al-Maghrib Al-Aqsa), slightly more westward than the Andalusian (Spanish) "*magribi-maghribi-maghrebi*" is not at all a term referring to prostitutes Morocco, but the name is an ethnic name. While the term pashtun is an ethnic Afghan ethnic group whose population is in eastern and southern Afghanistan and in the North West Frontier Province, and Balochistan which is a province of Pakistan (Hidayat, 2017).

Puncak area is a special attraction for tourists, especially the lazy peddlers; many prostitutes from Morocco and Pakistan enliven the prostitution business in the area Puncak. The rate of CSWs for Maghribi is 5 Million to 10 Million Rupiah for short time. For long time till morning, impose a tariff of 15 Million to 20 Million rupiah, the price does not include villa rental price or inn. The advantages of the Maghribi because of satisfactory sex service with the term "*cat bath*" is to serve sex from head to toe by licking the whole body of men, and this becomes a plus Maghribi. Meanwhile, Rates with Pashtun is 3 Million to 5 Million Rupiah and for long time until the morning, charging 20 Million to 25 Million Rupiah, the price does not include the rental price of villa or inn. The advantages of Pashtun for being drunk and this is the value plus Pashtun. Sometimes there are guests who deliberately rent not for making love, but ask for a drink together. Another plus, Pashtun always provide extra plus package. In addition to providing services on the bed, Pashtun was always carrying olive oil in their bags to provide full body massage services to guests, both before and after execution.

The usual transaction to order Maghribi and Pashtun is online transactions via social media either Blackberry Messenger to Whatsapp. To transact, potential customers will select the desired CSWs criteria. How to choose it was well structured and organized. The sequential numbers 1 to 25 are clearly displayed along with the names and photos of Maghribi and Pashtun women. To enrol in Maghribi women is quite strict and cannot be arbitrary people, prospective customers must also provide brief information².

In addition to the problem of foreign CSWs, another problem faced by the government of Cianjur Regency is the presence of tourists from Middle East who eventually lived and became citizens of Puncak. Not a few Arab men who also married local women, and not infrequently also participate in the Middle East into Indonesian Workers. This is the problem of identity crisis for the people of Puncak and Cianjur in particular and generally for the people of Indonesia.

The legal regulations governing prostitution in Bopuncur (Bogor, Puncak and Cianjur) area still contain many obstacles, such as: (1). the absence of regulations that specifically deal with prostitution activities; (2). the existence of resistance from the community; (3). Obstacles from the perpetrator and the victim's family. The absence of legislation that specifically regulates prohibition of prostitution either preventively, repressively, rehabilitation and restitution leads to the handling of prostitution throughout Indonesia including in Bopuncur (Bogor, Puncak and Cianjur) still on the way (Andriasari, 2011). So with the purpose of this study is to analyse what factors that cause the occurrence of criminal act of prostitution maghribi and how efforts made by the government in preventing and overcoming the occurrence of the crime of prostitution.

METHOD

This research is a field research with a qualitative approach. The data used in this study is by using primary and secondary data. The primary data that I mean is data from interviews (Sunggono, 2011). Qualitative primary data is generally in the form of perception variations from respondents or customers. Direct interviews were conducted with 10 sex workers who were used as objects of research. Secondary data is used to strengthen primary data obtained from the Office of Social Affairs and Regional Regulations relating to Prostitution in Cianjur Regency. Qualitative data analysis uses analytical techniques developed by Straruss and Corbin (2007) with three major steps, namely: (1) Open Coding; (2) Axial Coding; (3) Selective Coding.

RESULTS AND DISCUSSIONS

Factors of Foreign Prostitution in Puncak Area

Prostitution derived from the Latin *pro-stituere* or *pro-stauree* means allowing self to commit adultery, performing prostitution, fornication and the shooting (Mesites & Gede, 2015). Meanwhile Jolin (1994), said prostitution is a social phenomenon with women selling themselves doing sexual acts as a livelihood. While Schulze (2014), states that prostitution is the surrender of women to many men with payment. While Ekberg (2004) says that prostitution is the delivery of women's bodies by receiving payment, to the crowds to satisfy the sexual appetite of those people.

Viewed from the aspect of education, prostitution is a demoralizing activity. From the aspect of femininity, prostitution is an act of degrading women's dignity. From the economic aspect, prostitution in practice often occurs extortion of labour. From the aspect of health, the practice of prostitution is a very effective medium for transmitting sexually transmitted diseases and very dangerous. From the aspect of security and public order the practice of prostitution can lead to criminal activities. From the aspect of urban structuring, prostitution can reduce the quality and aesthetics of urban environment (Farley, 2004).

The regulation of prostitution in the Criminal Code (KUHP) then there is no single article that specifically regulates (Manullang, 2016) so it is criminally difficult to say that prostitution is a crime, because it does not cause casualties. Similarly, when the moral offenses of Article 281 to Article 303 of the Criminal Code, especially Article 296 and Article 506 of the Criminal Code are not shown in Women Susceptible (Prasetyo, 2010). The provisions in the Criminal Code are addressed to the owners of brothels, i.e. pimps or *muckari* and brokers.

Arrangements relating to prostitution in RKUHP (Draft of the Criminal Code) in Part Four Articles 460 on Adultery mentioned in paragraph (1) shall be punished for adultery with a maximum imprisonment of 5 years,³ however law enforcement issues against prosecution should still be disciplined and prosecuted through the respective Regional Regulations of each region. One of the arrangements in overcoming the practice of prostitution in Cianjur Regency is by the enactment of Regional Regulation namely Regional Regulation Number 21 of 2000 on Prohibition of Prostitution (Peraturan Daerah Kabupaten, 2000). Another rule concerning prostitution is Law Number 21 Year 2007 regarding Trafficking in Persons (Undang-Undang,

2007). While sexual exploitation is any form of exploitation of sexual organs from the victim to gain profit, including prostitution and fornication. Thus, the trafficking of persons should be prevented not only by the criminal law indiscriminately but also through preventive action against the potential victims, as well as the handling of victims in a comprehensive and compatible manner.

Factors of prostitution in addition to the main factors lying in the biological factors and the nature of humanity as a whole, then it makes sense that prostitution is forced into prostitution, there are also factors both on the part of men and women, which bind to various aspects of life in society. From the results of the study, the authors can describe the factors of prostitution, namely: high-level prostitutes are located on economic factors in the sense to fulfil his life that desires luxury, or the special causes contained in biological and psychological factors. While those entering false prostitution are in practice he is veiled on legal provisions, also with an economic background. A woman chooses life as a prostitute because she thinks there is an advantage of being a prostitute; this choice grows from learning factors in her association (Ruh, 2016).

The Government Efforts to Prevent and Address the Crime of Prostitution

In the effort to overcome the crime can be done through penal or non-penal means. Law enforcement by means of penal is one aspect of criminal law application, more emphasizing the effort of crime prevention more emphasize on repressive nature (oppression/eradication/crackdown) after the crime happened, while through non penal path that is effort of handling more emphasize at effort of handling is preventive (prevention/capture/excavation) before the crime occurs (Begum, 2013).

Since non-penal measures are more of a preventive measure for the occurrence of crime, the main objective is about conducive factors for the occurrence of crime, factors that, among other things, centre on issues or social conditions that directly or indirectly can cause or grow substitute crime. Thus from the perspective of criminal politics on a macro and global basis, non-penal efforts occupy key and strategic positions of overall criminal political action (Kelsen, 2006).

The very complex problems with commercial sexual exploitation that exist today, it is necessary to eliminate or at least reduce the obstacles in order to implicate the policy can effectively run, among others: (1) Coordination and cooperation; (2) Handling efforts; (3) Protection Efforts; (4) Rehabilitation and social reintegration efforts (Amalia, 2013).

Various efforts will be conducted synergistically and maximally if the handling of prostitution is done through the penal law policy both penal through legislation with the application of sanctions, and through non penal policies such as prevention, rehabilitation and working capital assistance (restitution). So the revitalization of the handling of prostitution in facing the renewal of the new criminal law can be implemented (Gunakarya, 2002).

There are five steps that must be taken to overcome prostitution. The first step, law enforcement or strict sanctions to all prostitutes Not only pimps, Commercial Sex Workers (CSWs) and their service users who are subjects in prostitution circles should be subject to strict sanctions. The second step, the provision of employment, the poverty factor which is often the

main reason CSWs plunge into the valley of prostitution need not happen if the state provides for the survival of every member of society. Including the provision of employment, especially for men. This is because women should not be the main breadwinners for their families. The third step is education that is aligned. Quality and cost-free education will provide people with the skills and skills to be able to work and work in a good and lawful way, education also instils a basic value of right and wrong and the standards of life that can be taken and not. So the reason for prostitutes returning to the place of prostitution after having skills training because it is more difficult to get money from sewing than to prostitute will not happen when there is a strong planting of the right and wrong standards. Furthermore, the fourth step of social, coaching to form a harmonious family is the completion of the social path which should also be the government's attention. Equally important is the formation of a social environment that is not permissive against immorality so that the perpetrators of prostitution will get social control from the surrounding environment. Then the fifth step is political will. Completion of prostitution requires the implementation of policies based on Islamic law, must be made laws that firmly regulate prohibition of any business related to prostitution (Kelsen, 2006).

Meanwhile, the efforts made by the Cianjur Regency government to reduce the problem of prostitution are as follows:

1. Preventive measures embodied in activities to prevent prostitution, including:
 1. Completion of legislation concerning the prohibition or implementation of prostitution, through regional regulation number 22 of 2007 concerning Anti-Immorality.
 2. Intensification of the provision of religious and spiritual education for commercial sex workers who have been rehabilitated.
 3. Expanding employment. Because most of the prostitutes carry out prostitution because of economic pressure.
 4. Organizing sex education and understanding the value of marriage in family life that has been carried out through a coaching program for couples who will marry by the Ministry of Religion.
 5. Organizing socialization on healthy internet by the Ministry of Education.
 6. Confiscation of books, magazines, films and pornographic images carried out by Non-Governmental Organizations, as well as blocking of internet sites that provide pornography and prostitution businesses by the Ministry of Information and Technology.
2. Repressive and curative efforts include:
 1. Making rehabilitation and resocialization centres for prostitutes, so that they can be returned as normal citizens, to date the rehabilitation centres for prostitutes are in Sukabumi District.
 2. Providing new jobs.
 3. Providing appropriate punishment for prostitutes, to provide a deterrent effect.

CONCLUSION

The factors of the occurrence of the criminal act of prostitution of maghribi in Puncak area are economic factor, poverty, low education, unfair regulation of legal system, supported by people who have interest in earning income in the business of prostitution.

Efforts made by the government in preventing and overcoming the occurrence of criminal acts of prostitution are: (1) law enforcement or strict sanction to all perpetrators of prostitution or adultery; (2) the provision of employment, the poverty factor which is often the main reason that prostitutes enter the prostitution valley need not occur if the state provides for the survival of every member of the community; (3) namely education. Quality and free education will provide the ingenuity and expertise of everyone to be able to work and work in a good and lawful way; (4) i.e. social. Coaching to form a harmonious family is the completion of the social path which should also be the government's attention; (5) is political will. Completion of prostitution requires the implementation of policies based on Islamic law, must be made laws that firmly regulate prohibition of any business related to prostitution.

To reduce or suppress prostitution, the authorities should cooperate with all levels of society together to conduct raids in places suspected of prostitution. To minimize the emergence of such prostitution, it should be done by perfecting the Criminal Code which must set clear and firmly against the practice of prostitution. Thus, law enforcement officers in big cities, especially in Cianjur Regency freely take action against the perpetrators of prostitution in the presence of clear rules so as to eradicate the existence of the practice of prostitution.

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ENDNOTE

1. Interview with Pimps and Perpetrators CSWs in Kota Bunga, Sunday Date January 7, 2017.
2. Interview with Pimps and Perpetrators CSWs in Kota Bunga, Sunday Date January 14, 2017.
3. Draft of the Criminal Code 2017 Article 460 paragraph:
 - (a) Sentenced for adultery with a maximum imprisonment of 5 years:
 1. A man in a marital tie intercourse with a woman who is not his wife.
 2. Women who are in marital ties intercourse with men who are not her husband.
 3. Men who are not in marital ties intercourse with women, when it is known that the woman is in a marriage bond.
 4. Women who are not in marital ties intercourse with men, when it is known that the man is in a marriage bond.
 5. Men and women, each of whom is not bound by a legal marriage, engage in sexual intercourse.
 - (b) The criminal act as referred to in paragraph (1) shall not be prosecuted except on the complaint of husband, wife, parent or child, Article 461 paragraph:
 1. The man who has intercourse with a woman as referred to in Article 460 paragraph (1) letter e with her sexual intercourse because of the promise of marriage then denies the promise because of other tricks, shall be imprisoned for a maximum of 4 (four) years or fines of category III most.

2. In a criminal act as referred to in paragraph (1) resulted in pregnancy and the man is not willing to marry or any barriers to marriage knowing according to the laws and regulations in the field of marriage shall be imprisoned for a maximum of 5 (five) years or the most fine many categories IV.

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