

The Crime of Prostitution in View of the KUHP and Law No. 19 Year 2016

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Abstract

Sex work through social media has now become a criminal problem that is often encountered through social media, Instagram, WhatsApp, Facebook, and other applications such as micat and tantan. This happens with the increase in a person's lifestyle or economic problems. Proof of criminal law in cyber crimes in the form of commercial sex workers through social media is the focus of this research. The type of legal research carried out is normative juridical, so the approach used is the Statute approach and the conceptual approach. Evidence of cyber prostitution is the same as Article 184 of the Criminal Procedure Code, namely regarding evidence in the form of witness statements, expert statements, letters, instructions. However, in the ITE Law, cases that become evidence can be said to be digital evidence because they are in the form of electronic information and/or electronic documents in accordance with the criteria in Article 1 number 1 and number 4 of Law Number 19 of 2016 so that this digital evidence can clarify facts that have occurred supported by other evidence.

Keywords

crime; prostitution; evidence



I. Introduction

The presence of an informatics network system in the form of a deep network these various fields, also creates opportunities for other parties to access the network for their own interests which in the end can harm certain parties. A computer is a series or collection of electronic machines that work together and can perform a series or series of jobs automatically through instructions or work given to them. The internet is a product of the development of information technology which brings enormous changes to the empowerment of information and telecommunications, which in it gave birth to a concept called information globalization, where the limitations of space and time are decreasing in interacting activities and various information about various things that humans need.

As if connected wirelessly without being limited by place. Until now, with the widespread use of computer networks, crimes in the computer sector are also increasing, many cases occur, but not many have reached court. One of the problems faced by law enforcement to ensnare the perpetrators is the problem of proving the guilt of the accused. This fact becomes a challenge for the legal community that must be accepted to solve all the problems that occur due to very rapid technological developments. Crimes using information technology, especially the internet, have reached an alarming stage. Advances in information technology in addition to bringing to the business world a revolutionary Digital Revolutioner Area that is all practical, it also has a terrible dark side such as computer crime, pornography, terrorism, gambling, fraud, theft and so on. Proof is a matter that plays a role in the trial process, with this proof the fate of the defendant is determined.

If the results of evidence with the evidence determined by law are not sufficient to prove the guilt charged to the defendant, the defendant is released from punishment, on the other hand if the defendant can be proven by the evidence referred to in Article 184 of the Criminal Procedure Code, the defendant must be declared guilty and he will be punished. sentenced. Therefore, judges must be careful, careful, and mature in assessing and considering evidentiary issues. Examining to what extent is the minimum limit of "strength of evidence" or "bewijs kracht" of each piece of evidence referred to in Article 184 of the Criminal Procedure Code.

The crimes in question are adultery (Article 284 of the Criminal Code), rape, sexual intercourse (Article 285 of the Criminal Code), sexual intercourse with a woman not his wife who is unconscious (Article 286 of the Criminal Code), sexual intercourse with a woman who is not fifteen years old who is not his wife (Article 287 of the Criminal Code), and having sexual intercourse in marriage with acts that are not yet timed for marriage and causing injury or death (Article 288 of the Criminal Code).⁷ While the rules regarding cyber prostitution are not specifically explained in the law, but regarding matters related to cyber crime, one of the one violation has been regulated in Article 27 paragraph (1) of the Law on Information and Electronic Transactions. The problem in this study is how to review criminal law against cyber prostitution and how to prove in the criminal law aspect of cyber crime in the form of commercial sex peddlers through social media?

II. Research Method

Research methods used normative juridical research with descriptive nature, which uses a statutory approach (statute approach) and a conceptual approach (conceptual approach). A statutory approach is needed for further study on the legal basis. The statutory approach is carried out by reviewing all laws and regulations related to legal issues. In this case the money law used is the Criminal Procedure Code and Law no. 19 of 2016 concerning Information and Electronic Transactions Jo. UU no. 19 Regarding Amendments to Law No. 19 of 2016 concerning Information and Electronic Transactions. This research also uses a conceptual approach, an approach that departs from the views and doctrines that develop in the science of law. by examining these views and doctrines with a systematic interpretation of written legal materials in order to obtain the results of legal analysis.

Sources of legal materials used include primary legal materials and secondary legal materials. Primary legal materials consist of legislation, namely: Law Number 8 of 1981 concerning the Law of Criminal Procedure (State Gazette of the Republic of Indonesia Number 76 of 1981, Supplement to the State Gazette of the Republic of Indonesia Number 3209), Law No. 19 of 2016 concerning Information and Electronic Transactions Jo. UU no. 19 Regarding Amendments to Law No. 19 of 2016 concerning Information and Electronic Transactions. Secondary legal material is legal material that provides a general explanation of what is contained in the primary legal discussion. The secondary legal materials needed in this writing are the opinions of legal experts and literature on law (legal journals and law books).

III. Result and Discussion

3.1 Cyber Prostitution

Cyber prostitution or cyber prostitution comes from two words, namely prostitution and cyber. Prostitution comes from the English 'prostitution'. According to Soerjono Soekanto, prostitution is the same as prostitution, he says that prostitution is a job that gives itself up to the public to perform sexual acts for wages. Meanwhile, according to Frank E. Hagan in Introduction Criminology Theories, Method and Criminal Behavior states that: Prostitution can be defined as the practice of having sexual relations with emotional indifference on a promiscuous and mercenary basis. In some countries and most US States, prostitution itself is not a criminal offense; it is the act of soliciting, selling, or seeking paying customers which is prohibited. Although sometimes referred to in jest as the world's oldest profession, prostitution certainly has been widespread in societies, both ancient and modern. (Prostitution can be defined as the practice of having sexual relations with emotional indifference and based on payment. In some States and most states in the US, prostitution in itself is not a crime; it is prohibited acts of soliciting, selling, or seeking paying customers. Although sometimes referred to as the 'oldest profession in the world', prostitution has become widespread in both ancient and modern societies.

Next is the word cyber describing the place of the activity conducted. Cyber is a term for people to express something related to the internet or cyberspace. Wiener is the originator of Cybernetics theory, admits that the term cyber was once coined by Ampere whose name was used as a unit of current strength. So that when it is drawn the origin of the term cyber has something to do with electric wires. The term cyber is used for Cyborg's electric artificial organs which stands for Cybernetics Organics. One theory state, crime is a product of society its self, in a simple sense that society itself produces crime.

In the State Journal Online it is stated that 'Prostitution is linked as the world's oldest profession. If that's true, it's also one of our longest running crimes. Making the matter worse, the profession is growing thanks to the internet'. The term prostitute according to James A. Inciardi as quoted by Topo Santoso is "The offering of sexual relations for monetary or other gain" usually in the form of money. So, Cyber prostitution is the activity of offering sexual services through cyberspace. Hugh D. Barlow, as quoted by Topo Santoso, stratified the practice of prostitution, namely:

- a. The lowest class is the street prostitutes (the street walkers or street hookers). The place of practice is in the streets, alleys, or city parks.
- b. The prostitutes who work in brothels (commonly called bordellos, cathouses or whorehouses). They work in brothels run (though not always owned) by pimps who may have worked in the same profession.
- c. The highest position is the call girl (call girl). They have different operating methods, because established call girls look after their customers with special services.

Customers' secrets are more protected because to get in touch with them using special references, usually trusted people. From the stratification of prostitution practices as above, cyber prostitution is in the practice of prostitution with the highest position, namely prostitutes can be ordered through cyber media. Cyber prostitution is carried out in cyberspace but not sexual intercourse occurred as the author termed the second version of cyber prostitution, while based on the highest position of the virtuous woman, the author categorizes it as the first version of cyber prostitution. The two cyber prostitutions use the internet as a medium. However, the actions taken are different. Cyber prostitution is part of cyber crime which is the dark side of activities in cyberspace. According to Barda Nawawi Arief, cyber prostitution is part of cyber crime which states that the decency offenses

contained in the Criminal Code can also occur in cyberspace, especially those related to pornography, pimping/brokers, and decency violations/fornication/deeds. indecent / adultery. As part of cyber crime, cyber prostitution has the same characteristics as cyber crime, namely: a. Acts committed illegally, without rights or unethical. Occurs in cyber space/region, so it cannot be ascertained which state jurisdiction applies to it. b. The act is carried out using any equipment that is connected to the internet. c. These actions result in material and immaterial losses (time, value, services, money, goods, self-esteem, dignity, confidentiality of information) which tend to be greater than conventional crimes. d. The need for people who master the use of the internet and its applications. e. These acts are often carried out transnationally/across national borders.

In the prostitution business, women become objects that are offered and commercialized, women's charms are used for material gain. Women are subordinated in a solid system and structure with the building of capitalism, the position of women is very low. This implication can be seen when shooting advertisements, for example with portrait criteria consisting of several aspects, namely beauty, body shape, beauty, and smoothness. Apart from being a social selection factor, women's involvement in advertising is also a dominant factor in the socialization of values, especially the value of 'womanhood'. The involvement of women in the prostitution business does not discourage entrepreneurs from spreading it commercially, but also using the internet. Perpetrators use social networks such as Facebook to launch their actions by using the purpose of friendship into sex transactions with the term 'can use' or bispak, call boys, call girls, or the like related to the activity of offering sex services.

The pimp's way of recruiting prostitutes is very diverse, he recruits young girls. After the pimps managed to seduce the young girls to become their subordinates, they were immediately offered through the website managed by the pimps. Generally, prospective clients register themselves first on the website. After the registration process is complete, the comfort girl will be escorted to the agreed place. The online transaction remains in direct intercourse (the first version of non-commercial prostitution). Meanwhile, the second version of non-commercial prostitution is a new mode with online transactions without direct intercourse but using electronic features such as using a webcam, skype, or the like.

3.2 Proof in the Crime of Online Prostitution

Proof of a criminal act is provisions that contain outlines and guidelines on ways that are justified by law to prove the guilt of the accused against the defendant, proof is also a provision that regulates evidence that is justified by law and which may be used by judges. prove the guilt of the accused. Evidence can be seen as a central point in the trial process in the Court, because in this evidence, the fate of the defendant will be determined. If the results of the evidence with the evidence determined by law are not sufficient to prove the guilt of the accused, the defendant is acquitted of the law. On the other hand, when the defendant's guilt can be proven, the defendant is found guilty, and therefore sentenced to a crime.

Proof of whether or not the defendant has committed the act he is accused of is the most important part of the criminal procedure law. Proving means giving certainty to the judge about the existence of certain events. The six main points that become the measuring tool in the theory of proof can be described as follows:

1. Basis of Evidence What is meant by Basis of Evidence are the basics used to obtain a truth on facts. In other words, the basis of proof is the content/material of the evidence

itself. It can be said that if the evidence is the container, then the basis of the proof is the contents of the container.

2. Instruments of Evidence Evidence tools are tools used to describe or explain a criminal situation or event based on facts that occurred in the past for the purposes of criminal proceedings.
3. Decomposition of Evidence Decomposition is methods used to describe an event or situation based on the use of evidence used to commit a crime. The breakdown of evidence plays a very important role in the examination of cases in court, because it is based on the evidence that the judge establishes his belief.
4. Strength of Evidence What is meant by Strength of Evidence here is the strength of proof of each piece of evidence. In criminal cases, the power of proof usually lies in the facts, where the proof is based on the truth of the facts that have been verified by the judge.
5. The burden of proof required by law to prove the indictment before a court hearing (bewijslast).

The minimum evidence required in proof to bind the judge's freedom (bewijsminimum) In essence, proof begins when there is a legal event. If there are criminal elements (initial evidence that a crime has occurred), then an investigation will be carried out (a series of actions by investigators to seek and find an event that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in this law).), and in Law Number 2 of 2002 concerning the Police in Article 1 point 13, an investigation is a series of actions by an investigator in terms of and according to the method regulated in this law to seek and collect evidence with which evidence makes clear the criminal act. what happened and to find the suspect.

- a. Witness Statement
- b. Expert Description
- c. Letter
- d. Instruction
- e. Defendant's Statement

In Article 5 of the Law on Electronic Information and Transactions it is stated that: Paragraph (1) Electronic information and or printed results of electronic information are legal evidence and have legal consequences. Paragraph (2) Electronic information and or printed results of electronic information as referred to in paragraph (1) is an extension of valid evidence in accordance with the applicable procedural law in Indonesia. In connection with the issues discussed regarding cybercrime using internet facilities, the legal provisions used still refer to the Criminal Procedure Code (KUHAP) and the Law on Information and Electronic Transactions Cyber crime has a different character from general crime, both in terms of perpetrators, victims,

The rapid development of information technology must be anticipated with the laws that govern it where the police are law enforcement agencies that play an important role in law enforcement. In order for a criminal case to reach the level of

prosecution and examination in court, then previously must pass several actions at the level of investigators. Basically, the criminal process goes through the following stages:

1. The stage of investigation by the police
2. Prosecution stage by the Prosecutor (Public Prosecutor)
3. The stage of examination in court.

In the investigation process, the investigators carry out a series of necessary actions in order to obtain evidence that will be required in court. If there is not enough evidence, or

the event is not a criminal act or the investigation is stopped for the sake of law, the investigator is authorized to stop the investigation process, and vice versa if the evidence has been met and the incident is not a crime, the investigator will continue the investigation process by making news. event (case filing) to be submitted to the public prosecutor. The crime of Mayantara (Cyber crime) using internet facilities is very difficult to find and collect evidence to ensnare perpetrators, both perpetrators of internet facilities providers and perpetrators of gambling players themselves.

If there are criminal elements (initial evidence that a crime has occurred), then an investigation will be carried out from that process (a series of investigators' actions to seek and find an event that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in the law). this law), and in Law Number 2 of 2002 concerning the Police in Article 1 point 13, an investigation is a series of actions by an investigator in terms of and according to the method regulated in this law to seek and collect evidence with which evidence makes light of a criminal act. what happened and to find the suspect. According to Petrus Reinhard Golose, as stated in his article in the law bulletin,

- 1) Making a Police Report, which is followed by summoning the Witness from the owner of the ISP (Internet Service Provider) who has known that the ISP is being used by the perpetrator (hacker);
- 2) Examination at the crime scene (TKP) and the internet cafe or cafe net used by the perpetrator, as well as to collect, track and/or confiscate electronic evidence (digital evidence) at the crime scene, such as hard disks;
- 3) Conducting examinations of witnesses and experts who have expertise in the field of information technology, or other institutions;
- 4) Examination of the suspect, after being preceded by forced arrest and/or detention, based on preliminary evidence and/or sufficient evidence;
- 5) Filing and application of criminal articles that can be suspected against suspects. In carrying out investigative activities, sufficient initial evidence is needed, namely evidence to suspect the existence of a crime by requiring a minimum of a police report plus one piece of evidence. This is of course related to the burden of proof that has been required by the law in this case, namely at least two pieces of evidence. In conducting an investigation of a cyber crime case, an investigator can use standard investigative tools, including:
 - a. Information as the basis for a case Information can be obtained from observation, examination of electronic evidence stored on the hard disk or even still in memory. For investigators, It is very important to obtain information through a computer-based crime scene search.
 - b. Interview and Interrogation This tool is used to obtain information from parties involved in cyber crimes. These interviews involve obtaining information by asking witnesses, victims, and other parties who may have relevant information to solve the case. While interrogation includes obtaining information by asking questions to suspects and witnesses. The technique is carried out with a sympathetic approach which includes:
 - a) Logical approach Using reasons to convince the suspect to admit his actions;
 - b) Indifference By pretending not to need a confession because the investigator already has enough evidence even without a confession. This is effective for cases with multiple suspects, where the information in question is contradicted with each other;
 - c) Facing-saving approach By allowing the suspect to give reasons for his actions and show an understanding of why the person concerned did the action.
 - c. Instruments The use of technology in obtaining evidence. In the case of cybercrimes, the use of data recovery techniques to find “deleted” and “erased” information on disks is one type of instrument. In addition, other traditional

examples include forensic techniques for collecting and analyzing evidence and DNA analysis. This is effective for cases with multiple suspects, where the information in question is contradicted with each other; c) Facing-saving approach By allowing the suspect to give reasons for his actions and show an understanding of why the person concerned did the action. c. Instruments The use of technology in obtaining evidence. In the case of cybercrimes, the use of data recovery techniques to find “deleted” and “erased” information on disks is one type of instrument. In addition, other traditional examples include forensic techniques for collecting and analyzing evidence and DNA analysis. This is effective for cases with multiple suspects, where the information in question is contradicted with each other; c) Facing-saving approach By allowing the suspect to give reasons for his actions and show an understanding of why the person concerned did the action. c. Instruments The use of technology in obtaining evidence. In the case of cybercrimes, the use of data recovery techniques to find “deleted” and “erased” information on disks is one type of instrument. In addition, other traditional examples include forensic techniques for collecting and analyzing evidence and DNA analysis. c) Facing-saving approach by allowing the suspect to give reasons for his actions and show an understanding of why the person concerned did the action. c. Instruments The use of technology in obtaining evidence. In the case of cybercrimes, the use of data recovery techniques to find “deleted” and “erased” information on disks is one type of instrument. In addition, other traditional examples include forensic techniques for collecting and analyzing evidence and DNA analysis. c) Facing-saving approach by allowing the suspect to give reasons for his actions and show an understanding of why the person concerned did the action. c. Instruments The use of technology in obtaining evidence. In the case of cybercrimes, the use of data recovery techniques to find “deleted” and “erased” information on disks is one type of instrument. In addition, other traditional examples include forensic techniques for collecting and analyzing evidence and DNA analysis.

- 6) Compiling a case report After all physical evidence has been collected and documented and the interrogation has been carried out, the next step is to prepare a case report containing: a. Investigation report; b. Reports on investigations of criminal cases which are followed up from the investigation reports; c. Documentation of electronic evidence d. Laboratory reports from computer forensic experts; e. Statements in writing from witnesses, suspects, and experts; f. Crime scene reports, photographs and video recordings; g. Print out of related digital evidence.
- 7) Examination of the case file by the Public Prosecutor The public prosecutor provides direction to the investigator on the weaknesses of the case file and additional information or additional evidence that needs to be obtained or clarifying the facts in order to strengthen the claim and prepare witnesses for the trial process if the case is transferred to the court.
- 8) Making a decision to sue If the case file is declared complete, the public prosecutor carries out legal prosecution of the suspect in a trial which is very dependent on the jurisdiction and procedures determined by law. At this stage the choice of the type of claim is determined based on the evidentiary law regulated in the Criminal Procedure Code.

In the prosecution process, a prosecutor who acts as a public prosecutor makes an indictment, where the indictment is based on evidence that has been researched, examined and stored by the prosecutor. In accordance with the evidentiary system adopted by the Criminal Code, the prosecutor in compiling his claim must also be guided by the contents of Article 183 of the Criminal Procedure Code, namely that there are at least two valid

pieces of evidence according to the law, which, if they have met the requirements of the case, will be forwarded to the examination process at the trial court. With regard to cybercrime by using internet facilities, the prosecutor's office coordinates with the police as investigators to ensnare the perpetrators of the crime, but if no strong evidence is found,

Based on the description above, it can be analyzed that the way that must be taken by the police and the Prosecutor's Office in the event of a cyber crime is to investigate the case by looking for an IP address on the web and looking for electronic evidence. Because the web ip address is the first strong evidence in the disclosure of cyber cases. According to article 5 of Law no. 19 of 2019 concerning Electronic Information and Transactions which reads: (1) Electronic Information and/or Electronic Documents and/or their printed results are legal evidence. (2) Electronic Information and/or Electronic Documents and/or their printed results as referred to in paragraph (1) is an extension of valid evidence in accordance with the applicable procedural law in Indonesia. (3) Electronic Information and/or Electronic Documents are declared valid if they use Electronic Systems in accordance with the provisions stipulated in this Law. There is a new legal breakthrough because Electronic Information and/or Electronic Documents and/or their printed results are an extension of legal evidence in accordance with the Procedural Law. But to "certify" the electronic evidence before the court is by processing the electronic evidence from an electronic form generated from a computer system into an output that is printed on paper media.

Namely, the embodiment of the electronic evidence has been changed in hardcopy, that is, printed, without any modification from humans. Then to strengthen it, the print out can be submitted to expert witnesses to be analyzed and submitted for validity before the court. During the examination process in court, the judge evaluates the strength of the evidence presented by the public prosecutor in his indictment. The judges in this case are guided by the negative evidence system according to the law, namely Article 183 of the Criminal Procedure Code which determines at least two pieces of evidence accompanied by conviction. The problem is sometimes in a criminal case process it is difficult to get an absolute truth because of the lack of available evidence,

The number of cases that have piled up is usually stalled at the police level because prosecutors in this case usually reject the case files submitted by investigators because of the lack of evidence supporting the charges. It is possible to eliminate evidence, this is a preventive measure to avoid justification of a proof both at the investigation level and at the examination level. Therefore, the role of evidence is very important in the criminal process so that it can be said that proof is the heart of criminal procedural law. Understanding the description above, it can be analyzed that to prove an act of cyber crime in court. For this reason, the evidentiary system in trial must be based on a positive legal-based evidence system. Where the law stipulates in a limited way which evidence can be used by judges. If the evidence has been used legally as stipulated by law, then the judge must determine the valid state of being proven, even though the judge apparently believes that what must be considered proven is not true.

This system seeks to get rid of all subjective judgments of judges and binds judges to strict rules of evidence. "This system is also called the theory of formal proof (*formele bewijstheorie*)". This theory was rejected by Wirjono Prodjodikoro to be adopted in Indonesia, because he said how judges can determine the truth other than by stating their beliefs about the truth, after all, the belief of an honest and experienced judge may very well be in accordance with people's beliefs. In the trial must also use a system of evidence based on the judge's belief for logical reasons (*la conviction raisonnee*). This proof system, the judge plays an important role here. A judge can only punish a defendant if he believes

that the act in question is proven to be true. This belief must be accompanied by reasons based on a series of thoughts (logic). "The judge is obliged to describe and explain the reasons that form the basis of his belief in the guilt of the accused". This evidence system recognizes the existence of certain evidence but is not limited by law.

Evidence like this clearly shows that a piece of evidence is not evidence, at least two pieces of evidence must be accompanied by the Judge's Confidence. Although there is sufficient evidence but the judge is not sure or the judge is convinced but the evidence is not sufficient, then the judge may not impose a sentence on the defendant. In Negative Wetterlijk's theory, it is clear that there is a relationship between the evidence and the judge's belief where the judge is bound by the law and he gains confidence that the evidence has been given so that the sentence can be imposed. Based on the description above, it can be analyzed that it is not simple to apply the rule of law to the perpetrators involved in cyber crime.

This is because the internet is cross-border. Many parties intersect with one another and this will complicate the examination process in court. Therefore, a solution must be found so that the perpetrators involved in cyber crime can be brought to justice. Which law applies is actually not as difficult as it has been so far, the perpetrators involved in this cyber crime can be sentenced to criminal penalties in accordance with applicable provisions (positive law) in accordance with the citizenship status of the perpetrator. Then it is also possible for foreigners who commit criminal acts in the territory of Indonesia to be punished by using Indonesian criminal law. This is in accordance with the principle of passive nationality. What we have to do if we want to use Indonesian law to catch foreign actors is to enter into an extradition treaty with the perpetrator's country of origin. The reason is, in the process of investigation and investigation, cyber crime cannot be done alone and it is necessary to coordinate with Interpol, FBI, and others.

IV. Conclusion

Proof of cyber prostitution is the same as in Article 184 of the Criminal Procedure Code, namely regarding evidence in the form of witness statements, expert statements, letters, instructions. However, in the case of ITE which becomes evidence, it can be said to be digital evidence because it is in the form of Electronic Information and/or Electronic Documents that comply with the criteria in Article 1 point 1 and number 4 of Law No. 19 of 2016 which includes writing, sound, pictures, maps, designs, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex,

teletype or the like, processed letters, signs, numbers, access codes, symbols, or perforations that have meaning or can be understood by people who are able to understand them and in analog, digital, electromagnetic, optical, or similar forms, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writing, sound, pictures, maps, designs, photos or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand it, which in the decision above is evidence that has the position to explain a cyber crime that may be committed by the suspect, so that this digital evidence clarifies the facts that happened with the support of other evidence.

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