



Criminal for Prostitution Based on Regional Regulation of Surabaya City Viewed From the Perspective of the KUHP

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Received: 25 December 2022; Revised: 27 May 2023; Accepted: 30 May 2023

Abstract

Crime cannot be separated between space and time, it can be committed by anyone and the victim can be anyone. Crime not only violates legal norms, but also violates social norms that apply in society and religious norms. Currently, if interpreted in reverse (a contrario) if there is an act (prostitution) which is of course an act that is condemned by society, but on the one hand it is not listed as an act or a criminal offense according to the Criminal Code (KUHP). how is the classification of this action and how is the law enforcement effort carried out. Being a commercial sex worker (PSK) and someone who uses the services of a commercial sex worker (PSK) are considered to have committed a crime and can be subject to criminal sanctions according to Surabaya City Regional Regulation Number 2 of 2020 concerning Amendments to Surabaya City Regional Regulation Number 2 of 2014 concerning the Implementation of Public Order and Public Peace, on the one hand the Criminal Code does not qualify these actions as criminal acts. The clash of norms occurred in the arrangement of the criminal law for prostitution in the city of Surabaya. The Civil Service Police Unit for the City of Surabaya with Civil Service Investigators (PPNS) for the City of Surabaya as the front guard in enforcing criminal law contained in the Regional Regulation of the City of Surabaya Number 2 of 2020 concerning Amendments to the Regional Regulation of the City of Surabaya Number 2 of 2014 concerning the Implementation of Public Order and Community Peace. This type of legal research is a type of normative legal research, which aims to examine positive legal provisions in this case criminal law as a source of law.

Keywords: Conflict of Norms, Crime, Law Enforcement, Prostitution

Introduction

According to its origin, there are no official restrictions and no interference from the authorities in crime. Crime was initially only seen as a personal or family matter. Individuals who feel they are victims of other people's actions will avenge the perpetrator or his family. This concept can be found in the *Code of Hammurabi* (1900 BC), Ancient Roman legislation (450 BC) and in ancient Greek society such as stealing a cow. This concept of revenge then developed into actions shown to the King, such as betrayal. Meanwhile, the actions of individuals are still a private domain. Over time, crime began to become the king's (currently the

state's) business, namely by the development of what is known as *parents patriae*. This concept was then delegated to the state so that vigilantes were not allowed. (Maruli, 2021)

In the XVIII century, the classical school emerged as a reaction to legal uncertainty and injustice as well as the arbitrariness of the rulers at that time, the *ancient regime*. The classical school defines crime as an act that violates the law. The most important teaching of the classical school is the doctrine of *nullum crimen sine lege*, which means that there is no crime if the law does not declare the act as a prohibited act. Then came dissatisfaction with this school at the end of the nineteenth century and a new view

which was pioneered by C. Lombroso. This school seeks to overcome the relativity of criminal law by proposing the concept of *non* -legal crime and interpreting crime as an act that violates natural *law*. To qualify an act as a crime, there are 7 (seven) interrelated main elements that must be fulfilled as follows (Maruli, 2021):

1. There are actions that cause harm;
2. The existing losses have been regulated in the Criminal Code (KUHP);
3. There must be an act (*criminal act*);
4. There must be evil intent (*criminal intent-mens rea*);
5. There is a fusion between evil intentions and evil deeds;
6. There must be a mix between the losses that have been regulated in the Criminal Code and the actions;
7. There must be criminal sanctions that threaten these actions.

Crime is not only based on the principle of legality alone, but there are social values that must be considered. Social norms that are violated also cause an act to be said to be a crime. The definition of crime according to some experts is described as follows (Maruli, 2021: 66-67):

1. Cardboard; From a formal juridical point of view, crime is a form of behavior that is contrary to human morality (immoral), constitutes a society, is asocial in nature and violates the law and criminal laws;
2. JM Bemmelen; views crime as an anti-social act that causes harm, immorality in society so that there is anxiety in society, and to appease society, the state must carry out punishments for criminals;
3. MA Elliot; say that crime is a problem in modern society or that failed and unlawful behavior is punishable by imprisonment, capital punishment and fines, etc.;
4. WABonger; said that crime is an act that is highly anti-social which is consciously challenged by the state in the form of giving suffering;
5. Paul Moedikno Moeliono; crime is an act of violating legal norms which is interpreted or should be interpreted by society as an act that is detrimental, annoying so that it cannot be tolerated (the state acts);
6. JESatapy and B. Marjono Reksodiputro; crime contains a certain connotation, is a relative understanding and labeling, contains variability and dynamics and is related to actions or behavior, which is judged by

some of the majority or a minority of society as an anti-social act, a rape of social values and/or living legal feelings in society according to space and time.

Etymologically, prostitution comes from the Latin word "*prostare*" which means to sell, peddle which is then known as "*prostituere*" which means to surrender openly to adultery (Simanjuntak, 1985). The definition of prostitution in the Big Indonesian Dictionary (KBBI) is the exchange of sexual relations with currency or gifts as a trade transaction and prostitution. Besides that, prostitution can also be interpreted as having sexual relations with multiple partners who are not the wife or husband, which is carried out in certain places (localization, hotels, recreation areas, etc.), where they generally get money after having intercourse (Dewi, n.d.). Prostitution can occur due to several factors as follows (Sulistyaningsih, 1997):

1. Forced by economic conditions, economic conditions force a person to undergo prostitution. Included in this factor are families with low socioeconomic status, an urgent need to earn money to support themselves and their families, have no source of income, have a low level of education, lack skills, or are deliberately sold by their families to prostitution places;
2. Go with the flow, prostitution is considered an easy option in making a living because other people (neighbors) have already done it and for local people prostitution can be used as an alternative job;

Frustration, one's failure to achieve life goals. For example, someone who really craves a happy home life will be frustrated if they experience a divorce, someone who loves their lover will be frustrated if they experience love failure. This situation can cause disappointment and heartache. In general, those who engage in prostitution because they want to avenge their hurt.

Everyone who commits a crime can be subject to criminal sanctions. Regarding an act that can be classified as a crime or not, it must refer to Article 1 paragraph (1) of the Criminal Code which is formulated in Dutch as "*Gen feit is strafbaar dan uit kracht van eene daaraan voor afgegane wetteijke strafbepalingen*" which means "there is no act who can be punished, except based on criminal provisions according to existing laws rather than the act itself (Lamintang, 1996 : 123).

Judging from the history of its birth, there is no doubt that the criminal provisions as stipulated in Article 1 paragraph (1) of the Criminal Code have a close relationship with human efforts to obtain legal certainty. Article 1 paragraph (1) of the Criminal Code aims to prevent the arbitrariness of the ruler (state) which can harm its population.

Arrangements regarding criminal law that are clear and not overlapping with regard to criminal acts of prostitution are absolutely necessary, so that the purpose of criminal law in J's opinion. Remmelink can be reached. According to J. Remmelink criminal law is not aimed at oneself but is aimed at upholding the rule of law, protecting the legal community (Abidin & Hamzah, 2010). In the English language literature criminal purposes are usually abbreviated as 3R and 1D (*Reformation, Restraint, Retribution* and *Deterrence*). **Reformation** means repairing or rehabilitating criminals to become good people and useful for society. Society will benefit and no one will lose if criminals become good. **Restraint** means alienating the offender from society (Abidin & Hamzah, 2010).

Elimination of offenders from society means that society will become safer. So it has something to do with the reform system. **Retribution** is retribution against the offender for having committed a crime. Currently, there are many critics as a system that is barbaric and not in accordance with civilized society. **Deterrence** means deterring or preventing so that the perpetrators of crimes or other people who have the potential to become criminals will be deterred or afraid to commit crimes because they see the punishment imposed on the offenders. (Abidin & Hamzah, 2010)

The Surabaya City Government established the Regional Regulation of the City of Surabaya Number 2 of 2020 concerning Amendments to the Regional Regulation of the City of Surabaya Number 2 of 2014 concerning the Implementation of Public Order and Public Peace where several acts of prostitution were criminalized. The policy of using criminal sanctions in Regional Regulations can essentially also be said to be part of criminal politics (*criminal policy*). As the opinion of Marc Ancel " *the rational organization of the control of crime by society* " in relation to the problem of criminalization, Muladi argues that there are several doctrinal measures that must be considered as follows (Muladi, 1995):

1. Criminalization must not give the impression of causing "over- *criminalization* " which is included in *the misuse of criminal sanction*;
2. Criminalization must not be *ad hoc*;
3. Criminalization must contain both actual and potential *victimizing* elements;
4. Criminalization must take into account the analysis of costs and results and the principle of *ultimum remedium*;
5. Criminalization must produce *enforceable* regulations;
6. Criminalization must be able to gain public support;
7. Criminalization must contain elements of " *subsociability* " (resulting in danger to society, even if it's very small);
8. Criminalization must pay attention to the warning that every criminal regulation limits the freedom of the people and provides the possibility for law enforcement officials to curb this freedom.

Having explained the background above, in this legal research, 2 (two) formulations of the problem will be discussed as follows: (1) Is prostitution a crime that can be subject to criminal sanctions?, (2) How is law enforcement against prostitutes in terms of Regional Regulation of the City of Surabaya Number 2 of 2020 concerning Amendments to Regional Regulation of the City of Surabaya Number 2 of 2014 concerning Implementation of Public Order and Public Peace.

Material and Method

This type of legal research is a type of normative legal research, which aims to examine positive legal provisions in this case criminal law as a source of law. The problem approach in this legal research uses a statute approach which is carried out by examining the laws and regulations that are related to the legal issues being discussed. This legal research also uses a conceptual approach (conceptual approach) which according to Peter Mahmud Marzuki is to move on the views of experts so that researchers need to look for legal ratios and the ontological basis for the birth of laws and researchers can understand the philosophical content behind the law. -laws as well as conclude whether or not there is a clash of philosophies between the laws and the issues at hand, and accompanied by a case approach. (Rijadi, 2017).

emerged that focused on actors in the study of crime. This school is called a positive school which was pioneered by C. Lombroso. This school seeks to overcome the relativity of criminal law by proposing the concept of *non* -legal crime and interpreting crime as an act that violates natural *law*. To qualify an act as a crime, there are 7 (seven) interrelated main elements that must be fulfilled as follows (Maruli, 2021):

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Results and Discussion

Prostitution as previously explained is an act that violates the norms of decency that apply in society. Prostitution as a delict of decency is regulated in Book II Chapter XIV of the Criminal Code with the title "About Crimes Against Decency/Decency" which consists of Article 281 of the Criminal Code to Article 303 bis of the Criminal Code with the following qualifications of criminal acts:

1. Article 284 of the Criminal Code regulates husbands and wives who are proven to have committed an affair (adultery);
2. Article 285 of the Criminal Code regulates sexual intercourse with violence or threats of violence (rape);
3. Article 286 of the Criminal Code regulates intercourse with women who are unconscious/helpless;
4. Article 287 of the Criminal Code regulates sexual intercourse with underage women;
5. Articles 289, 290, 292, 293, 294, 295 of the Criminal Code regulate obscene acts with several qualifications in them (fornication)
6. Article 296 of the Criminal Code regulates the act of making, connecting, facilitating obscene acts by other people with other people and used as a livelihood or habit (pimps/pimps).

Based on Article 296 of the Criminal Code, the crime of prostitution that can be pun-

ished is only for someone who provides or connects and makes obscene acts (prostitution) by people with other people as their livelihood. In this case pimps/pimps can be punished. Acts related to sexual lust that occur between people who are competent at law and each of them is not bound by marriage are not prohibited and do not qualify as a crime as stipulated in Chapter XIV of the Criminal Code. Moreover, prostitution (obscene acts) is included in the category of crime as regulated in Book II of the Criminal Code. Regulation of an act in the category of Crime raises several consequences such as a longer probationary sentence for the offence (Article 14 b of the Criminal Code) and the threat of a heavier sentence than the criminal offence. The occurrence of a clash of norms in the provisions Based on Article 37 paragraph (2) in conjunction with Article 44 in conjunction with Article 46 Regional Regulation of the City of Surabaya Number 2 of 2020 concerning Amendments to Regional Regulation of the City of Surabaya Number 2 of 2014 concerning the Implementation of Public Order and Public Peace with Article 296 of the Criminal Code makes enforcement criminal law becomes confusing and prone to injustice in law enforcement. This is due to differences in qualifications, threats of punishment, and forms of criminal acts as follows:

Table. 1

ACTION Or DEEDS	REGIONAL REGULATION OF SURABAYA CITY NUMBER 2 OF 2020	Criminal Code
Immoral in public	Convicted Article 11 paragraph (1) letter n, Article 37 paragraph (1)	Convicted Article 281
Becoming a commercial sex worker (PSK)	Convicted Article 37 paragraph (2) letter a	Not a Criminal Act
Ordering, facilitating, persuading, forcing others to become commercial sex workers (PSK)	Convicted Article 37 paragraph (2) letter b	Convicted Article 296
Using the services of commercial sex workers (PSK)	Convicted Article 37 paragraph (2) letter c	Not a Crime

Conflict of norms between Article 37 paragraph (2) letter a and letter c of Surabaya City Regional Regulation Number 2 of 2020 concerning Amendments to Surabaya City Regional Regulation Number 2 of 2014 concerning the

Implementation of Public Order and Public Peace with Article 1 paragraph (1) Technically the Criminal Code can be tested based on Article 9 paragraph (2) Law Number 13 of 2022 Concerning the Second Amendment to Law

Number 12 of 2011 Concerning the Formation of Legislation, then in one case the laws and regulations are suspected to be contrary to Law, the review is carried out by the Supreme Court. The criminalization of prostitution as stipulated in Article 37 paragraph (2) letters a and c of Surabaya City Regional Regulation Number 2 of 2020 concerning Amendments to Surabaya City Regional Regulation Number 2 of 2014 concerning the Implementation of Public Order and Public Peace is not justified by legal certainty. It can even be said that the Regional Regulation violates the provisions of the applicable laws and regulations (KUHP). Even though based on Article 15 paragraph (2) of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation and Regulations, it gives authority to Regional Governments to make Regional Regulations which contain criminal sanctions in them, but the regulation should the punishment contained in it may not conflict with criminal arrangements at the level of higher laws and regulations.

The hierarchy of Legislation is regulated in Article 7 paragraph (1) of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly (TAP MPR);
3. Laws/Government Regulations in lieu of Laws (Perpu);
4. Government Regulation (PP);
5. Presidential Regulation (Perpres);
6. Provincial Regulation (Provincial Perda);
7. Regency/City Regional Regulations (Regency/City Perda).

The existence of a hierarchy of laws and regulations in the Indonesian constitutional system is a system for maintaining consistency and adherence to the principles of positive law in Indonesia (Aditya, 2008). The same thing was conveyed by Nimatul Huda who stated that if lower laws and regulations conflict with those above, then these regulations can be demanded to be canceled or null and void (*van rechtswege*) (Aditya, 2008). Regarding the criminal provisions governing prostitution, the Surabaya City Regional Regulation Number 2 of 2014 may not conflict with the Criminal Code as a statutory regulation which is hierarchically above it. Regarding criminal acts (*strafbaarfeit*) in the Criminal Code Bill, it departs from the

principle of legality which states that the law (KUHP) is the main source in determining prohibited acts. In addition, the Criminal Code Bill also recognizes or confirms the existence of living law in society (*living law*) as a basis for declaring prohibited acts. In other words, the concept apart from starting from the existence of the formal Legality Principle (Article 1 paragraph (1) of the Criminal Code), also adheres to the Material Legality Principle which originates from *living law*, both Customary Law and Religious Law (Zaidan, 2014).

Furthermore, stated by Barda Nawawi Arief, the concept of renewal in criminal law is currently being fought for which is essentially a reconstruction/ reconceptualization of the existing Criminal Code. Therefore, the Criminal Code Bill defines the Goals and Guidelines for Sentences, one of which is its function, namely the Formulation stage (legislative policies), the application stage (judicial policies) and the Execution stage (administrative/executive policies) so that there is coherence and integration (Aditya, 2008). The Criminal Code Bill which has not become a legal regulation still cannot be used based on the Legality Principle. In this case, prostitution, even though we know that prostitution in morality and decency is qualified as a bad act, being a commercial sex worker (PSK) and using the services of a commercial sex worker (PSK) is not a crime as long as each of them has legally competent and not bound by marital relations,

B. The law enforcement process for the crime of prostitution is based on Surabaya City Regional Regulation Number 2 of 2020 concerning Amendments to Surabaya City Regional Regulation Number 2 of 2014 concerning Implementation of Public Order and Public Peace

Based on Article 43 of the Regional Regulation of the City of Surabaya Number 2 of 2020 concerning Amendments to the Regional Regulation of the City of Surabaya Number 2 of 2014 concerning the Implementation of Public Order and Public Peace, it is stated that the Regional Head has the authority to carry out guidance, control and supervision of the implementation of public order and public tranquility. by the Civil Service Police Unit together with Civil Servant Investigators (PPNS) with other relevant regional work units. The existence of the Civil Service Police Unit is regulated in Government Regulation (PP) Number 16 of 2018 concerning Civil Service Police Units. This government regulation serves as a technical implementation regarding the duties and

functions of the Civil Service Police Unit and the authorities attached to it. By definition, based on Article 1 point 1 of Government Regulation Number 16 of 2018 concerning the Civil Service Police Unit, it states that the Civil Service Police Unit is a regional apparatus formed to enforce Regional Regulations and Regional Head Regulations, administer public order and peace and carry out community protection. In carrying out its duties and functions, the Civil Service Police Unit has the authority regulated in Article 7 of Government Regulation Number 16 of 2018 concerning the Civil Service Police Unit as follows:

- a) Carry out non-judicial enforcement actions against community members, apparatus, or legal entities that violate regional regulations and/or regional regulations;
- b) Take action against members of the public, apparatus or legal entities that disturb public order and public peace;
- c) Carry out investigative actions against community members, apparatus, or legal entities suspected of violating regional regulations and/or regional head regulations; and
- d) Carry out administrative actions against community members, apparatus, or legal entities that violate local regulations and/or regional regulations.

Apart from being subject to criminal sanctions, the crime of prostitution in the City of Surabaya can be subject to administrative sanctions as stipulated in Article 44 paragraph (1) of Surabaya City Regional Regulation Number 2 of 2020 concerning Amendments to Surabaya City Regional Regulation Number 2 of 2014 concerning Implementation of Public Order and Public Peace.

While regarding criminal procedural law in the investigation stage, violations of Article 37 of Surabaya City Regional Regulation Number 2 of 2020 concerning Amendments to Surabaya City Regional Regulation Number 2 of 2014 concerning the Implementation of Public Order and Public Peace were carried out by Regional Civil Service Investigators. Based on Article 2 of the Surabaya City Regional Regulation Number 18 of 2014 concerning Civil Servant Investigators, Regional PPNS are under and responsible to the Mayor of Surabaya through each SKPD head concerned and coordinated by the Civil Service Police Unit Head as the head of the PPNS secretariat. The authorities and obligations of the Surabaya City Regional PPNS

are regulated in Article 4 in *conjunction* with Article 7 of the Surabaya City Regional Regulation Number 18 of 2014 concerning Civil Servant Investigators as follows:

- 1) Regional PPNS Authority City of Surabaya
 - a. Receiving a report or complaint from someone about a criminal act for violating a Regional Regulation;
 - b. Carry out the first action and inspection at the scene;
 - c. Ordering someone to stop and checking the suspect's identification;
 - d. Confiscate objects or letters;
 - e. Taking fingerprints and photographing a person;
 - f. Call people to be heard and examined as suspects or witnesses;
 - g. Bringing in experts designated in connection with the examination of cases;
 - h. Holding an end to the investigation after receiving instructions from the POLRI investigator that there was not enough evidence and then through the POLRI investigator notifying the Public Prosecutor, the suspect or his family; and
 - i. Take other actions according to law that can be accounted for.
2. Regional PPNS Obligations City of Surabaya
 - a. Carry out investigations and receive reports or complaints on violations of Regional Regulations that contain criminal sanctions;
 - b. Submit the results of the investigation to the Public Prosecutor and/or the court through the POLRI Investigative Supervisor coordinator in the same jurisdiction;
 - c. Make minutes of every action in terms of:
 1. Examination of suspects;
 2. Entering the house and/or other enclosures; confiscation of objects;
 3. Mail check
 4. Examination of witnesses; and
 5. Examination of the scene.
 - d. Comply with the PPNS code of ethics;
 - e. Make a report on the implementation of tasks to the Mayor through the Head of the Civil Service Police Unit as Chair of the PPNS Secretariat.

In the process of law enforcement against local regulations, the Civil Service Police Unit can coordinate with the Indonesian National Armed Forces (TNI), the Indonesian National Police, the Indonesian Attorney General's Office (Attorney) and the Courts located in the Regency/

City provinces (Article 8 Surabaya City Regulation Number 16 year 2018). In this case, actually the Civil Service Police Unit can coordinate with the National Police regarding Article 37 paragraph (2) letters a and c of the Regional Regulation of the City of Surabaya Number 2 of 2020 concerning Amendments to the Regional Regulation of the City of Surabaya Number 2 of 2014 concerning the Implementation of Public Order and Public Peace which qualify a person who becomes a commercial sex worker (PSK) and a person who uses the services of a commercial sex worker (PSK) can be punished or not.

Actions of arrest or control by the Civil Service Police Unit Surabaya City against commercial sex workers (PSK) or people who use the services of commercial sex workers (PSK) were found in several cases in Surabaya City:

1. Two street buskers and two commercial sex workers (PSK) were caught by the Rembulan Malam II Care Team while carrying out their respective activities on Jalan Diponegoro, Jalan Tambak Asri, and Jalan Demak, Surabaya, Tuesday (12/19/2017) early morning (Wicaksono, 2017). This was conveyed by the Field Controller of the Second Night Moon Orphanage Team, Abdul Razak from the Civil Service Police Unit Surabaya City Government. "We secured two prostitutes in two different places, the one on Jalan Diponegoro when hanging out waiting for customers while the ex-localized one when receiving customers and the buskers performing at TL Dupak-Demak. After we secured them, we recorded the four of them and gave directions not to carry out the action again because they violated municipal regulations. Then the two prostitutes and a busker who had been caught were taken to the social boarding school in Keputih Surabaya to receive further instructions."
2. Even though Dolly's localization has been closed since 2014, prostitution activity in the city of Surabaya has never been quiet. The proof is that last night the Civil Service Police Unit, the Surabaya City Government managed to arrest a socioeconomically vulnerable woman (WRSE), Friday morning, July 5 2019. Wearing a tight t-shirt and hot pants, this 30-year-old woman was caught while looking for a male masher around the Kembang Kuning cemetery in Surabaya. Raids on socioeconomically vulnerable women (WRSE), last night only managed to catch one woman. In fact, this area has be-

come an open secret and is still a location for prostitution (Ngopibareng.id, 2019).

3. A total of 14 commercial sex workers (PSK) were caught by the Civil Service Police Unit, Linmas, and the Surabaya City Transportation Agency. the Civil Service Police Unit Company Commander, Abdul Razak said, the raid was carried out in the Surabaya Wonokromo Station area, besides that the Civil Service Police Unit also succeeded in securing 1 male customer, 1 pimp, 14 prostitutes and 2 men who gambled. (Kurniawan, 2019)

The Surabaya City Government instead of making a Regional Regulation which contains criminal sanctions for prostitutes (PSK), it will be more useful if it maximizes rehabilitation and empowerment programs. Empowerment activities, according to Silkondze, are activities that are able to develop certain imaginative educational techniques to arouse public awareness. Empowerment orientation must help the community to be able to develop themselves on the basis of existing innovations, determined in a participatory manner, whose methodological approach is oriented to the needs of the target community and practical matters. Both in individual and group services. The role of consultant, mentor and information delivery role. Thus the participation of the target community itself becomes very dominant (Nugroho, 2017).

According to Sumaryadi, community empowerment is an effort to prepare the community in line with efforts to strengthen community institutions so that they are able to realize progress, independence and prosperity in an atmosphere of sustainable social justice. Helping the authentic and integral human development of people who experience discrimination, empowering groups of people socially and economically so that they can be more independent and can meet their basic needs in life (Nugroho, 2017). This is the main thing to do because it is not uncommon for commercial sex workers (PSK) who have actually been given training and material for their survival to return to becoming commercial sex workers (PSK) because the existing empowerment program has not been carried out seriously and continuously.

Conclusion

1. There is a *conflict of norms* regarding regulation of prostitution as criminal law. The Criminal Code regulates prostitution as a crime only in the act of providing a place, facilitating prostitution and serving as a livelihood (pimps, pimps).

On the other hand, the Regional Regulation of the City of Surabaya Number 2 of 2020 concerning Amendments to the Regional Regulation of the City of Surabaya Number 2 of 2014 concerning the Implementation of Public Order and Public Peace in Article 37 further adds that not only pimps and pimps can be punished, but criminalization occurs that the act of being a peddler Commercial sex (PSK) and people who use the services of commercial sex workers (PSK) are criminal acts that are punishable by criminal sanctions.

2. Enforcement of criminal sanctions in the Regional Regulation of the City of Surabaya Number 2 of 2020 concerning Amendments to the Regional Regulation of the City of Surabaya Number 2 of 2014 Concerning the Implementation of Public Order and Public Peace is carried out by the Civil Service Police Unit and Regional PPNS of the City of Surabaya. Coordination between Civil Service Police Unit and TNI-Polri is only limited to raiding places suspected of being used in cases of prostitution, considering that the criminalization of prostitution has been regulated in the regional regulation. Civil Service Police Unit in their authority to carry out non-judicial control, which means that it does not reach the Court stage, imposing criminal sanctions of imprisonment can be given through a trial on the spot if someone is found to have violated the criminal provisions in the Regional Regulation.

Suggestion

1. Regional Regulations in containing criminal law up to the imposition of criminal sanctions must not conflict with statutory regulations that are higher than the Regional Regulation itself. Regional Regulation of the City of Surabaya Number 2 of 2020 concerning Amendments to Regional Regulation of the City of Surabaya Number 2 of 2014 concerning the Implementation of Public Order and Public Peace should be an elaboration of the criminal act of decency regulated in the Criminal Code, strengthening the regulation of criminal decency (prostitution) as regulated in the Criminal Code . Regional Regulation of the City of Surabaya Number 2 of 2020 Concerning Amendments to Regional Regulation of the

City of Surabaya Number 2 of 2014 Concerning the Implementation of Public Order and Public Peace should make a more detailed elaboration of criminal acts of decency in terms of implementation (technically) in the field, instead of making a wrong new criminal law norms. Article 37 paragraph (2) letters a and c of Surabaya City Regional Regulation Number 2 of 2020 concerning Amendments to Surabaya City Regional Regulation Number 2 of 2014 concerning the Implementation of Public Order and Public Peace must be subject to a judicial review to the Supreme Court as stipulated in Article 24 A paragraph (1) of the 1945 Constitution of the Republic of Indonesia;

2. Non-judicial prosecution as inherent in the authority of Civil Service Police Unit and criminal law enforcement units in the Regional Regulation of the City of Surabaya Number 2 of 2020 concerning Amendments to the Regional Regulation of the City of Surabaya Number 2 of 2014 concerning the Implementation of Public Order and Public Peace must be carried out properly. Wrong criminalization will actually result in arbitrariness committed by the Regional Government of Surabaya City. In terms of controlling commercial sex workers (PSK) and people who use the services of commercial sex workers (PSK) in public facilities, this can be done as long as there is no coercive effort in it which can limit human rights. For commercial sex workers (PSK) and people who use the services of commercial sex workers (PSK) who carry out their activities in private places (hotels, inns, etc.) no attempts to raid and carry out searches and arrests in any terms (carrying, arresting) , bringing, etc.), inspection by Civil Service Police Unit if there are couples who are still married is only limited to assistance and must submit investigations to law enforcement officials who are intended for this, namely the National Police.

References

- Abidin, A. ., & Hamzah, A. (2010). *Pengantar dalam Hukum Pidana Indonesia*. Yarsif Wampone.
- Aditya, Z. F. (2008). Rekonstruksi Hierarki Peraturan Perundang-Undangan di Indonesia. *Jurnal Negara Hukum*, 9(1).

- Dewi, H. E. (n.d.). *Memahami Perkembangan Fisik Remaja*. Gosyen Publishing.
- Irfani, N. (2020). Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya Dalam Penalaran dan Argumentasi Hukum. *Jurnal Legislasi Indonesia*, 16(3).
- Kurniawan, D. (2019). *Terjaring Razia, 8 PSK di Stasiun Wonokromo Surabaya Positif HIV*. Liputan6. <https://jatim.voice.com/read/2019/05/19/153955/14-psk-terjaring-razia-di-stasiun-wonokromo-8-diantaranya-terjangkit-hiv>
- Lamintang, P. A. F. (1996). *Dasar-Dasar Hukum Pidana Indonesia*. Citra Aditya Bakti.
- Maruli, S. (2021). *Buku Ajar Kriminologi*. Rajawali Buana Pustaka.
- Muladi. (1995). *Kapita Selekta Hukum Pidana*. Universitas Diponegoro Semarang.
- Ngopibareng.id. (2019). *Razia Asusila, Satpol PP Tangkap Satu Kupu-kupu Malam*. Ngopibareng.Id. <https://www.ngopibareng.id/read/gelar-razia-rutin-satpol-pp-surabaya-jaring-wanita-tunasusila-1044530>
- Nugroho, B. P. (2017). Pemberdayaan Masyarakat Eks Lokalisasi Dolly Melalui Pengembangan Wirausaha Oleh Pemerintah Kota Surabaya. *Jurnal Kebijakan Dan Manajemen Publik*, 2.
- Rijadi, P. (2017). *Memahami Metode Penelitian Hukum Dalam Konteks Penulisan Skripsi/ Tesis*. AL Maktabah.
- Simanjuntak. (1985). *Patologi Sosial 1985*, h. 112. Tarsito.
- Sulistyaningsih, H. (1997). *Pelacuran di Indonesia: Sejarah dan Perkembangan*. Erlangga.
- Wicaksono, S. B. (2017). *Kepergok Sedang Mangkal, Dua PSK dan Dua Pengamen Jalanan Terjaring Razia Satpol PP Surabaya*. Tribun Jatim. <https://jatim.tribunnews.com/2017/12/19/kepergok-sedang-mangkal-dua-psk-dan-dua-pengamen-jalanan-terjaring-razia-satpol-pp-surabaya>
- Zaidan, M. A. (2014). Norma, Sanksi dan Teori Pidana Indonesia. *Jurnal Yuridis*, 1(1).