

Covert Mode of Sexual Crimes in the Tourism Sector in Indonesia



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ABSTRACT: The phenomenon of sexual activity in tourism is still an unresolved problem, with every development the practice of prostitution can be found openly or covertly. These conditions cause the phenomenon of female commercial sex workers to continue to grow rapidly, as evidenced by the increasing number of comfort women or sex workers every year. Another problem caused by the existence of activities in the form of sex tourism which accommodate commercial sex workers is considered to be an act of immorality, in other words, this act is classified as something that violates and is contrary to moral norms, especially the practice of trafficking in persons in the tourism industry. Therefore, the research aims to analyze the forms and methods of sex crimes in the tourism sector and also how law enforcement related to sex crimes in the tourism sector in Indonesia is enforced. This research uses normative legal research with a statutory and conceptual approach. The data sources used are primary and secondary data sources. The data analysis used is classifying similar materials and processing them comprehensively so that this step is expected to make the flow of discussions on the completion of this research easier. The research results show that: first, forms of sexual crime in the tourism sector include commercial sexual exploitation, sexual harassment and sexual violence. Second, the law enforcement process against human trafficking, such as sex crimes in the tourism sector, does not only adhere to legal provisions, but must be linked to the social environment of society. The operation of law in society is not only emphasized by applicable regulations, but is also influenced by the social environment of the community. Likewise, preventing and enforcing the law against human trafficking is not only sufficient by making legal regulations that prohibit it, but also requires the participation of the community and government.

KEYWORDS: Law Enforcement; Sex Crimes; Tourism; Human Trafficking

I. INTRODUCTION

Tourism has become a necessity for many people. The movement of people from one place to another to gain new experiences or pleasure is now on the rise. Various places are used as destinations for prospective tourists. Various destinations are also constructed in the form of urban landscapes to attractions that use fictional stories to then become their own gaze for the place. The modus operandi of sex crimes in the tourism sector in Indonesia involves various elements such as the use of intermediaries such as hotel employees, motorcycle taxi drivers, and satay sellers to connect commercial sex workers with tourists. These intermediaries play an important role in facilitating transactions between sex workers and clients, often disguising the nature of the activity through various fields such as karaoke guides or beauty salon employees. In addition, this study highlights the importance of understanding the habits and patterns of sex tourism, emphasizing the need to analyze the behavior and choices made by perpetrators to effectively combat the crime. By studying the modus operandi of sex crimes in the tourism sector, law enforcement can develop strategies to prevent and address these illicit activities, ultimately contributing to a safer environment for local residents and tourists in Indonesia.

II. RESEARCH METHODS

The research writing method for this writing uses the normative legal research type (Legal research). Legal research is to find the truth of coherence, namely the rule of law according to legal norms and norms in the form of commands or prohibitions in accordance with legal principles, and a person's actions (Act) in accordance with legal norms (not according to legal rules) or Legal principles.¹

This research is more directed at the Statute Approach and the Conceptual Approach.² The statute approach is carried out by examining all laws and regulations related to the legal issue being handled.³ The Conceptual Approach is carried out to refer to

¹ Peter Mahmud Marzuki, 2015, *Penelitian Hukum (Edisi Revisi)*, PT. Adhitya Andrebina Agung, Jakarta, p. 47.

² *ibid.*, p. 93.

³ *Ibid.*

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concepts or thoughts or opinions or doctrines of experts who develop in legal science related to writing. Regarding the concept in norms consisting of several concepts, to understand norms must begin with understanding a concept. based on systematics, a method with certain thoughts to see between one law that regulates provisions that are similar but contradictory or not contradictory to other laws, so that later a meeting point will be found, both similarities and differences that will be very helpful in the analysis process.

III. DISCUSSIONS

A. Sexual Crimes in the Tourism Sector in Criminal Law

Law is essentially something abstract, although in its manifestation it can be concrete. According to Roscoe Pound, law is a social reality, which regulates its society. A good society is a society that pays attention to the public interest, therefore the purpose of establishing a State is for the sake of law. However, law must not harm individual interests. Meanwhile, according to Satjipto Raharjo, law must be viewed as a social institution. Law is not viewed as something autonomous and independent, but is understood functionally and is always in an independent relationship with other areas of society. Law also does not only act as a static norm that only uses certainty and order, but must dynamize thinking and engineer the behavior of society in achieving its ideals.⁴

Law is not viewed as the only alternative in regulating society, therefore to maintain law, an effort is needed for arrangement in the political, economic, social, and cultural fields. In the end, the existence of law is no longer a problem, but law can be accepted as something that should be carried out or something that must be applied, so that it can realize justice. Therefore, law must be able to harmonize the elements of justice, elements of legal certainty, and other elements. In its implementation, these elements often conflict with each other, therefore, in implementing the objectives of the law, it can be done through the social order, social system, and concept of justice of the society concerned. Regarding this, Roscoe Pound stated: "Since Roman Law, people have learned to better and better carry out their practical duties, to regulate relationships and regulate behavior so that the instincts of human will can be restrained by working together for the advancement of civilization".⁵

On that basis, the law must continue to be updated, so that the objectives of the law can fulfill the sense of justice of the community. However, in reality, most people have not been able to feel the justice and certainty of the law, they consider the conditions of the colonial era to be much better than the current era of independence. Therefore, the application of the law must continue to be improved, so that law enforcement, which is one way to achieve justice, can run and cannot be negotiated, therefore there needs to be regulation and revitalization in various fields such as morals, more professional working methods, and most importantly, a clean, authoritative, modern, fast and cheap justice system. This is the hope and desire of the community in living and in society.

Today in legal reform, Indonesia has issued several regulations, especially on human rights law and ratified several international conventions, especially human trafficking which is a violation of human dignity and slavery, but several of these legal regulations have not deterred the perpetrators from stopping human trafficking, in fact lately the act has tended to increase.

In addition to that, in responding to prostitution, the laws in various countries vary, some classify it as a crime, some are silent with several exceptions, such as Indonesia. Indonesian criminal law is based on the Criminal Code (KUHP) which is called ordinary criminal law. In addition, there are certain criminal laws that are divided into several other laws.

Regarding prostitution, the Criminal Code regulates it in two articles, namely Articles 296 and 506. Article 296 states that "anyone who intentionally causes or encourages indecent acts of others and makes it a way of life or a habit, then he must; shall be punished with a maximum imprisonment of one year and a maximum imprisonment of four months or a maximum fine of Rp. 15 thousand.

Meanwhile, Article 506 states that: "anyone who benefits from the indecent acts of a woman and makes her a prostitute, shall be subject to a maximum imprisonment of one year".

There is no law regulating prostitution, but here we see the legal definition of prostitution, namely men or women who provide comfort and make themselves prostitutes as a habit or livelihood. and also benefit from it.

Definitions of sexual crimes according to international and national law, namely: first, according to UNODC, sexual crimes include all forms of sexual exploitation, violence, and harassment carried out without consent. Second, Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking in Indonesia provides a definition of human trafficking for sexual purposes.⁶

Classification of sexual crimes: first, Commercial Sexual Exploitation, namely the Use of a person for commercial sexual activity. Second, sexual harassment, namely unwanted sexual acts, such as physical or verbal contact. Third, sexual violence in this case includes rape and other forms of sexual violence.

⁴ Sri Warjiyati, 2018, *Memahami Dasar Ilmu Hukum: Konsep Dasar Ilmu Hukum*, Prenada Media Group, Jakarta, p. 87.

⁵ Antonius Cahyadi dan E. Fernando M. Manullang, 2021, *Pengantar ke Filsafat Hukum*, Kencana, Jakarta, p. 96.

⁶ Riyan Alpian, "Perlindungan Hukum Bagi Korban Tindak Pidana Kekerasan Seksual di Perguruan Tinggi", *Lex Renaissance*, Nomor 1 Vol 7 Januari 2022, p. 71.

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Definition and scope of the tourism sector according to the WTO, tourism includes activities undertaken by people who travel to and stay in places outside their usual environment for a period not exceeding one consecutive year. The impact of tourism on the economy and society in Indonesia is that tourism is one of the main sources of foreign exchange for Indonesia and provides many jobs, but also carries the risk of increasing sexual crimes.

B. Regulations Concerning Sexual Crimes in Criminal Law

Criminal justice reform efforts mostly involve criminal justice policies, which are part of and closely related to police policies, criminal policies, and social policies. Therefore, criminal law reform is essentially part of the politics (rational efforts) of updating legal content to strengthen law enforcement, combat crime to protect society, and resolve social and humanitarian problems to achieve national goals, namely social, social security and welfare.

Criminal law reform efforts to rely on criminal law and criminal policies that reflect the aspirations of the nation and the needs of society today and in the future can be linked to legal developments in developed countries. In addition, criminal justice reform is also part of an effort to review and re-evaluate the basic ideas or socio-philosophical, socio-political, and socio-cultural values of criminal policy and criminal police policy. It is not criminal law reform if the orientation of criminal law values is the same as the orientation of the old criminal law values (KUHP WvS) inherited from the colonialists. Therefore, criminal law reform must be formulated with an orientation towards policies and values. Therefore, criminal law reform must be based on the basic ideals of Pancasila which is the foundation of the values of national life that are aspired to and lived by the Indonesian people.

Related to the reform of Indonesian criminal law, especially the formulation of the concept of criminal law, the values of Pancasila must be included in the articles of criminal law (the latest Criminal Code). In this regard, Muladi explained five functional characteristics of future substantive law, namely:⁷

1. Future national criminal law is not only formed by sociological, political, and practical reasons, but must be consciously designed within the framework of the national ideology of Pancasila.
2. Aspects related to the state of humans, nature and customs of Indonesia must not be ignored in future criminal law.
3. Future criminal law must be able to adapt to universal trends that develop in civilized society.
4. In connection with the recognition that the criminal system, criminal policy, and legal policy are part of social policy, considering the very harsh criminal system and one of the goals of punishment is prevention, criminal law must also consider the following aspects: preventive aspects.
5. Criminal law and the criminal justice system are essentially part of a larger system, namely the political, economic, social, cultural, defense, and science and technology systems. In such circumstances, the status of criminal justice is a "dependent variable". It should be noted here that criminal law must be able to respond to developments in science and technology, so that it can improve its function in society.

Regulation of sexual crimes in criminal law in Indonesia is regulated in several laws, including:

First, the Criminal Code (KUHP): The KUHP is the main legal basis that regulates various criminal acts, including sexual crimes. Relevant articles include: a. Article 285: Concerning rape; b. Article 286: Sexual intercourse with helpless women; c. Article 287: Sexual intercourse with minors; d. Articles 289-296: Concerning indecent acts and other indecent acts.

Second, Law Number 23 of 2002 concerning Child Protection: Regulates the protection of children from all forms of violence, including sexual violence. In this law, heavier sanctions are given for sexual crimes against children.

Third, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking: Regulates human trafficking, including sexual exploitation.

Fourth, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS): This is the latest law that specifically regulates criminal acts of sexual violence. This law regulates various forms of sexual violence, provides a clear definition, and introduces a mechanism for protection and recovery for victims. Fifth, Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT): Regulates domestic violence, including sexual violence.

These laws complement each other in providing legal protection for victims of sexual crimes and punishing perpetrators with appropriate sanctions. This regulation also covers various forms of sexual crimes, ranging from rape, sexual harassment, to child sexual exploitation.

We must know that the latest criminal law contained in Law No. 1 of 2023, especially concerning sexual crimes and human trafficking, has gone through decades of revision, preparation and refinement. Several times the team changed and the Minister of Law and Human Rights changed, the discussion process was carried out in Senayan and continued. This is a dilemma that must be eliminated. On the other hand, the formation of new criminal laws is said to still be in process, because the development of crime

⁷ Moh.Alvian Zul Khaizar, "Analisis Pembaharuan Hukum Pidana dan Hukum Acara Pidana dalam Undang-Undang Tindak Pidana Kekerasan Seksual", *Diktum: Jurnal Ilmu Hukum*, Nomor 1 Vol 10 Mei 2022, p. 107.

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and criminal behavior, as well as the development of Indonesian society, which is always the reason for the adoption of criminal laws, future laws, criminal law, and the values of local wisdom of Indonesian society.⁸

We also need to know that the new criminal law is included in the national legislation program, namely the national legislation program of the government and the DPR. The government requested that this new criminal law be a priority for discussion. Mistakes after mistakes come from the legislative process. This also means political problems in national criminal law. Because, the DPR and the government have the greatest power in deciding the National Criminal Code policy.

C. Modes and Forms of Sexual Crimes in the Tourism Sector in Indonesia

Modus Operandi of Sexual Crimes in Tourism includes: first, the mode of utilizing Tourist Attractions, some tourist attractions are used as locations to exploit victims, especially in areas crowded with tourists such as Bali and Lombok. An example of a case in Bali where children were exploited on the beach and local bars. Second, the mode of utilizing Tourism Services. Criminals use services such as hotels, travel agents, and transportation to facilitate sexual crimes. Certain hotels are known to collaborate with perpetrators to provide rooms for customers seeking sexual services. Third, the mode of utilizing Technology which includes social media and websites is used to recruit victims and arrange meetings. Cases of using dating applications to lure foreign tourists to commit sexual exploitation.

Forms of Sexual Crime in the Tourism Sector include:⁹ First, Commercial Sexual Exploitation. There are many cases of human trafficking where victims are forced to work in the tourism sector as sex workers. An example of a case in Jakarta where young women are trafficked for sexual exploitation in hotels and nightclubs. Second, sexual harassment. Tourists and tourism sector workers are often victims of sexual harassment, both physically and verbally. Studies show high rates of sexual harassment in popular tourist destinations such as Bali and Yogyakarta. Third, Sexual Violence. Incidents of sexual violence including rape that occur in tourist attractions. Cases of sexual violence in remote locations that are difficult for law enforcement to reach.

Factors that Drive Sexual Crimes in the Tourism Sector include: first, Social and Economic Factors. Poverty and unemployment in tourism areas increase the risk of sexual crimes. Lack of education and awareness of human rights.

In cultural factors, cultural norms that are permissive of certain sexual behaviors can affect the prevalence of sexual crimes. The influence of foreign tourist culture that brings different sexual norms. While in regulatory factors, weaknesses in regulation and law enforcement in the tourism sector. Lack of coordination between the central and regional governments in handling sexual crimes.

For example, a case study in Bali where a human trafficking network took advantage of the tourism sector to exploit victims. A case in Yogyakarta where the perpetrator used a dating application to trap the victim. The implications of the case study are: psychological and physical impacts on victims of sexual crimes. Reputational and economic losses to the tourism sector in Indonesia.

Prevention and Mitigation Efforts include: first, government policies. Review of existing policies and their effectiveness in reducing sexual crimes. Prevention programs implemented by the government and international cooperation. Second, the Role of the Community and Non-Governmental Organizations (NGOs). Local community and NGO initiatives in preventing and handling sexual crimes. Examples of successful programs such as awareness and education campaigns in schools. Third, Technology and Education. The use of technology to monitor and prevent sexual crimes. Education programs and awareness campaigns for tourists and tourism industry players.

IV. CLOSING

A. Conclusion

Modus Operandi of Sexual Crimes in Tourism includes: first, the mode of utilizing Tourist Objects. Second, the mode of utilizing Tourism Services. Criminals use services such as hotels, travel agents, and transportation to facilitate sexual crimes. Third, the mode of utilizing Technology. While the forms of Sexual Crimes in the Tourism Sector include: First, Commercial Sexual Exploitation. Second, sexual harassment. Third, Sexual Violence.

The process of enforcing the law against human trafficking, such as sexual crimes in the tourism sector, does not only adhere to legal provisions, but must be linked to the social environment of the community. The functioning of the law in society is not only emphasized on applicable regulations, but is also influenced by the social environment of the community. Likewise, overcoming and enforcing the law against human trafficking is not only sufficient by making legal regulations that prohibit it, but requires the participation of the community and government.

B. Suggestion

The suggestions or recommendations from the author in this study are as follows:

First, the government should immediately be firm in following up on cases of human trafficking in the tourism industry. One of the main tasks of the tourism industry is to increase awareness of tourism workers and tourists about human trafficking. For workers

⁸ Moh. Alvian Zul Khaizar, *Analisis Pembaharuan Hukum Pidana dan Hukum Acara Pidana dalam Undang-Undang Tindak Pidana Kekerasan Seksual*, p. 126.

⁹ Shidarta dkk, 2023, *Aspek Hukum Ekonomi dan Bisnis*, Kencana, Jakarta, p. 375.

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in the tourism industry, including hotels and accommodation, education and training provided by tour guides and travel agents can help them recognize signs of human trafficking and report them to the authorities. With this increased awareness, they can become additional eyes and ears in detecting cases of human trafficking and protecting potential victims.

Second, society and government must continue to play an active role in providing social and personal power, which not only affects society as a target regulated by law, but also on law-making institutions and institutions that apply sanctions. Law enforcement against criminal acts of human trafficking in the tourism sector must continue to be carried out. Because in essence, the work of order in society cannot be monopolized by law. People's behavior is not only determined by law, but also by other social forces, namely the order of customs and morality. Moreover, human trafficking in the tourism industry has also violated Human Rights. On that basis, prevention of human trafficking, such as sexual crimes in the tourism sector from a human rights law perspective, must be carried out comprehensively and integrally, which can be done through criminal law policy through legislation, execution and judiciary.

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