

LEGAL ANALYSIS ON THE RESPONSIBILITY OF THE OWNER OF AN ELECTRONIC DEVICE USED IN ONLINE PROSTITUTION BASED ON DECISION NUMBER 65/PID.SUS/2023/PN.WNS

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Abstract

This research investigates the role of digital technology in facilitating illegal activities, specifically online prostitution involving a minor. It explores how social media platforms and electronic devices are used to enable criminal operations, focusing on the interactions between perpetrators, victims, and the tools they utilize. It delves into the processes by which individuals exploit technology for personal gain, the vulnerabilities of minors in such scenarios, and the methods used to detect and address these activities. The research also examines the legal and ethical challenges in combating technology-enabled crimes, highlighting the significance of cooperation among law enforcement, legal systems, and the community. It aims to provide a comprehensive understanding of the mechanisms behind such offenses and to suggest strategies for prevention, public education, and enhanced regulation of digital platforms to protect vulnerable individuals from exploitation.

Keywords: Digital technology misuse, Online prostitution, Minor exploitation

BACKGROUND

Advances in technology and information have provided both benefits and disadvantages for society in various types of fields.¹ Rapid technological and informational progress has reached a level where distance and time zones are no longer a barrier to communication. As a result, technological developments have made the world less influential and accelerated the rate of social change that occurs.² Human activities are greatly helped by these electronic-based activities. This is in accordance with Article 28F of the 1945 Constitution of the Republic of Indonesia, which states that every citizen has the right to communicate and obtain information in order to strengthen their personal and social networks, and has the right to seek, obtain, own, share and disseminate information by using all available means. This statement is inconsistent with the positive and negative forces that can harm humanity as a whole.³

At this time, the development of information and communication of technology cannot be separated from the daily basis of the human's life. As technology develops rapidly, cellphones are created which are flexible mobile devices. Many people from the upper, middle and lower classes already have cell phones for communication, or more specifically cell phones with

¹ SEBAB TERJADINYA PROSTITUSI online Dan UPAYA PENANGGULANGANNYA Dari PERSPEKTIF KRIMINOLOGI (Studi Di Wilayah Hukum Polresta Banyumas) | Setiawan | Soedirman law review. (n.d.). Soedirman Law Review. <https://journal.fh.unsoed.ac.id/index.php/SLR/article/view/3488>

² Ramli, A. M. (n.d.). Cyber law and HAKI Dalam Sistem Hukum Indonesia / Ahmad M. Ramli | Perpustakaan Mahkamah Konstitusi. Portal Aplikasi Inlis Lite | MKRI. <https://simpus.mkri.id/opac/detail-opac?id=5232>

³ Online prostitution amidst the rapid technological advances: Legal and social aspects | Semarang State University undergraduate law and society review. (n.d.). Universitas Negeri Semarang. <https://journal.unnes.ac.id/sju/lst/article/view/49837>

Android OS, to send messages, whether in the form of text or voice messages, receiving calls, and without realizing it, with cell phones, ideas about controlling electronic devices are starting to emerge.⁴

Technological advancements have a positive effect, as they allow the public to easily access information and communication, as well as the internet which can enhance knowledge and comprehension. Nonetheless, the ordinary people are still at risk of experiencing the adverse effects of technological advancement. Because of the prevalence of fake information and deception online, it is easy to encounter fraudulent content like pornography. Advancements in information and communication technology are leading to a decreased quality of life for individuals. This happens because this technology makes daily activities easier and makes it easier to access online resources, such as online prostitution and those who use computers for various purposes or forms of sexual expression such as cybersex.⁵ With the ease of accessing the internet and easy ways to communicate, transactions in terms of commercial sex are also becoming easier to obtain.

Technological progress simplifies online transactions for individuals. E-commerce, a worldwide trend, has impacted various industries including trade, finance, and communications. People are able to easily and quickly conduct various transactions without needing to communicate or interact in person. In general, the growth of online transactions has played a significant role in shaping modern society. Thanks to the progress in technology and the extensive use of digital tools, online transactions will remain significant in influencing the future of our society. Hence, it is crucial for all stakeholders, such as governments, corporations, and people, to adjust to these transformations and guarantee that the advantages of internet transactions are accessible to everyone in a secure and enduring way.⁶

Online transactions can be a criminal act by individual perpetrators or community groups. One of the things that will be discussed in research on the negative impacts of online transactions is online transactions in the immoral sector.⁷ These immoral activities have found new media that are more accessible and harder to track, creating new challenges for law enforcement and public protection.

The types of online transactions in immoral acts include various forms of illegal activities. The prevalence of pornographic content being distributed and sold through websites, video sharing platforms, and social media has been on the rise. Moreover, social media platforms, messaging apps, and dedicated websites are also used to promote and schedule encounters between sex workers and clients in online prostitution.⁸

The Government of Indonesia has taken action by passing laws to regulate and ban immoral online transactions as a precautionary or corrective measure. In Indonesia, the distribution of immoral content through electronic media is banned by Law Number 1 of 2024, which amends Law Number 11 of 2008 regarding Electronic Information and Transactions.

Immoral online transactions can cause significant harm, especially for victims experiencing harassment, exploitation, and psychological trauma. Perpetrators face severe legal consequences, including prison, fines, and defamation. Methods like digital forensics and content

⁴ Digital platforms and prostitution. (2022, December 22). UOC. <https://www.uoc.edu/en/news/2022/313-digital-prostitution>

⁵ Barda Nawawi Arief, Pornografi, pornoaksi dan Cybersex-Cyberporn, Pustaka Magister, Semarang, 2011, https://digilib.usm.ac.id/pasca/index.php?p=show_detail&id=2563

⁶ Prostitution has gone online – and pimps are thriving. (n.d.). MSUToday | Michigan State University. <https://msutoday.msu.edu/news/2016/prostitution-has-gone-online-and-pimps-are-thriving>

⁷ Vario Virginia Putri, Muhammad Zaky. "Cyber Pimping : Peran Teknologi dalam Meningkatkan Prostitusi Anak Sebagai Korban Sekaligus Pelaku". Jurnal Ilmu Hukum, Humaniora, dan Politik (JIHHP), Vol. 4 No. 4 (Mei 2024). <https://dinastirev.org/JIHHP/article/view/2064>

⁸ Ana Suzanalisa, "The Policy of Criminal Law in Eradicating Online Prostitution in Indonesia," in Public Law Remedies In Government Procurement: Perspective From Malaysia, ed. Abdul Rahim et al. (Future Academy, 2018), <https://www.europeanproceedings.com/article/10.15405/epsbs.2018.12.03.13>

filters are utilized to fight against this behavior, leading law enforcement to frequently close down unlawful websites and save victims.⁹

The use of the internet or social media as a platform for communication enables pimps, sex workers, and customers to engage in online prostitution.¹⁰ The rise of online prostitution involves an increase in immoral behaviors due to advancements in technology and easier access to different services. The swift advancement of information and communication technology, particularly the internet, has resulted in society becoming more accessible to information and social media. Yet, this upside is counterbalanced by downsides, one being the rise in incidents of unethical behavior taking place on the internet. The increase in online prostitution is causing concern for government and legal officials due to the accessibility for perpetrators to partake in illicit activities through different online channels and resources.¹¹

The legal principle of criminal liability mandates that individuals must be responsible for their criminal deeds and endure the legal consequences of such actions. Criminal accountability is essential to ensure that criminals experience appropriate outcomes, with the goal of providing justice for victims, deterring further offenses, and maintaining social order within the realm of criminal activities. The advancement of technology and the internet has introduced new aspects of legal responsibility, particularly in relation to online purchases.¹² The increase in illegal activities such as internet fraud, distribution of inappropriate content, and human trafficking calls for a flexible and efficient legal response.¹³

Electronic devices such as smartphones, tablets, and computers are commonly utilized in a wide range of activities, both personal and professional. However, behind the benefits that's offered, these electronic devices also open up opportunities for illegal activities, such as online prostitution. As a highly accessible and easy-to-use tool, it allows perpetrators to manage, organize, and even disseminate unlawful content, often without being detected by authorities. This phenomenon marks a significant shift in the modus operandi of immoral crimes, from physical interactions to hard-to-reach digital spaces.¹⁴

In a legal setting, ownership of electronic devices utilized for illicit activities prompts significant inquiries regarding the obligations of the individuals possessing them. The legal system must decide the level of liability held by a person who owns an electronic device used in criminal activities, regardless of their knowledge. If a person loans their device to someone who uses it to commit a crime, the owner may face legal consequences. Therefore, this research will also explore the concept of legal responsibility attached to owners of electronic devices, as well as how law in Indonesia regulates this aspect, especially in the context of immoral crimes such as online prostitution.¹⁵

⁹ Suzanalisa, "Eradication of Online Prostitution Law in Indonesia," *European Proceedings of Social and Behavioural Sciences*, vol. 52, Future Academy, 2018, https://www.researchgate.net/publication/329899300_The_Policy_Of_Criminal_Law_In_Eradicating_Online_Prostitution_In_Indonesia

¹⁰ Prostitusi online dalam perspektif hukum pidana Di Indonesia. (n.d.). *Jurnal Res Justitia: Jurnal Ilmu Hukum*. <https://www.resjustitia.lppmbinabangsa.id/index.php/home/article/view/39>

¹¹ Universitas Mulawarman. "Penegakan Hukum Pidana Terhadap Mucikari Terkait Prostitusi Online di Indonesia." *Risalah Hukum* 15, no. 1 (2020), [Cache://E-journal.fh.unmul.ac.id/index.php/risalah/article/view/918](https://e-journal.fh.unmul.ac.id/index.php/risalah/article/view/918) - Google search. (n.d.). <https://e-journal.fh.unmul.ac.id/index.php/risalah/article/view/918>

¹² Aryo Fadlian. "Tanggung jawab Pidana Dalam Suatu Kerangka Teoritis". *Jurnal Hukum POSITUM*. Vol. 5, No. 2 (Desember 2020), <https://journal.unsika.ac.id/index.php/positum/article/view/5556>

¹³ *Ibid*

¹⁴ Finn, "Online Prostitution: Law Enforcement Challenges in the Digital Age," *Journal of Criminal Justice* 50 (2023): <https://jurnal.unissula.ac.id/index.php/icls/article/download/26452/7402>

¹⁵ Rodriguez, "Digital Marketing and Online Prostitution: A New Challenge for Law Enforcement," in *Cybercrime and Digital Forensics*, ed. M. Yar (London: Palgrave Macmillan, 2023)

The phenomenon of misuse of electronic devices by third parties in online prostitution activities is increasingly worrying. In this situation, someone who owns an electronic device such as a cellphone, laptop or computer can become a victim without realizing it because their device is used by another party to carry out illegal activities, including online prostitution. This misuse often occurs without the owner's knowledge, either through hacking techniques, use of physical access, or negligence in maintaining device security. Perpetrators exploit security gaps to transact, communicate, or hide digital traces, making it difficult for law enforcement to identify the real perpetrators.

Use of a device by a third party can have various negative impacts on the owner, both legally and socially. Device owners may face legal charges or sanctions, even if they were not directly involved in the activity. Their reputation can also be tarnished due to the device's involvement in online prostitution. For this reason, it is important for device owners to increase digital security and report incidents to the authorities if their devices are misused. Cases like this also emphasize the need for regulations that protect victims from legal consequences for misuse of devices, as well as improving law enforcement's ability to handle increasingly complex cyber crimes.¹⁶

The development of this technology also has negative impacts that need to be watched out for. One example is the online prostitution case that occurred in Cilincing, North Jakarta, in 2023. In this case, the law enforcement managed to apprehend five males and five teenage females engaged in online prostitution through the MiChat app. The way the perpetrator operates is by providing cell phones to teenage girls to make it easier for them to engage in prostitution deals, using the phones to promote sexual services and communicate with clients. This example showcases the potential for technology, specifically electronic gadgets like cell phones, to be abused for criminal activities, including online prostitution.¹⁷

This research stems from concerns about the increasing cases of online prostitution involving the use of electronic devices, and aims to provide a deeper understanding of how these devices are utilized in these illegal activities. The study will also examine steps that device owners and authorities can take to prevent misuse of electronic devices in unlawful activities.

The legal principle of criminal liability mandates that individuals must be responsible for their criminal deeds and endure the legal consequences of such actions. Criminal accountability is essential to ensure that criminals experience appropriate outcomes, with the goal of providing justice for victims, deterring further offenses, and maintaining social order within the realm of criminal activities. The advancement of technology and the internet has introduced new aspects of legal responsibility, particularly in relation to online purchases. The increase in illegal activities such as internet fraud, distribution of inappropriate content, and human trafficking calls for a flexible and efficient legal response.

In the case of the conviction of the perpetrator who distributed cellphones to witness Sasya Adian Putri's child to be used to offer sexual services via the social media Michat. In Decision Number 65/Pid.sus/2023/PN.Wns. Explaining that the perpetrator gave a cellphone to the witness's child and in the cell phone a Michat account was found in the name "Lalaaa" which was used by the witness's son to provide information about his sexual services to another Michat account user (male).

Therefore, the author is interested in discussing the legal aspects of the responsibility of owners of electronic devices that are misused for online prostitution. This study highlights related laws, including the Information and Electronic Transactions Law and the Criminal Code, to assess

¹⁶ *Ibid.*

¹⁷ Detiknews, "Terlibat prostitusi online via MiChat, 10 remaja di Jakut diamankan polisi" (On-Line) Tersedia di <https://news.detik.com/berita/d-6662817/terlibat-prostitusi-online-via-michat-10-remaja-di-jakut-diamankan-polisi> (4 September 2024)

the legal implications of the defendant's actions, intentionally distributing information that has content that violates immorality.

Based on this, the author is interested in conducting research on the case with the title “Juridical Analysis of the Responsibilities of Electronic Device Owners in Online Prostitution Cases (Study Decision Number 65/PID.SUS/2023/PN.Wns”.

RESEARCH METHOD

This research is based on a normative legal approach. The nature of the research used by the author is analytical descriptive research. This analytical descriptive research will provide a detailed description of the characteristics of a situation and human treatment to obtain legal materials regarding the relationship between one symptom and other symptoms. During this research, the author utilizes secondary data sourced from prior research findings such as official documents, books, etc. In carrying out this study, the author employs the library research approach, involving gathering data through analyzing books, literature, notes, and relevant reports related to the issue at hand. The data analysis used by the author is a qualitative approach where the research produces descriptive data.

RESULT AND DISCUSSION

It can be ascertained that the actions of the Michat account can be blocked as an act distribute or transmit or make accessible electronic information and electronic documents containing moral messages, because through the Michat application, which is a common social media tool, that allows Michat account users to be able to access/interact with electronic information/electronic documents submitted by Michat account users “lalaaa” and michat imeyy account and it can be confirmed that the information electronic/electronic documents submitted by account users.

Michat “lalaaa” and the Michat “imeyy” account have been accessed by other people (users of other Michat accounts) as proven by the number received. And this act is a prohibited act and violates the law as intended in *Pasal 45 ayat (1) Undang-Undang RI No.19 tahun 2016* concerning amendments to *Undang Undang No.11 tahun 2008* concerning Electronic Information and Transactions which reads “Every person intentionally and without right distributes, and/or transmit, and/or enable access to information electronic and/or electronic documents that have content decency sentence as intended in Article 27 Paragraph (1) shall be sentenced to imprisonment for a maximum of 6 (six) years and/or a fine maximum Rp. 1,000,000,000,- (one billion rupiah).”

Considering that the Defendant has been charged by the Public Prosecutor with an alternative form of indictment, so that the Panel of Judges Pay attention to the legal facts mentioned above and choose direct charges as regulated in *Pasal 45 ayat (1) Jo. Pasal 27 ayat (1) Undang-Undang No. 19 tahun 2016* concerning Amendments to *Undang-Undang no. 11 tahun 2008* concerning Information and Electronic Transactions Jo. *Pasal 56 ayat (2) Undang-Undang*, the elements of which are as follows:

1. Everyone;
 2. Intentionally and without right to distribute or transmit or make accessible electronic information or documents electronics that have contents that violate decency;
 3. Those who deliberately provide opportunities, facilities or information to commit a crime;
- Considering that regarding these elements, the Panel of Judges consider the following:

1. The element “any person” :

Considering, that according to the provisions of *Pasal 1 No. 21 UU RI Nomor 11 tahun 2008* concerning Information and Electronic Transactions, as amended by *UU nomor 19 tahun 2016* concerning Amendments to *UU Nomor 11 of 2008* concerning Information

and Electronic Transactions, what is meant by “person” is individuals, whether Indonesian citizens, foreign nationals, or legal entity;

Considering, that as such, “individuals”, whether Indonesian citizens (WNI) or foreign citizens (WNA), as well as legal entity (corporation) as a capable supporter of rights and obligations responsible for his actions, can be made a defendant according *UU No. 11 tahun 2008* concerning Information and Transactions Electronic, as amended by *UU No. 19 tahun 2016* concerning Amendments to *UU No. 11 tahun 2008* concerning Electronic Information and Transactions;

Considering, that this element needs to be considered so that this does not happen error regarding the person (error in persona); Considering, that based on the facts at the trial which obtained from the statements of witnesses and the statements the Defendant has indicated to the person/personal legal subject, namely the Defendant Jihan Fadila Alias Jihan Binti H. Dulfian whose identity was checked at the trial as stipulated in *Pasal 155 Ayat (1)* of the Criminal Procedure Code, it turns out that the Defendant confirmed and also matched the identity of the Defendant in the letter the indictment of the Public Prosecutor and the witnesses whose statements were heard in The trial court also acknowledged that the Defendant was presented at trial in this case it is true that Jihan Fadila Alias Jihan Binti H. Dulfian, so that according to the Panel of Judges, the “everyone” element has been fulfilled according to the law.

2. The element “Intentionally and without right distributing or transmitting or otherwise making accessible electronic information or electronic documents that have or electronic document that has content that violates decency”.

The element of "intentionally and without right distributing, transmitting, or making accessible electronic information or electronic documents that contain content violating decency" involves the deliberate use of electronic systems to share inappropriate or indecent materials. Intention here refers to the defendant's awareness and purposeful actions, understanding the consequences of their behavior. The term "without right" signifies actions taken outside any lawful authority or rights.

Sending electronic information involves transmitting data through an intermediary electronic system, which processes and disseminates information using devices like computers or mobile phones. Decency, though not explicitly defined in the law, relates to acts associated with sexuality that evoke shame, disgust, or inappropriate arousal. Examples include actions or materials involving sexual intercourse, nudity, or child exploitation, as outlined in related laws and expert opinions.

In the case at hand, the defendant's actions involved lending a mobile phone to a minor, who then used it to engage in online prostitution through the MiChat application. The minor, under the alias "lalaaa," created a profile with sexual content, offering services to potential clients. The profile included sexualized language and status updates such as "Stay kos, hobby COD kos beb," which indicated that the individual was available for sexual services. Prospective clients, upon understanding these signals, would contact the minor's account to negotiate terms and set up meetings for sexual encounters. These actions, which involved sending explicit messages and photos, clearly fit within the definition of content that violates decency.

The minor's actions were facilitated by the defendant, who allowed the use of their mobile device for the explicit purpose of offering sexual services. The defendant's involvement in this process, including the provision of a platform for the illegal activity, further solidifies the fact that the actions were intentional and carried out without lawful authority. The content shared via the MiChat messages, including explicit descriptions and negotiations for sexual services, constitutes a violation of decency, as it involves

sexual exploitation and activities that would cause feelings of shame and discomfort in most people.

Therefore, it is legally and convincingly proven that the defendant's actions: distributing, transmitting, and making accessible electronic information and documents that contained indecent content—met the legal criteria for violating decency. This violation was facilitated through the use of an electronic system, in this case, a mobile phone and the MiChat app, making it a clear instance of technology being exploited for unlawful purposes. The case thus serves as an example of how technology can be misused to distribute content that undermines societal norms and violates laws intended to protect individuals, particularly minors, from exploitation.

3. The element “Those who intentionally provide opportunities, means or information to commit a crime”

Assistance in a crime can be categorized based on when the assistance is provided:

1. If the assistance is given during the commission of the crime, there are no restrictions on the type of help that can be offered.
2. If the assistance is given before the crime, it is limited to providing opportunities, facilities, or information.

According to the objective theory, assistance and participation are distinguished by the nature of the act. If the act is inherently illegal, it is considered participation, whereas assistance refers to actions that, while not illegal in themselves, support or help facilitate the commission of the crime. The subjective theory, however, focuses on the intent of the person providing assistance. In participation, the individual intends to commit the crime, while in assistance, the person's intent is only to aid the primary perpetrator without the intent to commit the crime themselves.

In this case, the defendant lent a phone to a minor, who used it to offer services through the MiChat application. The minor created a profile and engaged with potential clients, providing information and arranging services. After reaching an agreement on terms, the minor directed clients to a designated location. The court found that the defendant's actions: loaning the phone and helping facilitate the process, were limited to providing the opportunity and means for the minor to engage in the activities.

As all necessary elements were met, the defendant was found legally responsible for providing assistance. The court also considered both aggravating factors (such as the nature of the actions) and mitigating factors (such as the defendant's remorse and cooperation).

Adjudicate

From the deliberation session of the Panel of Judges Watansoppeng District Court, on Monday, November 06, 2023 it was decided the following:

1. Declare the defendant JIHAN FADILA also known as JIHAN Binti H. DULFIAN is legally and convincingly proven guilty of committing the crime of “Intentionally providing opportunities, facilities or information to commit a crime, intentionally and without right distributing or transmitting or making accessible the Electronic Information or access to Electronic Information or Electronic Documents that which has content that violates decency”;
2. The court impose a punishment against the Defendant therefore with a punishment of imprisonment for 7 (seven) months;

3. Determine that the period of arrest and detention that has been served by the The period of arrest and detention that has been served by the Defendant shall be deducted entirely from the punishment imposed;
4. Determine that the Defendant shall remain in custody;
5. Determine the evidence in the form of:
 - 1 (one) mobile phone unit of Oppo A17k gold color with IMEI 1 and IMEI 2 .
IMEI 1 1862645068012193 and IMEI 2 862645068012185;
Returned to the Defendant
 - 1 (one) mobile phone unit brand Vivo Y17 black color mixed red
maroon with IMEI Number 1 866440049920938 and IMEI 2
8664400449920920
Returned to Witness Sasya.
6. Charged the Defendant to pay court costs in the amount of
Rp3,000.00 (three thousand rupiah).

The adjudication was done as the Defendant JIHAN FADILA Alias JIHAN Binti H. DULFIAN has been legally and convincingly proven guilty of committing the crime of “Those who deliberately provide opportunities, facilities or information to commit a crime, intentionally and without the right to distribute or transmit or make accessible Electronic Information or Electronic Documents that have content that violates decency” as charged to the defendant in violation of Pasal 45 ayat (1) Jo. Pasal 27 ayat (1) Undang-Undang R.I. No. 19 tahun 2016 tentang Perubahan atas Undang-Undang No. 11 tahun 2008 tentang Informasi dan Transaksi Elektronik Jo. Pasal 56 ayat (2) KUHPidana.

CONCLUSION

The case demonstrates the application of *Pasal 45 ayat (1) Jo. Pasal 27 ayat (1) Undang-Undang R.I. No. 19 tahun 2016 tentang Perubahan atas Undang-Undang No. 11 tahun 2008 tentang Informasi dan Transaksi Elektronik Jo. Pasal 56 ayat (2) KUHPidana*, emphasizing the legal framework for addressing crimes involving the misuse of electronic systems and the exploitation of minors. The court found the defendant guilty based on evidence, including expert testimony, witness statements, and digital traces, which confirmed the facilitation of online activities that violated decency laws and child protection provisions. The decision to impose a seven-month imprisonment sentence, adjusted for time already served, reflects adherence to legal standards while accounting for the circumstances of the case. The confiscation of devices used in the crime further aligns with the law’s aim to prevent the continuation of illegal activities. This outcome highlights the importance of both punitive and preventive measures in ensuring compliance with electronic information laws and child protection regulations.

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