

Criminalisation of Service Users and Traditional Commercial Sex Workers in Indonesia

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ABSTRACT: Law enforcement against service users and traditional commercial sex workers in Indonesia in handling the increasingly rampant practice of prostitution. Despite government efforts to reduce involvement in prostitution, the lack of specific regulations in Indonesian law has allowed service users of prostitution to avoid appropriate legal consequences. The purpose of this research is to understand the urgency to criminalize traditional commercial sex workers and service users. The majority of the problem lies in economic factors influenced by someone's income or needs, especially the difficulty for women to meet their needs, especially women who lack skills, thus their competitiveness in the job market is very low, and also related to the legal framework which still lacks regulation. This research uses a normative juridical method by employing legislative approach, conceptual approach, and comparative approach. Researchers examined secondary legal materials, including local regulations such as the DKI Jakarta Regional Regulation, the Indramayu District Regulation, the Tangerang City Regulation, the Denpasar City Regulation, the Badung Regency in Bali, Batam City, and Bandung Regency, as well as the Dutch regulation on brothels, known as the "Wet Regulering Prostitutie en Bestrijding Misstanden Seksbranche" (Regulation on Prostitution and Combating Abuses in the Sex Industry). The research findings indicate the need to promptly incorporate these regulations into the NATIONAL CRIMINAL CODE to prosecute users of traditional sex services and also the workers themselves, or at least to follow the policy of the Dutch government by legalizing brothels, where brothel owners are required to prove consistent tax payments and not being involved in any crimes, aiming to prevent HIV/AIDS and human trafficking.

Keywords: Urgency, Criminalisation of Traditional Commercial Sex Workers and Service Users.



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INTRODUCTION

The practice of prostitution, also known as solicitation, has been a longstanding social issue and is one of many highly complex social problems. The phenomenon of prostitution is an intriguing topic for investigation and has many aspects that can continue to be debated. From the early emergence of humanity until the end of time, occupations or professions like prostitution will

continue to exist. It is difficult, if not impossible, to eradicate them as long as uncontrolled sexual urges exist and are not restrained by willpower or conscience(Wagenaar, 2006).

According to Kartono, "The issue of prostitution is categorised as a highly sensitive and complex social problem because it involves social regulations, social values, morals, and ethics(Kartono, 2008). According to Kartono, prostitution is the act of selling oneself (prostitution) by selling one's body, honour, and personality to many people to satisfy desires in exchange for payment in the form of money. Regarding selling oneself, based on its meaning, those who sell themselves are called prostitutes." Prostitution is always associated with conditions of poverty, which lead to women being exploited as profitable economic objects by certain parties. Due to economic hardships, women are often trapped in the sex trade and lose control over their involvement in prostitution. However, economic factors are not the only main cause or motivation for engaging in prostitution. In Indonesia, there are several other factors that drive women to be involved in the sex industry, such as economic pressures, lack of education, internal motivation, competition, family pressures, and emotional distress(Purnomo, 2007).

Minister of Social Affairs Khofifah (2015) stated that the issue of prostitution in Indonesia has become a concern for all parties and therefore requires a solution for resolution. "On April 29 (2015), there will be a coordination meeting (rakor) to discuss various current issues, and the situation is already worrying for all parties," said Khofifah during a visit to the Al Quran Islamic Boarding School in Cijantung, Ciamis Regency, West Java. She mentioned that prostitution is a problem in all countries, involving four fundamental issues: slavery, criminality, exploitation, and human trafficking(Kenedi, 2017a; McBride & Janushev, 2021). Prostitution and pornography are parallel and interconnected because they involve incest, pedophilia, and tourism packages containing pornographic elements. "This includes online prostitution, which is the utilization of information and communication technology as a modus operandi among many methods used by procurers to conduct their business," said Khofifah(Kristiyanto, 2019).

Valid data to accurately reveal the number of sex workers in Indonesia is not available. The data provided by the Indonesian Ministry of Social Affairs typically records the number of registered sex workers, those who are registered in localities scattered throughout Indonesia. As of 2019, the country with the most localities, with a total of 40,000 female residents in these localities, had 168 localities spread across 24 provinces and 76 districts/cities. This data is compiled from social services departments in all provinces and various sources (cnnindonesia., 2018).

The Minister's explanation mentioned above has been met with a pessimistic response from some members of the community. They view it as merely addressing the surface of the issue, considering the complexity of prostitution in Indonesia and the government's lack of consistency in preventing and addressing the commercialization of sex. For example, although prostitution is prohibited under Article 296 and Article 506 of the Criminal Code (KUHP), penalties are only imposed on those who organize or provide pimps, without seriously addressing the weak law enforcement issue (Kenedi, 2017b). Sex workers and their clients, who are affected by economic disparities seen as the root cause of the spread of sex commercialization in Indonesia, are not addressed adequately.

Based on this background, the writer is interested in conducting research on the urgency of

criminal sanctions for service users and traditional commercial sex workers in Indonesia, comparing it with the prohibition of sex workers as labourers in the Netherlands.

METHOD

The type of research used is juridical-normative or often referred to as doctrinal legal research. This research employs the juridical-normative method as proposed by Peter Mahmud Marzuki, which is a process to discover legal rules, principles, and doctrines to address the legal issues encountered. The research approach utilizes legislative approach, conceptual approach, and comparative approach with the Netherlands, due to the differences in governance systems between Indonesia and the Netherlands. In regulating prostitution in the Netherlands, legitimate brothels are required to obtain official permits from the local government, typically represented by the municipal council. Theoretically, this system should function smoothly, but in practice, local governments seldom grant permits to sex workers who comply with all established regulations. Many cities enforce policies where only existing brothels are permitted to renew their licenses, and this is accomplished through a complex procedure known as the 'wet BIBOB', where brothel owners must demonstrate that they have fulfilled their tax obligations correctly and are not involved in any criminal activities. Utilizing primary legal resources such as the Criminal Code (KUHP) and Law Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes, as the governance systems differ between Indonesia (presidential) and Malaysia (parliamentary). While the provisions of the Criminal Code can only be utilized to prosecute providers of commercial sex workers/pimps based on Article 296 juncto Article 506 of the Criminal Code. Legal regulations regarding prostitution include local regulations such as the Regional Regulation of DKI Jakarta, Regulations of Indramayu Regency, Regulations of Tangerang City, Regulations of Denpasar City, Badung Regency in Bali, Batam City, and Bandung Regency. In the Netherlands, prostitution (commercial sex) is regulated by the Prostitution Act (Wet regulering prostitutie) enacted in 2000 (Nieuwenhuis et al., 2010).

RESULT AND DISCUSSION

A. Commercial Sex Workers: Definitions and Types in Indonesia

The discussion on the commercialization of sex services in Indonesia cannot be separated from various related terms, such as prostitution, solicitation, and the commercial sex industry. Solicitation refers to the practice of selling sexual services by individuals to sex service users. Those who provide these sexual services are often referred to as prostitutes, Women of Immoral Conduct (WTS), or Commercial Sex Workers (CSWs). In general, WTS or female sex workers are defined as women who offer sexual services upon request, with the aim of satisfying clients in exchange for money or goods.

In everyday life in Indonesia, the term "prostitute" is often associated with women, even though in reality, men are also involved as sellers of commercial sex services. In addition to Commercial Sex

Workers (CSWs), several parties are involved in prostitution practices, including users/customers, pimps, and intermediaries. Users/customers are individuals who pay a sum of money to CSWs to obtain sexual satisfaction. Pimps are individuals who profit financially from sex transactions by managing, facilitating, and controlling prostitution practices, including providing venues, overseeing operations, recruiting CSWs, and providing food and protection. Intermediaries can be brokers or recruiters who receive rewards by connecting customers with CSWs or with pimps who manage prostitution practices.

When discussing Sex Workers, although many people consider the terms "WTS" or "PSK" to have similar meanings, they actually carry different connotations, although in this context, they are often used interchangeably to refer to the same phenomenon. The term "Women of Immoral Conduct" reflects a view that blames prostitutes as women lacking morality, who violate social norms by engaging in sexual relationships outside of marriage with multiple different men (Baker, 2010). On the other hand, the term "Commercial Sex Workers" emphasizes that the sale of sexual services can be done by both women and men as a job, highlighting the rational choice of individual freedom to use their body as a source of income.

In some regions of Indonesia, the term used is "pelacuran," according to (Asyari, 2010). Prostitution is considered one form of social disease that needs to be stopped from spreading, without neglecting prevention efforts and improvements. The word "pelacuran" comes from the Latin term "pro-stituere" or "prostauree," which means offering oneself for open sexual relations in exchange for compensation. Sometimes, society uses euphemistic terms to refer to activities considered taboo or inappropriate. For example, the term "wanita tuna susila" refers to female prostitutes or "gigolo" for male prostitutes. This is done to soften the meaning and avoid the use of harsh or derogatory words. However, it is important to note that the use of euphemisms does not change the essence of the activity. Engaging in prostitution remains an activity involving sexual trade, whether done casually or as a full-time job. Furthermore, the terms used to refer to female or male prostitutes can vary depending on the culture and language used. It is also important to remember that the issue of sexual trade often involves complex problems such as exploitation, gender inequality, and serious health risks. Therefore, it is crucial to understand the broader context when discussing this topic.

In general (Rusyidi, 2018), "categorizing types of prostitution in Indonesia into 2 groups: traditional (common) type and non-traditional type. The traditional type of prostitution includes activities mainly conducted in red-light districts by women to earn money. In other words, in this group, money is the only form of payment. The sex workers in this group usually come from poor families, have low levels of education, and engage in sex work due to economic difficulties. On the other hand, non-traditional prostitution is commonly practiced by individuals from middle to upper socio-economic backgrounds with higher education in major cities. This includes prostitution activities by students or university students (under the guise of pimps, escorts, call girls) and professionals or those with stable jobs (such as in the case of Secretaries Plus). Apart from economic motives, non-traditional sex workers engage in sex work for adventure and experimentation purposes. Besides receiving payment in cash, they often receive rewards in the form of luxury/expensive items such as mobile phones, clothing, perfumes, entrance tickets to prestigious clubs, and so on."

On the other hand, non-traditional prostitution often referred to as online prostitution, is a societal phenomenon where women sell themselves, engage in sexual activities as a means of livelihood, and use social media as a tool to negotiate prices and locations for their prostitution activities. Some individuals involved in online prostitution. It is clear that the online prostitution referred to in the ITE Law is related to websites or platforms that display or provide content that violates decency solely for the purpose of making money by showcasing images of commercial sex workers, without any other purpose such as for educational or therapeutic purposes, and so on. The provisions regarding sanctions in the ITE Law are stated in Article 45 paragraph (1) concerning Criminal Provisions: Any person who meets the elements as stipulated in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished by imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp. 1,000,000,000.00 (one billion Indonesian Rupiah). This article threatens penalties for anyone committing several crimes, including Article 27 paragraph (1) related to online prostitution with a maximum prison term of 6 years and/or a maximum fine of 1 billion Indonesian Rupiah.

An analysis can be drawn regarding online prostitution, where electronic media is used as a tool for this practice. For example, according to Wirandi (2022), there are five applications commonly used in online prostitution(Wirandi, 2022):

1. Mi-Chat is a free instant messaging service originating from Singapore developed by Michat PTE. Limited. The application was initially intended to facilitate communication with family and friends, similar to WhatsApp, Line, and others. It has gained popularity among users of prostitution services due to various features that facilitate communication. One of its notable features is "People Nearby," which allows users to find other MiChat users in the nearest radius(Islamy & Katimin, 2021).
2. Tinder is a dating app that works by finding people around us based on set preferences. However, Tinder has also been misused as a messenger app, with recent news of a government official using Tinder to find online commercial sex workers. Therefore, Tinder has become one of the messenger apps commonly misused and used for online prostitution.
3. Tantan, similar to Tinder, is a dating app that allows users to find acquaintances nearby. It became popular in 2018 and is also used by prostitution offenders to create profiles and attract potential customers after getting acquainted.
4. WhatsApp is a popular messaging app that has replaced BBM and Line Messenger in the present, with a global user base of up to 2 billion and nearly 83% of internet users in Indonesia, approximately 180 million users. Due to its popularity, WhatsApp is misused by online prostitution offenders for exchanging contact information, sending photos, and conducting final transactions before meeting in person.
5. Facebook, besides WhatsApp, is another popular platform used in online prostitution practices. Offenders utilize Facebook to market and offer their services by creating profiles and often sending offer messages to potential clients.

B. Prostitution as a Legal Sex Work in the Netherlands.

In 1999, the Netherlands became one of the first countries to legalize prostitution by lifting the ban on brothels and recognizing sex workers as part of the regulated sex industry under local government control. Those working in the sex industry are entitled to social rights typically obtained by workers (Outshoorn, 2004). Only citizens of the European Union are allowed to work legally as prostitutes; those from outside are not permitted work permits and thus become undocumented workers without rights and protection once their temporary visas expire. The new measures came into effect in 2000.

In regulating prostitution in the Netherlands, legitimate brothels must obtain official permits from the local government, usually represented by the municipal council. Theoretically, this system should run smoothly, but in practice, local governments rarely grant permits to sex workers who comply with all the established rules. Most cities implement policies where only existing brothels are allowed to renew their licenses, and this is done through a complex procedure called the 'wet BIBOB', where brothel owners must prove that they have fulfilled their tax obligations correctly and are not involved in any criminal activities (Bengry, 2022; Pundik et al., 2022). However, the Netherlands has now reformed this law with a new draft legislation, the 'Prostitution Regulation and Abuse Prevention in the Sex Industry Act', introduced to parliament in 2009, with stricter measures to combat human trafficking and crimes, but with more control over the sex industry and sex workers. They will be required to register with the relevant authorities with the condition that the age for working in the sex industry will be raised from 18 to 21, and customers will be required to check if the sex worker is registered and not an 'illegal' worker.

In its history, in the nineteenth century, the Netherlands had a prostitution regulation system that allowed the existence of brothels. After a long abolition campaign by feminists and Protestants, the rule was repealed by the Morality Act of 1911. The law also made abortion, contraception, and homosexuality punishable offenses. Brothels were banned; pimps and other individuals who earned income from prostitution were criminalized, but not sex workers, who were seen as women in need of rescue (Vries, 1997b). The Morality Act reflected the new majority in parliament from religious parties formed in the early 1900s. However, this abolition regime never succeeded; throughout the twentieth century, unofficial policies reverted to regulation when local authorities centralized prostitution activities in specific areas and allowed 'private houses'. This aligns with the pragmatic approach respected by Dutch authorities towards morally controversial issues in the absence of moral consensus. As long as public order is not threatened, authorities pretend not to see what is happening (Vries, 1997).

In reality, the fundamental principle of the latest law is to distinguish between voluntary and coerced prostitution. The focus is on regulating prostitution practices by protecting minors from sexual exploitation, raising the age of consent to 18, and "protecting" the position of sex workers (Weitzer, 2012b). This step also aims to clean up the sex industry from criminal activities by implementing a licensing system for brothels. However, coercing someone into becoming a sex worker remains a criminal offense, which includes violence such as deception, coercion, or abuse of power, and is considered a practical solution to social problems (Logie et al., 2021; Weitzer, 2012a).

This step aligns with the progressive discourse in the Netherlands about tolerance, which includes respect for gay rights, tolerant drug policies, liberal abortion regulations, euthanasia legalization, and same-sex marriage since 2001. Sex workers have additional rights recognized,

including the right to choose their own work, social insurance, and acknowledgment of their right to sexual self-determination. However, they also have the obligation to pay taxes and contribute to social security according to their status as legally recognized workers.

Because, undocumented workers are susceptible to extortion due to their illegal status(Kagie, 2010). The new law will make it more difficult for them to find work, as it will be risky to use their services.

C. The Urgency of Criminalizing Clients and Traditional Commercial Sex Workers in Indonesia.

Regulations related to prostitution in Indonesia do not always criminalize all individuals involved in such practices, such as clients of prostitution services who are not clearly regulated. Several regions in Indonesia, such as DKI Jakarta, Kabupaten Indramayu, Kota Tangerang, Kota Denpasar, Kabupaten Badung in Bali, Kota Batam, and Kabupaten Bandung, have issued local regulations criminalizing the use of prostitution services in their respective areas(Arimoro, 2021; Wu et al., 2022). However, this approach is considered ineffective due to the lack of consistency in regulations across regions. For a more effective prostitution eradication, a national regulation that is uniform across all areas is needed. Efforts by the government to combat prostitution are deemed less successful because the number of prostitution service users tends to fluctuate from year to year. Although the government prohibits all parties involved in prostitution, including pimps, commercial sex workers (CSWs), and clients of prostitution services, the handling of prostitution service users remains unclear.

Law enforcement is an urgent need in the legal domain to create positive change and a more humane orientation. In Indonesia, criminal law is divided into two main sources: general criminal law found in the Criminal Code (KUHP) or known as codified criminal law, and special criminal law that encompasses all criminal regulations outside the KUHP. Efforts to combat crime and the politics of criminalization can be outlined in several forms, namely criminal law application, prevention without punishment, and influencing society's views on crime and punishment through mass media. This means that the policy of criminalization can be carried out through penal and non-penal approaches. The penal approach entails imposing criminal sanctions on perpetrators, while the non-penal approach is aimed at prevention or changing public perceptions of crime.

Based on legal doctrine, it states that lawmakers must consider three principles of criminalization when establishing an act as a criminal offense and regulating its criminal punishment(Handoko, 2017). These three principles are: the principle of legality, the principle of subsidiarity, and the principle of equality. The principle of legality emphasizes that an act can only be considered a criminal offense if it is clearly regulated by law. The principle of subsidiarity states that criminalization should be the last resort in handling crimes, often referred to as the last option. Meanwhile, the principle of equality aims to ensure that criminal law is made clear and simple so that it is fair to everyone.

According to Sudarto (Pustaka, 2018), there are four conditions that must be considered in criminalization:

1. The aim of criminalization is to create social order within the framework of establishing a welfare state. Therefore, if users of prostitution services can be criminalized, it can prevent violations of moral and religious norms and avoid negative impacts on health and mental well-being, thus creating a prosperous and peaceful society.
2. The act that is criminalized must be an act that causes widespread damage and creates victims. This is directly related to the criminalization of users of prostitution services being appropriate because it is not uncommon for these users to engage in violence during sexual encounters.
3. Cost-benefit analysis must be considered, meaning that the costs incurred and the benefits obtained must be balanced. This implies that criminalizing users of prostitution services in the legal framework results in achieving a balanced outcome, so if there are legal rules explicitly prohibiting prostitution, they should be considered.

Here is the translation of the regulations regarding prostitution bans in various regions of Indonesia:

1. Regional Regulation of DKI Jakarta No. 8 of 2007 Article 42 Paragraph (2) which states "Every person is prohibited: a. to be a commercial sex trader; b. to instruct, facilitate, persuade, force others to be commercial sex traders; c. to use the services of commercial sex traders."
2. Regional Regulation of Indramayu Regency No. 7 of 1999 concerning Prostitution Article 8 Paragraph (3) which states "Those not considered guests as referred to in paragraph (2) of this Article are: a. Individuals residing at the place whose domicile status can be held accountable; b. The responsible family members bound by a valid marriage; c. Individuals visiting the place for non-immoral activities; d. Officials who, due to their duties, are present for official purposes."
3. Regional Regulation of Tangerang City No. 8 of 2005 concerning Prostitution Ban Article 2 Paragraph (2) which states "Anyone in the Region is prohibited, either individually or collectively, from engaging in prostitution."
4. Regional Regulation of Denpasar City No. 1 of 2015 concerning public order Article 39 which states "Every person is prohibited: a. engaging in prostitution; b. offering or providing oneself for prostitution; c. instructing, facilitating, persuading, or forcing others to offer prostitution services; and d. using prostitution services."
5. Regional Regulation of Batam City No. 6 of 2002 concerning Social Order Article 5 which states "Every person or entity residing or domiciled in Batam City is prohibited from: (1) Providing or using buildings or places for gambling and immoral acts. (2) Engaging in activities promoting immorality. (3) Operating reception and distribution centers for prostitutes for entertainment venues and similar places without the Mayor's permission. (4) Operating as a beggar. (5) Being homeless."
6. Regional Regulation of Bandung Regency No. 5 of 2015 concerning Public Order, General Orderliness, and Community Protection Article 24 letter c which prohibits using the services of

commercial sex traders on the streets and public facilities.

That's a valid concern. Without clarity and firmness in addressing prostitution practices and the lack of regulations criminalizing the use of prostitution services in Indonesia, these practices may continue and even escalate each year. Although the government encourages avoiding involvement in prostitution, the absence of specific regulations in Indonesian law makes users of prostitution services not legally accountable. Therefore, it is important to discuss the criminalization of the use of prostitution services to make legal rules in Indonesia clearer and firmer in addressing this issue.

CONCLUSION

The urgent need for criminal sanctions against users of commercial sex services and traditional sex workers in Indonesia to address the practice of prostitution remains very minimal. Although there are government efforts to prevent involvement in prostitution, the lack of specific regulations in Indonesian law results in sex service users not being legally accountable. Regulations regarding prostitution in Indonesia do not always criminalize all individuals involved in such practices, such as loosely regulated sex service users. Several regions in Indonesia, such as DKI Jakarta, Indramayu Regency, Tangerang City, Denpasar City, Badung Regency in Bali, Batam City, and Bandung Regency, have issued local regulations that criminalize the use of sex services within their respective areas. The findings of this research suggest that the government should promptly incorporate rules into the national criminal code to prosecute service users in traditional forms or take examples from the Dutch government, where brothel owners are responsible for proving consistent tax payments and not being involved in any crimes, aiming to prevent HIV/AIDS and human trafficking (Kemenkes, 2020). Real implications of Indonesian culture on commercial sex are the complexity in addressing the issue. Indonesia's rich culture of religious values, traditions, and social norms provides a different background in viewing prostitution practices (Rissa Asmitha Wardoyo, 2021). The majority of Indonesian society is still strongly bound by religious values that condemn sexual practices outside of marriage. This creates a strong social stigma against sex workers and service users. On the other hand, there are also socioeconomic realities that drive individuals to engage in prostitution, especially in impoverished areas. The implication is the inequality in access to education, decent employment, and economic opportunities, which may force individuals to engage in commercial sex as a means of survival. Additionally, government policies and their implementation also reflect Indonesian culture. Despite efforts to address prostitution, the lack of specific regulations and enforcement challenges contribute to the difficulty in handling this issue. Efforts to address prostitution must consider and respect the diverse cultural values and communities in Indonesia.

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