



## Criminal Law Reform as an Effort to Enforce the Law on the Crime of Prostitution

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### **ABSTRACT**

Prostitution in Indonesia remains a significant social and legal problem, as it violates both moral and legal norms. This study employs a normative juridical approach to examine the regulation and enforcement of laws related to prostitution. The findings indicate that, although existing legislation primarily targets service providers, comprehensive criminal law reform is necessary to address all parties involved, including intermediaries (pimps), sex workers, and clients. Effective regulation should combine criminal penalties, rehabilitation programs, and vocational training to support sex workers in transitioning to alternative livelihoods. The study concludes that legal reforms are essential to establish a deterrent effect, prevent the recurrence of prostitution, and promote justice, thereby contributing to the eradication of prostitution in Indonesia.

**Keywords:** Criminal Law, Prostitution, Legal Reform

### **ABSTRACT**

Prostitusi di Indonesia masih menjadi masalah sosial dan hukum yang signifikan karena bertentangan dengan norma moral dan hukum. Penelitian ini menggunakan pendekatan yuridis normatif untuk menelaah regulasi dan penegakan hukum terkait prostitusi. Hasil penelitian menunjukkan bahwa meskipun peraturan yang ada saat ini lebih menargetkan penyedia jasa prostitusi, reformasi hukum pidana yang komprehensif diperlukan untuk menangani semua pihak yang terlibat, termasuk perantara (mucikari), pekerja seks, dan pengguna jasa. Regulasi yang efektif sebaiknya menggabungkan sanksi pidana, program rehabilitasi, dan pelatihan kerja untuk mendukung pekerja seks beralih ke mata pencaharian alternatif. Penelitian ini menyimpulkan bahwa reformasi hukum diperlukan untuk menciptakan efek jera, mencegah terulangnya praktik prostitusi, dan menegakkan keadilan, sehingga berkontribusi pada pemberantasan prostitusi di Indonesia. Kata Kunci:

**Keywords:** Hukum Pidana, Prostitusi, Pembaharuan Hukum

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## **INTRODUCTION**

Social life always causes social problems that continue to develop over time. Legal problems in society caused by the entry of new cultures and access to technology apparently have a great impact in the form of positive and negative impacts. The social transformation that is happening today poses problems, especially related to prostitution. The world of prostitution is not new, even before globalization and modernization entered Indonesia, this problem was already in our society. Prostitution has proliferated from time to time throughout human history, inseparable from the cultural values of the community and the act of neglect.<sup>1</sup> Prostitution has long been considered a deviant social pathology and can endanger community morality because it is considered a type of deviation from marital norms.

On the other hand, prostitution is not only considered a social disease but also an unlawful act that can be criminally charged. Both prostitution perpetrators, namely sex service sellers, and sex service users can be punished. According to Article 284 of the Criminal Code (KUHP) concerning Adultery, sanctions are imposed on people who use online prostitution services, people who use sex peddlers, or customers, with a maximum prison sentence of 9 (nine) months.

One of the regional regulations stipulates criminal sanctions for users of prostitution services and become prostitutes, namely Article 42 paragraph (2) of the Jakarta Regional Regulation No. 8 of 2007 concerning Public Order, which states that every individual is prohibited from ordering, encouraging, seducing, and forcing others to become commercial sex peddlers; become a commercial sex peddler; and use their services. Then, if someone violates this regulation, they can be fined a minimum of Rp500,000 (five hundred thousand rupiah) and a maximum of Rp30,000,000 (thirty million rupiah), or imprisonment for 20 days or longer than 90 days.<sup>2</sup>

Certain people in the environment have been influenced by social structures so that they act deviantly rather than conform to social norms. Crime is a way to earn a living because many factors in society indicate that the poor are in desperate need of money. In this situation, prostitution is a way to earn money for both women and men.<sup>3</sup> Here, the act of prostitution is concluded as an act of violating the norms of decency, religious norms, and legal norms, which means that it can interfere with, harm the safety, peace, and physical and spiritual prosperity of society as a whole.<sup>4</sup>

Based on the explanation above, a criminal law reform is needed to stop prostitution. Therefore, the author is interested in writing an article entitled "Criminal Law Reform as an Effort to Enforce the Law for the Crime of Prostitution".

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<sup>1</sup> Irwansyah, Lutfi. 2016. "Poverty, Family, and Prostitution in Adolescents". Asean Seminar 2nd Psychology and Humanity: Psychology Forum UMM, p. 213-218

<sup>2</sup> Article 61 paragraph (2) of DKI Jakarta Provincial Regulation Number 8 of 2007 concerning Public Order

<sup>3</sup> Burlian, Paisol. 2016. *Social Pathology*. Jakarta: PT. Bumi Aksara, p. 206.

<sup>4</sup> Utami, Kania Mulia., Ridwan., Aan Asphianto. 2020. "Criminal Law Reform on Criminal Liability for Prostitution Service Users in Indonesia.". PAMPAS: Journal of Criminal Law, Vol.1 No.(2), p. 22-42

## LITERATURE REVIEW

### Definition of Prostitution

In Indonesian society, prostitution is viewed negatively, and individuals who rent or sell their bodies often carry a negative stigma, so it is clear that prostitution is terrible. The concept of prostitution argues that prostitution can satisfy the sexual desires of people who need a place to channel their lust because it is feared that there will be forms of violation of the law, such as rape and assault.<sup>5</sup>

Prostitution as a profession is a form of violation of civil marriage law, as stated in Law No. 1 of 2023 concerning the Criminal Code. Koentjoro (2004) explained that prostitution is a form of profession that sells services to meet the sexual needs of its customers, usually by renting out the body of the seller himself or others.<sup>6</sup> Meanwhile, Kartini Kartono (2005) explained that prostitution is a form in which a man or woman gives up their body to be trapped in sexual activities in exchange for money.<sup>7</sup> Kartini Kartono<sup>8</sup> also described prostitution as a type of sexual deviance that has an unnatural and integrated impulse organization pattern in the form of uncontrolled sexual desire with many people (promiscuity), accompanied by impersonal exploitation and commercialization of a non-affective nature.

Based on some of the above understandings, the author can conclude that prostitution or prostitution behavior is a sexual act between a man and a woman without a legal marital bond, where there is a party that connects the person who seeks satisfaction and the party who sells sex. This activity is carried out to obtain service rewards where sex users obtain sex services to satisfy their lust, while sex peddlers receive rewards in the form of money.

### Influencing factors

Human life does not always go according to expectations. Often, they face obstacles that make them disappointed and unable to find a way out, turning their life path that is not right. In terms of prostitution, it is a form of deviation from life and also a social disease that cannot be simply abolished. In a human life decision, of course, there is a background or driving factor, so that they decide to take the path of prostitution as a form of livelihood.

According to Kelly Weisberg, prostitution itself contains 3 (three main motives that affect women and cause them to enter the world of prostitution, namely:<sup>9</sup>

- a. The motive of psychoanalysis, in which he emphasizes the neurotic aspect of prostitution that makes a person act like the existence of an Oedipus Complex conflict that needs to go against social norms and parents. The Oedipus complex itself is a

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<sup>5</sup> Akbar, Andi Agustang, and Muhammad Syukur. 2022. "Covert Prostitution Network in Lappa Village, North Sinjai District, Sinjai Regency." Phinsi Integration Review, Vol. 5 No.(3): 608-615

<sup>6</sup> Koentjoro. 2004. On the Spot, Speech from the Nest of Prostitutes. Yogyakarta: CV. Qalam, p. 35

<sup>7</sup> Kartono, Kartini. 2005. Social Pathology. Jakarta: PT. RajaGrafindo Persada, p. 214

<sup>8</sup> Ibid

<sup>9</sup> Koentjoro, 2004, Op.cit

boy's emotional and sexual attraction to the opposite sex, who is his mother, while a woman's attraction to his father is called electra complex.<sup>10</sup>

- b. Economic motives that motivate a person to commit prostitution. Usually, people who feel they do not have the ability or opportunity to work normally are then attracted or forced to take a bad way out by becoming commercial sex workers (PSK).
- c. Situational motivation that includes the abuse of parental power, or a poor relationship with the parent, so that often a person needs a means to meet the needs of affection and remuneration in the form of money without the need to work hard. In addition, Weisberg considers childhood experiences, such as sexual experiences of the self and traumatic events, to be situational sources.

According to Kartini Kartono, the occurrence of prostitution in Indonesia is based on the following reasons:<sup>11</sup>

- a. There is no written law prohibiting prostitution or sex activities outside of marriage.
- b. There is a human desire to channel their sexual needs.
- c. There is commercialization of the parties involved to utilize and facilitate sexual services.
- d. Moral decadence and moral and religious norms.
- e. The high level of insult to the dignity and dignity of women has led to exploitation in modern times, even since the war period. Women have become sexual slaves.
- f. The concept of a free market economy thus gives rise to a trade law where supply and demand are the basis for the implementation of sexual relations.
- g. The existence of development projects with a concentration of men causes an imbalance in the ratio.
- h. The entry of globalization and modernization has given rise to various cultures and local communities.

Based on the above opinions, it can be concluded that the factors that encourage the occurrence of prostitution activities can be classified into two, namely internal factors and external factors. Internal factors that encourage prostitution are the low standards of values and morals possessed by sex peddlers and service users, sexual desires possessed, and the experience of the person.<sup>12</sup> Meanwhile, the external factors are the encouragement of economic needs, the absence of strong laws regulating prostitution, parental parenting, the need to obtain a higher social status, and the lack of social control, which causes a gap in the ratio of men and women in an area.

### **Types of prostitution**

According to Asyari (1986), prostitution is divided into two categories based on its registered and organized activities, and unregistered. The differences are as follows:<sup>13</sup>

<sup>10</sup> Alodokter. 2021. "Understanding the Oedipus Complex, Boys' Attraction to His Mother." <https://www.alodokter.com/memahami-oedipus-complex-ketertarikan-anak-laki-laki-terhadap-ibunya>, accessed December 20, 2023

<sup>11</sup> Kartono, Kartini. Op.cit, p. 243-244

<sup>12</sup> Irwansyah, Lutfi. Op.cit., p. 215

<sup>13</sup> Asyari, Sapari Imam. 1986. Social Pathology. Surabaya: National Enterprises of Surabaya, p. 78

a. Registered prostitution

These prostitutes are in certain locations where their numbers are safe and tend to be rare. In this category, supervisory deputies and police departments supervise the perpetrators, and cooperate with social services and health services agencies so that residents can regularly check with a doctor or health worker to get injections and medicines.

b. Unregistered prostitution

This type is not registered with the authorities, has no location, and is not organized, so it cannot be found anywhere. So individuals or groups involved in prostitution illegally or illegitimately seek customers on their own or through brokers.

### Legal Regulations of Prostitution

The regulation on prostitution is still unclear about who is criminally responsible for prostitution activities. Until now, there has been basically no legal regulation that regulates the problem of prostitution. If you look at the Criminal Code (KUHP), Law No. 19 of 2016 concerning ITE (ITE LAW), Law No. 44 of 2008 concerning pornography (Pornography Law), and Law No. 19 of 2016 concerning ITE, no article can punish those who use prostitution either directly or online. Therefore, prostitution that can be held criminally responsible is only a pimp or an intermediary between prostitutes and service users. This is definitely unfair and does not create a deterrent for those who use the service. Even though this is against religious and moral norms, they can still do their deeds calmly.<sup>14</sup>

Although the act of prostitution has been categorized as a criminal act, there are no specific regulations for the perpetrators of prostitution themselves or the people who use the service. Some legal provisions, as contained in the Criminal Code (KUHP) Article 248, only explain the relationship so that it is considered to violate Article 27 of the Civil Code (KUHPer), so that this act is considered adultery. Likewise, it is stated in Law Number 1 of 2003 concerning the Criminal Code, where Article 411 regulates criminal punishment for persons who commit adultery with a maximum prison sentence of 1 (one) year and a maximum fine of Rp. 10,000,000 (ten million rupiah).

Meanwhile, the Criminal Code Article clearly regulates and can ensnare prostitution service providers called pimps/pimps. The articles that regulate are contained in Article 296, which stipulates that a person who deliberately causes or facilitates obscene acts by people with other people and makes a habit or livelihood is threatened with imprisonment for a maximum of one year and four months or a maximum fine of Rp15,000,000 (fifteen million). Meanwhile, Article 506 of the Criminal Code explains criminal acts that seek to profit from the actions of a woman and are used as a livelihood, and are threatened with the longest prison sentence, which is one year.

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<sup>14</sup> Ilyas, Ada., Maria Novita Apriyani. 2021. "The Urgency of Criminality of Online Prostitution Service Users as an Effort to Overcome Social Problems in Indonesia". *Mulawarman Law Review*, Vol. 6, Issue (2): 73-90. <https://doi.org/10.30872/mulrev.v6i2.687>.

This regulation was then perfected by Law Number 1 of 2023 concerning the Criminal Code, which in article 420 states that a person who becomes a liaison person to facilitate obscene acts will be sentenced to a maximum of 2 (Two) years in prison, and article 421 which if a person withdraws profits from the actions in Article 420 will be sentenced to an additional third or 4 months.

## **METHOD**

This research employs a juridical-normative approach. Normative legal research aims to identify and analyze legal rules, principles, and doctrines to address legal problems.<sup>15</sup> It focuses on the study of legal norms and the system of laws.<sup>16</sup> In conducting normative legal research, several methods are commonly used, including the case approach, the legislative approach, and the conceptual approach, which together provide a comprehensive understanding of the legal issues under study.

## **DISCUSSION**

### **1. Criminal Liability of Parties Involved in Prostitution**

In response to the rampant prostitution activities in Indonesia that are covert and localized, of course, strict action must be taken without exception. Indonesia itself has a Criminal Code (KUHP) whose function is a general criminal law and a special crime that must be enforced by the legal apparatus throughout Indonesia. So far, Indonesia has been a country that responds to prostitution by being silent, with exceptions.<sup>17</sup>

Regarding prostitution and the law in Indonesia, which is regulated in the Criminal Code, where it is regulated two articles regarding prostitution. Article 296 has stated that the party who deliberately facilitates and causes obscene acts between one person and another by making it a habit can be sentenced to a maximum of one year in prison, an additional four months, and a fine. Meanwhile, Article 506 is a further explanation regarding the party who withdraws profits from prostitution will be threatened with imprisonment for one year.

Combining the two articles above, it can be known that the criminal law only categorizes prostitution as a violation of the law by the intermediary (pimps or pimps), so that the authorities only have room to radicalize the intermediary. As a result, prostitution activities will continue as long as there are still the main perpetrators, namely, sex workers and customers of the service.

The provisions in the Criminal Code Articles 296 and 506 do not ensnare the actions of the commercial sex worker (PSK) or the user of the service, but only bind the owner or manager of the commercial activity. The legal regulations of the Criminal Code on prostitution are certainly difficult to apply to eradicate women peddlers of sexual services and guests who visit them, so that in every jurisdiction, almost no sexual service

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<sup>15</sup> Marzuki, Peter Mahmud. 2017. Legal Research, Ed. 13. Jakarta: Kencana Prenada Media

<sup>16</sup> Muhaimin. 2020. Legal Research Methods. Mataram: Mataram University Press

users are ever arrested.<sup>18</sup> Likewise, in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (PTPPO Law), which also includes prostitution. However, this rule only criminalizes people who benefit from sexual activity, who are the intermediaries themselves.

Currently, prostitution, also known as prostitution, is still rampant in Indonesian society. Although the government and the authorities have tried to combat this social disease, the fact is that the public is only able to move through the intermediary. This can be seen from the number of commercial sex workers (PSK) who are still circulating in the neighborhood after being released by officers. Also, because of the lack of guidance from the government and the lack of clarity on the law or punishment for prostitutes, the perpetrators have no deterrent to the crimes they commit. Therefore, to really be able to radicalize this social pathology, it is very necessary to carry out reforms to the criminal law in Indonesia related to this sexual activity that can specifically regulate the parties involved in it.

## 2. Criminal Law Reform as an Effective Effort to Tackle Prostitution

Prostitution is a social disease that has existed for a long time in Indonesia. Previously, this activity was carried out conventionally without internet media, but along with the development of technology and modernization, prostitution activities can be carried out through online searches. The legal subjects of online prostitution include intermediaries, workers, and users of commercial services themselves. In the concept of criminal liability, it can only assess whether the act is prohibited or not prohibited by law. In short, if there are no provisions that regulate or prohibit it, then such actions can be taken. So, in connection with the act of prostitution, it must be seen whether the activity is prohibited or not by law.

The law in Indonesia defines prostitution as an act prohibited by law. This is evidenced by the existence of regulations regarding parties who facilitate or contact people to act immorally, who can be held criminally liable. Therefore, it is important for the government and legislators to not only look at the ability of the perpetrators to be held accountable, but also to see who can be held accountable for these actions.<sup>19</sup>

Currently, Indonesia has not regulated the imposition of criminal penalties on users of prostitution services, while this criminal act is committed by more than one person, which can be subject to Article 55 of the Criminal Code, which explains that parties involved in an act or those who promise something, give opportunities, and even facilitate can be criminally charged. The imposition of criminal threats against service providers and service users is a substantial measure for the prevention of prostitution practices. This is considered substantial when looking at prostitution as a free market, where the concept of a market must be that there are sellers and buyers, so that a seller will not trade if the market does not have buyers.<sup>20</sup>

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<sup>18</sup> Beccaria, Cessare. 2011. *Regarding Crime and Punishment*. Copyright © 2019 Genta Publishing. All Rights Reserved.

<sup>19</sup> Huda, Chairul. 2011. *From No Crime Without Guilt to No Criminal Responsibility Without Guilt*. Jakarta : Kencana Prenada Media

<sup>20</sup> Ilyas, Ada., Maria Novita Apriyani. Op.cit p. 85

If this concept is applied, then the user of prostitution services as a buyer and a pimp as a seller, while commercial sex workers (PSK) are commodities that are sold. If the buyer is threatened with a criminal penalty, it will provide fear and a concrete deterrent effect so that the buyer will think again before deciding to buy. The law as a tool of control and control will reduce the *deterrent effect* that can reduce the demand for sexual services.<sup>21</sup>

Criminalization may be one of the best ways to address prostitution and other social problems in society, but it is not the only step to take. So far, we have seen that the Criminal Code and the Law only catch providers of prostitution services or facilities, while users and workers are not given a verdict. In addition, Regional Regulations owned by several regions have prohibited the practice of prostitution, even though not all regions in Indonesia have it. The Regional Government Regulation (PERDA) itself is a territorial regulation, so the regulations will be different in each region, which brings discrimination and legal uncertainty.

Based on the problems at hand, it is necessary to reform the criminal law system that is able to solve the complex problem of prostitution, which covers a wide scope, including.<sup>22</sup>

- a. Reform of the substance of criminal law, namely, material criminal law, formal criminal law, and criminal administration law.
- b. Reforms in the criminal law structure are institutional structuring, management systems, and mechanisms. This includes law enforcement support facilities.
- c. Reform of the criminal law culture that emphasizes the habituation of legal awareness, education, and criminal law science.

In this case, the author concentrates more on substance reform, namely, how material criminal law limits who is responsible for prostitution. This is because not all commercial sex workers (PSK) want the job, so it does not mean that they have to serve a prison sentence. Instead, they should be given rehabilitation and state recovery to improve their mental and psychological condition before becoming a prostitute. Then, after that, it offers new jobs that they can accept so that they do not return to becoming prostitutes.

In addition to the sexual workers who are punished, it is also important to sentence the users of these sexual services as a form of non-discrimination for sexual activities involving the user and the worker themselves. This is because the criminalization of user rules aims to control human sexual instincts and prohibits the distribution of necessities in the form of adultery. Another goal of this criminalization is the realization of the fulfillment of human values that must be just and civilized for everyone.

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<sup>21</sup> Utami, Kania Mulia., Ridwan., Aan Asphianto. Op.cit.,

<sup>22</sup> Arief, Barda N. 2017. *The New Criminal Code Bill: A Restructuring / Reconstruction of the Indonesian Criminal Law System*. Semarang: Publishing Board of Diponegoro University

## CONCLUSION

The existence of the practice of prostitution in Indonesia is a legal and social problem that must be immediately eradicated because it violates the values of Pancasila and the sanctity of the law of morality that lives in society. Until now, the law in Indonesia has only focused on criminalizing prostitution service providers or intermediaries who facilitate commercial sex users and workers to commit immorality as stipulated in Article 296 of the Criminal Code and Article 506 of the Criminal Code. Therefore, as a form of countering prostitution in Indonesia, criminal law reform must be carried out that can foster a deterrent effect for service users and sexual workers themselves, so that a fair law is achieved.

Here, the author presents the idea of criminal law reform to overcome prostitution by adding legal substance that can ensnare every perpetrator involved in prostitution, be it pimps, sexual service users, or even sex workers themselves. In addition to criminal punishment, rehabilitation and job training are also provided so that when a sex worker recovers from the social disease, he can find a more decent job. As for users of this service, the renewal of the substance of the criminal law is aimed at providing a *deterrent effect* so that they do not repeat it again.

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