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### Criminalization of Sex Workers from the Perspective of Criminal Law Transformation in Indonesia

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**Abstract:** This research examines the phenomenon of the criminalization of sex workers in Indonesia amidst the ongoing transformation of criminal law. The criminalization of commercial sex workers (CSWs) often stems from social and moral norms that deem this practice immoral and illegal. This study aims to analyze the impact of criminalization on human rights and the welfare of CSWs, as well as how legal ambiguities contribute to the exploitation and violence they face. Additionally, it explores weaknesses in existing legal regulations and proposes necessary reform efforts to create a more inclusive legal framework that protects the basic rights of CSWs. Through a comprehensive approach, this research is expected to contribute to the development of more humane and effective policies, as well as enhance public understanding concerning the position and rights of CSWs in Indonesia.

Keyword: Criminalization, Sex Workers, Criminal Law, Legal Transformation, Human Rights, Legal Regulation

#### INTRODUCTION

In societal life, social issues evolve over time, especially regarding prostitution. Discussing prostitution refers to a problem that has existed for a long time, yet remains relevant to human development in various places. According to Kartono, prostitution, often referred to as the selling or exchange of sexual services, is a form of work aligned with human existence. As a social problem, prostitution is viewed through cause-and-effect relationships, even though its origins cannot be firmly established. However, to this day, practices related to prostitution are commonly found in everyday life throughout Indonesia, whether conducted openly or covertly. The issue of prostitution is a structural problem; societal views on prostitution are often trapped within moral perspectives. Misunderstandings around these moral issues can lead to a "victim-blaming" attitude, exacerbating the oppression faced by those involved.

Criminal law encompasses the principles and norms adopted by a country to maintain legal order by prohibiting actions contrary to the law and imposing penalties on offenders. As stated by Mertokusumo, criminal law functions as ulitimum remedium, meaning it should serve as a last resort for resolving problems. In Indonesia, the criminal law regulations still in effect today are a legacy of the Dutch legal system, known as the Wetboek van Strafrecht or the Indonesian Penal Code (KUHP). While the Netherlands has reformed its criminal law, Indonesia continues to use the existing KUHP, leading to many actions not being regulated therein, including those related to prostitution. The KUHP does not provide explicit provisions regarding the practice of prostitution.

Prostitution cannot be separated from the existence of Commercial Sex Workers (CSWs), individuals who provide sexual services in exchange for compensation from their clients. Currently, the KUHP only regulates the presence of intermediaries known as pimps, as stipulated in Articles 296 and 506 of the KUHP. Meanwhile, there are no clear provisions regarding CSWs, resulting in their criminalization being regulated only under certain regional laws.

Prostitution is considered a highly complex form of criminality to handle, with economic factors being a major cause in society. This practice emerges as an effort to meet basic human needs, stemming from primordial biological instincts. Prostitution, represented by the sale of sexual services and individuals known as CSWs, should be regarded as a longstanding social problem. This practice is often viewed as a deviation from the sanctity of marital norms. Until now, the practice of prostitution still cannot be eradicated, and the government seems to tolerate the deeply entrenched phenomenon within Indonesian society. This has the potential to threaten sexual morality, family life, women's health, and overall well-being, along with presenting challenges for local governments.

Criminalization is the process of transforming behaviors previously deemed non-criminal into acts that society categorizes as punishable offenses. According to Moeljatno, there are three characteristics in the formation of criminal law. First, the designation of an act as a crime must align with the prevailing legal consciousness of society. Second, it is essential to consider whether the threat of punishment and the imposition of penalties are the primary methods for preventing violations of that act. Third, an assessment of the government's capability, through relevant state institutions, to enforce criminal threats upon violations is necessary. Based on this explanation, it can be concluded that the behavior of commercial sex workers (CSWs) satisfies the characteristics of criminalization and therefore needs to be classified as a criminal act.

The lack of normative provisions in the Indonesian Penal Code (KUHP) regarding the practice of commercial sex workers (CSWs) is a crucial issue within contemporary criminal law. Although the KUHP specifically regulates acts committed by pimps in Articles 296 and 506, which emphasize penalties for parties that traffic individuals for prostitution, the acts involving CSWs do not enjoy clear legal regulation. This creates a normative vacuum where individuals engaged in prostitution cannot be subject to criminal sanctions even though their actions are often considered to violate moral norms. This lack of clarity risks violating human rights, as CSWs frequently become victims of stigma and oppression, in the absence of sufficient legal protection. The consequences of this normative vacuum do not only impact CSWs but also hinder governmental efforts to address broader social issues, such as human trafficking and sexual exploitation. Thus, legal reform is necessary to provide comprehensive and clear regulations regarding the practice of prostitution to protect the rights of all involved and create better social order.

Based on this brief exposition, the author discusses the necessity of criminalizing sex workers within the perspective of the transformation of criminal law in Indonesia, identifying the weaknesses stemming from the absence of regulations on the criminalization of sex workers, and the efforts needed to develop regulations for their criminalization.

#### **METHOD**

The normative juridical research method is employed in this legal study, focusing on document analysis and legal norms. This method aims to analyze existing legal rules and how these rules are applied or interpreted within a specific context. In normative juridical research, primary sources include laws and other legal literature. This approach is relevant for studying issues of a theoretical and conceptual nature, such as a discussion on the necessity of criminalizing sex workers within the perspective of the transformation of criminal law in Indonesia. It will also identify the weaknesses of not regulating the criminalization of sex workers and the efforts to formulate criminalization regulations for sex workers. One approach used in this method is the statute approach and the conceptual approach. The statute approach involves examining and analyzing various regulations governing specific issues, such as the Penal Code and related regulations. Through this approach, the researcher can address the necessity of criminalizing sex workers in the context of the transformation of criminal law in Indonesia.

#### **RESULT AND DISCUSSION**

## Criminalization of Sex Workers from the Perspective of Criminal Law Transformation in Indonesia

The emergence of commercial sex workers (CSWs), also known as women in the sex trade, is often considered a "disease of society" due to its close association with prostitution phenomena that involve intermediaries or pimps. The activities performed by CSWs are generally referred to as prostitution, which is the act of a woman providing herself to fulfill the sexual needs of men in exchange for money or other agreed-upon compensation. This phenomenon has become a hot topic in society as it does not only involve individuals from low-income, less-educated backgrounds but also those with higher education levels who may engage in this practice. From a criminal law perspective, prostitution is categorized as a crime against morality.

Currently, Indonesian criminal law, through the KUHP as the general law and specific laws outside the KUHP, such as the Narcotics Law, regulates various types of crimes. However, the regulation regarding crimes against morality in the KUHP is relatively limited as it mainly targets intermediaries or pimps, as stipulated in Articles 296 and 506 of the KUHP. These articles merely emphasize that pimps can be held criminally liable, while CSWs themselves are not covered by clear statutory provisions within the KUHP that specifically criminalize their actions.

When linked with Article 284 of the KUHP, which governs adultery defined as sexual relations outside the bounds of marriage, this provision does not entirely fit the regulation of CSW actions. CSWs engage in sexual relations not based on personal preference or relationships but to earn income from compensation received from their clients, whose marital status they may not be aware of. Furthermore, the provisions within this article can only be applied if there is a complaint from one of the parties' legal spouse. The normative vacuum in this regulation creates challenges in law enforcement, as police lack a strong legal basis to take action against CSWs. Consequently, prostitution practices continue without legal hindrance, allowing CSWs to openly offer their services without fear of sanctions under the KUHP.

The Indonesian Penal Code, as a product of colonial-era law, has yet to provide specific provisions regarding commercial sex workers (CSWs). In terms of crimes against morality, the KUHP only regulates sanctions against pimps or intermediary parties in prostitution, as outlined in Articles 296 and 506. These articles establish that individuals facilitating or organizing acts of prostitution can face criminal penalties. However, these

provisions do not encompass individuals directly involved as CSWs, meaning there are no legal grounds for imposing criminal penalties on them. This limitation results in a normative vacuum in the criminal law regulation concerning CSWs, as the KUHP does not provide adequate legal foundations to criminalize their acts directly. This normative vacuum arises from colonial legal perspectives that initially viewed CSWs as individuals requiring social protection rather than as criminal actors. Consequently, the KUHP focuses primarily on the third party (pimps) seen as exploiting CSWs for commercial利益.

However, in practice, this leads to the situation where CSWs lack a clear legal status and are vulnerable to discrimination both socially and legally. The absence of explicit provisions regarding CSWs within the KUHP significantly impacts their legal protection and certainty. Due to the lack of clear regulations, CSWs frequently face legal uncertainty, allowing for discretionary interpretation at the local level or by law enforcement officials. Some local governments have enacted regional regulations (Perda) addressing crimes related to CSWs. Nevertheless, these regulations vary in substance and application, ultimately resulting in inconsistency and legal ambiguity for CSWs. In some cases, CSWs may even experience discriminatory treatment or oppression due to the lack of legal umbrellas protecting their rights. This normative vacuum also affects the government's efforts to implement consistent policies in addressing prostitution issues. Absent centralized regulations within the KUHP, law enforcement against CSWs cannot be effective and uniform, creating detrimental effects on human rights protection and fair law enforcement. This highlights the necessity of renewing criminal law to encompass clear and specific regulations regarding CSWs, thus creating legal certainty that upholds the rights of all parties and addresses existing uncertainties.

Several regional regulations (Perda) in Indonesia have attempted to fill the normative vacuum present in the KUHP concerning commercial sex workers (CSWs) by imposing local criminal sanctions on them. Such regional regulations are typically issued in major cities and areas faced with significant prostitution problems as perceived by local communities. Sanctions imposed through regional regulations typically include fines, short-term detention, or social rehabilitation actions. For instance, some regions impose administrative fines or requirements to participate in rehabilitation programs for CSWs caught in raids. In other areas, even pimps, clients, and CSWs could face social sanctions such as community service or mandatory spiritual counseling. These measures demonstrate local government responses to address prostitution by establishing regulations to fill the void in the KUHP.

However, the inconsistency among regional regulations concerning the governance of CSWs creates negative impacts, particularly regarding legal certainty and protection for CSWs. Each region has different policies regarding sanctions and handling procedures, leading to a situation where CSWs face legal uncertainty contingent on their location. Moreover, this diverse approach tends to result in discriminatory treatment for CSWs in some areas, subjecting them to social sanctions that overlook their basic rights as citizens. This situation is further exacerbated by the fact that many CSWs reside in vulnerable economic conditions, so that penalties such as fines or detention only worsen their circumstances rather than providing a fair and effective solution.

Some regional regulations also appear to overlook human rights protection standards that should be guaranteed for CSWs. Rather than providing protection, several regional regulations create new vulnerabilities for CSWs by adopting a more repressive approach than a solution-oriented one. In some cases, CSWs frequently face excessive social stigma and discrimination in the enforcement of regional regulations. They may lose access to health services, adequate rehabilitation, or their rights to defend themselves when entangled in legal issues. The lack of uniformity in these regulations not only complicates fair law enforcement but also obstructs efforts to address prostitution issues with an approach that respects rights and dignity for CSWs.

The criminalization of commercial sex workers (CSWs) under the Bill of the Penal Code carries complex implications for human rights (HAM) and legal certainty. On one hand, this bill provides a clear legal foundation to regulate CSW activities, which previously lacked specification in the KUHP, creating national standards applicable to all regions. Yet, by categorizing CSW actions as criminal acts, there exists the risk that this bill could exacerbate the situation for CSWs. When CSWs are criminalized, they become more vulnerable to social stigma, marginalization, and discriminatory actions from society and law enforcement officials. This negatively impacts their human rights, particularly the right to fair treatment, the right to work, and the right to adequate health services.

The criminalization of CSWs potentially creates human rights dilemmas, as the imposed sanctions may not address the underlying social issues that compel individuals to resort to CSW, such as poverty, lack of employment opportunities, and unsupportive family conditions. When criminalization proceeds without accompanying comprehensive social solutions, sanctions such as fines may entrap CSWs in more challenging situations and perpetuate cycles of social instability. This penal approach may be perceived as disrespectful to individuals' rights to choose their employment, particularly under limited conditions, without providing adequate solutions or protections to improve their welfare and social standing.

The criminalization of sex workers within the framework of criminal law transformation in Indonesia displays several fundamental weaknesses, particularly regarding its impact on HUMAN rights and social welfare. Policies that classify commercial sex workers (CSWs) as subjects of criminalization tend to overlook the socio-economic conditions that drive their involvement in the profession. When criminal penalties are imposed on CSWs without a sufficiently robust socio-economic approach, such actions only exacerbate the instability they face, ensnaring them in cycles of poverty and marginalization. Criminalization also risks reinforcing social stigma, which obstructs CSWs from accessing appropriate health services or legal aid. Consequently, this penal approach often fails to address the root causes of prostitution issues and creates a scenario that leaves CSWs more vulnerable, exacerbating social disparities without providing comprehensive solutions.

Moreover, the criminalization approach toward CSWs potentially stifles progressive legal reform efforts in Indonesia. When CSW actions are regarded as criminal acts, the space for creating supportive social policies for their welfare and rehabilitation becomes limited. This positions criminal law as the primary solution (ultimum remedium) instead of a more integrative and humane social approach. This approach solely based on criminalization contradicts global trends moving toward the decriminalization or regulatory legalization of prostitution, which generally respects individual rights and is more effective at reducing exploitation risks. In Indonesia, reliance on a penal approach can hinder efforts to introduce more adaptive regulations based on human rights, which are better at protecting CSWs and addressing their challenges from social and economic perspectives.

# Weaknesses of Not Regulating the Criminalization of Sex Workers and Efforts for Establishing Regulations

The absence of clear regulation concerning the criminalization of commercial sex workers (CSWs) in Indonesia poses several significant weaknesses with widespread implications for their daily lives. One of the most conspicuous effects is legal ambiguity, which creates a problematic legal environment. In this context, CSWs often lack a clear legal status, leading to uncertainty regarding their rights and obligations. This makes CSWs highly vulnerable to arbitrary and discriminatory law enforcement. In situations where laws do not clearly state the legal status of sex work, law enforcement officials have the discretion to interpret and apply regulations according to their interests. Consequently, many CSWs fall victim to unjust law enforcement, facing penalties or arrests without clear reasoning. This

situation is further exacerbated by the social stigma associated with sex work, as society tends to view CSWs as lawbreakers. The stigma not only degrades their public image but also creates fear and distrust towards the legal system. Many CSWs are reluctant to report incidents of violence or violations they encounter due to concerns over more severe legal consequences for themselves.

Legal ambiguity also impacts CSWs' access to human rights protections. In many cases, they lack legal channels to seek justice or protect themselves from violence, whether perpetrated by clients, pimps, or law enforcement officials themselves. This creates situations in which CSWs are often forced to deal with their problems independently without adequate support. Their inability to report incidents of violence or exploitation only worsens their circumstances, creating a cycle of injustice that is hard to break. The uncertainty surrounding CSWs' legal status also affects their ability to access necessary health services. Many CSWs feel apprehensive about seeking medical treatment due to fear of stigma and law enforcement. This leads to deteriorating mental and physical health, significantly increasing the risk of sexually transmitted infections in society. In the long run, the ramifications of this legal ambiguity not only harm CSWs but also pose greater public health risks.

The lack of clearly defined regulations regarding sex work in Indonesia significantly exacerbates the social stigma surrounding commercial sex workers (CSWs). When sex work is treated as a criminal act, society tends to view CSWs negatively, perceiving them as lawbreakers and individuals lacking morals. This stigma leads to systemic marginalization and discrimination, with CSWs often being neglected in various aspects of life, including access to health services, education, and legal protections. In this context, stigma not only limits their social and economic opportunities but also undermines their self-esteem and self-worth.

This marginalization has direct implications for the health and welfare of CSWs. When they attempt to access health services, many face rejection or discriminatory treatment from service providers. For example, CSWs may fear seeking medical care due to anticipated stigma or may hesitate to report health issues related to their work. Consequently, they often avoid critical health checks, such as testing and treatment for sexually transmitted infections (STIs) and HIV/AIDS. This not only affects their individual health but can also pose a public health risk. The societal stigma linked to sex work creates deep-seated fears that hinder CSWs from reporting violence or exploitation they experience. In situations where they are victims of violence from clients or law enforcement, many CSWs feel compelled to refrain from seeking help. The uncertainty regarding how they will be treated by authorities if they report such cases makes them choose not to engage with the legal system. In many instances, they worry that their efforts to seek justice may worsen their legal circumstances, leading to arrest or prosecution based on their status as CSWs.

Without proper legal protections, commercial sex workers (CSWs) are often forced to operate in unsafe and high-risk conditions. The lack of clear legal protections creates an environment where CSWs lack the right to demand better working conditions or refuse unwanted services. In scenarios like these, they frequently find themselves compelled to accept potentially dangerous job offers without the ability to ensure their safety and well-being. This becomes a significant factor that heightens their likelihood of becoming victims of physical, sexual violence, and exploitation by clients, venue owners, or even law enforcement.

The existence of ambiguous legal frameworks also fosters powerlessness among CSWs. When they do not have clear legal support, they feel trapped in a vulnerable position and find it challenging to refuse detrimental situations. For instance, if a CSW feels threatened by a client, they may be unwilling to report the incident, fearing more severe legal repercussions or further victimization. This powerlessness contributes to a recurring cycle of violence in which CSWs are often compelled to remain in perilous situations with no safe

exit. Such unsafe working conditions affect not only the physical safety of CSWs but also their mental and emotional health. Constant exposure to risky situations and violence can lead to deep psychological trauma, increasing the risk of mental health issues such as depression, anxiety, and post-traumatic stress disorder (PTSD). These psychological impacts may exacerbate their sense of helplessness, making it increasingly more difficult to seek alternatives or transition into safer employment.

Legal ambiguity surrounding the status of commercial sex workers (CSWs) in Indonesia significantly hampers the government's efforts to implement effective public health policies. When sex work is viewed as illegal activity, CSWs are often excluded from disease prevention and treatment programs. This occurs because most CSWs feel alienated from the healthcare system designed for them, creating a gap between them and the necessary health service offerings.

The stigma attached to sex work serves as a major barrier for CSWs seeking healthcare services. Many hesitate to visit health facilities, whether for routine examinations or for STI treatments, fearing discrimination or legal consequences. This uncertainty increases their vulnerability to infections and diseases, which can adversely affect not only their personal health but also public health at large. In such circumstances, the risk of sexually transmitted disease transmission increases and can spread to wider populations, creating much more serious public health issues. In the absence of clear regulations and government support, prevention programs targeting CSWs tend to be ineffective. For instance, education about safe sexual practices and access to preventive healthcare services, including vaccinations and routine testing, become minimal. This neglects the health needs of CSWs and has the potential to worsen the spread of infections within larger population groups. The inability of CSWs to access adequate healthcare services entraps them in cycles of high-risk behavior, which can have long-term implications for both individuals and the broader community.

Efforts to establish clear regulations on the criminalization of commercial sex workers (CSWs) in Indonesia are crucial to facing the challenges this group encounters. One initial step that requires attention is conducting comprehensive studies on the social, economic, and health conditions experienced by CSWs. This inquiry must engage various stakeholders, including the CSWs themselves, non-governmental organizations (NGOs), academics, and government entities. By understanding the real conditions faced by CSWs, policymakers can formulate responsive and inclusive regulations that provide adequate protections for them. Through this evidence-based approach, it is hoped that the resulting regulations will create a legal framework that recognizes CSWs' rights and protects them from all forms of discrimination and violence.

After conducting this study, the next step is to formulate clear and comprehensive regulations concerning the legal status of CSWs. These regulations should encompass aspects such as the rights and obligations of CSWs, protections against violence and exploitation, and their access to health and education services. In this regard, a Bill concerning Sex Workers should consider principles of human rights and social justice. Thus, CSWs will have clear legal guarantees, enabling them to report incidents of violence or rights violations without fear of legal repercussions. Moreover, it is essential to establish transparent oversight and law enforcement mechanisms to ensure the regulations set forth are effectively implemented without any abuse of power by law enforcement authorities.

Additionally, it is crucial to actively involve CSWs in the policy-making process. By listening to their voices and experiences, policymakers can design regulations that are more appropriate and consistent with their needs. Active engagement from CSWs in this dialogue will not only legitimize the resulting policies but also help mitigate the stigma and discrimination they face in society. Furthermore, the involvement of CSWs in policy-making

may facilitate greater public awareness of the issues they encounter and promote a better understanding of sex work as a part of societal reality.

In parallel, the government needs to develop programs supporting the welfare of CSWs through education, skill training, and access to health services. These programs should be designed to help CSWs access safer and more sustainable employment opportunities outside of sex work. By providing adequate support, the government can contribute to creating a safer and healthier environment for CSWs while simultaneously reducing the stigma attached to them. Through this comprehensive approach, it is hoped that the establishment of a criminalization framework for CSWs can provide the necessary protections and significantly improve their quality of life.

#### **CONCLUSION**

Legal regulations concerning commercial sex workers (CSWs) in Indonesia still face numerous challenges and significant normative vacuums, particularly within the current Penal Code (KUHP), which fails to provide adequate protection or regulation. While local governments have attempted to fill these voids through regional regulations, varied and often discriminatory approaches instead exacerbate CSWs' vulnerabilities and create legal uncertainty. Furthermore, the potential criminalization of CSWs under the Bill of the KUHP can adversely affect their human rights and social welfare, placing them in more vulnerable positions regarding stigma and marginalization. In confronting this complex issue, progressive legal reforms that do not solely rely on criminal law as the primary solution but also incorporate a comprehensive socio-economic approach to improving the living conditions of CSWs while reducing stigma and discrimination they experience are essential. Therefore, the future policy concerning CSWs in Indonesia should shift towards decriminalization and more humane regulation, fostering a safe and equitable environment while respecting individual rights and improving their social and economic conditions.

The criminalization of commercial sex workers (CSWs) in Indonesia demonstrates that legal ambiguities regarding their status have far-reaching and significant consequences on their daily lives. The lack of clear regulation creates an ambiguous legal space, resulting in arbitrary and discriminatory law enforcement while increasing the social stigma associated with sex work. This worsens CSWs' access to human rights protections, healthcare services, and the opportunity to report violence or violations they experience. The marginalization faced by CSWs not only affects their health and welfare but also introduces greater public health risks. Therefore, the formation of clear and comprehensive regulations is imperative to protect CSWs' rights and provide them with adequate legal protection. Involving CSWs in the policy-making process and providing relevant support programs are vital steps toward creating a safer and fairer environment, while simultaneously improving their overall quality of life. Through collaborative efforts from the government, society, and various stakeholders, it is anticipated that regulations can emerge that not only recognize the existence of CSWs but also respect and protect their rights as valuable individuals in society.

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