

# Commercial Sex Workers Policy in Indonesia

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**ABSTRACT**---*The purpose of this study is to analyze the reformulation of criminal liability for commercial sex workers. The method used in this study is an empirical normative research method. The results of the study indicate that the regulations to ensnare prostitutes in Indonesia have not been able to provide a deterrent effect. The Criminal Code can only be used to ensnare a pimp / pimp / commercial sex worker provider. whereas Articles that can be used to ensnare commercial sex workers are regulated in their respective regional regulations. Based on the principle of lex superior derogat legi inferior, of course, the regulation on prohibition of prostitution cannot be enforced because it is against the Criminal Procedure Code as a higher law. The clash between prostitution activities with moral values, religion, and culture certainly becomes a philosophical and sociological problem in building an ethical, cultured, and civilized society. Law Enforcement in the process of providing sanctions to prostitution perpetrators of law enforcement officers is in accordance with applicable regulations. it's just that we need a reformulation of criminal responsibility aimed at commercial sex workers too. where in the case what happens is that commercial sex workers knowingly and without coercion practice prostitution. The absence of rules that explicitly prohibit the practice of prostitution, is an obstacle so that the practice of prostitution is increasingly increasing with various types of types of prostitution along with the development of the era. Efforts made in providing sanctions for the responsibility of commercial sex workers from existing cases only by making them as witnesses and victims, as well as data collection and then the commercial sex workers were given rehabilitation only*

**Keywords**--- *Commercial, Sex Worker, Law Reform*

## I. INTRODUCTION

Prostitution is a legal problem and a social problem that happened long ago. Even said to be a very old profession in the civilization of human life. Prostitution according to James A. Inciardi as quoted by (Topo Santoso, 1997) is "the offering of sexual relations for monetary or other gain" (the offer of sexual relations to obtain money or other benefits). So prostitution is sex for a living, usually in the form of money. This includes not only intercourse but also every form of sexual relations with others to get paid. In prostitution involved three components, namely commercial sex workers (prostitutes), pimps or pimps (pimps), and their clients (clients) that can be done conventionally or through cyberspace.

Prostitution is not merely a symptom of moral violations but is a trading activity. Prostitution activities lasted quite a long time, this may be caused because in practice these activities take place because of the many requests from consumers for sexual activity services, therefore the more the level of supply offered. Another impact of the

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practice of prostitution is the result of the practice of sexual relations, which if observed in the lives of the people of the homeland seen the emergence of many problems, especially health problems such as increasing cases of AIDS and venereal diseases, maternal mortality that is still very high, the widespread practice of abortion due to pregnancy unwanted, increasing cases of sexual violence against women, and the tendency of adolescents to have sexual relations before marriage. The most feared impact of prostitution is the spread of the HIV / AIDS virus according to data ([www.depkes.co.id](http://www.depkes.co.id), access on 18 October 2019, at 08.58) the number of sufferers is increasing, recorded the number of HIV / AIDS sufferers throughout Indonesia as of June 2018 it was reported that 433 (84.2%) were HIV positive / AIDS from 514 districts / cities in 34 provinces in Indonesia. But with the increase in transmission of this deadly disease still does not make a prostitute deterrent.

The rise of prostitution cases as if they have not had a deterrent effect on the perpetrators, the Criminal Code can only be used to ensnare pimps / pimps / providers of commercial sex workers. whereas Articles that can be used to ensnare commercial sex workers are regulated in their respective regional regulations. Based on the principle of *lex superior derogat legi inferior*, of course, the regulation on prohibition of prostitution cannot be enforced because it is against the Criminal Procedure Code as a higher law. The clash between prostitution activities with moral values, religion, and culture certainly becomes a philosophical and sociological problem in building an ethical, cultured, and civilized society. Even though the practice of prostitution is an act that damages morals and mentality that can destroy the integrity of the family, positive law itself does not prohibit perpetrators of prostitution but only for those who provide a place or facilitate the practice of prostitution.

In the act of prostitution there are related subjects namely pimps or pimps (pimp), commercial sex workers (prostitutes) and their clients (clients). Prostitution is part of the act of adultery categorized as (crime without victim) that commercial sex workers and their clients (clients) include victims but also as perpetrators in their actions so that Indonesia's positive criminal law currently still does not provide fair legal certainty and the same treatment before the law as mandated in Article 28D of the 1945 Constitution. The principle of *nullum delictum nulla poena lege praevia*, namely that there is no crime, can be imposed without precedence with regulations that contain criminal sanctions in advance guaranteeing the protection of human rights from the arbitrariness of the authorities. However, a commercial sex worker who prostitutes herself with or without a pimp is not a crime because it is not prohibited in Indonesian criminal law even though it violates from the point of view of religion, customs and decency in Public. The same applies in the client (client), even though as an act of adultery contained in article 284 of the Criminal Code, this article is an absolute offense which means it cannot be prosecuted if there is no complaint from the injured husband and wife (which is humiliated). This article can also only apply to one client (client) or commercial sex worker who has been bound by marriage, whereas if the customer (client) and commercial sex worker have not been bound by marriage then the article cannot be applied.

Other laws relating to prostitution are also contained in Act Number 19 of 2016 concerning Information and Electronic Transactions. However, the Information and Electronic Transactions Law does not mention the word prostitution in all its articles. Except for the norm of Article 27 which contains prohibited acts, namely distributing or making electronic information accessible in violation of decency.

Pornography Law No. 44/2008 which defines pornography broadly includes pictures, photographs, conversations, body language, or any message in various forms of communication and public performances that contain obscenity that violates moral norms, but does not regulate criminal sanctions for prostitution. This law

only limits the matter of making obscenity or sexual exploitation through pictures, sketches, illustrations, photographs, writing, sounds, sounds, moving pictures, animations, cartoons, conversations, gestures, or other forms of messages that violate the norms of decency in society.

The problem now faced is that commercial sex workers who are netted in prostitution are never regarded as perpetrators, but rather as victims. According to (Arief Gosita, 1983) victims are those who suffer physically and spiritually as a result of the actions of others. Who seeks the fulfillment of self-interest or other people who are contrary to the interests and rights of those who suffer. Referring to the definition of the victim according to the author that commercial sex workers cannot be categorized as victims. Because of the several cases in which commercial sex workers are aware and voluntary, without experiencing physical or spiritual suffering, selling their own services, commercial sex workers engage in self-awareness without coercion so this does not include the crime of trafficking in persons.

Article 296 of the Criminal Code states "anyone who intentionally causes or facilitates obscene by others and makes it a search or habit, threatened with a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiahs" this article determines that criminal prosecution can only imposed for those who intentionally cause or facilitate obscene acts with others, and make it a search or habit.

Article 506 states "anyone who draws profit from the obscene acts of a woman and makes her a search, is threatened with imprisonment for a maximum of one year"

Juridical problems can be seen from the formulation of these articles, in which penalties can only be made to pimps or pimps (pimp) whereas commercial sex workers (prostitutes) and their clients (clients) themselves cannot be subject to crime. The punishment handed down to pimps or pimps (pimp) is in the form of basic crimes namely imprisonment and confinement, but prostitution activities still cannot be overcome. Provisions regarding the legality of the localization area are precisely sought to be regulated through local regulations, consequently commercial sex workers are only able to capture the provisions of population administration. For conventional prostitution in several pockets of localization, raids are only intended to capture the circulation of alcohol, narcotics abuse and population administration. Even so, this prostitution activity clashes with philosophical and cultural values in Indonesia. Based on the explanation, the problem that will be examined in this paper is What is the Policy on Reforming Criminal Liability for Commercial Sex Workers?

## **II. METHODOLOGY**

The type of research used is empirical Normative Law Research. that is, normative research supported by empirical data. This type of research is adjusted to the formulation of the problem being studied, namely the study in the field of law. legal research with normative legal research type is legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparative law, structure and composition, scope and material, consistency, general explanation of article by article, formality, and binding force a law and the legal language it uses, but it examines aspects of its application or implementation (Kadir, 2004).

## **III. RESULTS**

### *History of Prostitution*

The word prostitution comes from the Latin word 'prostitution (em)', then was introduced into English into 'prostitution', and became prostitution in Indonesian. In the 'English-Indonesian, Indonesian-English Dictionary', by John M. Echols and Hassan Shadili, prostitution is defined as 'prostitution, prostitution, immorality', while in writing 'Review of Legal Sociology of Prostitution Life in Indonesia', by Syamsudin, interpreted that according to the term prostitution, is defined as workers who have surrendered or sold services to the public to carry out sexual acts by obtaining wages in accordance with what was promised beforehand. Prostitution or Prostitution is the sale of sexual services, such as oral sex or having sex. Someone who sells sexual services is called a prostitute or commonly called a commercial sex worker. Prostitution is an activity that should be taboo because it is morally perceived contrary to religious values and decency.

Prostitution is not limited to business and profession. There is desire and lust in it. There is desire and satisfaction on the contrary. There is poverty and crying in his contempt. There is humility and brutality in his depravity. There is the term "temple prostitution" (temple prostitutes). This model of prostitution was found in the Babylonian, Ancient Egyptian, Ancient Palestinian, Greek, and Roman cultures. Prostitutes wandering the streets and taverns, looking for male prey. Later, his income was handed over to the priests to help build the temple. Perception and position of prostitution fluctuated. There were times when it was placed as slavery. They are stamped as lower class society. Usually they operate more on the streets. In Greece, commercial street sex workers are called porno. Sexual habits have grown varied. In Rome, commercial sex workers were considered criminals and bullies for children. Commercial sex workers are required to use certain clothing to differentiate from aristocratic women. More stringently, Assyria stipulates the article of punishment for commercial sex workers who take off their headgear as their trade mark. In Ancient India, this lowly commercial sex worker was called 'kumbhadasi'. Women from the lower class were only given two choices, married or become prostitute. While in China, prostitution has begun to be placed in special homes. Commercial sex workers who come from the lower class are called "wa she". During the Han Dynasty, commercial sex workers of this group were laid off together with groups of criminals, prisoners of war, and slaves. Likewise in the early days of Islamic society, the emergence of a harem was inseparable from prostitution. It has been a tradition, rich people usually buy hundreds of female slaves to make them harems. Although prostitution was clearly prohibited and the government had immoral police, secretly many female slaves were employed as commercial sex workers. In Indonesia, the practice of prostitution by William Wallace Sanger was traced through the islands of Java, Sumatra and Kalimantan, because at that time, indeed not yet an independent nation. (William Wallace Sanger, the History Prostitution (history of prostitution in the world)

### ***General Description of Crime of Prostitution in Kendari City***

In order to further illustrate and understand, the author first describes 4 things, namely the place, time, and who (personal), as well as the mode or manner of prostitution. As stated earlier, that not just anyone is aware of the places that are usually used for the practice of prostitution. In the area of Southeast Sulawesi, especially the capital city of the province of Kendari, places that are usually used for prostitution are hotels and there are sometimes individual homes. For details on the places usually used for the practice of prostitution, can be seen from the following table

**Table 1:** Places for Prostitution

NO	Type Of Places	JUMLAH	%
1.	Hotels	7	70%
2.	Individual house	3	30%
	Amount	10	100%

Data source: Observation result data in Kendari City area

From the data table above, it shows that most of which are often used for prostitution practices are 7 hotels (70%), then in individual homes (boarding or rented houses or 3 friends' houses) (30%). hotels that are also sometimes used as prostitution practices are like Inayah, Mentari and Purnama, the location of the hotel is far from the crowds and far from the city center, while the definition of individual houses here is a boarding house or rented house, and sometimes a friend's house there are settlements in which there is a special room that can be used for sexual intercourse.

It is almost certain that the practice of prostitution is generally only carried out at night, especially in hotels, except those carried out in individual homes, which is possible during the day depending on the order or the will of the consumer. For details on the times normally used for the practice of prostitution, can be seen from the following table:

**Table 2:** Times of Prostitution

NO	TIME	JUMLAH	%
1.	Night time	6	60%
2.	Day Time	4	40%
	Amount	10	100%

Data source: Observation result data in Kendari area

From the data table above, it shows that most of the time that is often used for prostitution is night, especially those conducted in famous hotels (starred) as many as 6 (60%), whereas those carried out during the day are usually in places boarding or renting number 4 (4%).

With regard to the individual perpetrators of these actors, the authors classify into strata level based on education level, and economic background.

**Table 3:** Level of Education Data for Prostitution Actors

NO	AGE	JUMLAH	%
1.	High School Student	2	20%
2.	College student	5	50%
3.	Work	2	20%
4.	Unemployment	1	10%
5.	Amount	10	100%

Data source: Observation result data in Kendari

From the data table above, it shows that high school students who work as WTS are as many as 2 people (20%), then those who work as WTS are college students in private universities as many as 5 people (50%), then for the students WTS who already have a job or profession other than being a prostitute as many as 2 people (20%), and for WTS who do not have a job or college as much as 1 person (10%)

**Table 4:** Data on Sources of Economic Income for Prostitutes

NO	TYPE OF SOURCES OF INCOME	JUMLAH	%
1.	Parents	2	20%
2.	Independent	5	50%
3.	Parents and Independent	3	30%
	Amount	10	100%

Data source: Observation result data in Kendari

From the data table above, it shows that most prostitutes are those who make prostitution a part of their source of income, which is 5 people (50%), while others are pure assistance from parents, 2 people (20%), and the rest In addition to the assistance of parents there are also independent businesses, which are 3 people (30%).

#### IV. CONCLUSION

In the process of providing sanctions to prostitution perpetrators, law enforcement officers are following applicable regulations. it's just that we need a reformulation of criminal responsibility aimed at commercial sex workers too. where in the case what happens is that commercial sex workers knowingly and without coercion practice prostitution. Administrative administration is less effective and does not provide a deterrent effect, rehabilitation and capital giving is also not very helpful because many commercial sex workers repeat their actions, this is because by becoming commercial sex workers it is faster and easier to get large amounts of money. The role of the government in terms of overcoming the practice of prostitution is very important, it is hoped that in the future the government will make rules on prostitution where if proven to be pimps, service users and commercial sex workers may also be subject to sanctions. regardless of whether commercial sex workers are forced, to practice prostitution. We also adopt laws from outside countries such as Sweden and South Korea. Which is where prostitution is strictly prohibited, both from pimps, service users (clients), and their own sex workers (not a woman can peddle herself)

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