

DOES THE CRIMINALIZATION OF USERS OF PROSTITUTION SERVICES ACTUALLY MINIMIZE THE PRACTICE OF PROSTITUTION?

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Article history: received 10 November 2024; revised 21 November 2024; accepted 27 December 2024

DOI: <https://doi.org/10.33751/jhss.v8i3.11446>

Abstract. This article aims to examine and analyze the phenomenon of prostitution services and evaluate the effectiveness of criminalizing users of prostitution services in reducing current prostitution practices. The article is written using a legal, empirical, and comparative approach, with data based on secondary sources. The analysis results indicate that prostitution can be fundamentally interpreted as the commercialization of sexual relationships, where an individual provides sexual services to another in exchange for money. In the present era, many studies emphasize the significant meaning of criminalizing users of prostitution services, as exemplified by the measures taken in Sweden. However, despite Sweden's attempt to criminalize by imposing fines on users of prostitution services, the practice of prostitution persists. Criminalization can lead to new issues, such as the emergence of human trafficking practices and an increase in the spread of HIV due to inadequate supervision of covert prostitution practices.

Keywords: criminalization; human trafficking practices; prostitution

1. INTRODUCTION

Globalization and modernization represent an era in which technology and information rapidly advance. This progress has a significant impact on the social changes in society,[1] including issues related to crime and societal diseases that transform through technological means,[2] one of which is associated with the practice of prostitution. Prostitution, often referred to as "pelacuran" in Indonesian, originates from the Latin word "prostitue," which implies letting oneself engage in adultery, promiscuity, abuse, and immorality. In English, the term for prostitution is "prostitution," which carries a similar meaning to the Latin language, encompassing prostitution, promiscuity, and immoral behavior. Individuals involved in the practice of prostitution are often called prostitutes. Furthermore, the Indonesian language's term for prostitution, "Pelacuran," is derived from the word "lacur," meaning unfortunate, miserable, unlucky, failed, or behaving badly with anyone.[3]

Currently, it is undeniable that prostitution has evolved into a complex and undeniable social phenomenon. It is crucial to emphasize that in every case of prostitution, women are often perceived as directly involved, regardless of whether they are victims of sexual crimes or victims of poverty.[4]

Women as victims of crime essentially refer to the existence of prostitution practices resulting from criminal activities, such as human trafficking crimes.[5] Human trafficking crimes, especially those targeting women and children, have proliferated in the form of organized and unorganized crime networks.[6] This practice involves not only individuals but also corporations and even perpetrators with authority and power at the state level who abuse their positions. The networks of human trafficking criminals operate both domestically and internationally. In general, the root cause of human trafficking crimes lies in economic issues, particularly poverty. The most common modus operandi involves debt entrapment and low levels of education.[7]

The Indonesian government has essentially employed various preventive and repressive measures to address the issues and impacts resulting from the practice of prostitution. This is reflected in numerous regulations governing the prostitution circle, targeting perpetrators, service users, or third parties involved, such as pimps and others.

The prohibition of prostitution practices is, in fact, regulated in various legal provisions, such as the Criminal Code (KUHP), Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE Law), and Law Number 44 of 2008 concerning Pornography (Pornography Law). However, an evaluation of these regulations indicates

shortcomings in providing clarity, especially regarding the enforcement against commercial sex workers (CSWs) and users of prostitution services. The lack of clarity in these rules is considered a factor that does not yield a deterrent effect on CSWs and users of prostitution services. [8]

The fact of the ambiguity in the existing regulations to prosecute both prostitutes and users of prostitution services has been extensively examined in various scientific articles, such as the one written by Apriliani Kusumawati & Nur Rochaeti. In their conclusion, they state that the Indonesian Government has issued various legal regulations governing the prohibition of prostitution practices. Some of these include (1) the Criminal Code; (2) Law Number 21 of 2007 concerning Human Trafficking; (3) Law Number 44 of 2008 concerning Pornography; (4) Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection; and (5) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. However, assessments of these regulations indicate a lack of clarity, especially in terms of sanctions for users or consumers of prostitution services.[7]

Furthermore, in their article, Apriliani Kusumawati & Nur Rochaeti propose the formulation of new policies for the criminalization of users of prostitution services, similar to those in Sweden. This involves creating regulations or laws governing prostitution practices. The focus would extend beyond intermediaries such as pimps, procurers, or owners and/or operators of brothels, to also penalize users or consumers of prostitution services. Meanwhile, efforts to empower Pedila can be enhanced through comprehensive recovery programs and by enacting the Draft Law on the Elimination of Sexual Violence (PKS), which has been included in the National Legislation Program (Prolegnas) as a priority for the DPR since 2016. Article 13 in the PKS Bill can serve as a legal basis for prosecuting users or consumers of prostitution services.[7] Based on the writings of Apriliani Kusumawati & Nur Rochaeti, this article will attempt to provide a study and analysis of whether the policy of criminalizing users of prostitution services can be effective.

II. RESEARCH METHOD

This article is written using normative research methods with conceptual and historical approaches. The conceptual approach is used to examine and analyze the concept of deontological philosophy developed by Immanuel Kant, which is then associated with the application of modern law in the context of legal positivism. The historical approach is used to trace the development of Immanuel Kant's thought and the application of deontological philosophy in the context of law from time to time.

The data used in this study is secondary data sourced from related literature, both in the form of books, journals, and other documents that discuss deontological philosophy, moral law, and positive law. The collected data were then analyzed descriptively-analytically to see the relevance and criticism of the application of the philosophy of deontology in modern law.

Descriptive analysis is used to describe the main concepts of deontological philosophy and how they are applied in modern law. Furthermore, a critical analysis is carried out on the application of these concepts, taking into account various philosophical views that oppose the rigidity of the application of moral law in modern law, especially from the perspective of post-positivism. This method provides an in-depth understanding of the relationship between Immanuel Kant's deontological philosophy and modern law, as well as identifying weaknesses and rigidity that may arise in the application of these concepts in the current era of positive law..

III. RESULT AND DISCUSSION

1. Decriminalization of Prostitution & Critiques Thereof.

In the current discourse on prostitution, there exists a battle between two perspectives advocating for the criminalization and decriminalization of prostitution practices. In this section, the author will attempt to provide an overview and insights from both viewpoints, such as the issue of the proposed decriminalization of prostitution by Amnesty International. Amnesty International released a highly controversial policy fundamentally urging governments worldwide to "eliminate the criminalization of prostitution." They also call for countries to "include sex workers in the development of laws that affect their lives and safety" and ensure that relevant parties are protected from danger, exploitation, and coercion.[9]

Controversies surrounding Amnesty International's perspective on the issue of prostitution are grounded in the voices of 500 delegates from 80 countries who voted in favor of the initial recommendation to eliminate the criminalization of prostitution. Amnesty also garnered support from public health advocates and activists who view decriminalization as the best way to reduce the adverse effects associated with the sex industry, including underage prostitution, human trafficking, and violence. This debate is bound to recur, almost certainly filled with accusations of betrayal.[10]

Amnesty International's proposal for the decriminalization of acts or practices related to prostitution states that it will be "based on the human rights principle that consensual sexual behavior among adults is entitled to protection from state interference" as long as there is no violence or abuse of children or other illegal behaviors. Supporters of decriminalization argue that this eliminates the stigma of prostitution and makes it easier for sex workers to report to the police if they need protection from violence.[11]

Moreover, the decriminalization of prostitution practices can provide freedom for sex workers and involved parties to negotiate healthy and safe sexual relationships, shielding them from threats to their physical and mental well-being.[12] Currently, various groups worldwide support decriminalization, such as Durbar in India, Germany, New Zealand, and the Netherlands. Germany is one of the countries that liberalized its prostitution laws.

One of the primary reasons Germans chose to legalize prostitution in 2002 was that illegal prostitution practices would become more professional, offering practitioners greater access to benefits like health insurance and pensions,

akin to other professions. However, criticisms abound regarding the legalization of prostitution in Germany. Critics argue that only a small number of commercial sex workers register and can claim its benefits. The primary critique is that this approach fosters sex tourism and fuels human trafficking to meet the growing market demand. Another criticism of the legalization model for prostitution in Germany is that pimps are the sole beneficiaries of the decriminalization of prostitution.[13]

2. Effectiveness of Criminalization Policies for Prostitution Service Users

After understanding the model of decriminalization policies for prostitution practices in Germany, the author will now provide further explanation on the effectiveness of current criminalization policies for prostitution practices. Recommendations issued by Amnesty International are, in fact, opposed by groups striving to end prostitution, viewing it as a source of sexual inequality and danger to women.[14] Groups opposing the deradicalization of prostitution believe that merely legalizing laws to apprehend perpetrators/users of prostitution services is a way to end and reduce demand. However, this group does not advocate for legal efforts/arrests against women or practitioners providing prostitution services. Criminalization of prostitution service users refers to the legal framework of the Nordic model. Sweden is a country that can be said to implement the practice of criminalizing prostitution service users. Through the Prostitution Act of Sweden, known as the Sex Purchase Act or *Sexköpslagen* introduced since 1999, Sweden practices a unique approach in handling prostitution. This approach creates a legal framework distinct from most other countries facing prostitution issues.[15]

The main point of the Sex Purchase Act is the criminalization of prostitution customers, while the sex workers themselves are not subject to criminal sanctions. This represents a significant paradigm shift from the traditional approach that emphasizes the criminalization of sex workers. In this context, sex workers are considered victims of exploitation, and the focus of punishment is placed on individuals purchasing sexual services.[16]

Criminalization of clients aims primarily to reduce the demand for commercial sex services. By imposing legal sanctions on sex buyers, the Swedish government seeks to alter the dynamics of the prostitution market by targeting its consumers. This approach is based on the belief that reducing demand will alleviate pressure on sex workers, and in the long run, the phenomenon of prostitution may decrease. For the sex workers themselves, the Swedish government implements a more humane policy. In contrast to criminalization, sex workers are provided with support and assistance to exit the profession. This approach acknowledges that many sex workers engage in such activities due to difficult economic situations or social pressures. By offering assistance in quitting sex work, the government aims to provide better alternatives for them.[17]. The assistance provided is not limited to economic aspects but also includes social and psychological support. Rehabilitation and reintegration programs are designed to help sex workers overcome challenges they face after leaving the industry. The Swedish government strives to create an environment that supports positive changes in the lives of sex workers who decide to leave the profession.[18]

However, Sweden's approach to prostitution has also faced criticism. Some human rights groups and sex worker activists argue that this approach can increase the risks and vulnerabilities for sex workers. They claim that by criminalizing clients, sex workers become more marginalized and may be exposed to more risky situations without protection. Additionally, there is a debate about the effectiveness of this approach in reducing prostitution and its impact on the safety and well-being of sex workers. The criminalization model applied to clients of prostitution in Sweden has been the subject of intense debate. Some argue that this model successfully alters the dynamics of prostitution by targeting sex buyers, while others contend that this approach poses serious risks to sex workers. It is a fact that this criminalization model has succeeded in driving the practice of prostitution into more concealed and difficult-to-monitor spaces. The increased privacy has led to prostitution occurring beyond the public eye, making it challenging to regulate and supervise by authorities. Consequently, this more clandestine environment may elevate risks for sex workers, particularly concerning their health and safety. One prominent risk is the increased susceptibility to the spread of infectious diseases, especially HIV. In more closed spaces, access to healthcare services and health monitoring becomes more challenging. Sex workers may be unwilling or find it difficult to access the necessary health protection and information. This can create an environment where the spread of diseases, including HIV, can occur without adequate supervision and preventive measures.

IV. CONCLUSION

The debate on prostitution has given rise to two main perspectives: those in favor of criminalization and those advocating for decriminalization. Amnesty International proposes decriminalization, urging the elimination of criminalization of prostitution and the involvement of sex workers in the formulation of laws that affect them. Despite being seen as reducing the adverse impacts of the sex industry, such as underage prostitution and human trafficking, decriminalization sparks controversy as it is considered to heighten the risks and vulnerabilities for sex workers. The Swedish criminalization model draws attention by targeting prostitution clients instead of the sex workers. With the Swedish Prostitution Act since 1999, Sweden aims to decrease the demand for commercial sex services. Although successful in driving prostitution underground, this model is criticized for increasing health risks for sex workers, especially the spread of infectious diseases such as HIV. Criminalizing clients is seen to exacerbate the marginalization of sex workers, heightening risks without adequate protection. Thus, the practice of criminalizing users of prostitution services is not a solution that truly ensures government effectiveness in addressing the issue of prostitution.

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