

# Disbanding Prostitution Localization is Violating Female Sex Workers' Rights: A Case of Indonesia

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## Abstract

Many see prostitution as controversial, as it has few, if not many things to do with morality and public safety. For Indonesia in particular, such practice is also contradictory with the religious teachings upheld by the society. Realizing that the majority of people stand against prostitution practice, government authorities are competing to entirely wipe out prostitution by disbanding prostitution localizations. Total of 160 prostitution localizations had been disbanded in the span of 2016-2019. However, such attempt did not evaluate safety concerns for therein female sex workers (FSW). Prostitution will flourish, localized or not. Thus, FSW were relocating to scattered areas (increasing safety risk) or soliciting online (violating more laws). The disappearance of monitored zones for sex business will address new problems, resulted from negative effects of uncontrolled prostitution. This research is a preliminary analysis in criticizing the Indonesian government policy for disbanding prostitution localizations. Indonesia's government promoted eradication of prostitution to conform with norms while in national level, prostitution is not entirely illegal. Sex work is not a crime and in the history, regional governments had been accommodating area for prostitution. That, in a way, provided safety for FSW from criminalization. However, a full recognition, let alone legalization, of prostitution is still far from achieved. The authors concluded that the recent prostitution localizations dissolution is a hostile attempt to eliminate the rights of FSW as women, including rights for welfare and a safe work environment. Thus, strict control for prostitution through localizations for sex work is actually the answer for a safe, monitored prostitution industry and should have not been disbanded.

## Keywords

Prostitution Localization, Dissolution Policy; Female Sex Workers; Women's Right; States Responsibility



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## Introduction

Prostitution has practically lived within the society since the beginning of time, as it is oftentimes said to be the world's oldest profession.<sup>1</sup> The term sex workers might as well have provided an obvious meaning that is used to emphasize on people as the subjects of this particular matter,<sup>2</sup> whereas prostitution itself is a term that is oftentimes used to emphasize more on the activity of sexual labor, conducted by sex workers, in an exchange of money, or any other valuable material items.<sup>3</sup> Thus, the term 'sex worker' refers to the person and 'prostitution' refers to behavior pertaining to sexual activities that sex workers do for livelihood.

Such exchanges may be independently initiated, or facilitated by a third party, or even industries.<sup>4</sup> Prostitution may involve people from various backgrounds, genders, and even ages, considering that in some cases, there also exist underage sex workers. However, prostitution that involves women and/or girls is the most commonly known by the society in general.<sup>5</sup>

History of Japan, China, ancient Rome, ancient Greek, described prostitution as female escort who accompanied royals and soldiers.<sup>6</sup> Based on the narrative, it is certain that up to this day, prostitution is deeply embedded within the society as it did not vanish with human civilization. If anything, it evolves along with the society.

As an integral part of the society, prostitution is often viewed as a form of social deviance/problem where the subjects involved, especially the prostitutes, are at risk of experiencing various discriminatory treatments<sup>7</sup>

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<sup>1</sup> Greggor Mattson, "The Modern Career of 'the Oldest Profession' and the Social Embeddedness of Metaphors," *American Journal of Sociology* 3, no. 2 (2015): 191-223, <https://doi.org/10.1057/ajcs.2015.4>.

<sup>2</sup> Molly Smith and Juno Mac, *Revolting Prostitutes: The Fight for Sex Workers' Rights* (London, Brooklyn: Verso, 2018).

<sup>3</sup> Treena Orchard, "Sex Work and Prostitution," *Encyclopedia of Sexuality and Gender*. Springer. (2020): 1-5 [https://doi.org/10.1007/978-3-319-59531-3\\_15-1](https://doi.org/10.1007/978-3-319-59531-3_15-1).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Aswab Nanda Pratama, "Mengenal 9 Praktik Prostitusi Dalam Sejarah Perabahan Di Dunia." Kompas, 9 January 2019. <https://internasional.kompas.com/read/2019/01/09/06010041/mengenal-9-praktik-prostitusi-dalam-sejarah-perabahan-di-dunia?page=all#page1>. Accessed on 1 August 2020

<sup>7</sup> Ridwan T.R., Andi Lolo, and Arlin Adam, "The Social Construction of the Commercial Sex Workers in Makassar City," *Mediterranean Journal of Social Sciences* 7, no. 3 (2016): 215-221, <https://doi.org/10.5901/mjss.2016.v7n3s1p215>. Accessed on 2 August 2020

due to the traditional stigmatization within the society itself. In addition, as the prostitution business is expanding in the present days, it often has a strong relation with exploitation and human trafficking. Although the business might as well involve people who operate willingly.

Trafficking has been categorized as an organized crime. It might as well be categorized as international organized crime when the trafficking is crossing country borders. Exploitation by all means is also categorized as a crime. However, not all prostitution involves trafficked women and/or girls as there are also many who provide these services voluntarily. The latter is not explicitly considered a crime in Indonesia. Although practically, in many occasions, brothels become the target of police raids<sup>8</sup>, but, to note that after raids, captured sex workers were released without charge. To avoid the above-mentioned raids, there have been plenty of sex workers who operate online. This operation does not necessarily free them from having to have encounter with the police, even worse, they could face jail time based on the country's Digital Transaction Law<sup>9</sup> that explicitly prohibits any kind of distribution, transmission, and/or making accessible of electronic documents and/or information that infringes decency norm.<sup>10</sup>

Eventhough the above paragraph stated that prostitution is not explicitly illegal in Indonesia, it does not necessarily free all involved subjects in this business from having to be the subjects of criminal sanction. Referring to the regulation set out in Indonesian Criminal Code, criminal sanction for middleman or pimps may be imposed based on Article 296 and Article 506 of the above law. This leaves prostitution industry in Indonesia in the gray area, not explicitly illegal but not entirely legal either. Unlike in the Germany where prostitution is treated as a profession<sup>11</sup>. Still, it is safe to say that prostitution essentially not illegal in Indonesia. Although, it has become a common knowledge that the business is frequently frowned upon in Indonesia based on the moral and decency norm that are upheld highly

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<sup>8</sup> Faisal Irfani, "Coronavirus Killed the Sex Industry. Now Indonesian Sex Workers Are Coming Together to Survive the Pandemic." Translated by Jade Poa. VICE, May 19, 2020. <https://www.vice.com/en/article/93554e/indonesia-jakarta-sex-worker-organisation-coronavirus-pandemic>. Accessed on 27 September 2020

<sup>9</sup> *Ibid.*

<sup>10</sup> Indonesia, Article 27 Paragraph (1) of Law Number 11 Year 2008 regarding Electronic Information and Transaction, State Gazette Year 2008 Number 58.

<sup>11</sup> Ronald Weitzer, "Legal Prostitution: The German and Dutch Models". In: Savona, E., Kleiman, M., Calderoni, F. (eds) *Dual Markets*. Springer, Cham (2017). [https://doi.org/10.1007/978-3-319-65361-7\\_24](https://doi.org/10.1007/978-3-319-65361-7_24)

by the general society.<sup>12</sup> Derived from this situation, it is often quite challenging for the sex workers to decide to change their profession.<sup>13</sup>

Prostitution is explained as to fall under a variety of classifications, that could, in a certain condition, possibly result in different use of regulations, which classified as follows:<sup>14</sup>

1. Consensual Prostitution

This group of prostitution involves women and/or girls that have willingly given their consent to be part of the group, due to several reasons, one of which is their economic background, as becoming a prostitute does not require education degree or specific skills to earn a big paycheck, which sometime might be multiple times bigger than experts.<sup>15</sup> Diving further into the implementation, consensual prostitutions also differ as on how they operate:

a. Women of the street

Although majority of women and/or girls within this category get into prostitution for the first time through mediators, this type of prostitution group is usually generated independently, as the women and/or girls seek to provide sexual favors for male strangers in order to earn some money. They usually attract customers by walking down the streets, alleys, waiting rooms, hotels, cinemas, and coffee shop, alone.<sup>16</sup>

b. Brothels

This category refers to prostitution in organized houses, by which there exist third parties (commonly called as leaders) whose duties are to control the transactions between prostitutes and clients. Such leaders usually earn big part of income from each of the prostitute, which ranges from 50% - 60%. Women and/or girls that work in brothels usually believe that they are in better place than the street prostitutes, as in brothels, they usually have procedures that ensure their hygiene and safety.<sup>17</sup>

c. Telephonic Girls (Call Girls) & Online-Based Prostitution

In the prostitution ladder, these call girls may be placed on the highest rank of all the existing prostitution categories. Women and/or girls involved in this category are higher educated and better mannered.

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<sup>12</sup> Faisal Irfani, *Op. Cit.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Ehsan Rostamzadeh, Rohani Abdul Rahim, and Farid Mohseni, "Historical Background of Prostitution and Typology: A Social-Legal Perspective", *Mediterranean Journal of Social Sciences* 7 No. 5, (2016): 234, <https://doi.org/10.5901/mjss.2016.v7n5p232>

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, p. 235.

<sup>17</sup> *Ibid.*

They wear fancy clothes and live in more luxurious houses. As they are called 'call girls', the mechanism of this prostitution category is done telephony; the women and/or girls wait for their customers to call them. They also relate with their customers as girlfriends instead of prostitutes. Hence the selective behavior towards their prospective customers.<sup>18</sup> Similar to how telephonic prostitutions are generated, online-based prostitutions use internet technologies as email, file transfer protocol (ftp), newsgroups, websites, chats, as well as peer-to-peer servers.

## 2. Forced Prostitution

Referring to the above-mentioned explanations with regards to consensual prostitution, there is another type that should also be taken into account, which is forced prostitution that is likely to be classified as one of a certain type of human trafficking.<sup>19</sup> Derived from the aforementioned classification, it is clear that forced prostitution is defined as the activity of sexual labors provided by women and/or girls without their consent. Others define sexual trafficking as a situation where women and/or girls do not have the ability to change their current conditions, of being subjects to sexual violence and exploitation, regardless of how they got into those circumstances; they just cannot get out.<sup>20</sup> In another condition, traffickers might have obtained the victims consent through a certain type of coercion, threat, fraud, abuse of powers, or deception.<sup>21</sup> They use a various false promises to persuade the targeted women and/or girls to detain them and later make them serve as sex workers.<sup>22</sup> They usually promised the victims a good job, education, and even a false marriage proposal. Even many of them are sold into prostitution by their relatives (including parents, partners, and/or spouses), whereas others would be, against their will, kidnapped and taken away by the traffickers.<sup>23</sup> Poor women and/or girls, and those who are considered to be socially vulnerable (including orphans, disable

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<sup>18</sup> *Ibid*, p. 236.

<sup>19</sup> Neely Mahapatra, Monica Faulkner, and Mona C.S. Schatz, "Forefront of Human Rights Issues: Integrating Human Trafficking into the Social Work Curriculum," *Critical Social Work Journal* 17 No. 1 (2016): 76 <https://doi.org/10.22329/csw.v17i1.5896>

<sup>20</sup> Kathryn E. Nelson, "Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches", *Houston Journal of International Law* 24, No. 3 (2002): 553

<sup>21</sup> Samuel Lee & Petra Persson, "Human Trafficking and Regulating Prostitution", *SSRN Electronic Journal*, (2012): 8, <https://doi.org/10.2139/ssrn.2057299>

<sup>22</sup> *Op. Cit*, Nelson, p.554.

<sup>23</sup> Neha A. Deshpande, BA and Nawal M. Nour MD, MPH, "Sex Trafficking of Women and Girls", *Reviews in Obstetrics and Gynecology Journal* 6 No. 1, (2013): 23

women and/or girls, innumerate, and illiterate), are most likely to be the targeted subjects of forced prostitution.<sup>24</sup>

Below are some underlying factors that contribute to the reason why women chose to become sex workers:<sup>25</sup>

1. Economic Factor. This is the dominant factor that cause women to do sex work;
2. Difficulties to obtain employment;
3. Low education level;
4. Sufficient income as a sex worker;
5. Family issue. i.e., being left by spouse and the spouse's job does not provide for the family.

The bottom line is that considering the variety of the above underlying factors, hence the need to find a variety of approaches to understand and solve this particular issue. The absence of law that regulates prostitution resulted that sex workers are non-punishable from the viewpoint of Criminal Law.<sup>26</sup> From Criminology perspective, social behavior studied in Criminology is divided into 2 (two) category:<sup>27</sup>

1. Crime, a behavior that endanger the society in economic, physical, psychological, and also include environmental damage.
2. Deviant, a behavior that is against society acceptance of morality. There is very less to none harm resulted.

Therefore, approaches towards prostitutions supposedly does not use legal approach as it is more suitable to fall under the category of 'a deviant'.

Align with the national law that Indonesia has been implementing, international legal instruments, particularly the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the

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<sup>24</sup> *Ibid*, 24.

<sup>25</sup> Siti Munawaroh, "Pekerja Seks Komersial (PSK) di Wilayah Prambanan, Kabupaten Klaten, Jawa Tengah", *Dimensia Journal* 4 No. 2 (2010): <https://doi.org/10.21831/dimensia.v4i2.3433>

<sup>26</sup> Raden Satria Ocktaviar, Nandang Sambas, and Dian Andriasari, "Telaah Kritis terhadap Putusan Nomor 470/Pid.Sus/2014/Pn.Smn tentang Perkara Prostitusi Online Ditinjau dari Perspektif Kriminologi", *Prosiding Ilmu Hukum Universitas Islam Bandung* 4 No. 1, (2018). <http://dx.doi.org/10.29313/.v0i0.8824>

<sup>27</sup> Muhammad Mustofa, quoted from his speech on "Pelacuran dalam Sudut Pandang Kriminologi", presented in the National Seminar of *Tindak Pidana Prostitusi dan Permasalahan dalam Penegakkan Hukumnya*, Universitas Trisakti, Jakarta, 1 Agustus 2019.

Prostitution of Others, stated that Parties to the aforementioned Convention should agree to punish anyone who, for prostitution purposes, gratify the passions of the procurement, enticement, or diverting and/or exploiting another person, even with their consent.<sup>28</sup> This only means that the provision written in the international legal instruments, do not recognize any criminalization against the sex workers themselves. Referring to such circumstances, there had been several movements within the international community that demanded a full political protection towards sex workers. In the 1990s, there were several movements and the establishment of prostitute organizations in the United States. Call Off Your Old Tired Ethics (COYOTE), established in San Francisco in 1973 was acknowledged to be the first self-identified prostitutes movement.<sup>29</sup> A couple of years later, the similar movement also came to the surface in French in 1975 which resulted in the creation of the French Collective of Prostitutes that inspired the later emergence of several other groups located in England (1975), New York (1979) – which became USPROS, Australia (1981) – which now known as PCV, and Italy (1982).<sup>30</sup> Subsequently, the International Committee for Prostitutes Rights (ICPR) was established and ever since such establishment, there had been two World Whores Congresses which were held respectively in Amsterdam, in 1985 and in Belgium in 1986. These two congresses resulted in a Charter of Prostitutes Rights.<sup>31</sup>

Nonetheless, the aforementioned charters cannot be considered as a binding international legal instrument as it was not established by an official international body. Supplementing the international regulations on prostitution, in its practice, countries within the international community have issued various policies on whether or not they decriminalize prostitution. Recently, there has been a survey targeted to 100 countries based on major religions, geographical regions, and policies on prostitution. Referring to the aforementioned survey, it is recorded that there are at least 53 countries that consider prostitution to be legal, 12 countries with limitedly legal prostitution policies, and 35 countries that decriminalize

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<sup>28</sup> United Nations General Assembly, "Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others", 1951, Art. 1

<sup>29</sup> Kamala Kempadoo and Jo Doezema, *Global Sex Workers: Rights, Resistance, and Redefinition*, (London, New York, Routledge: 1998).

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

prostitution, and Indonesia is classified into the classification of countries where prostitution is legal.<sup>32</sup>

The elaboration above brings out the question of what's next. State is expected to eliminate prostitution, however, state must do it in a way of prioritizing FSW safety. Borrowing from an international publication regarding state accountability for eliminating VAW, Indonesia can utilize the due diligence framework that introduced by Zarizana Abdul Aziz and Janine Moussa in 2016 based on a due diligence project, driven by the struggle to understand women's rights as human rights and to bring violence against women out of the private zones of silence and place it firmly in the public sphere of State accountability are among the most important gains of the global women's movement over the past three decades.<sup>33</sup> The project report has been successfully addressed five principles in a pursue for effective elimination of VAW by the state.

The five principles of state's accountability in eliminating VAW according to Aziz and Moussa (2016) are:

- Prevention;
- Protection;
- Prosecution;
- Punishment of perpetrators;
- Provision of redress and reparation of victims/survivors.

Closing down prostitution localizations to banish prostitution is not fulfilling the 5Ps principle, because:

- Closing down prostitution localization, evidently, not preventing the occurrence of prostitution, let alone, violence against FSW. In contrary, not having a localized area for prostitution is opening up a potential violence against FSW with the occurrence of street and illegal prostitution as the consequences.
- Consequently, lesser protective measure for FSW as the state does not conform with the prevention aspects as well as creating protection from VAW for women therein prostitution industry.

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<sup>32</sup> ProCon.org, "Countries and Their Prostitution Policies", ProCon.org, 23 April 2018, <https://prostitution.procon.org/countries-and-their-prostitution-policies/>, on 15 July 2020.

<sup>33</sup> Zarizana Abdul Aziz and Janine Moussa, *Due Diligence Framework. State Accountability Framework for Eliminating Violence against Women*, (Malaysia, International Human Rights Initiative, 2016)



The lacking of prevention and protection as a result of the dissolution of prostitution localization, consequently affecting the effectiveness of prosecution, punishment of perpetrators of violence addressed to FSW, as well as reparation for FSW fall victim of violence. The situation is more pervasive as FSW are discriminated in the eye of general society and violation of their rights is likely done by state apparatus.

Indonesia had been housing around 160 prostitution localizations spread throughout its archipelagic geography. However, the authorities of Indonesia regularly raids prostitution places, despite of non-existing national law constituted sex work as illegal, also, regional government had been accommodating the industry for decades before turning their backs and decided to disband prostitution localizations. The effort apparently went national as many regional governments followed, until in 2019, 160 prostitution localizations had been closed. Some of the most famous brothel shut down are as follows:

1. Surabaya

One example of the 'women of the street' prostitution in Indonesia exists in Surabaya, one of the leading cities in Indonesia. As legal prostitution spaces in Surabaya were closed by the local governor, many sex workers would peddle themselves on the side of the road, all along Diponegoro road, starting at 23:00 until 04:00 Western Indonesian Time. The age of the sex workers also varies from 30 to 40 years old.<sup>34</sup>

2. Jakarta

One of the biggest brothel practices in Indonesia takes place in Jakarta, namely Kalijodo. Considering the width of this brothel, Kalijodo located in two cities at the very same time; West Jakarta and North Jakarta. The prostitution practice therein is covered by the businesses of cheap and small café and karaoke bar. In each building, they provide at least 15 to 20 women who are available to provide sexual favors. Female sex workers (FSW) at Kalijodo usually peg price ranging from 100,000 to 200,000 rupiahs per one client. Not only it becomes a place where they work, most of FSW actually live there.<sup>35</sup> In 2016, Basuki Tjahaja Purnama

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<sup>34</sup> Dian Kurniawan, "Fenomena Bisnis Prostitusi di Jalanan Surabaya", *Liputan 6*, 13 April 2014, <https://www.liputan6.com/news/read/2036314/fenomena-bisnis-prostitusi-di-jalanan-surabaya>, Accessed on 19 July 2020.

<sup>35</sup> Ramadhian Fadillah, "Kalijodo, Legenda Prostitusi yang Belum Mati", *Merdeka.com*, 12 June 2017 <https://www.merdeka.com/khas/kalijodo-legenda-prostitusi-yang-belum-mati.html>. Accessed on 19 July 2020.

or also known as Ahok, the governor of Jakarta Province for 2014-2017 period, dismissed Kalijodo. The program was to refunction the area into child friendly public area. This move was considered ineffective due to the fact that some FSW came back and some began to ‘continue the sex business’ at other area such as Pluit-Tomang.<sup>36</sup> While the government successfully shut the place, FSW seek other location to continue working, such as bar, cafes, hotels, or becoming a street prostitute. Also in Jakarta, few years later, Anies Baswedan, the former governor of Jakarta, had terminated the operational permit for Alexis Hotel, a hotel infamous for prostitution.<sup>37</sup>

The dissolution of prostitution localization in Indonesia arose critics with regard to the purpose of dissolution, gender lens (mind that gender plays pivotal role as the majority of sex workers are women), states responsibility of protection for women’s rights, and solution for prostitution in the long run that will not violating sex workers’ rights. Indonesia’s current stance for prostitution is a ‘quasi-illegal’, meaning that some behaviors are not illegal and some are illegal.

Behavior	Not illegal	Illegal	Legal Basis
Soliciting sex work (conventional)	√		National Criminal Code
Managing sex work (pimping)		√	National Criminal Code
Soliciting online sex work		√	The Digital Transaction Law No. 11/2008 and No.19/2016
Underage sex work		√	The Child Protection Law No. 35/2014 and No. 23/2002
Non-consensual sexual intercourse (rape, harassment)		√	The Anti-Sexual Violence Law No. 12/2022
Sex trafficking		√	The Human Trafficking Law No. 21/2007

<sup>36</sup> Hendra Friana, “Langkah Penertiban Prostitusi Kalijodo Dinilai Kurang Tepat”, *Tirto.id*, 7 June 2017, <https://tirto.id/langkah-penertiban-prostitusi-kalijodo-dinilai-kurang-tepat-cqfQ>. Accessed on 9 August 2020

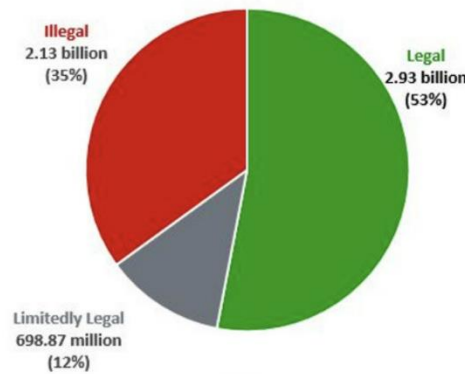
<sup>37</sup> Jessi Carina, “Kisah Anies dan Alexis, Ahok dan Kalijodo” *Kompas*, 31 October 2017, <https://megapolitan.kompas.com/read/2017/10/31/12305911/kisah-anies-dan-alexis-ahok-dan-kalijodo?page=all>. Accessed on 9 August 2020

Providing places for sex work (hotel/café/karaoke)		√	Regional level laws
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Table 1. Legality of sex work in Indonesia

The use of term ‘not illegal’ is intentional as Indonesia never explicitly constitute sex work as legal, nor recognize sex worker as a legitimate employment. workers do not employment Indonesia’s law. In contrary, fear of criminalization those who prostitution as some society actively propose criminalization If this notion the government, trafficking

Percentage of Countries with Legal, Illegal, and Limitedly Legal Prostitution (of the 100 countries)



Thus, sex enjoy rights under employment they face the

(including entered forcefully) members

for sex work. approved by sex victims will

face double violation as they will fall under the subject of the notion as well.

The undetermined legality of the status of sex workers has left them working in the brink of societal norm. Regional government apparatus oftentimes performed raid against FSW which resulted to no legal prosecution whatsoever, but it did portray fear for authoritative figures.

Worldwide, countries have variation for their legality towards prostitution. In 2018, from 100 countries, there are 53 countries have legalized prostitution.

Image 1. Percentage of legality for prostitution based on countries<sup>38</sup>

In Germany for instance, as one of countries that have recognized sex work as a labor, local authorities/cities can place restrictions on how and where sex work takes place. If sex workers work outside of these restrictions, then they are liable to fines and potentially imprisonment.<sup>39</sup> Brothel-keeping is legal and under new laws recently adopted any brothel will have to be registered and licensed under stringent regulations.<sup>40</sup> Sex workers will be required to:

- register to work legally and undergo counselling from a social worker.
- Must renew registration every 2 years.
- Must be registered to work in a brothel and brothel owners responsible for making sure only employ registered workers.<sup>41</sup>

Contracts constituted between sex workers and their clients are also deemed valid.<sup>42</sup> This is the ideal notion of prostitution regulation, in term of maximum protection for FSW rights.

Indonesia's move to shut down prostitution localization is needed to be examined if this was an adequate move, specially in relation with women's right. FSW bore the same right as all women, including right to employment, reproductive health, and security. Prostitution localizations provide better protection for FSW in term of access of assistance in health care, counsel, and advocacy.

The narration above leads to an important question that have become the root of all complications:

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<sup>38</sup> ProCon, "Countries and Their Prostitution Policies", [procon.org](https://prostitution.procon.org/countries-and-their-prostitution-policies/), 23 April 2018, <https://prostitution.procon.org/countries-and-their-prostitution-policies/>. Accessed on 2 May 2023.

<sup>39</sup> Global Network for Sex Work Project, "Germany", [nswp.org](https://www.nswp.org/country/germany#:~:text=Selling%20sex%20is%20technically%20legal,to%20fines%20and%20potentially%20imprisonment), <https://www.nswp.org/country/germany#:~:text=Selling%20sex%20is%20technically%20legal,to%20fines%20and%20potentially%20imprisonment>. Accessed on 2 May 2023

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Daniela Danna, "Report on prostitution laws in the European Union.", Università degli Studi di Milano, 5 February 2014, <https://documentation.lastradainternational.org/lisidocs/3048-EU-prostitution-laws.pdf>. Accessed on 2 May 2023.

- a. What are the collateral effects of the dissolution of prostitution localization?
- b. How is the best protection towards female sex workers as a part of states responsibility, considering the Indonesian government's way is seemingly inadequate?

## Method

This article is a preliminary review which mainly utilizes desk review with type of research is a qualitative research method. To provide a more elaborated view of the topic discussed, the research conducted by combining desk review with in-depth interview with two representatives from a non-government organization that focus on sex workers. Secondary data was taken from articles, journals, books, and laws and regulations. Having laws and regulations as secondary data means, law and regulations of Indonesia as primary legal materials and international law instruments as secondary legal material.

## Result and Discussions

This research constructed on the proposition that prostitution was a social deviance and aimed to reconstruct the perspective towards FSW who were stigmatized as deviant. This research proposed the idea that the dissolution of prostitution localization is a non-conformity of states responsibility to eradicate violence against women (VAW). This was not to contest that prostitution should be legalized, but to rebuild the approach towards women who were in sex industries.

Prior prostitution localization shut-down, FSW were oftentimes being raid and sent to be treated and educated at social department provided by the regional government. Have the FSW interviewed on their preference, is what missing in all of these attempts to neutralize the society from prostitution. This needs an inclusive approach that emphasizes on the sex workers viewpoint because they are, truly, a subject instead of merely an object. Without holistic knowledge on why and how these individuals became sex workers, attempts to eradicate prostitution may turn out to be a violation of women's right. For instance, Jakarta has established its Regional Regulations No. 8 Year 2007 in which specifically stated that anyone in general, is prohibited to: a) become sex worker; b) facilitate or persuade others to become a sex worker, and; c) using the sex workers' "services".<sup>43</sup> Further, Article 61 of the aforementioned Regional Regulations mentioned that parties who have been proven to have violated provisions written in Article 42 point a and c, would have to face a criminal sanction of imprisonment or fine<sup>44</sup>. This local regulation, nonetheless, non-executable with regard to the unconformity with the Indonesian Criminal Law. Although, local law enforcers frequently use this regional law as a basis to detain FSW on minor-crime notion, thus, a violence against women conducted by state apparatus.

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<sup>43</sup> Jakarta Regional Regulations No. 8 Year 2007 regarding Public Order, *Lembaran daerah provinsi daerah khusus ibukota Jakarta tahun 2007 Nomor 8*, Art 42 paragraph (2).

<sup>44</sup> *Ibid*, Art. 61

## The absence of prostitution localizations and its effects

Prostitution localization held pivotal role in increasing regional economic advantage. It is undeniably true that prostitution industry increases tourism rate<sup>45</sup> and the sector is followed by the growth of supporting businesses, i.e., café, hotel, restaurants, bars.<sup>46</sup> Shutting down prostitution localization impacted the continuation of this businesses, as domino effect, also reducing the amount of regional income where the localization resided. In a case of prostitution localization called 'Dolly' in Surabaya, upon dissolution, the municipal government of Surabaya set up a program targeted for local community. Steps that already conducted were (based on Circulation Letter of East Java Governor dated 30 November 2010 number:

460/16474/031/2010):

- Closure with no relocation.
- Prevention the increase of new comer at prostitution location.
- Facilitation growing economy activities at location.
- Empowering human resources in location.

However, the most impacting result of the dissolution was in the aspect of socio-economic. In term of social, people at Dolly lost employment and employment opportunity.<sup>47</sup> In term of economic, a decrease of income for people who used to rely their employment at Dolly businesses.<sup>48</sup> These impacts were manifested through protests and strikes

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<sup>45</sup> Krista Surbakti and Permai Yudi, "Pemanfaatan Lokalisasi Prostitusi untuk Pendapatan Asli Daerah (PAD).", *Curere- Jurnal Ilmiah Fakultas KIP Universitas Quality* 3, no. 2 (2019): 70 DOI: <http://dx.doi.org/10.36764/jc.v3i2.251>

<sup>46</sup> *Ibid*, p. 71.

<sup>47</sup> Margaretta Annisya Harjianti and Ardy Maulidy Navastara, "Kajian Persepsi Masyarakat Dalam Pengembangan Kawasan Eks Lokalisasi Dolly Surabaya.", *Jurnal Teknik ITS* 9, no. 2 (2021): C198 <https://ejurnal.its.ac.id/index.php/teknik/article/viewFile/56131/6329>

<sup>48</sup> *Ibid*.

from people of Dolly i.e., sex workers, pimps, residence and NGOs.<sup>49</sup> The protest went very savage it attracted the Central Government and international attention.<sup>50</sup> Despite protests, municipal government of Surabaya shut down Dolly in 2014.

To analyze, it is relevant to look backward to know that regional governments in Indonesia created prostitution localizations purposively. In 1970-1999, Jakarta's former governor, Ali Sadikin, localized prostitution and its supporting business in Kramat Tunggak, to maintain the order of Jakarta Province.<sup>51</sup> Prior to the establishment of Kramat Tunggak, sex work was solicited on the streets and scattered in cafes/hotels with less supervision.<sup>52</sup> Sadikin mentioned that localized prostitution means restricting the business into one area, thus, efficient to control negative effect of sex work i.e., sexually transmitted diseases, unlawful pimps, illegal sex work (underage sex work), violence, drugs.

The notion is that shutting down prostitution localization does not equal elimination of prostitution. FSW in localization that being closed off were listed to receive compensation fund and trainings to accommodate starting a new life.<sup>53</sup> However, the implementation was not as promised due to a mismatch in registering FSW as well as the amount of the fund was not sufficient. This resulted in numerous FSW did not receive the fund, or, received the fund but still failed to start the said new life.<sup>54</sup>

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<sup>49</sup> Hasan Kurniawan, "Perlawanan PSK Dolly Menolak Penutupan Lokalisasi.", *sindonews*, 18 June 2014, <https://daerah.sindonews.com/berita/874648/23/perlawanan-psk-dolly-menolak-penutupan-lokalisasi> accessed on 4 May 2023

<sup>50</sup> *Ibid.*

<sup>51</sup> Muchammad Yani, "Ali Sadikin, Dijuluki Gubernur Maksiat Karena Kramat Tunggak", *Merah Putih*, 27 April 2022, <https://merahputih.com/post/read/ali-sadikin-dijuluki-gubernur-maksiat-karena-kramat-tunggak> accessed on 5 May 2023

<sup>52</sup> Rindi Nuris Velarosdela, "Lokalisasi Kramat Tunggak: Dibuat Ali Sadikin, Diruntuhkan Sutiyoso.", *Kompas*, 22 June 2021, <https://megapolitan.kompas.com/read/2021/06/22/11462021/lokalisasi-kramat-tunggak-dibuat-ali-sadikin-diruntuhkan-sutiyoso?page=all>. Accessed on 5 May 2023.

<sup>53</sup> Sasongko Darmadi, "Sobek sertifikat pelatihan, PSK di Malang menuntut kompensasi.", *Merdeka*, 25 November 2014, <https://www.merdeka.com/peristiwa/sobek-sertifikat-pelatihan-psk-di-malang-tuntut-kompensasi.html> accessed on 5 May 2023

<sup>54</sup> Gresi Plasmanto, "Dinsos: 100 mantan PSK belum peroleh kompensasi.", *Antara News Jambi*, 11 August 2015, <https://jambi.antaranews.com/berita/307860/dinsos-100-mantan-psk-belum-peroleh-kompensasi> accessed on 5 May 2023.



As a structural problem, prostitution must be approached from multiple helix and not merely shutting down localization and hoping sex work will disappear. In contrary, shutting down prostitution localization means having prostitution less controlled. This will increase the risk of:

- Sexually transmitted diseases (STD);
- Illegal sex work where underage sex workers are employed (human trafficking);
- Violence against women (FSW), as there will be no management to supervise the contract between client and FSW;
- Violence in general and crime rate;

The increase of those risk is caused by:

- Difficulty in reaching the population of FSW as they will be scattered or onto unregistered area, thus, difficulty for NGOs and social services to provide FSW with health care, reproductive health support i.e., contraception, vaccines, medicines; infected FSW will be easily transmitting the disease to clients without proper tracking and mitigation mechanism;
- Unlawful pimps and managements who recruit sex workers without control. Underage girls traded by their families or culprit and then employed in various sex trade locations (including online solicitation), cannot be investigated because the event is not observable. This is also the factor for the increase of violence against women and girls;
- Online prostitution, street prostitution, independently generated prostitution meaning lesser third party to observe the contract (as the basis of consented sex intercourse), leaving only FSW and her client to undergo the settlement (less protection measure for FSW);
- Sex trade location are relocated to various areas (oftentimes within or nearby civilization hubs) with minimum control, giving opportunity for crimes and violence occurs in such places.

Kediri District, a district located in East Java, Indonesia, did not shut down some of prostitution therein. Kediri district government revealed the reason to not shut down localizations is to maintain the monitoring towards STD. They undergo monitoring and assistance together with

NGOs, providing FSW in localizations with skill training, with hope that it will inspire them to change livelihood.<sup>55</sup> This showed a diversity in handling prostitution in Indonesia. However, as national law did not constitute sex work as illegal, FSW are not subjected to criminal law. Thus, no state apparatus authorized to arrest, let alone to prosecute.

NGOs play important role to assist FSW. They also pivotal in minimizing negative effects of sex work, both for FSW and for the society. Yayasan Anak dan Perempuan (YAP) is one of NGOs who assist health care for FSW. FSW are supported in preventing HIV and any sexual transmitted diseases. For those who already have the sickness, they also support them in term of access towards health care. FSW with HIV and STD need support for medication and recovery.<sup>56</sup> YAP also establishes cooperation with the government, with hope to endorse FSW who wish to quit the prostitution business and find other occupation that would put plates on the table and to protect the wellbeing of sex workers who still want to stay.<sup>57</sup> YAP is founded and organized by former sex workers, it would be easier to get close with FSW and maintain good relation. With this organization, the program to support FSW is carried on efficiently.<sup>58</sup>

YAP explained about troubles with the protection of FSW in the field. In a situation of violence, FSW is reluctant and deciding not to file a report because they are afraid of the authority. Some FSW also fell under irresponsible pimps. Although, not all pimps did such wrongdoings towards their workers, some do have good faith and intention to take care of them.<sup>59</sup> In general, trouble is caused by stigmatization from society. Such condition driven the majority to close prostitution localization, as their existence is against common belief. This means, programs to shut down prostitution localization is based on one sided subjective evaluation

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<sup>55</sup> "Pemkab Kediri Tidak Tutup Lokalisasi Prostitusi.", Adakita, 30 January 2015, <https://www.adakitanews.com/pemkab-kediri-tidak-tutup-lokalisasi-prostitusi/> accessed on 5 May 2023.

<sup>56</sup> Conversation with Yeremias Wutun from YAP, 29 August 2020

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> Conversation with Lisa from YAP, 29 August 2020.

(majority side, government politically sided with majority voices), and without using gender lens from the viewpoint of FSW as the main actor.

Increasing crimes was evidently reported in prostitution localization, which became the reasoning for the dissolution. However, shutting the place is not the answer but to repair the control system in the area. Analogically, when a disease spread in a container, we quarantined the container while working on disinfecting the area, not to demolish the container and let the disease spread wider.

## **Protection measure for FSW**

In the context of consensual prostitution, to be or not be a sex worker is fully the right of the woman. Seeing from the current situation with regard to prostitution businesses that have been growing along with the human civilization, as well as from the nature of Indonesian society that is adhering religious teachings and strict social norms, it is also crucial to understand to which extent the law tolerate prostitution businesses. Or else, how exactly the law works to manage this consensual prostitution matter.

The highest, most relevant law that we may refer to in order to analyze this phenomenon is Indonesian Criminal Code, as it specifically regulates matters with regard to prostitution. However, Article 296 of Indonesian Criminal Code only regulates that one party that can be punished accordingly is the pimp.<sup>60</sup> Up to the point where this research was being conducted, there were no legal instruments that could be used against sex workers and their clients, in sense that the sex worker has fulfilled the requirement to be considered as an adult before the law. The clients, however, can be considered to have violated the law, in the event that they are, with full conscience, or they should had been able to notice, having sexual intercourse with underage sex workers,<sup>61</sup> considering that it is highly possible for underage kids nowadays to have consented to become a sex worker due a certain number of reasons. However, Indonesian Criminal

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<sup>60</sup> Indonesian Criminal Code, Art. 296

<sup>61</sup> *Ibid*, Art. 290 paragraph (2)

Code does not impose any punishment against those underage sex workers, as they are still considered as kids.

The local regulations, however, they contain a whole different provision from what stated in Indonesian Criminal Code. Jakarta Regional Regulations No. 8 Year 2007 for instance, it specifically stated that anyone in general, is prohibited to: a) become sex worker; b) facilitate or persuade others to become a sex worker, and; c) using the sex workers' services.<sup>62</sup> Further, Article 61 of the aforementioned Regional Regulations mentioned that parties who have been proven to have violated provisions written in Article 42 point a and c, would have to face a criminal sanction of imprisonment or fine<sup>63</sup>. Article 63 on the other hand, in sum mentioned that any party who have been proven to have violated Article 42 paragraph (2) point b, would have to face criminal sanctions in accordance with the prevailing regulations.<sup>64</sup> In this regard, once again, sex worker is not a subject of any kind of punishment, as Indonesian Criminal Code stated that criminal sanctions cannot be imposed against actions that are not being regulated under the prevailing criminal code,<sup>65</sup> and may be imposed against those who have committed crime within the jurisdiction of the Republic of Indonesia.<sup>66</sup>

Traditionally, States have only been responsible for their own actions or those of their agents.<sup>67</sup> Gradually, public international law developed to mandate States to exercise due diligence to promote, protect and fulfil human rights.<sup>68</sup> This obligates States to take reasonable measures to prevent human rights abuses before they occur, such as adopting relevant laws and policies, and effectively prosecute and punish perpetrators if abuses occur.<sup>69</sup> This notion applies to women's rights as well, particularly pertaining to

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<sup>62</sup> Jakarta Regional Regulations No. 8 Year 2007 regarding Public Order, Lembaran daerah provinsi daerah khusus ibukota Jakarta tahun 2007 Nomor 8, Art 42 paragraph (2).

<sup>63</sup> *Ibid*, Art. 61

<sup>64</sup> *Ibid*, Art. 63

<sup>65</sup> Indonesian Criminal Code, Art. 1 paragraph (2).

<sup>66</sup> *Ibid*, Art. 2.

<sup>67</sup> Zarizana Abdul Aziz and Janine Moussa, *op cit*, p. 1.

<sup>68</sup> *Ibid*.

<sup>69</sup> *Ibid*.

violence against women (VAW). Established as a due diligence framework, there are five principles to adhere to in eliminating VAW: Prevention; Protection; Prosecution; Punishment of perpetrators; Provision of redress and reparation for victims/survivors.

In the context of this article, the principle of protection is utilized as conceptual framework in criticizing government's program to shut down localizations. Protection means state is responsible to keep victims safe from harm. FSW need to be approached as victim. If not a victim of trafficking, slavery, they are victim of social structure imbalance that drove them to do sex work as a mean to live.

Protection principle is manifested in ensuring the availability of coordinated support services, protection orders, and in the context of prostitution localization, a well regulated and supervised environment. Thus, shutting down localizations does not conform this principle. Idea to criminalize FSW also expressed in various literature. The reasoning is based on the preposition of 'efforts to overcome a crime, in essence, is an integral part to protect the community. Thus, it can be concluded that the main objective of a criminal policy that is to guarantee the protection of society.'<sup>70</sup> However, in the concept of criminal and deviance, FSW does not fall under the category of criminal but a deviance. If all FSW are handled as criminal, this will result to over-criminalization. This does not entertain the problem of over population in penitentiary that Indonesia already faced. In the viewpoint of legal certainty and society order, this proposal may be suitable, if this refers to only legal supremacy and majority group. Whereas, prostitution handling must refer to the viewpoint of FSW through gender lens as well.

Laws and regulations of Indonesia both national and regional are not sufficient in providing legal protection for FSW. National criminal code only ensuring that FSW doing sex work is not against the law, while other regional laws are trying to overtake this notion by putting provision that criminalizing FSW, and they are all far-fetched. In line with protection

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<sup>70</sup> Gea Illa Sevrina, "Kebijakan Kriminalisasi Terhadap Praktik Prostitusi di Indonesia.", *Law and Justice* 5, no. 1 (2020): 21 DOI:10.23917/laj.v5i1.9216

principle, treating FSW as victims, meaning the proposal to criminalize FSW must be denied, as the idea means criminalizing victims of VAW.

In the previous chapter, Germany's approach towards prostitution is modelled. Thus, the Indonesian government must ensure protection principle towards FSW by upholding the following proposed program:

- Recreating registered localizations with a strong monitoring system, creating minimum standard of prostitution management and maintaining the enforcement of the standard; Only in the registered localization prostitution can be established;
- Registering FSW and pimps. FSW can only be entitled of protection if registered. This way, underage sex worker and trafficker victim will be observable and handled legally. Legitimate pimps are those with permit. FSW and pimps must renew their registration periodically;
- Providing access to justice for FSW in localization by ensuring the availability of first responder in time of need;
- Continue to criminalize online sex work solicitation and sex trafficking;
- Strengthening coordination with NGOs focusing on sex workers wellbeing in term of health and economy; programming a training periodically for registered FSW to encourage FSW to look other livelihood and equip FSW if they want to quit.

## **Conclusion**

The program of most regional governments in Indonesia to shut down prostitution localizations is harming the rights of therein FSW. The dissolution will cause the increase risk of sexually transmitted diseases (STD); Illegal sex work where underage sex workers are employed (human trafficking); Violence against women (FSW), as there will be no management to supervise the contract between client and FSW; Violence in general and crime rate. The idea to criminalize sex workers also violates FSW rights as FSW are likely to be a victim of trafficking who are not supposed to be charged with criminal law. Legal approach is not sufficient and not suitable, thus, the government should uphold these following program to ensure protection principle is carried on:

1. Recreating registered localizations with a strong monitoring system, creating minimum standard of prostitution management and maintaining the enforcement of the standard, only in the registered localization prostitution can be established;
2. Registering FSW and pimps. FSW can only be entitled of protection if registered. This way, underage sex worker and trafficker victim will be observable and handled legally. Legitimate pimps are those with permit. FSW and pimps must renew their registration periodically;
3. Providing access to justice for FSW in localization by ensuring the availability of first responder in time of need;
4. Continue to criminalize online sex work solicitation and sex trafficking;
5. Strengthening coordination with NGOs focusing on sex workers wellbeing in term of health and economy; programming a training periodically for registered FSW to encourage and equip FSW if they want to quit.

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