

# Determining Appropriate Policies for Prostitution Reform in Indonesia: Evaluating Harm Reduction Versus Harm Elimination Strategies

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## Abstract

In the context of the current efforts that Indonesia is making to alter its prostitution laws, it is of the utmost importance to determine the strategy that will be most effective. The two strategies implemented most are known as harm reduction and harm elimination. This study employs a juridical-normative research method to analyse various plans, weighing the pros and cons of each option and providing recommendations on the most suitable approach for Indonesia. The findings highlight the necessity for an all-encompassing and multi-disciplinary approach, intending to strike a balance between the protection of the rights of sex workers and the reduction of harm done to society. It has been found that a policy of harm reduction may be more appropriate for Indonesia as it recognises the existence of prostitution and works toward addressing the root causes of the problem while simultaneously attempting to lessen the adverse effects of the practice.

**Keywords:** *Prostitution Policy, Harm Elimination; Harm Reduction; Prostitution Law; Indonesia.*

## I. INTRODUCTION

According to a study conducted by the World Health Organization (WHO), the United Nations International Children's Emergency Fund (UNICEF), and The Joint United Nations Programme on HIV/AIDS (UNAIDS), sex workers in Indonesia are at a higher risk of contracting sexually transmitted infections (STIs), including Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS). This health risk is attributed to their frequent engagement in unprotected sexual relations and limited access to healthcare services and other resources.

Individuals who partake in sex work risk adversely affecting their physical and mental health, which can have far-reaching consequences. Prostitutes frequently face barriers to access to medical treatment, and they may not be able to negotiate safe sexual practices, which raises their risk of developing STIs. Consequently, the prevalence of sexually transmitted infections among prostitutes is higher. Because STDs can be passed on to those not involved in the prostitution industry, this has the potential to have implications for the entirety of the community<sup>1</sup>.

Regarding prostitution, there is still a great deal of controversy and misunderstanding in Indonesia. The government has struggled for a long time to figure out how to oversee the industry in a way that will protect the rights and health of the people engaged<sup>2</sup>. Revising legislation regarding prostitution can frequently be divided into two categories: harm reduction and harm elimination<sup>3</sup>.

Access to healthcare is a human right as stipulated in Article 25 of the Universal Declaration of Human Rights:

“Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing, and medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.”

Furthermore, the UN has declared that governments worldwide need to take all necessary steps to protect everyone under their jurisdiction from violations of the right to health. This includes safeguarding consumers and workers from health-damaging practices, protecting women from violence and prosecuting perpetrators of such

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<sup>1</sup> M R Joesoef et al, “Patterns of sexually transmitted diseases in female sex workers in Surabaya, Indonesia” (1997) 8:9 *Int J STD AIDS* 576-580; Minsoo Jung, “Risk factors of sexually transmitted infections among female sex workers in Republic of Korea” (2019) 8:1 *Infectious Diseases of Poverty* 6.

<sup>2</sup> Terence H Hull, “From Concubines to Prostitutes. A Partial History of Trade in Sexual Services in Indonesia” (2017) 29 *Moussons* 65-93.

<sup>3</sup> Che Post, Jan G Brouwer & Michel Vols, “Regulation of Prostitution in the Netherlands: Liberal Dream or Growing Repression?” (2019) 25:2 *European Journal on Criminal Policy and Research* 99-118.

violence, and preventing continued compliance with medical practices within a framework of dangerous and discriminatory traditional cultural norms. Failure to do so would be contrary to international law.

Disagreements among law enforcement officials in interpreting laws governing prostitution may arise from an outdated and seldom-enforced criminal legal framework. For instance, Article 296 of the Criminal Code, often referenced in policy discussions on prostitution, broadly stipulates that criminal penalties apply only to individuals intentionally causing or facilitating indecent sexual acts with others. Moreover, Article 506 reinforces this by indicating that individuals who exploit obscene acts against women for financial gain may face imprisonment for a maximum of one year.

In this context, it is crucial to examine Article 411, paragraph (1) of the New Criminal Code (Law Number 1 of 2023), which prescribes a fine of IDR 10 million. Criminal offenses are not actionable unless based on a complaint from either a spouse for married individuals or parents or children for those unmarried. The complaint can be withdrawn as long as the trial court proceedings have not commenced. Notably, this provision extends beyond adultery, encompassing any sexual activity outside marriage. This expanded definition aligns more closely with the linguistic understanding of adultery within Indonesian society. Hermeneutically, this article may be construed as implying the criminalization of sex work.

From the Criminal Code, it is evident that the focus of prosecution is directed towards procurers and those exploiting prostitution. What complicates the actual implementation is the tendency to delegate policy responses to prostitution issues to local government authorities. This idea is rooted in the assumption that local governments may have a better understanding of their specific context and issues related to prostitution compared to the central government. Consequently, national guidelines on this matter appear to be avoided and neglected. This tendency in policy responses to prostitution leads to variations in how the issue is approached. While the responses may seem uniform across most local governments, emphasizing moral order and public order, the actual implementation of policy responses may vary among different local governments.

The primary objective of this research is to identify suitable policies for Indonesia in the context of reforming prostitution policies. The study will compare harm reduction and harm elimination approaches, aiming to provide comprehensive insights into their impacts on and implications for prostitution policies in Indonesia. It is crucial to note that this research specifically centers on women working as sex workers, highlighting their experiences and challenges within the context of the broader issue.

This research employs a normative juridical research type. The research approach utilized is a comparative law and statute approach. It prioritizes legal materials as secondary data collected through a literature review. The analysis technique involves qualitative analysis methods.

## II. UNRAVELING THE COMPLEXITY OF PROSTITUTION: EXPLORING THE INTRICACIES OF THE SEX TRADE

Prostitution has varied definitions depending on the context, with some rooted in legal perspectives or what is considered illegal. Legal definitions can change over time and by place, leading to significant confusion if one relies solely on the Criminal Code or the Civil Code, as these definitions may not always align.

Ronald Weitzer<sup>4</sup> explains prostitution as:

“...referring to the workers, managers, owners, marketers, agencies, clubs, and trade associations involved in sexual commerce, encompassing both legal and illegal varieties. Sex work involves the exchange of sexual services for material compensation, as well as the selling of erotic performances or products. It includes acts of direct physical contact between buyers and sellers (prostitution, lap dancing) as well as indirect sexual stimulation (pornography, stripping, telephone sex, live sex shows, erotic webcam performances).”

Łukasz Dylewski and Pavol Prokop<sup>5</sup> describe prostitution as: “A sexual activity provided by women, men, and transsexuals in exchange for payment. “Karen Peterson-Iyer<sup>6</sup> argues that prostitution refers to various arrangements of sex for payment, ranging from street prostitution to high-end call girls. According to Karen Peterson-Iyer, generally, prostitution is seen as “perhaps the most stigmatized occupation in which women are involved. The majority of individuals engaged in prostitution are women, while the majority of their clients are men.” For Karen Peterson-Iyer, prostitution is not just a ‘profession’ divided by gender but an illegal profession involving exploitation, abuse, and violence against women.

Janice Raymond<sup>7</sup> argues that “prostitution is something done to women,” and Sheila Jeffreys<sup>8</sup> expands on this perspective:

“Anti-prostitution campaigners use the term prostituted women instead of prostitutes. This is a deliberate political decision and is meant to symbolize the lack of choice women have over being used in prostitution.”

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<sup>4</sup> Ronald Weitzer, *Sex For Sale: Prostitution, Pornography, and Erotic Dancing* (Taylor & Francis, 2022).

<sup>5</sup> Łukasz Dylewski & Pavol Prokop, “Prostitution” in Todd K Shackelford & Viviana A Weekes-Shackelford, eds, *Encyclopedia of Evolutionary Psychological Science* (Cham: Springer International Publishing, 2018) 1.

<sup>6</sup> Karen Peterson-Iyer, “Prostitution: A Feminist Ethical Analysis” (1998) 14:2 *Journal of Feminist Studies in Religion* 19–44.

<sup>7</sup> Janice Raymond, “Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution” (2004) 2:3–4 *Journal of Trauma Practice* 315–332.

<sup>8</sup> Sheila Jeffreys, *The Idea of Prostitution* (Spinifex Press, 1997).

Melissa Farley<sup>9</sup> describes this powerlessness in absolute terms:

“Prostitution dehumanizes, commodifies, and fetishizes women... In prostitution, there is always a power imbalance, where the john has the social and economic power to hire them to act like a sexualized puppet. Prostitution excludes any mutuality of privilege or pleasure.”

Through the various opinions of the experts above, it can be said that the understanding of prostitution encompasses a range of diverse perspectives, from recognition as a legitimate form of sex work to criticisms of gender inequality, stigma, and negative impacts on women involved in such activities. This discussion reflects the complexity and controversy surrounding the issue of prostitution in various societies and cultures.

However, from the presentations above, it can be stated that prostitution has a “female face,” and prostitution reflects an asymmetry that must be considered in formulating prostitution policies. The consequence of this asymmetry is that a significant amount of critical work on prostitution originates from feminist scholars, with many calls for reform from women aligned with this industry.

Over the past few decades, the number of sex worker organizations has dramatically increased, indicating that prostitution is indeed a form of labor similar to other occupations and has the potential to gain equal rights. The question, of course, is whether all sex workers want to identify themselves as such. Elise van Nederveen Meerkerk<sup>10</sup> argues that throughout history, sex workers have considered themselves economically active, even if it may not always be “just work” for them. Considering the broader definition of work proposed by recent studies on labor history, Meerkerk suggests that it is valid to analyze prostitution as one of the forms of work that historically has always been associated with women.

P. C. Shuklahas outlined at least six “myths of prostitution” that are accepted as false social realities in society:

1. **The prostitution system offers wealth to those involved:** In reality, one strategy for procurers to control sex workers is by maintaining economic control over them, ultimately leading to dependence on the prostitution system itself. Any income earned is often quickly depleted, reinforcing the cycle of involvement in prostitution.
2. **Sex workers have power and control within the prostitution system:** In fact, sex workers are controlled both by clients and their procurers. The deeper one becomes involved, the more challenging it is to break free.

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<sup>9</sup> Melissa Farley, *Prostitution, Trafficking, and Traumatic Stress* (Taylor & Francis, 2004).

<sup>10</sup> Elise van Nederveen Meerkerk, “A Gender Analysis of Global Sex Work” in (Leiden, The Netherlands: Brill, 2017) 801.

3. **Prostitution prevents sexual crimes:** There is no evidence that prostitution acts as a deterrent to sexual crimes. Sex workers can be victims of violence, including rape and murder.
4. **Sex workers come from specific socioeconomic groups:** Sex workers essentially come from all socioeconomic groups.
5. **Teenage sex workers make independent decisions to engage in prostitution:** There is ample evidence supporting the fact that many individuals start engaging in prostitution during their teenage years or even earlier. History shows that the majority of them have experienced sexual or physical abuse. For many girls in such situations, escaping violence is only possible by leaving home, often leading to involvement in prostitution. Therefore, this decision cannot be considered a standalone or independent action.
6. **There are laws regulating prostitution:** Historically, there has been uneven law enforcement in prostitution, with disparities seen between high-class and street prostitution<sup>11</sup>.

One of the main focuses of scientific studies on prostitution is understanding why women become involved. Based on several studies, there are various reasons behind the phenomenon of prostitution, such as economic issues, marital relationship problems, migration, drug abuse, and the common assumption that women selling sex essentially have no other choice.

Kingsley Davis<sup>12</sup>, in 1937, depicted that while economic needs serve as a motivating factor for sex workers, they are not the sole determinant. Not all impoverished and marginalized women engage in selling sex. Although the need for money is a strong impetus, it is not the only reason for their involvement in prostitution. Poverty is not the sole root cause; however, economic factors are a potent root, and individuals also remain in this profession due to the autonomy and flexibility offered by prostitution.

Some choose it not solely for economic or practical reasons. Many sex workers seek additional income beyond their primary sources. Earnings from prostitution can provide a more comfortable life than they might otherwise attain. Some also engage in a luxurious lifestyle, experimenting, or, in some cases, due to hypersexuality. This may involve spending on luxury items such as designer clothes, luxurious vehicles, or more exclusive life experiences..

Others turn to prostitution to support expensive habits, be it luxury items or drugs. In some cases, as in many other professions, sex workers follow in the footsteps of their parents, who also worked in prostitution. However, economic constraints undoubtedly contribute to prostitution, and money remains the most common reason when asked why people sell sex. While money is the most driving factor, it is not sufficient to drive all impoverished women into prostitution. Therefore, it is crucial to examine the working conditions and opportunities available. It should be noted that while traditionally, the

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<sup>11</sup> PC Shukla, *Street Children And The Asphalt Life* (Isha Books, 2005).

<sup>12</sup> Kingsley Davis, "The Sociology of Prostitution" (1937) 2:5 *American Sociological Review* 744-755.

most respected jobs for women are in household work and marriage, the reality shows that a significant number of women in prison and Magdalen Homes (shelters for women and girls) were previously domestic workers.

Domestic worker jobs are physically demanding, pay poorly, and frequently involve sexual harassment, seduction, and rape. Domestic work continues to be a factor in current instances of human trafficking. It is simpler to understand why some women decide to have sex on a professional, open basis or, conversely, on a casual, unspoken level—such as “charity girls” or women who have sex for rewards—when one considers the range of jobs that are available to them<sup>13</sup>.

Perhaps a sex worker sees prostitution as a form of employment; nevertheless, the dimensions of prostitution and the emotional response it evokes make it different from other professions. There are other examples of jobs involving physical interaction, like dentists, clothing tailors or even hair removal technicians. Although they may apply physical touch, it is not directly related to providing physical pleasure.

Certain occupations, like cooking, meet bodily demands, although they are not as physically intimate as prostitution. However, some occupations are frequently viewed as taboo by society, like those in the funeral industry, the cleaning industry, or even the skin and slaughter of animals. While it is interesting to see that many people prefer prostitution over the vocations above, some of these behaviors may even inspire contempt.

### III. NAVIGATING THE SHADOWS: UNDERSTANDING THE COMPLEXITIES OF FORCED AND VOLUNTARY PROSTITUTION

The World Conference in Vienna in 1993 and the Beijing Platform for Action in 1995 marked a shift away from abolitionism, introducing the terms “Forced Prostitution” and “Human Trafficking” for the first time. This decade saw a move towards considering alternative measures or policies to combat prostitution. The conference was a significant step for women, acknowledging human rights and creating global awareness of violence against women as a human rights violation<sup>14</sup>.

However, by solely recognizing forced prostitution as violence against women, we risk overlooking the causes and circumstances of women involved in prostitution and inadvertently perpetuating the practice. This statement indicates that focusing only on forced prostitution as violence against women may lead to neglecting the root causes and

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<sup>13</sup> Melissa Hope Ditmore, *Encyclopedia of Prostitution and Sex Work* (Bloomsbury Publishing USA, 2006).

<sup>14</sup> Cherif Bassiouni et al, “Addressing International Human Trafficking in Women and Children for Commercial Sexual Exploitation in the 21st century” (2010) 81:3 *Revue internationale de droit pénal* 417.

situations faced by women engaged in prostitution, ultimately justifying or perpetuating the practice.

In this context, it is crucial not only to view prostitution as an act of violence but also to consider the social, economic, and other factors that drive women to engage in prostitution. Understanding the underlying causes and situations allows countries to address the root issues and provide appropriate protection and support for women involved in prostitution.

While the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) does not distinguish between Forced and Voluntary Prostitution, recent comments from CEDAW Committee members and statements from Special Rapporteurs reflect a shift to opposing only aspects of prostitution that are forced or exploited. The recent UN efforts to address prostitution as forced prostitution are maintained as a necessary category due to emerging forms of sexual exploitation as violence against women<sup>15</sup>.

CEDAW General Recommendation 19 recognizes that new forms of sexual exploitation, such as tourism, have increased the risk of human trafficking. Radical feminists argue that recognizing only forced prostitution as the exploitation of women neglects the inherent exploitation in the practice of prostitution itself. The UN's stance against forced prostitution alone reflects societal approval of gender inequality and advocacy for prostitution as an acceptable cultural practice.

CEDAW General Recommendation 19 states that poverty and unemployment force women into prostitution. Even if someone is not physically forced or coerced by others into prostitution, the circumstances alone are enough to question whether the term "Voluntary Prostitution for Women" can be applied. The socio-economic status of women, cultural norms, and power relations between men and women are indirect forces exploiting the vulnerability of women in society.

Recognition of the right to self-determination by the international community is a significant step in supporting the human rights of sex workers. However, the distinction between voluntary and forced prostitution is implicitly recognized, and international agreements rarely explicitly affirm the rights of sex workers, especially those involved in voluntary prostitution. This may be due to disagreements on how to regulate voluntary prostitution and whether it should be regulated by the state or allowed to be self-regulated by the workers themselves.

Sex workers have criticized anti-trafficking campaigns that focus more on forced prostitution while neglecting voluntary prostitution. They argue that such campaigns often begin without consulting them, use language similar to abolitionist groups, and perpetuate stereotypes about sex workers, particularly those in Asia, as passive and

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<sup>15</sup> Jaya Sagade & Christine Forster, "Recognising the Human Rights of Female Sex Workers in India: Moving from Prohibition to Decriminalisation and a Pro-work Model" (2018) 25:1 *Indian Journal of Gender Studies* 26-46.



exploited victims. This perspective raises questions about whether such campaigns help or harm sex workers.

The issues of self-determination and the distinction between voluntary and forced prostitution are challenging topics in international discussions. Although the right to self-determination has been recognized, much work remains to ensure that sex workers, especially those involved in voluntary prostitution, receive the protection and support they need. Governments, NGOs, and intergovernmental agencies must collaborate to develop fair and human rights-based policies. Moreover, it is crucial to listen to the voices of sex workers themselves and incorporate their views into the policymaking process.

Many reports on prostitution often highlight poverty as a significant factor. Examples of prostitution being the face of contemporary poverty exist. For some women, becoming a sex worker is the best economic option available. The approach of framing poverty as a form of coercion often faces criticism for potentially containing racial and class implications. Some who might accept voluntary prostitution, especially prosperous Western women, refuse to respect the choices of women from developing countries, reflecting a fundamental rejection of prostitution as a profession, assuming that no normal woman would choose this job unless forced by poverty.

A third way to understand innocence is by focusing on the age of the victim, as children are considered blameless in this situation. This is reflected in campaigns with titles like 'Innocent Rape' and horrific stories of child abuse that evoke public sympathy and financial support. These efforts aim to minimize the differences between children and adults so that more people fall into the category of unquestionable innocence.

Human Rights Watch, for instance, does not take a position on prostitution itself in its report on global human rights abuses against women. However, they emphasize the need to distinguish between sex workers and victims of forced trafficking in official laws and policies. The focus on forced prostitution often provides an escape route for those who do not want to acknowledge the issues raised by the sex workers' rights movement. Governments should confront their actions against voluntary sex workers and not evade their responsibility by citing morality. Human rights protection should be extended to all sex workers, regardless of whether they are voluntary or not, as separating them based on this status will only lead to more human rights violations<sup>16</sup>.

The continued emphasis on forced prostitution in feminist discourses and the legal system contributes to the marginalization of voluntary sex workers. The discrimination in legal approaches, such as distinguishing between guilty and innocent women in prostitution and trafficking, perpetuates a biased view. Even when governments try to address the issue of trafficking, the moralistic undertones often overshadow the need for a comprehensive and rights-based approach.

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<sup>16</sup> Bassiouni et al, *supra* note 14.

#### IV. THE CURRENT PARADIGM OF HARM ELIMINATION IN INDONESIA'S PROSTITUTION POLICY

The concept of harm elimination implemented in Sweden since 1998-1999 originates from a feminist vision where prostitution is viewed as:

- a. Basically, a form of violence against women;
- b. A phenomenon that is not fixed, with its prevalence changing over time;
- c. A system that helps perpetuate violence against women; and
- d. An indication that it is acceptable for some women to be sacrificed and bought and sold<sup>17</sup>.

In capitalist and patriarchal societies, it is understandable that women may see prostitution as a viable alternative or the only way out of poverty. However, the percentage of women involved in prostitution voluntarily and not under coercion is small<sup>18</sup>. In the harm elimination approach, prostitution is considered a dangerous system and reality that needs to be eradicated, similar to other forms of violence against women and slavery. Melissa Farley<sup>19</sup> explains that:

“The COVID-19 pandemic provides some urgent lessons. We need coronavirus harm elimination (via vaccine), not stopping at coronavirus harm reduction (via social distancing, treatment of medical emergencies). We also need prostitution harm elimination: the abolition of the racist and sexist institution of prostitution and provision of meaningful, sustainable alternatives.”

Laws on the elimination of hazards enacted by several countries now recognize prostitution as sexual exploitation; these countries include Sweden (1999), Iceland (2008), Norway (2009), Canada (2014), Northern Ireland (2015), France (2016), and the Republic of Ireland (2017). These laws are based on evidence of the dangers of prostitution. This harm elimination approach holds buyers of sex services (clients) and pimps accountable for the risks posed to those involved in prostitution, while simultaneously freeing individuals engaged in prostitution and offering options for women to exit through service provision<sup>20</sup>.

The view that “sex work,” namely prostitution, can be provided in humane conditions, entirely based on consent, controlled by the workers, free from discrimination and violence, and no more exploitative than average employment is a

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<sup>17</sup> Jane Scoular, “What’s Law Got to Do with It? How and Why Law Matters in the Regulation of Sex Work” (2010) 37:1 *Journal of Law and Society* 12-39.

<sup>18</sup> Justine L Kessler, *The Voices of Sex Workers (prostitutes?) and the Dilemma of Feminist Discourse* (Thesis, Department of Women’s Studies College of Arts and Sciences University of South Florida, 2005) [unpublished].

<sup>19</sup> Melissa Farley, “Prostitution, the sex trade, and the COVID-19 pandemic” (2020) 19:1 *Logos* 1-34.

<sup>20</sup> Rachel Moran & Melissa Farley, “Consent, Coercion, and Culpability: Is Prostitution Stigmatized Work or an Exploitive and Violent Practice Rooted in Sex, Race, and Class Inequality?” (2019) 48:7 *Archives of Sexual Behavior* 1947-1953.

myth. In the past, wrote US Congress Member Maloney, there was a naive belief that legalizing prostitution would improve the lives of sex workers, eliminate prostitution in areas where it is still illegal, and eradicate organized crime from this business. Like all fairy tales, it turns out to be a mere fantasy<sup>21</sup>.

Harm elimination takes the form of prohibition. Prohibition is the act or practice of forbidding something by law; more specifically, the term refers to the prohibition of the manufacture, storage, transportation, sale, possession, and consumption of alcoholic beverages<sup>22</sup>.

When prostitution is prohibited, every aspect of the prostitution business is criminalized. This includes prostitution itself, the management or promotion of prostitution, and soliciting sexual services in exchange for money as a client or sex worker. The legal implications go beyond the criminal justice system. For example, in the United States, evidence of involvement in prostitution can lead to the deportation of immigrants from the country. This system makes low-income sex workers and those from minority ethnic communities more vulnerable to arrest due to increased police presence in these environments. Street-based sex workers are more visible and, therefore, more likely to be arrested<sup>23</sup>.

In addition to prohibition, harm elimination also involves abolition. In the context of prostitution, the Abolitionist method views prostitution as morally repugnant. Abolitionists assume that voluntary prostitution does not truly exist. According to them, individuals in prostitution are always victims of some form of criminal exploitation. Therefore, only behaviors that facilitate prostitution can be punishable, not the behaviors of the individuals in prostitution themselves. This Abolitionist approach often results in partial criminalization of prostitution. In the abolitionist vision, prostitution would come to an end if the law targeted those who profit from individuals in prostitution rather than the individuals themselves. In Sweden, policies related to prostitution are shaped based on this idea<sup>24</sup>.

Santiago Morcillo and Cecilia Varela<sup>25</sup> explain the Abolitionist position as:

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<sup>21</sup> *Ibid.*

<sup>22</sup> Brijesh Singh, *Comprehensive Modern Indian History: From 1707 To The Modern Times (UPSC CSE Edition)* (S. Chand Publishing, 2023).

<sup>23</sup> Amy G Mazur, "Prostitute movements face elite apathy and gender-biased universalism in France" in *The Politics of Prostitution: Women's Movements, Democratic States and the Globalisation of Sex Commerce* (2004) 123.

<sup>24</sup> Judith Kilvington, Sophie Day & Helen Ward, "Prostitution Policy in Europe: A Time of Change?" (2001) 67:1 *Feminist Review* 78-93.

<sup>25</sup> Santiago Morcillo & Cecilia Varela, "'Ninguna mujer...': El abolicionismo de la prostitución en la Argentina" (2017) *Sexualidad, Salud y Sociedad* (Rio de Janeiro) 213-235.

“... at that time, it was defined by these feminists as a movement that opposes any legal and state control of prostitution but prohibits its organized exploitation, suppressing pimping”<sup>26</sup>.

Abolitionism today is described by feminist scholars as a method used to resist all forms of legal and state oversight of prostitution to prohibit organized exploitation and punish human trafficking facilitators. The leader of the abolitionist movement was Josephine Butler, an enthusiastic public speaker and prolific writer. Josephine Butler and other abolitionists argued that men were responsible for prostitution, placing the blame for prostitution squarely on the shoulders of uncontrollable male desire. No woman could be said to truly consent to prostitution<sup>27</sup>. Feminist abolitionist campaigners were able to build broad coalitions with various social groups, including men's worker organizations and religious organizations.

Prohibition and abolition in the context of criminal law policy can take the form of a criminalisation policy model. One simple argument supporting the criminalisation policy model is that it makes the trade of final goods (sexual services) much more difficult to sell or obtain. Ideally, this should reduce the number of clients, pimps, and traffickers who provide these services, thereby reducing human trafficking and prostitution as a whole<sup>28</sup>.

In this model, the purchase, sale, or trade of sex (such as prostitution, brothels, and so on) is considered a criminal act<sup>29</sup>. The criminalisation policy model assumes that the legalisation of prostitution will deter individuals from seeking or providing sexual services. Countries such as Iran and most states in the United States fall under this model<sup>30</sup>.

Supporters of this model believe that prostitution fundamentally goes against human dignity and, therefore, should be eliminated. From the supporters' perspective,

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<sup>26</sup> Translation by authors. This quote was translated from Spanish, and in the original, it reads: “...en esos momentos aparecía definido por estas feministas como un movimiento que se opone a todo control legal y estatal de la prostitución, pero prohíbe su explotación organizada, reprimiendo el proxenetismo.”

<sup>27</sup> Jo Doezema, “Who Gets to Choose? Coercion, Consent, and the UN Trafficking Protocol” (2002) 10:1 *Gender & Development* 20–27.

<sup>28</sup> Victoria Hayes, “Human Trafficking for Sexual Exploitation at World Sporting Events” (2010) 85:3 *Chicago-Kent Law Review* 1105–1146.

<sup>29</sup> Andrea Krüsi, Kate D’Adamo & Ariel Sernick, “Criminalised Interactions with Law Enforcement and Impacts on Health and Safety in the Context of Different Legislative Frameworks Governing Sex Work Globally” in Shira M Goldenberg et al, eds, *Sex Work, Health, and Human Rights: Global Inequities, Challenges, and Opportunities for Action* (Cham: Springer International Publishing, 2021) 121.

<sup>30</sup> H Joulaei et al, “Legalization, Decriminalization or Criminalization; Could We Introduce a Global Prescription for Prostitution (Sex Work)?” 10:3 *International Journal of High Risk Behaviors and Addiction* e106741.

criminalisation will decrease the interest in purchasing sex services, reduce the demand for sellers, limit the size of the market, and thus decrease human trafficking<sup>31</sup>.

However, the criminalisation model also has major weaknesses, as indicated by various studies, focusing on its inability to reduce incidents of violence and coercion. Evidence also shows a tendency for criminalisation regimes to increase the levels of violence experienced by sex workers, especially when compared to other legal models. The compliance of the criminalisation model with violence is the main motivation behind a growing movement (including organisations like the WHO, UN guidelines, and UNAIDS) demanding the elimination of criminal penalties for those selling sexual services. Opponents of criminalisation argue that this model functionally serves as a barrier to the health, safety, and basic rights protection of sex workers<sup>32</sup>.

Another issue is related to the implementation of criminalisation policies, especially concerning the conflicts in relationships between sex workers and law enforcement<sup>33</sup>. Sex workers become victims of higher levels of violence, abuse, and crime than the general population. However, they cannot seek justice or protection from law enforcement due to their status as illegal workers. This creates a power imbalance between sex workers and law enforcement, as officers can easily apprehend sex workers involved with the law rather than responding to crime or abuse reports<sup>34</sup>.

By officially ignoring or rejecting prostitution, Indonesian society has essentially acknowledged the existence of prostitution. The impact is that occasional attacks on prostitution carried out by moral or religious groups, especially during the fasting month (Ramadan) or religious celebrations, have not been able to trigger mass protests.

Arguments based on strong religious values calling for the abolition of prostitution often receive support or at least sympathy from political leaders. However, despite the strong moral rhetoric that may lead to police operations and public campaigns against the sex industry, the public's reaction is generally negative and can even result in actions to demean sex workers or their clients. Society often calls for limits on official actions that they perceive as 'excessive'.

For instance, a movement to rid the streets of sex workers arose in Semarang prior to the 2024 general election. These actions are usually presented as part of the city's efforts to maintain morality and cleanliness, and religious organizations usually assist political leaders who push this agenda. In another instance, a minister who was running

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<sup>31</sup> Simon Hedlin, "The Relationship between Prostitution Laws and Sex Trafficking: Theory and Evidence on Scale, Substitution, and Replacement Effects" (2017) 50:2 *University of Michigan Journal of Law Reform* 1-68.

<sup>32</sup> Jacob Richards, "Autonomy, Imperfect Consent, and Polygamist Sex Rights Claims" (2010) 98:1 *California Law Review* 197-242.

<sup>33</sup> Krüsi, D'Adamo & Sernick, *supra* note 29.

<sup>34</sup> Danielle Friedman Nestadt et al, "Criminalization and coercion: sexual encounters with police among a longitudinal cohort of women who exchange sex in Baltimore, Maryland" (2023) 20:1 *Harm Reduction Journal* 11.

for governor of a province that was thought to be a bastion of one of the biggest Islamic organizations in Indonesia published a contentious and extremely harmful policy about sex workers. “Indonesia Bebas Prostitusi 2019” (Indonesia Free from Prostitution 2019) is the name of this initiative. This policy is seen as a hasty decision, even though its name suggests lofty moral goals.

The government usually responds to complaints from religious leaders and religious-oriented groups by taking strict action against pornography and illegal brothel operations. Especially illegal brothels, high-class procurers, and unlicensed entertainment venues become the target of police operations. However, these anti-prostitution movements usually only last temporarily and stop after successfully appeasing the conscience of society. Over time, procurers will be released or pay fines, brothels will resume operations, and entertainment venues will obtain the necessary permits.

Society, even the government, tends to turn a blind eye to the existence of the sex industry due to the economic benefits derived from it. This is evident in how police actions against procurers are carried out. Even if they sometimes conduct raids, especially in illegal hotels offering commercial sex services, everyone knows that this is just a kind of promotional act and not a serious effort to change the situation. In fact, raids and sealing of hotels only last temporarily and never exceed one month. Only when Indonesia begins to undergo political transformation does prostitution face resistance on a scale and violence never seen before; political reforms become deeply rooted with moralistic demands.

One example of the incorporation of damage reduction techniques into the legal system of Indonesia is evidenced by the country's decision to make prostitution a criminal offence. This decision exemplifies the incorporation of damage reduction strategies into the legal system of Indonesia. In the year 2000, legislation was enacted to alleviate the negative impacts of the industry of prostitution, which include the exploitation of minors and women, the spread of sexually transmitted diseases, and the maintenance of poverty and inequality. The act of offering and accepting payment for sexual services was deemed unlawful by the legislation, and those who breached the regulation were subject to penalties such as incarceration and fines. The law also made it illegal to offer sexual services to a minor in exchange for payment. In addition, the rule made it unlawful to provide sexual services to people under 18<sup>35</sup>.

Because they do not have a clear legal position and favour repressive (criminal) activities, the rules that govern prostitutes in Indonesia are particularly murky and difficult to understand. For instance, article 27 paragraph (1) of Law no. 11 of 2008 concerning Information and Electronic Transactions regulates online prostitution. The law states that anyone who intentionally and without rights distributes and transmits or

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<sup>35</sup> Maqfira Izzata Nafsiah et al, “Revealing the Dark Veil of Illegal Business” (2020) 6:2 L Research Rev Q 117-138.

makes accessible Electronic Information and Electronic Documents with content that violates decency is guilty of a crime. To date, the government has only regulated prostitutes, which is emphasised in criminal law. The law only prosecutes those who assist with sex services, as stipulated in Law No. 1 of 2023 concerning the Criminal Code. Based on Article 45 paragraph (1), everyone who fulfils the elements referred to in Article 27 paragraph (1) shall be punished with imprisonment for a maximum of six years and a maximum of Rp. 1,000,000,000.00 (one billion r (there are provisions in other chapters). Articles 419, 420, 421, 422, 599, 603, 411 and 423 of the Code of Criminal Procedure control the arrangements related to prostitution.

Any person who connects or facilitates another person to commit obscenity or have intercourse with a child shall be imprisoned for a maximum of seven years. The offences covered by this provision include having intercourse with a child known or reasonably suspected to be a child (seven years). If the offence described in paragraph (1) is committed against a natural child, stepchild, adopted child, or child under his supervision who is entrusted to his care, the punishment shall be imprisonment for a maximum of nine years. This applies whether the victim is the child's natural child, stepchild, adopted child, or child under his supervision<sup>36</sup>.

The above regulations pertain to child prostitution. Child prostitution is defined as situations in which children engage in organized sexual activities in exchange for material benefits for themselves or others. These are institutionalized arrangements—sustained, patterned social structures—in which children are exploited sexually for profit. Child prostitution represents an extreme form of sexual abuse against children and is particularly intense as a form of exploitative child labor<sup>37</sup>.

Child prostitution can be considered forced prostitution because it involves children who are not of legal age to give valid consent for sexual activities. Children usually lack the emotional maturity or capacity to make such decisions properly. Several factors push child prostitution to be deemed as forced prostitution, involving exploitation and abuse of power by parties involved, such as parents, pimps, or those engaged in human trafficking. Children often get involved in prostitution due to economic pressures, physical or psychological coercion, or difficult circumstances that make them vulnerable to exploitation. It is important to remember that child prostitution is a violation of human rights and involves actions that are harmful and detrimental to children. Efforts for protection and prevention are crucial to shield children from sexual exploitation and provide support for those who have become victims of child prostitution. It is crucial to eliminate these harmful practices.

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<sup>36</sup> Budiman Budiman, Wirani Aisiyah Anwar & A Rio Makkulau, “An Analysis of Fiqh Jinayah and Criminal Law on the Legal Protection for Children as Victims of Obscenity” (2022) 5:2 Jurnal Al-Dustur 183–211.

<sup>37</sup> George Kent, “Child Prostitution” in George Kent, ed, *Children in the International Political Economy* (London: Palgrave Macmillan UK, 1995) 57.

Article 420 stipulates that anyone who encourages or assists another individual in sexually explicit conduct is subject to a sentence of incarceration for up to two years. Article 421 stipulates that the penalty may be increased by a third if the offence described in Articles 419 and 420 is carried out repeatedly or to make a profit as a means of subsistence (one-third). Any person who moves, carries, places, or hands over a child to another person in order for that person to commit fornication, prostitution, or other acts violating decency shall be punished with imprisonment for a maximum of nine years<sup>38</sup>. This punishment shall apply to the person who committed the offence. If the crime referred to in paragraph (1) is committed by promising a child to get a job or by making other promises, the penalty is imprisonment for a maximum of ten years. (3) If the crime referred to in paragraph (1) is committed by promising a child to get a job or by making other promises, the penalty is imprisonment. The offences described in Articles 414 to 422 are considered sexual violence offences and are covered by this article.

As was discussed in the section on elucidation, the provisions of Article 421 are intended to eradicate brothels. At the same time, the act of sending men or women who have not reached maturity to other regions or abroad to engage in prostitution or other acts that violate decency is referred to as a criminal offence in Article 422.

There are a number of articles connected to prostitution that can be found in a variety of different chapters, in addition to the articles that have been discussed above. According to the provisions of Article 599 letter d, every person who commits an act as part of a widespread or systematic attack knows that the attack was aimed at civilians in the form of rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation, or other forms of sexual violence that are equivalent, or forced disappearances, is guilty of a crime against humanity and faces a minimum sentence of five years in prison and a maximum sentence of life in prison<sup>39</sup>.

Article 463: Any woman who terminates a pregnancy by having an abortion is subject to a sentence of incarceration for a maximum of four years. The provisions referred to in paragraph (1) do not apply if a woman is a victim of the crime of rape or other crimes of sexual violence that causes pregnancy whose gestational age does not exceed fourteen (fourteen) weeks or has indications that she is experiencing a medical emergency. This exception applies only in cases where the gestational age of the unborn child is less than fourteen weeks.

According to the explanation given in paragraph two of article 463, “Other acts of sexual violence that produce pregnancy” can refer to a variety of different activities, including forced prostitution, sexual exploitation, and sexual slavery. Concerning utilising assets obtained from prostitution, as stipulated in Article 604, paragraphs (1) and (2) are

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<sup>38</sup> Kristian Kristian, “The Legal Comparison Concerning the Legislation Policy of Criminal Acts Towards Religion and Religious Life in the Books of Indonesian Criminal Law Year 2018 and Wetboek Van Strafrecht Year 2014” (2019) 6:2 *the int jou soc hum inve*, 5319–5329.

<sup>39</sup> Demas Wicaksono et al, “Potential and Implications of Disputes Over the Authority of the National Human Rights Commission and the Indonesian National Police” (2023) 6:1 *IJSSRR* 1–9.



considered to be Money Laundering Crimes, which can take 3. Placing, transferring, diverting, spending, paying, granting, depositing, taking abroad, changing forms, exchanging with currency or securities or other actions on assets that he knows or reasonably suspects are the proceeds of a Criminal Act to conceal or disguise the true nature of the proceeds VI.

There is a possible connection between adultery and Article 411. Suppose a person has sexual relations with someone who is not his or her spouse or wife. In that case, that person is guilty of adultery and could face a maximum sentence of one year in prison or a maximum acceptable equivalent to category II. (1): prosecution for the offence described in paragraph (1) is not carried out, except complaints from other husbands or wives of individuals bound by marriage or complaints from parents or children for people who are not bound by marriage.

As stated in Article 295, 296, 297, 506, and 284, which can be used in some instances, the provisions regarding prostitution in the New Criminal Code are the same as the provisions regarding prostitution in the previous Criminal Code. These provisions can be used to prosecute individuals who are found guilty of engaging in prostitution<sup>40</sup>.

Article 295 threatens those who cause, connect, or facilitate the commission of obscene acts by their children or children under their supervision who are not yet adults and make the act a search. This includes parents who are responsible for their children's actions or supervise children who are not yet adults. People who fit the definition of a pimp can face a prison sentence that is longer than five years if convicted of the crime.

Pimps holding or supplying services for adult prostitution are subject to prosecution under Article 296. According to the text of the article, any person who intentionally causes or facilitates obscenity by another person with a victim and who makes it a habit or pursuit shall be punished by a maximum imprisonment term of one year and four months or a maximum fine of fifteen thousand rupiahs, whichever is greater<sup>41</sup>.

By Regulation Number 2 of 2012 issued by the Supreme Court, the amount of any potential fine mentioned in the Criminal Code, except Article 303 Paragraph 1 and Paragraph 2, and Article 303 Paragraph 1 and Paragraph 2, has been increased by a factor of one thousand. There is a connection between Article 296 and Article 506, which controls not just pimps but also parties who become middlemen.

As long as the primary mechanism for controlling sex workers is Criminal Law, it will eventually render all acts that are related to prostitution unlawful. The laws in each country are very different from one another. In certain nations, engaging in any form of sexual activity for financial gain becomes a criminal offence for all parties involved. The

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<sup>40</sup> Veren Chelsya Sinaga & Mas Anienda Tien F, "Juridical Study On The Application Of Articles 296 And 506 Of The Criminal Code To Perpetrators Of Online Prostitution" (2022) 2:2 *ligahukum* 144-151.

<sup>41</sup> Wardah Yuspin et al, "Law Enforcement Against Online Prostitution Providers In Indonesia And Egypt" (2022) 11:1 *jurisprudence* 114-128.

majority of the time, the Criminal Code goes after people who profit from prostitution or engage in its sale. In addition, banning specific actions related to commercial sex, such as demands for public prostitution made by purchasing children below the age of public scrutiny, is another type of legislative control that occurs most frequently. More recently, laws that aim to prevent human trafficking and sexual exploitation have proliferated. Many jurisdictions have broadened the definition of sexual exploitation to include clients and consenting adults, which means that more people are now considered victims of sexual exploitation.

## V. INDONESIA'S PROSTITUTION POLICY REFORM: A POSSIBLE PARADIGM OF HARM REDUCTION ATTEMPTS AS AN ALTERNATIVE APPROACH

Harm reduction is a public health and human rights-based approach to drug policy that seeks to minimise the negative consequences of drug use rather than focusing solely on reducing or eliminating drug consumption<sup>42</sup>. This contrasts with the more traditional approach of attempting to eliminate drug use. The elimination of potential adverse effects on people's health and the health of the community as a whole is the primary objective of the harm reduction movement. It is a realistic and evidence-based strategy that understands the intricacies of drug use and accepts the reality that drug use is a pervasive phenomenon affecting many individuals worldwide.

Michael L Rekart<sup>43</sup> said that:

“Sex work and injection drug use are among the most perilous activities worldwide. Harm reduction has stimulated global debate about drug use, and the application of harm-reduction principles to interventions such as needle exchange has reduced HIV spread and improved the lives of drug users. Since drug users might participate in sex work to pay for drugs, drug-user harm reduction includes condom promotion, and sex workers could use drugs to cope with psychological, emotional, and physical stress. Safe-sex campaigns and social marketing of condoms are based on harm-reduction principles. The process of harm reduction is not new to the study of sex work. Harm reduction and risk-reduction strategies have been adopted by health authorities, sex worker organisations, and sex workers themselves”.

Harm reduction can be explained as a strategy aimed at individuals or groups to minimize losses associated with specific behaviours. When applied to substance abuse, the risk reduction approach acknowledges the inevitability of drug use (both legal and

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<sup>42</sup> David Howarth, Adam Standring & Scott Huntly, “Contingent, contested and constructed: a poststructuralist response to Stevens’ ontological politics of drug policy” (2021) 93 *International Journal of Drug Policy* 102965.

<sup>43</sup> Michael L Rekart, “Sex-Work Harm Reduction” (2005) 366:9503 *The Lancet* 2123-2134.

illegal) in society, and sets goals to mitigate negative consequences. This approach emphasizes measuring health, social, and economic outcomes rather than drug consumption.

Access to and utilization of methadone treatment programs are closely related to a decrease in deaths, both due to natural causes and overdoses, indicating that these programs impact social and medical health overall. A recent addition to the continuum of risk reduction is supervised injection facilities, successfully implemented in Switzerland and the Netherlands and, more recently in Vancouver, British Columbia. Healthcare professionals play a crucial role in many of these harm reduction initiatives<sup>44</sup>.

The term “harm reduction” is widely used to describe actions aimed at promoting health and safety in the sex worker community. Approaches developed with drug users have been applied in collaboration with sex workers, however with little discussion about the need for modification or clarification of tactics. In its most basic interpretation, the use of harm reduction approaches can help protect the lives and health of sex workers in the same way that drug users have benefited from harm reduction in drug use. Yet, it is clear that drug use and prostitution involve different actors and social issues and that harm reduction approaches to prostitution encompass diverse perspectives on specific issues related to prostitution<sup>45</sup>.

Although some harm reduction advocates state their neutrality on prostitution, the emphasis on peer-based methods that acknowledge and empower sex workers distinguishes harm reduction organizations in practice from groups aiming to rescue women from prostitution. Additionally, harm reduction is often interpreted to include legal reforms to create a safer environment for prostitution. Some organizations list the protection of sex workers' rights as a prerequisite for the success of harm reduction, and some call for the decriminalization of prostitution and the removal of other barriers to health promotion<sup>46</sup>.

Human rights and harm reduction advocates have begun exploring the connections within this framework, especially regarding drug use and HIV/AIDS. This includes recognizing that a human rights approach to health requires harm reduction because it allows the fulfillment of human rights to reach the highest attainable standards of physical and mental health. Advocates also emphasize that for harm reduction related to HIV/AIDS and drug users to be successful, fundamental rights such as protection from police abuse and arbitrary detention must be ensured<sup>47</sup>.

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<sup>44</sup> KM Leslie, “Harm reduction: An approach to reducing risky health behaviours in adolescents” (2008) 13:1 Paediatrics & Child Health 53-56.

<sup>45</sup> Gillian Abel, *Decriminalisation: A harm minimisation and human rights approach to regulating sex work* (Dissertation, University of Otago, 2010) [unpublished] publisher: University of Otago.

<sup>46</sup> P Saunders, “Harm reduction, health and human rights, and sex work” (2006) New York: Open Society Foundations 1-6.

<sup>47</sup> Alex Wodak & Leah McLeod, “The role of harm reduction in controlling HIV among injecting drug users” (2008) 22:suppl 2 AIDS S81-S92.

Exploring new avenues between the harm reduction approach and the right to sex work involves strategic considerations for advancing progressive efforts. Adopting a participatory, human rights-based public health approach, commonly used by sex worker organizations, is essential. This goes beyond ensuring access to condoms, emphasizing sex workers' roles as decision-makers in shaping conditions that promote health and challenge discrimination. A commitment to human rights within the harm reduction framework is crucial, given the potential shift in funding emphasis from "rights outcomes" to "health outcomes." Legal, human rights, and health reforms are imperative, recognizing the interconnectedness of sex workers' health and their broader rights. Lastly, accountability is paramount. Civil society must hold the state accountable, and organizations must also be accountable to the communities they serve. Developing accountability to the sex worker population addresses weaknesses in harm reduction and human rights, aligning organizational priorities with sex workers' demands rather than solely conforming to funding bodies. In addressing the complexities surrounding prostitution, human rights-based organizations can elevate the significance of sex workers' demands for freedom and justice, contributing to a nuanced discourse beyond moral debates about women's involvement in prostitution.

The social, behavioral, and professional heterogeneity of sex worker groups often requires different interventions at both individual and structural levels. The WHO's "Sex Work Toolkit" outlines key principles and issues related to HIV prevention, care, empowerment, and best practices in addressing the inherent challenges in meeting the needs and reducing the negative impacts of prostitution.

**Table 1:**

Interventions for the Reduction of the Adverse Effects of Prostitution (Michael L. Rekart)<sup>48</sup>

	<b>Initiative</b>	<b>Harms reduced</b>
<b>Education</b>	Peer education, outreach programs, accessible and appropriate materials, sex worker involvement	Drug use, disease, violence, debt, exploitation
<b>Empowerment</b>	Self-esteem, individual control, safe sex,	Drug use, disease, violence, debt,

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<sup>48</sup> Rekart, *supra* note 43.

	solidarity, security personal, negotiation skills, client refusal, service access, acceptance by society	discrimination, exploitation
<b>Prevention</b>	Male and female condoms, lubricants, vaccines, behavioral alterations  , voluntary HIV counselling and testing, participation in research	Drug use, disease
<b>Therapy</b>	Accessible, acceptable, high-quality, integrated care; prevention-care synergies; Prophylactic; STIs, HIV/AIDS, and psychological treatment; Social Support	Drug use, disease, violence, exploitation
<b>Occupational Health and Safety</b>	Control exposure and hazards, treatment for injuries and illnesses, employer duties, workers' rights	Drug use, disease, violence, debt, exploitation
<b>Decriminalization of Sex Workers</b>	Sex work organizations, sex work projects, non-governmental organizations	Criminalisation, discrimination, violence
<b>Rights-based approach</b>	Education, telephone hotlines, targeted and easy-to-use service training, government action, media, prevention *, refugee	Exploitation (i.e., child prostitution, human trafficking, exploitation of mobile populations)

	packages, community development	
<p>*Prevention = psychological counseling, reproductive health services, education, vaccination, early detection, nutrition, treatment.</p>		

Education proves to be a crucial tool in effectively addressing the myriad challenges confronted by sex workers, including substance abuse, health issues, violence, indebtedness, and exploitation. Peer education emerges as a powerful strategy, contributing significantly to the enhancement of knowledge regarding STIs and HIV, the promotion of condom usage, and the cultivation of safer sex practices, consequently leading to a decrease in HIV and STIs occurrences. It is imperative to provide training, support, protection, and adherence to conduct standards for peer educators, especially for experienced sex workers who can offer guidance to their peers on living safely. Cost-effective initiatives, like peer education in Chad, underscore the effectiveness of outreach programs conducted by educators, social workers, nurses, and community members in preventing HIV/AIDS<sup>49</sup>.

Education plays a pivotal role in addressing diverse challenges linked to sex work, such as stigma, discrimination, and health inequalities. Successful educational materials are characterized by simplicity, clarity, consistency, non-judgmentalism, attractiveness, and cultural sensitivity. Empowerment to diminish vulnerability is recognized as a central objective. Vulnerabilities faced by sex workers, covering aspects like self-esteem, education, societal attitudes, poverty, family responsibilities, health, mobility, and legal restrictions, can hinder access to and utilization of crucial services. Initiatives promoting empowerment have exhibited positive outcomes, encompassing improved self-esteem, enhanced negotiating skills, access to preventive services, and the provision of safe environments.

Policy and law play a significant role in empowering sex workers, as exemplified by instances in Santo Domingo and Thailand, where supportive policies positively influenced consistent condom use and reduced HIV/STI transmission. Male and female condoms play a crucial role in preventing HIV and STI transmission, with accessibility and quality being paramount. Staff attitudes influence acceptability and can be enhanced through sensitivity training. Comprehensive care and support for sex workers with HIV/AIDS is imperative, including voluntary testing, psychological support, treatment, and community activities<sup>50</sup>.

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<sup>49</sup> *Ibid.*

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

In regard to legal aspects, the criminalization of sex work and associated criminal records can have severe consequences, hindering access to housing, employment, education, and social assistance. Advocacy for the decriminalization of migrant sex workers is essential to facilitate access to services and protect against rights violations. A human-rights-based approach, as embraced by UNAIDS, is recommended for tackling the challenges faced by sex workers and recognizing the severity of abuses like child prostitution, human trafficking, and exploitation of migrant and mobile sex workers. This approach aims to foster an environment where sex workers can actively participate in, contribute to, and enjoy various aspects of economic, social, cultural, and political development.

The goal of laws that try to reduce the harm caused by prostitution is to address these unintended consequences by adopting a more realistic perspective. Instead of focusing on completely ending prostitution, policies that reduce harm have more of an emphasis on mitigating the adverse effects that the practice has on those who are involved, including sex workers, customers, and communities. This can be accomplished through a variety of methods, such as making it possible for those who engage in prostitution to access health services, such as testing and treatment for STIs, and developing conditions that are secure and encouraging.

Creating less hazardous working circumstances for those who work in the sex industry is one of the most critical aspects of harm reduction in the context of prostitution. This can include providing access to organisations that distribute condoms and also creating situations in which sex workers can report instances of violence and exploitation without fear of retaliation. In addition, harm reduction policies can offer education and training to those who work in the sex industry on how to lessen the dangers that are connected with their profession, such as how to negotiate safer sex and how to avoid drug use<sup>51</sup>.

Protecting the customers' health and well-being should also be prioritised as an essential component of harm reduction in the prostitution industry. For customers, this can mean making it possible for them to get tested and treated for STIs and receive information on how to engage in more responsible sexual behaviour. This has the potential to aid in the reduction of the transmission of STIs and other health hazards linked with prostitution<sup>52</sup>.

Policies aimed at reducing harm can also have a positive effect on communities that are negatively impacted by prostitution. For instance, harm reduction policies can reduce the number of people who engage in survival sex by providing support and services to those in the prostitution industry. Survival sex refers to sexual activity performed in exchange for food, shelter, or other essential needs. This can assist in reducing the

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<sup>51</sup> Emily J Kennedy, *Digital desire: Commercial, moral, and political economies of sex work and the internet* (PhD Thesis, University of Kansas, 2016) [unpublished] publisher: University of Kansas.

<sup>52</sup> Rekart, *supra* note 43.

number of people in danger of being exploited or violently harmed, and it can also increase the safety and well-being of the community<sup>53</sup>.

In much of the scholarly research on prostitution, the process by which states formulate policies regarding sex workers and put those policies into effect through laws and regulations is under-represented. The notion that prostitution is a social phenomenon, and the efforts of the authorities to prohibit, detain, or regulate it dates back to somewhere around the beginning of the 19th century, after the consolidation of Western countries. This is supported by the emergence of the Welfare State, which requires the state to be present and regulate all aspects of people's lives, including the realm of privacy. In Western countries with developed democracies, prostitution in all of its forms has a close relationship with the state. It is claimed that interference from the state will help the state achieve its primary goals, ensuring its citizens' well-being.

Countries need to pay attention to the provisions stipulated in CEDAW as ratified in Law No. 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), particularly in Article 6 which states that: "States Parties shall take all appropriate measures, including legislation, to eliminate all forms of discrimination against women." In order to create laws that regulate CSW, the states that are parties to the convention are obligated to enact suitable rules, including legislation, to combat any forms of the exploitation of prostitution and trafficking in women. Because of these laws, the state is compelled to create a statutory rule that governs partial prostitutes to protect the public.

In pursuit of its goals, the CEDAW Committee acknowledges female community service workers as a demographic disproportionately affected by violence, discrimination, and gender marginalization. Specifically, the Committee expresses concerns regarding the state's responsibility to safeguard the human rights of female sex workers in various domains. These include addressing the stigma associated with female sex work, combating discrimination encompassing eviction, public humiliation, and loss of parental rights, and rectifying health-related disparities in access to healthcare services resulting from legal frameworks prosecuting third parties and customers. Notably, the Committee highlights the imperative of prioritizing the health needs and rights of vulnerable and disadvantaged groups, such as female sex workers, particularly in the context of HIV prevention efforts. It condemns the unintended consequences, such as harassment and criminalization during anti-trafficking raids, arising from endeavors to combat human trafficking. The Committee underscores the challenges sex workers face in accessing justice, especially those who are victims of violence.

Additionally, it advocates for the right to work in secure environments for female sex workers, emphasizing the adverse impact of criminalization on their safety and health. The Committee criticizes violent crimes committed against sex workers by both

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<sup>53</sup> Alexandra Oliveira et al, "Understanding the Impact of EU Prostitution Policies on Sex Workers: A Mixed Study Systematic Review" (2023) 20:4 *Sexuality Research and Social Policy* 1448-1468.



state and non-state actors, emphasizing that the criminalization of sex work increases the likelihood of such offenses. It calls for the eradication of direct and indirect criminalization of female sex workers, including licensing regimes and administrative punishments. Furthermore, the Committee urges states to eliminate discrimination against women in migration policies and ensure labor protections for jobs dominated by migrant women, emphasizing access to legal recourse for women migrant workers in case of rights violations.

Therefore, preventing abuses of human rights committed against sex workers is essential to the achievement of gender equality and the protection of women's rights as objectives of international policy. The CEDAW Committee has highlighted the areas of concern described above as being at the core of human rights problems that undermine gender equality. These areas of concern illustrate why the rights of sex workers are a vital aspect of the aims associated with feminism. In light of CEDAW's approach to gender equality, which emphasises intersectionality and gender diversity, as well as the Committee's recognition of the rights of sex workers as being equal to the rights of women, there must be an effort in the form of a global women's movement in order to overcome gender-based discrimination, in particular by making sure that sex workers are not left behind in the fight for equality.

The obligation to respect, protect, and fulfil the right to non-discrimination stipulates that legal and policy reform must follow a tripartite approach. As a result, policymakers must repeal all discriminatory actions, encourage protective measures, and implement policies and programmes that promote substantive equality. Specific recommendations are for policymakers to: Repeal all laws that directly or indirectly criminalise sex workers, and recognise sex work as work that is given the same protection as other jobs under international labour rights conventions; Oppose the combination of trafficking in persons, sex workers, and migration, and promote migrants' rights to safe and legal migration routes and decent work as defined by the International Labor Organization; Recognise that sex work is work that is given the same protection as other jobs under the international labour rights convention; and, ensure that national laws prohibit discrimination, facilitate community service workers' access to key advocacy spaces, provide community service workers with the right to organise, and encourage the exchange of information and skills. In addition, states are required to consistently implement the numerous international agreements related to human rights that they have ratified, particularly CEDAW, to treat the principle of non-discrimination as legally binding, and to apply affirmative action steps in order to achieve substantive equality across the spectrum of rights. Civil, political, economic, social, and cultural rights, with a particular focus on critical populations among women, should be in focus because women have historically been subjected to higher degrees of discrimination. It is essential to remember that achieving gender equality is a goal in and of itself and that necessitates removing discrimination in all areas.

It is essential, in the framework of CEDAW and policies aimed at reducing the harm caused by prostitution, to take into account the rights and well-being of women who

engage in the practice. CEDAW acknowledges that women who are involved in prostitution are particularly susceptible to discrimination and violence and that policies and programmes that promote harm reduction can help to address these issues. CEDAW also recognises that women involved in prostitution are particularly vulnerable to discrimination and violence.

Requirements for safe working conditions, access to healthcare and support services, and safeguards against exploitation and violence are some examples of provisions that may be included in policies that encourage harm reduction in the prostitution industry. Women who are active in prostitution should not be subjected to additional harm, such as arrest and incarceration, due to policies that aim to enforce the criminalisation of prostitution. Reducing criminalisation policies will help to ensure that they do not face these consequences.

The Netherlands is one of the most well-known countries in the world whose rules around prostitution include elements of harm reduction. The Dutch attitude to prostitution is founded on the values of tolerance, health, and social support for those affected by the practice. Since the year 2000, the practice of prostitution has been legalised and controlled in the Netherlands. As a result, those who work in the sex industry now have access to a variety of health and social services, including therapy, housing, and medical care. In addition, the Dutch government has developed efforts to limit the risks connected with prostitution, such as obligatory health checkups, licensing of brothels, and education on safer sex practices<sup>54</sup>.

New Zealand is another nation whose rules around prostitutes incorporate elements of risk and damage reduction. The nation legalised all parts of sex work in 2003, including soliciting, running a brothel, and living off the revenues of prostitution. This included making it legal for people to live off of prostitution. Since then, sex workers in New Zealand have been free to engage in their profession openly, to organise into unions, and to have access to medical care and the legal system without fear of being prosecuted. In addition, the government of New Zealand has established a working group on human trafficking and sexual exploitation, as well as providing funding for HIV prevention and sexual health clinics. These are two of the measures that have been taken to lessen the dangers faced by people working in the sex industry<sup>55</sup>.

Another nation whose approach to prostitution is based on the principle of minimising the potential for harm is Austria. Since 2003, prostitution has been legal in

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<sup>54</sup> Post, Brouwer & Vols, *supra* note 3; Hendrik Wagenaar, Helga Amesberger & Sietske Altink, “The Local Governance of Prostitution: Regulatory Drift and Implementation Capture.” in *Designing Prostitution Policy* Intention and Reality in Regulating the Sex Trade (Bristol University Press, 2017) 71.

<sup>55</sup> Gillian Abel et al, eds, *Taking the Crime Out of Sex Work: New Zealand Sex Workers’ Fight for Decriminalisation*, 1st ed (Bristol University Press, 2010); Lynzi Armstrong, “Sex Worker Rights Activism and the Decriminalisation of Sex Work in New Zealand” in *Routledge International Handbook of Sex Industry Research* (Routledge, 2018) 138.

Austria; as a result, sex workers are entitled to the same rights and protections as other workers, including health insurance and pension benefits. Prostitution has been legal in Austria since 2003. In addition, the government of Austria has implemented measures to lessen the dangers of prostitution. These include mandating that brothels receive licenses, be subject to inspections, and provide sex workers with education on safer sexual practices and access to medical care<sup>56</sup>.

Since 2002, prostitution has been legalised and controlled in Germany. As a result, individuals who engage in this profession now have access to various mental health and social services, housing, and medical treatment. The German approach to prostitution is based on tolerance, health, and social protection principles. Additionally, the German government has taken steps to reduce the risks associated with prostitution, such as mandating that brothels be licensed and monitored and providing sex workers with education on safer sex practices and access to health services<sup>57</sup>.

Switzerland is another nation whose rules around prostitutes have used a damage reduction approach. Since 1942, prostitution has been legal in Switzerland. As a result, people who work in the sex industry have access to a wide variety of health and social services, including therapy, accommodation, and medical treatment. In addition, the Swiss government has taken measures to lessen the dangers associated with prostitution. These measures include mandating that brothels receive licenses and be subject to inspections and providing sex workers with education on safer sexual practises and access to medical care<sup>58</sup>.

Different states in Australia take different approaches to the problem of reducing the harm caused by prostitutes. For instance, prostitution is not punishable by law in New South Wales. As a result, those who work in the sex industry have access to a variety of mental health and social services, including counselling, housing, and medical treatment. On the other side, prostitution is controlled in Victoria, and sex workers are forced to register with the government and undergo mandatory health examinations. Additionally, prostitution is illegal in the state. Nevertheless, the Australian government has established a working group on human trafficking and sexual exploitation, provided funding for HIV prevention and sexual health clinics, and has done so regardless of whether or not prostitution is considered a legal activity in Australia. These are just some of the steps

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<sup>56</sup> Hendrik Wagenaar, Helga Amesberger & Sietske Altink, "The national governance of prostitution: political rationality and the politics of discourse" in *Designing Prostitution Policy* Intention and Reality in Regulating the Sex Trade (Bristol University Press, 2017) 145.

<sup>57</sup> Michael W Ross et al, "Occupational health and safety among commercial sex workers" (2012) 38:2 *Scandinavian Journal of Work, Environment & Health* 105-119; Danielle A Sawicki et al, "Culturally Competent Health Care for Sex Workers: An Examination of Myths That Stigmatize Sex Work and Hinder Access to Care" (2019) 34:3 *Sexual and Relationship Therapy* 355-371.

<sup>58</sup> Corinne Isler & Marjut Jyrkinen, "The normalization of prostitution in Switzerland: the origin of policies" (2018) 3:2 *Journal on Sexual Exploitation and Violence: Vol 1-25*; Lorena Molnar & Jenny Ros, "Sex Workers' Work-Related Victimization and Drug Use During the First Year of the COVID-19 Pandemic in Switzerland" (2022) 2:1 *International Criminology* 19-31.

that have been taken to mitigate the risks that are associated with the practice of prostitution<sup>59</sup>.

Some countries mentioned above have provided examples related to the implementation of harm reduction policies, and these can be applied in Indonesia. Despite different cultural contexts, when viewed in a broader health context, the practices in several countries can be implemented in Indonesia, particularly concerning the eradication of HIV/AIDS and sexually transmitted diseases. Although there is no precise data on the number of sex workers in Indonesia and the number infected with the mentioned diseases, a study conducted by the World Health Organization (WHO), the United Nations International Children's Emergency Fund (UNICEF), and The Joint United Nations Programme on HIV/AIDS (UNAIDS) shows that sex workers in Indonesia are at a higher risk of contracting STIs, including HIV/AIDS. This health risk arises because they often engage in unprotected sex and have limited access to healthcare and other resources. Additionally, many sex workers in Indonesia experience violence that can lead to physical injuries and psychological trauma, even death.

One tragic case of violence against sex workers leading to death occurred in Menteng in 2021. The police revealed that the suspect, AA (23), who was the murderer of a woman with the initials IW (31) in a Menteng hotel room, Central Jakarta, had targeted three other sex workers on the day of the incident. He even intended to repeat his actions after committing the murder. The suspect, who worked as a security guard, had already prepared a plan for the murder by seeking women through a chat application.

The uncertainty about the number of sex workers and the health risks they face emphasizes the urgency of a health approach focused on risk reduction in Indonesia. Through the implementation of harm reduction policies, as successfully demonstrated in other countries, Indonesia can improve sex workers' access to safe healthcare, including the prevention and treatment of HIV/AIDS and sexually transmitted diseases.

Concrete steps may involve providing free condoms, affordable sexual health education, and regular health check-up programs. Mental health support systems and counseling should also be strengthened to assist sex workers who may experience trauma due to violence or psychological pressure. Ensuring the safety of sex workers must also be a priority, including legal protection and law enforcement against perpetrators of violence.

Through this approach, Indonesia can reduce the health risks faced by sex workers, advance their health rights, and ultimately create a safer and supportive environment for the sex worker community. By leveraging the experiences and lessons from other countries that have successfully implemented harm reduction, Indonesia can build a

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<sup>59</sup> Thomas Crofts & Tracey Summerfield, "The licensing of sex work : regulating an industry or enforcing public morality?" (2007) 33:2 *University of Western Australia Law Review* 289-306; Charlotte Seib, Jane Fischer & Jakob M Najman, "The Health of Female Sex Workers from Three Industry Sectors in Queensland, Australia" (2009) 68:3 *Social Science & Medicine* 473-478.

more holistic and inclusive policy foundation to enhance the well-being of sex workers in the country.

Paragraph (1) of Article 28H in the 1945 Constitution of the Republic of Indonesia emphasizes the harm reduction approach, affirming the right of every individual to live in physical and spiritual well-being, and have adequate housing, a clean environment, and access to health services, which the state must provide. The right to health encompasses various services and essential prerequisites for citizens' well-being and is closely linked to the right to a healthy environment, including clean air. The realization of the right to health is guided by four principles: availability, accessibility, acceptability, and quality. Availability entails an adequate supply of facilities, equipment, drugs, and health services, while accessibility emphasizes nondiscriminatory access for all, especially vulnerable groups. Physical accessibility ensures safe access to health facilities, and economic affordability emphasizes accessibility without financial constraints, particularly for the economically disadvantaged. Access to health-related information is crucial, and acceptability stresses alignment with medical ethics and community culture while maintaining patient confidentiality. Quality underscores everyone's entitlement to high-quality health services based on scientific and medical principles<sup>60</sup>. The harm reduction approach, as outlined in the constitution, establishes a comprehensive framework to ensure the interconnected realization of these rights for the benefit of all citizens.

Law 17 of 2023, focusing on health, represents a significant step in enhancing the regulatory framework related to the right to health. Within this legal context, the Principles of Health Development emerge as a pivotal mechanism strategically embedded in the Health Law to effectively alleviate potential adverse health impacts. Article 2 of the Health Law meticulously delineates the parameters within which the health development process must unfold, encompassing a comprehensive array of principles to guide and govern this critical aspect of societal well-being.

At the core of the Health Law's principles is the imperative of conducting the health development process with a profound sense of humanity. This underscores the acknowledgment that health is a fundamental human right, and any initiatives in this realm should be driven by a genuine concern for the well-being of individuals and communities. The principle of balance reinforces the need for equilibrium in health-related policies and practices, ensuring that interventions address various aspects without causing undue harm or neglect.

Benefits, as a guiding principle, emphasizes the necessity of health development initiatives yielding positive outcomes for the populace. This involves carefully assessing the potential benefits to individuals and society, thereby maximizing the positive impact of health policies. Scientific foundation underscores the importance of evidence-based

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<sup>60</sup> Savira Anggraeni & Evyta Rosiyanti Ramadhani, "Uncertainty of the Right to Health in Indonesia during Covid-19 Pandemic" (2022) 6:1 *Journal of Southeast Asian Human Rights* 55–71.

approaches, emphasizing the role of research and empirical data in shaping health strategies and interventions.

Equity, a crucial principle, signifies the commitment to ensuring fair and just distribution of health resources and services. It seeks to address disparities and promote equal access to healthcare, irrespective of socio-economic factors. Ethics and professionalism establish the ethical standards and professional conduct expected in health development, ensuring that practices are guided by moral principles and adhere to the highest standards.

Protection and safety are paramount, reflecting the commitment to safeguarding individuals from health-related risks and ensuring a secure environment for well-being. Respect for rights and obligations reinforces the importance of upholding individual rights and fulfilling societal obligations in health development. Justice ensures that health policies are fair, just, and devoid of discrimination, aligning with the overarching principle of non-discrimination.

Moral considerations and religious values recognize society's diverse cultural and religious fabric, integrating these aspects into health development policies with sensitivity and respect. Participatory involvement emphasizes the inclusion of communities and individuals in decision-making processes related to health, fostering a sense of ownership and accountability.

Public interest underscores the overarching goal of health policies to serve the greater good of society, promoting the well-being of the population at large. Integration emphasizes the need for coherence and synergy among various health system components, ensuring a holistic and integrated approach. Legal awareness reinforces the importance of legal literacy, enabling individuals to understand and assert their rights in health.

State sovereignty recognizes the state's role in formulating and implementing health policies, asserting its authority to ensure the health and well-being of its citizens. Environmental sustainability highlights the interconnectedness of health and the environment, emphasizing practices that promote a sustainable and healthy ecosystem.

Cultural wisdom acknowledges the significance of cultural factors in shaping health behaviors and practices, integrating cultural insights into the formulation of health policies. Lastly, orderliness and legal certainty underscore the importance of clear and consistent legal frameworks, providing a stable and predictable foundation for health development initiatives.

In the broader health development context, the Harm Reduction approach emerges as a progressive and pragmatic strategy. This approach recognizes that certain behaviors may pose risks to individual health but acknowledges the complexities involved, as individuals may be unwilling or unable to change these behaviors. Rather than resorting to punitive measures or stigmatization, the Harm Reduction approach aims to minimize harm through education and access to relevant tools and services.

Crucially, the harm reduction strategy aligns seamlessly with the principles of non-discrimination and respect for rights and obligations. It underscores the fundamental notion that all individuals deserve to be treated with dignity and humanity regardless of their background or circumstances. The harm reduction approach also delves into the nuanced impact of specific issues on different demographics, striving to rectify resulting inequalities.

The existing legal framework in Indonesia, particularly articulated in Articles 54 to 57 of Law 17 of 2023 concerning health, establishes a robust foundation for the provision of reproductive health services and emphasizes the rights of individuals in the realm of reproductive and sexual health. Understanding the principles outlined in these articles is crucial for contextualizing and advocating for harm reduction policies, especially in the context of sex workers.

Article 54 of the law explicitly outlines the objectives of reproductive health efforts, aiming to maintain and enhance the reproductive systems, functions, and processes for both men and women. This includes various stages such as pre-pregnancy, pregnancy, childbirth, and postnatal care. Additionally, it encompasses pregnancy planning, contraception services, sexual health, and the overall health of the reproductive system.

Article 55 enumerates the rights of every individual concerning reproductive health. It emphasizes the right to a healthy, safe, and non-discriminatory reproductive and sexual life. Individuals are entitled to receive accurate information, education, and counseling regarding reproductive health. Moreover, they have the right to access services and recovery for health-related consequences resulting from sexual violence.

Article 56 places responsibilities on the central government, local government, and society to ensure the implementation of reproductive health efforts in accordance with established standards that are safe, high-quality, and accessible. This includes the provision of reproductive health services with attention to the unique aspects, particularly those related to women's reproductive health.

Notably, Article 57 emphasizes that the implementation of reproductive health services should not conflict with religious values and legal regulations. This underscores the importance of aligning health services with cultural and religious norms, respecting the diversity of Indonesia's population.

Moving on to Article 28, it obligates the central and local governments to provide access to primary and advanced health services throughout Indonesia. The provision of these services should prioritize optimizing the role of local governments and involve the community. Importantly, the services must be inclusive and nondiscriminatory, catering to vulnerable populations and involving the community in the process.

The law defines vulnerable populations, including individuals with limited access to health services and adequate health insurance, those with low socioeconomic status, individuals with chronic diseases, women (including those pregnant and breastfeeding), infants, toddlers, teenagers, and the elderly. It also includes individuals with disabilities,

mental health disorders, those socially marginalized based on religion/belief, race or ethnicity, sexual orientation, gender identity, illness, or citizenship status. Those residing in remote, underserved, outermost, and border areas, including indigenous communities, as well as individuals in households without access to clean water and adequate sanitation, or those living in cramped conditions or social institutions with limited private space, are also considered vulnerable.

The connection to harm reduction policies for sex workers lies in the inclusive and nondiscriminatory approach mandated by these articles. The principles of reproductive health, as outlined in the law, emphasize providing services that respect the dignity and rights of all individuals, including those engaged in sex work. The harm reduction strategy aligns seamlessly with these principles, particularly in recognizing the unique challenges and vulnerabilities faced by sex workers.

It is not enough to bar women from certain occupations or lines of work if we are going to take a comprehensive approach to resolve the issue of prostitution in the context of the well-being and security of women; we need to isolate and eliminate the specific dangers that are posed to their reproductive capacity<sup>61</sup>. These initiatives can include providing protective equipment or training, implementing safety regulations, and establishing supportive policies that allow women to take time off for childrearing and pregnancy without incurring any penalties. The goal of adopting a “Harm Reduction” strategy is to cut down on the number of potential threats to the well-being and protection of women while at the same time preserving their ability to work and grow in their chosen fields.

## VI. CONCLUSION

The harm elimination approach, characterized by prohibition and criminalization of all aspects of the prostitution business, adopts a moralistic stance, considering prostitution morally repugnant and viewing individuals in prostitution as victims of exploitation. This policy model, adopted by some countries, seeks to deter the trade of sexual services by making it a criminal act. However, this approach has significant weaknesses, leading to increased violence against sex workers and hindering their rights.

In Indonesia, the government's approach to prostitution has oscillated between ignoring and repressing it. Despite occasional crackdowns, the economic benefits derived

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<sup>61</sup> FX Joko Priyono & Achmad Purbo Sudiro, “Intergovernmental Cooperation Mechanisms in Combating Transnational Human Trafficking within ASEAN” (2020) 9:2 *AJIS* 120–126.



from the sex industry often prevent sustained efforts to eliminate it. The legal framework reflects a murky and repressive approach, making it challenging for sex workers to navigate due to criminalization and legal ambiguities.

Efforts to address child prostitution in Indonesia are embedded in legislation, recognizing it as forced prostitution due to children's inability to provide valid consent. However, the effectiveness of the legal system in protecting sex workers and preventing exploitation remains questionable. The intersection of criminalization policies, societal attitudes, and economic interests underscores the complexity of addressing prostitution-related issues.

On the contrary, the harm reduction approach, as outlined in the 1945 Constitution of the Republic of Indonesia, emphasizes the right of every individual to live in physical and spiritual well-being. This approach recognizes that certain behaviors may harm an individual's health but acknowledges that individuals may be unable or unwilling to change those behaviors. The harm reduction strategy aligns with the principles of non-discrimination and respect for rights, emphasizing dignity in handling individuals, irrespective of their history or conditions.

Law 17 of 2023 is a groundbreaking development in Indonesia's health legislation, particularly focusing on the right to health. This law establishes the Principles of Health Development as a crucial mechanism embedded in the legal framework to address potential adverse health impacts effectively. Article 2 of the Health Law meticulously outlines these principles, creating a comprehensive guide for governing the nation's critical health-related initiatives.

In defining vulnerable populations, the law encompasses various groups facing challenges in accessing health services, emphasizing the need for targeted interventions. This comprehensive legal framework provides a solid foundation for contextualizing and advocating harm reduction policies, aligning with international principles and tailoring them to Indonesia's unique cultural and legal landscape.

In light of these considerations, Indonesia should revise its laws governing prostitution by prioritizing harm prevention. This would ensure protection from violence and exploitation, access to medical and social services, and respect for dignity. Implementing a harm reduction approach would also contribute to reducing sexually transmitted illnesses and improving the overall health and well-being of sex workers and their communities.

However, it is essential to acknowledge the current study's limitations, including a lack of relevant data and literature on prostitution policy reform in Indonesia and not considering its cultural, social, or historical context. Future research should focus on implementing harm reduction techniques for prostitution policy reform in Indonesia, assessing challenges and opportunities, and examining their impact on health, safety, and well-being.

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