

Comparative Analysis of the Crime of Adultery Based on the Old Criminal Code and the New Criminal Code to Realize Justice

Ahmad Bagas Dwi Darsono^{1✉}, Deny Guntara², Muhamad Abas³

Fakultas Hukum, Universitas Buana Perjuangan Karawang, Indonesia

e-mail: hk20.ahmadbagasdwardarsono@mhs.ubpkarawang.ac.id

ABSTRACT

Law number 1 of 2023 was prepared as an update of the old product, namely the Netherlands Heritage Fund. Various new paradigms of legal protection are part of the preparation of the draft of Law number 1 of 2023. However, at the same time, the protection of commercial sex workers (PSK) is still limited to efforts to provide a deterrent effect on those who allow prostitution to occur. In fact, the solution to the problem of prostitution should be solved systematically with lex specialis who raises issues involving prostitution. Meanwhile, the weakness of Law number 1 of 2023 is that it has not solved the core problem of brutal and inhumane social justice in prostitution. However, Law number 1 of 2023 has at least stopped the criminalization of prostitution. This research is prepared by normative juridical methods and reviews the law in depth based on the editorial and context of legal products of Law number 1 of 2023 on the basis of research to find.

Keywords: PSK, Law Number 1 of 2023, Lex Specialis

INTRODUCTION

Adultery is one of the ethical violations that often occur in society, especially in countries like Indonesia that uphold moral norms and religious values. As a religious society, many people argue that adultery is an act that violates moral and religious norms. In Islam, Christianity, and several other religions recognized in Indonesia, adultery is considered a great sin. This view is supported by many religious and community leaders who see adultery as a threat to the sanctity of the institution of marriage and the resilience of the family.¹

Islamic law views every sexual intercourse outside of marriage as adultery and threatens it, whether the perpetrator is married or not, consensually or not.² A person who commits adultery after having sexual intercourse in a halal manner is called an adulterer muhsan and a person who commits adultery but has never had sexual intercourse in a halal manner before, even though he is married, is called an adulterer gairu muhsan.³

Debates about adultery as a public or civil issue often arise in legal and ethical discussions. There are those who argue that adultery is a private affair that should not be interfered with by the state. They argue that every individual has the right to privacy and personal freedom, including when it comes to sexual relations. According to this view, the state should respect these individual rights and not criminalize adultery.⁴

¹Citra Trifena Oktavia Musu and Rani Apriani, 'Tinjauan Empiris Fenomena Prostitusi Pekerja Seks Komersial Dalam Kajian Sosiologi Hukum', *Jurnal Ilmiah Wahana Pendidikan*, 10.3 (2024), 175–81.

²Ahmad Wardi Muslich, *Hukum Pidana Islam* (Cet. 2; Jakarta: Sinar Grafika, 2005).

³Hamzah Hasan, *Kejahatan Kesusilaan Perspektif Hukum Pidana Islam* (Cet. 1; Makassar: Alauddin University Press, 2012), h. 77.

⁴Edward Stein, 'Adultery, Infidelity, and Consensual Non-Monogamy', *Wake Forest L. Rev.*, 55 (2020), 147.

However, views that consider adultery as a personal matter are often confronted with the fact that the impact of adultery is not only felt by the couples involved, but also by the family and society at large. Adultery can damage trust and harmony in the household, which in turn can affect the emotional and psychological development of children. Children who grow up in an inharmonious family environment often experience a variety of problems, including insecurity, stress, and difficulty building relationships in the future.⁵

The issue of adultery involving commercial prostitution workers is often ignored or simplified in public debate. Being a prostitute is often seen as a quick way out of poverty. In the view of commercial pragmatism, this job appears to be an easy solution to earn a decent income without the need for special skills. However, this view ignores the various complex dimensions that come with this profession, including social stigma, health issues, and human exploitation.⁶

First, prostitutes are often scapegoats for moral and loyalty issues in relationships, especially among men. They are considered the main cause of infidelity and adultery. This view ignores the fact that infidelity is a decision taken by an individual who cheats, not just because of prostitution. For example, there is no unsolicited supply; The existence of prostitution is the result of the demand in the community. Therefore, violating prostitution is a purely simplistic and unfair view, ignoring the moral responsibility of all parties involved in adultery.⁷

Second, many prostitutes are people who are in a vulnerable position and are often victims of human trafficking. They are recruited and forced into the world of prostitution through threats, fraud, or urgent economic conditions. As victims, prostitutes need adequate protection so that their rights and safety are protected. This includes protection from violence, harassment, and exploitation, as well as access to health care and legal aid. Treating prostitutes as perpetrators of crimes will only exacerbate their suffering and ignore the reality that they are victims in an exploitative system.⁸

Third, the issue of adultery involving prostitutes is also closely related to health protection, both physical and mental. Sex workers are often in environments that are at high risk of sexually transmitted diseases and poor mental health conditions due to the stress and stigma they face. Therefore, it is important to provide comprehensive health services, including regular checkups, medication, and psychological support. In addition, efforts to help prostitutes get out of this job and acquire other skills that are more humane and safer should also be a priority.⁹

In order to overcome this complex problem, a holistic and sustainable approach is needed. This includes policies that emphasize not only law enforcement but also

⁵Nikko Iffah A Firdausi, Yuliati Hotifah, and Irene Maya Simon, 'Psychological Dynamics of Young People on Broken Home Families', *Acta Counseling and Humanities*, 1.1 (2020), 31–41.

⁶Dahniar Nur, 'Labelling Terhadap Anak Pekerja Seks Komersial Di Pantai Salukaili Pasangkayu', *Jurnal Indragiri Penelitian Multidisiplin*, 3.3 (2023), 27–34; Dewa Putu Yudi Pardita and others, 'Character Building Pada Pekerja Seks Komersial Dan Orang Dengan HIV AIDS Melalui Pelatihan Kewirausahaan Dan Penanaman Nilai-Nilai Agama', *Lambung Inovasi: Jurnal Pengabdian Kepada Masyarakat*, 8.3 (2023), 458–68.

⁷Luh Made Khristianti Weda Tantri and Luh Made, 'Perlindungan Hak Asasi Manusia Bagi Korban Kekerasan Seksual Di Indonesia', *Media Iuris*, 4.2 (2021), 145–72.

⁸Muhammad Kamal, *Human Trafficking: Penanggulangan Tindak Pidana Perdagangan Manusia Di Indonesia* (CV. Social Politic Genius (SIGn), 2019).

⁹Aris Prio Agus Santo so and others, 'Hak Reproduksi Pada Penderita HIV/AIDS Ditinjau Dari Sudut Pandang Hukum Dan Agama', *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)*, 7.3 (2023), 2004–17.

empowerment, education, and social protection for prostitutes. The community also needs to change their view of prostitution, from seeing them as the cause of moral problems to acknowledging them as victims who need help and support. By doing so, we can create a more equitable and humane environment for all parties involved.

This research is focused on the Protection of Prostitutes based on the new Criminal Code and also its comparison with the old Criminal Code. From this research, it is hoped that it will give us insight into the application of punishment that is fair and in accordance with the rights of prostitutes as Indonesian citizens so that they are not persecuted in relation to their involvement as prostitutes where even though they also take part and make mistakes, it does not mean that they can be treated unfairly.

METHOD

This study uses a normative juridical method where the purpose of this study is to compare the legal protection of prostitutes from the old Criminal Code Law and also the latest Criminal Code, namely Law no. 1 of 2023. The purpose of this study is to be able to understand the dynamics of legal changes that occur. How is the legal protection of prostitutes in a *das sollen* or based on legal facts after Law no. 1 of 2023 and also the previous legal protection and how the law is viewed in the lens of the constitution and human rights which are the values of a decent livelihood. Legal research is a process that finds legal rules, legal principles and legal doctrines to answer legal issues faced.¹⁰

RESULTS AND DISCUSSION

A. Comparative Analysis of the Crime of Adultery Based on the Old Criminal Code Human Rights of Commercial Sex Workers

The human rights of prostitutes are divided into two. The first is their rights as human beings. Their rights as human beings are based on Human Rights Carters as well as the ethics of humanity that live and thrive in society. The second is the right based on the constitution that we have, namely the 1945 Constitution and also Pancasila.

In this case, religious values are also taken into consideration. For example, in the Qur'an it is written in Surah Az-Umar 39:53 about forgiveness for all parties. This forgiveness is of course also a form of forgiveness for prostitutes who commit moral crimes. In addition, Surah An-Nisa 4:110 also states again that forgiveness is part of God's goodness to mankind. In this case, Islam, which is the religion with the largest followers in Indonesia, provides an important picture that prostitutes are entitled to a second chance and return to society as they should. Meanwhile, in Christian teachings, there is also the theme of forgiveness in adultery, namely in John 8:1-11 where Jesus Christ forgives prostitutes who will be stoned. Considering religious values is important in the formation of law in Indonesia. So, this religious value should be a reference to treat prostitutes as well as possible. Not only that, prostitution is also a social phenomenon that is commonly found in Indonesia. In the past, prostitution was considered a solution for lower-class citizens whose economic conditions were not good enough.

Furthermore, the rights of prostitutes are actually also fought for in the human rights charter or better known as The Universal Declaration of Human Rights. In the charter that is the benchmark of this human rights standard, there are several points of agreement that become the benchmark, the first is article 3 where in article 3 it is stated

¹⁰Marzuki, Peter Mahmud, *Penelitian Hukum*. Cet 2, Jakarta: Kencana, 2008. Hal 35

that everyone should be free from exploitation, including prostitution. This exploitation occurs in various forms, such as contract fraud, forcing prostitutes to work under pressure and inhumane conditions as well as the absence of security for prostitutes themselves. In many cases, prostitutes are a vulnerable group because they work under criminal syndicates.¹¹ Plus, prostitutes are actually victims of exploitation in some ways because they have to pawn their honor and also honor as human beings to get money. In the practices of exploitation of prostitutes, there is also an element of fraud so that they do illegal work and therefore the ideal law must free and protect women from these exploitation efforts. Then in Article 12, prostitutes should not be persecuted because they are related to clients or users of their services because of requests from their service users. If he is then persecuted because he is considered to provide opportunities for activities that are beyond the moral limits, then it can be said that prostitutes are treated in according to their nature as human beings. Thus, the treatment is also part of the violation of Article 7 because it is a form of discriminatory treatment of prostitutes because it puts them as the only source of problems.

Then in our constitution there is also an affirmation of protection for prostitutes. The first is in the 2nd and 5th precepts which affirm that Indonesia people are built based on civilization. This civilization is translated as the subtlety of knowledge and ethics.¹² The word fair is mentioned twice, namely in the 2nd and 5th precepts, showing the importance of treating human beings regardless of their condition well and as fairly as possible. Then in the 1945 Constitution and its amendments, it is emphasized that the state has an obligation to protect its citizens article 28I paragraph 4 of the 1945 Constitution which states that human rights are the responsibility of the state and the state must take the necessary actions to protect the human rights of its citizens. Then, decent livelihood where decent is translated as work that is able to meet one's daily needs and put people in a dignified position is found in article 27 paragraph 2. Furthermore, legal certainty is also part of the government's duties, mainly as enshrined in Article 28D paragraph 1 where the government provides guarantees and legal protection to all parties in this case, including commercial sex workers.

Based on various human rights references and principles, commercial sex workers (PSK) have a number of rights that must be protected and respected by society and the government. These rights are formulated to ensure that prostitutes are treated fairly and humanely, and are protected from various forms of discrimination, exploitation, and unfair treatment.

The first right owned by prostitutes is the right not to be persecuted haphazardly and not to be blamed for the actions of others who violate moral values. Often, prostitutes are victims of social stigma that considers them to be the main cause of various moral and social problems. In fact, they are only part of a more complex system, where demand from service users and economic factors often force them to engage in this work. The protection of this right means that the community and law enforcement must not commit arbitrary actions that sacrifice prostitutes without clear evidence, and must not make them scapegoats for violations of morality committed by others.

¹¹Indah Damayanti, Cokorde Istri Dian Laksmi Dewi, and Karyoto Karyoto, 'Peran Hukum Dalam Mencegah Eksploitasi Anak Dalam Kerja Anak Dan Perdagangan Manusia', *Jurnal Sosial Dan Sains*, 4.6 (2024), 446–55; Pardita and others.

¹²Langgeng Priasih, Sindi Dwianjani, and Shilvy Apriliani, 'Implementasi Sila Kemanusiaan Yang Adil Dan Beradab Dalam Konteks Hak Asasi Manusia', *Advances In Social Humanities Research*, 1.4 (2023), 331–36.

The second right owned by prostitutes is the right to get legal protection and be treated fairly. Many prostitutes are actually victims of larger crime networks, including human trafficking and sexual exploitation. They are often forced or trapped in situations they do not want, and do not have access to escape this cycle of exploitation. Therefore, it is very important that the law provides adequate protection for prostitutes, including protection from violence, fraud, and coercion. Law enforcement officials must work to protect prostitutes and ensure that they have access to justice without discrimination or prejudice.

The third right is that even if prostitutes commit offences that violate the criminal law, they still deserve fair legal treatment and a proper rehabilitation process. This principle is crucial in ensuring that the legal system not only serves to punish, but also to rehabilitate and rehabilitate individuals. If prostitutes are arrested for engaging in illegal activities, they should get a fair trial and the right to a defense. In addition, it is also important to provide a rehabilitation program that allows them to get out of the world of prostitution and start a new and better life. These programs can include skills training, psychological counseling, and other social assistance that assists prostitutes in the process of reintegration into society.

Overall, the implementation of these rights demonstrates a commitment to treating prostitutes with the dignity and respect they deserve as human beings. Communities and governments must work together to ensure that prostitutes are protected from violence and exploitation, get justice in the legal system, and be given the opportunity to restart their lives in a safe and supportive environment. By doing so, we can build a more just and inclusive society, where every individual is treated with respect and equality.

B. Comparative Analysis of the Crime of Adultery Based on the New Criminal Code

New Views on Prostitution

Based on Indonesia law, the prostitution profession has never really been criminalized. For example, the old Criminal Code rules only contained one article regarding the prohibition of peddling as a livelihood, namely Article 298. Although it is not implied to mention the profession of prostitution or the like, this rule is considered a rule that leads to the regulation of prostitution. However, in the new Criminal Code, the article no longer exists and there is no criminalization of prostitution. Although the criminalization of prostitution has been abolished, it does not mean that the phenomenon of decriminalization of prostitution is considered an effort to allow prostitution.

In Islamic law, every sexual relationship carried out outside of marriage is adultery, both by married and unmarried people, even if it is done willingly and willingly, it is still categorized as a criminal act.¹³

In fact, working as a commercial sex worker (PSK) is a choice that many people take because it is considered easy to do and able to provide a decent income. The large income from this job is often the main reason why many individuals choose it. This shows

¹³Djubaedah, *Perzinaan dalam Peraturan Perundang-undangan di Indonesia ditinjau dari Hukum Islam*, Jakarta: Kencana Prenada Media Group, 2010, hlm 15.

that efforts to criminalize prostitution are an unproductive step. Criminalizing this work will not eliminate its existence, it may only complicate the lives of those involved in it.¹⁴

In addition, many of these business people actually don't want to be stuck in a job as a prostitute. They still choose it because they can't find another job that is more viable and in line with their self-esteem as a human being. If they had access to better job opportunities and matched their skills and aspirations, many of them would have left the industry. Therefore, a more effective solution is to provide them with decent training and job opportunities, not with a criminalization approach.¹⁵

Criminalizing prostitution will also alienate them from the government and institutions that seek to help. When prostitutes feel that they are being criminalized, they will be less willing to cooperate with the authorities. This makes efforts to solve the problem of prostitution more difficult. To address this problem, a more humane and inclusive approach is needed. Governments and relevant agencies must work closely with prostitutes, listen to their needs and concerns, and provide real and sustainable solutions.

Thus, a more effective approach to dealing with the problem of prostitution is to provide decent job alternatives, skills training, and a more inclusive and humane approach. Criminalizing prostitution will only worsen the situation and make them even more marginalized. Instead, providing better support and opportunities will help them get out of the industry and build a better life. This is what is affirmed in Law number 1 of 2023 and is a benchmark in policies to overcome the problem of adultery and sex trafficking.

However, this new view has generally not been followed by an effective solution to help prostitutes escape their problems. The legal product of Law number 1 of 2023 is still limited in exempting prostitutes from criminalization, but the protection of prostitutes has not been discussed much. The punishment given to pimps is still limited to punishment in the hope of providing a deterrent effect, but it is not a punishment that has a systematic protective impact on the prostitute. Punishment is given to those who have proven to be pimps. Even though before the process of this exploitative relationship occurs, there are several stages that make pimps can take advantage of the carelessness of prostitutes.

One example is grooming. Grooming is a form of crime where pimps try to influence a minor and shape their mindset so that they obey the pimp's orders. This regulation regarding grooming has not been enshrined in Law number 1 of 2023. Furthermore, there has not been a protection agency established when a woman experiences verbal or physical violence from pimps. In comparison, in some cases, pimps turn out to be members of their own family and even counted as nuclear families such as fathers, mothers or siblings. Victims will find it difficult to open up and seek help. In the context of rape, there is a weighting article, namely article 413, which is when rape is committed by a family member himself. In the same context, when prostitutes are exploited by their own families, the punishment should also be severed. However, the

¹⁴Erni Nurdin, 'Realita Pekerja Seks Komersial', *Scolae: Journal of Pedagogy*, 6.1 (2023), 7–11; Zeti Utami and Hadibah Zachra Wadjo, 'Perlindungan Hukum Terhadap Pekerja Seks Komersil Anak Di Kabupaten Kepulauan Aru', *SANISA: Jurnal Kreativitas Mahasiswa Hukum*, 1.1 (2021), 24–33; Nur.

¹⁵I Dewa Gede Dana Sugama and Diah Ratna Sari Hariyanto, 'Politik Hukum Pemberantasan Prostitusi Online Terkait Kriminalisasi Pekerja Seks Komersial Dan Pengguna', *Kertha Wicaksana*, 15.2 (2021), 158–68; A A Triyatna and I G Parwata, 'Kriminalisasi Terhadap Perbuatan Pekerja Seks Komersial Dalam Pembaharuan Hukum Pidana', *Kertha Wicara J. Ilmu Huk*, 2019, 1–16.

protection of prostitutes is still limited to punishing those who are likely to become prostitutes, not preventing the occurrence of commercial sex trafficking itself.

For example, in some countries, there are several different paradigms in solving the problem of prostitution. In some countries, the focus of solving the problem of prostitutes is to ensure that prostitutes carry out their profession safely and reduce their risk of contracting sexually transmitted diseases (STDs). This is considered an effort to humanize prostitutes and make them avoid problems due to their profession while attracting and advocating for them to leave the profession. Meanwhile, in other countries, the prevention of prostitution is carried out by closing access from the beginning, such as criminalizing people who communicate with minors and sending indecent messages. Prevention is also carried out by closing access where prostitution practices are carried out while at the same time facilitating access to education, work and various other basic needs for victims or potential victims of the prostitution business. This policy paradigm is not seen in the legal rules made after the inauguration of Law no. 1 of 2023 concerning the Criminal Code.

Criminalization of pimps

Criminalization efforts are actually seen in pimps and this is also actually part of the previous Criminal Code. In the latest Criminal Code, the article that regulates this is contained in Article 420 while in the previous Criminal Code it was in article 296. This difference in setting occurs in explanations and detailed descriptions. If Article 296 mentions the element of livelihood, then Article 420 emphasizes that there is no need for an element of livelihood to punish someone who helps the implementation of the prostitution business.

In general, the paradigm of this rule is to have a deterrent effect or deter anyone who wants to be involved in the pimp business. The severe punishment was expected to make people think twice before entering this world. Thus, this rule serves as a deterrent that is expected to be effective in reducing the number of pimps operating. The deterrent effect resulting from the threat of punishment is also expected to have an impact on commercial sex workers (PSK) who will avoid this business because they do not have access to engage in this business without the support of pimps.

However, the simplification of the article that regulates pimps can be a problem in itself. When the definition in the article is too broad, this rule not only targets pimps, but can also affect parties who simply help prostitutes run their businesses. For example, people who provide shelter or security for prostitutes can be affected by this law even if they do not play the role of pimps. This has the potential to cause excessive criminalization and is not in accordance with the original purpose of the regulation.

Criminalization that goes beyond the context of pimps can lead to legal chaos and ongoing conflicts. If the law is applied excessively, many parties may not be directly related to the pimp business but still be affected. This can lead to legal uncertainty and injustice, as well as worsen the situation for prostitutes who actually need support and protection. Therefore, the regulation of punishment for pimps requires caution and must be adjusted to the reality on the ground.

In the end, although this rule aims to have a deterrent effect for pimps and prostitutes, the simplification of the article must be done carefully. Definitions that are too broad can lead to excessive criminalization and create complex legal problems. Therefore, the regulation of punishment needs to take into account social realities and seek a balance between crime prevention and human rights protection.

The New Paradigm of Adultery Criminalization in Indonesia and Its Impact on Prostitution

The new Criminal Code, namely Law number 1 of 2023, undeniably has a new paradigm in criminalizing immoral acts. One form of the new paradigm is to see infidelity and also violations of moral norms not only as a problem between husband and wife but also as a problem that is felt by the whole family. Article 411 of Law number 1 of 2023 emphasizes that action is taken if there is a complaint from a parent or child from a party whose parents or children are proven to be involved in adultery. This new rule is different from the old Criminal Code, namely article 248 which states that prosecution can only be carried out through a husband or wife complaint which shows that infidelity is a domestic affair of a husband or wife only.

Changing views on divorce is a significant step forward, given the huge impact of infidelity or divorce on a family. One of the most visible impacts is on the psychological development of children. Children often feel worthless and blame themselves for their parents' divorce. This feeling of guilt can lead to serious psychological problems, so many children need psychological help to cope with the trauma and loss they have experienced.

In addition to the psychological impact, divorce also has a significant economic impact. Children born out of divorce often have difficulty meeting their economic needs. Financial uncertainty that occurs due to divorce can disrupt the stability of their lives. Many families struggle to make ends meet, and often children fall victim to this uncertain economic situation.

Furthermore, divorce creates heavy social pressure for the entire family. In many societies, divorce is still considered taboo, and the families involved often get a negative stigma. This negative perception can add to the emotional and social burden for family members, who have to face negative views and judgments from the surrounding environment.

By understanding and changing the view of divorce, it is hoped that the community can better support families who are experiencing divorce. This support is very important to help reduce the negative impact of divorce, both psychologically, economically, and socially. Thus, the children and families involved can more easily adapt and live their lives better.

This new form of enforcement also actually has a special impact on prostitutes. Often prostitutes are victims of persecution. In general, in Indonesia most prostitutes are women. These prostitutes often peddle their services to men and in some cases, these prostitutes are caught by the spouses of their customers and subjected to violence from their customers' official spouses.

Seeing this phenomenon, there actually needs to be special attention to solve this problem. The reason for the need to solve this problem is because the persecution of prostitutes is so glorified. Even the substitute term used is *pelakor* which is an abbreviation of a male thief. The use of this term psychologically and socially shows several views and symptoms regarding the phenomenon of the perpetrator.¹⁶

¹⁶Reh Bungana Beru Perangin-angin and others, 'Pelakor Overviewed from Indonesian Law Perspective', in International Conference for Democracy and National Resilience (ICDNR 2021) (Atlantis Press, 2021), pp. 79–82; Dwi Maharani, 'ANALISIS FRAMING TENTANG MAKNA "PELAKOR" PADA FILM WEB SERIES LAYANGAN PUTUS', SENGKUNI Journal (Social Science and Humanities Studies), 4.2 (2023), 189–94.

The first phenomenon is that there is still an attitude to blame a woman for adultery. The term *pelakor* makes the impression that the cause of infidelity is only because there is a woman who flirts and makes men provoke to make mistakes¹⁷. The term that is often used is 'gatel'. Gatel itself actually does not come from the term itch which means discomfort on the skin but is closer to the Javanese term *gatel* which means to flirt. So, the thought that arises is that it seems that the man has good morals until the woman commits temptation and the man falls into a mistake. This seems to identify the fault of the man.

The second phenomenon is that in this case violence becomes a common thing because a woman's self-esteem is tarnished when her husband cheats. In several cases, there has been violence against this actor, including vigilante actions that are seen to violate the applicable legal rules.¹⁸ This phenomenon that continues to take place in society is indeed widely accepted and approved by several levels of society who think that there must be social punishment for women who make men disloyal.

But of course, from the point of view of positive law, this cannot be taken for granted because social punishment is not a written punishment and the form of social punishment is not objective. The reason why social punishment is not objective is because this punishment is based on tradition and even based on the spiritual atmosphere of social psychology of the society itself¹⁹. The party who is the object of this social punishment is in a cornered situation and does not get objective justice. In fact, one of the purposes of the law is to provide justice for all parties.

Therefore, it can be said that Law number 1 of 2023 concerning the Criminal Code is a breakthrough to regulate this community phenomenon into the applicable law. The impact of this regulation is to provide a legal avenue for parties outside the legal spouse to resolve cases in the legal channel in the hope of reducing the percentage of street courts that are often detrimental to women.

This includes the rights of the prostitutes themselves. Morally, being a prostitute is the wrong action. But realistically, there are many conditions that encourage a person to become a prostitute. Thus, it is unfair that then prostitution is considered the only wrong party. The provision of legal channels to complain about 'pelakor' and parties who have an affair is an important breakthrough to avoid persecution of prostitutes.

Critical Analysis on the Practice of Legal Protection in Prostitution

The policy to stop the practice of prostitution in Indonesia is still in its early stages focusing on the deterrence effect. This deterrent effect, in a realistic context, has not been

¹⁷'Ini Arti Gatel Bahasa Gaul, Sering Terdengar Banyak Yang Tak Paham Apa Itu Gatel (Gatel Artinya) - Halaman 3-Tribunpekanbaru.Com' <<https://pekanbaru.tribunnews.com/2021/06/21/ini-arti-gatel-bahasa-gaul-sering-terdengar-banyak-yang-tak-paham-apa-itu-gatel-gatel-artinya?page=3>> [accessed 30 July 2024].

¹⁸'Heboh Emak-Emak Keroyok Pelakor Yang Nekat Geruduk Rumah Istri Sah - Editor.Id' <<https://editor.id/heboh-emak-emak-keroyok-pelakor-yang-nekat-geruduk-rumah-istri-sah/>> [accessed 30 July 2024]; 'Pelakor Naik Gunung Bareng Suami Orang, Baru Di Parkiran Dilabrak Istri Sah, Teman Ungkap Sosoknya-TribunTrends.Com' <<https://trends.tribunnews.com/2024/01/02/pelakor-naik-gunung-bareng-suami-orang-baru-di-parkiran-dilabrak-istri-sah-teman-ungkap-sosoknya>> [accessed 30 July 2024]; 'Geger Istri Sah Labrak Wanita Pelakor: Maki-Maki Hingga Botaki Rambut' <<https://www.detik.com/jogja/berita/d-7411202/geger-istri-sah-labrak-wanita-pelakor-maki-maki-hingga-botaki-rambut>> [accessed 30 July 2024].

¹⁹Achmad Asfi Burhanudin, 'Eksistensi Hukum Adat Di Era Modernisasi', *Salimiya: Jurnal Studi Ilmu Keagamaan Islam*, 2.4 (2021), 96–113.

effective in reducing crime or increasing protection for commercial sex workers (PSK). The main reason is that the deterrent effect is more effective on rational and logical offenders, but it has little effect on individuals who are caught in difficult economic situations where they consider their options to be equally bad and instead see opportunities in risky options with the law. For them, taking the risk of engaging in prostitution may be considered better than living in poverty. Therefore, policies that rely solely on deterrent effects are not entirely successful.

Systematic prevention is the key to tackling the problem of prostitution more effectively. This systematic prevention involves creating better alternative options for prostitutes, which can help them get out of the business of degrading their self-esteem. Currently, the Criminal Code (KUHP) only serves as the main legal fortress to protect individuals from bullying, persecution, and exploitation related to prostitution. However, as time goes by, a more holistic and comprehensive legal product is needed that can address various aspects of this problem.

In addition, legal products must be realistic in preventing social persecution of prostitutes. Social justice that is often unfair, brutal, and inhumane prostitution needs to be stopped. It is important to avoid social judgments that tend to blame women, since in many cases, the practice of prostitution occurs due to the agreement of both parties. Women are often in a weak, cornered, and manipulated position. For this reason, legal products must be able to provide fair protection and prevent unfair exploitation and persecution of prostitutes.

In order to create effective policies, a more comprehensive and humane approach is needed. Policies that only rely on deterrent effects are not enough to overcome the problem of prostitution. Systematic and holistic prevention efforts are needed, as well as fair legal protection for prostitutes. Governments must work closely with various parties, including non-governmental organizations, to create sustainable and humane solutions, as well as ensure that prostitutes have access to better options and opportunities to get out of the cycle of prostitution. With the right approach, it is hoped that the problem of prostitution can be overcome effectively and provide better protection for all parties involved.

CONCLUSION

In the new Criminal Code (KUHP), there is a paradigm change that is more open regarding adultery and prostitution, as well as various other moral violations. This paradigm includes the understanding that the violation is detrimental to both parties, not just those in a romantic or legal relationship. However, despite these changes, the new Criminal Code still does not fully touch the interests of commercial sex workers (PSK). The protection provided to prostitutes is still limited to efforts to provide a deterrent effect to pimps and users of prostitution services, which basically only causes fear without fundamentally solving the problem.

Prevention that only relies on the deterrent effect as the first layer of criminalization is temporary and ineffective in the long term. This is because the deterrent effect only targets logical and rational criminals, without taking into account the economic and social conditions that encourage a person to become a prostitute. Therefore, more systematic and realistic steps are needed to stop this problem. This systematic approach includes the creation of policies that provide better alternatives for prostitutes, such as job training programs, access to education, and economic assistance that can help them get out of the prostitution industry.

In addition, the protection of prostitutes should include efforts to protect them from social justice that is often unfair and degrading to human dignity. Brutal and inhumane social justice not only exacerbates the stigma against them, but also degrades the dignity of the law itself. In this context, it is important to create legal products that are not only realistic but also fair and humane, that can protect prostitutes from social stigma and provide them with opportunities for rehabilitation and reintegration into society.

A holistic and comprehensive legal product must include protection and coaching for prostitutes. This involves collaboration between governments, non-governmental organizations, and communities to create programs that support prostitutes in acquiring new skills, access to health services, and psychological support. Thus, prostitutes can get the support they need to get out of the prostitution industry and start a better life.

It is also important to educate the public about the importance of protecting human rights and reducing stigma against prostitutes. This education can be done through public campaigns, educational programs in schools, and training for law enforcement officials to ensure that they understand and respect the rights of prostitutes. With this comprehensive and inclusive approach, it is hoped that the problem of prostitution can be addressed effectively and sustainably, as well as provide better protection for prostitutes and society as a whole.

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