

# Human rights and HIV prevention: re-thinking prostitution policies in Indonesia

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## Abstract

As a multi-faceted phenomenon, prostitution is influenced by various factors, including gender, social norms, and legal frameworks. Prostitution is criminalized, and this legal framework has been associated with adverse outcomes for sex workers, such as violence, stigma, and limited access to essential healthcare services, especially those related to human immunodeficiency virus (HIV) prevention and treatment.

This study explored how criminalization exacerbates vulnerabilities by creating a hostile environment for sex workers, constraining their ability to negotiate safer working conditions, and increasing the risks of HIV transmission. It supported transitioning from punitive measures to a more humane approach that respects their rights. This research suggested that decriminalization, educational empowerment, harm reduction strategies, and better healthcare access, are essential parts for improving the welfare and reducing the spread of HIV and other sexually transmitted infections. Additionally, it discussed how deep-seated societal stigma and cultural taboos create discriminatory barriers, which hinder access to important preventive programs. By analyzing global best practices and the impact of Indonesia's legal and health frameworks, the study emphasized the requirement for comprehensive policy reforms, prioritizing the health, safety, and human rights of sex workers.

In conclusion, community-based non-punitive policies, which decriminalize sex work must be implemented to effectively combat the HIV/acquired immune deficiency syndrome epidemic and improve health outcomes as sex worker-friendly health services. This approach, coupled with a shift in societal attitudes toward sexual health and human rights, will contribute to better health outcomes and a reduction in HIV transmission among high-risk groups.

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**Key words:** sex workers, HIV/AIDS, human rights, health policy, prostitution.

## Introduction

Prostitution is defined as the act of engaging in sexual relations, either voluntarily (as a job) or through coercion (as oppression) for material or immaterial compensation. This practice acknowledges commercial aspects, ranging from voluntary labor to forced exploitation, and emphasize

the commercial nature, inherent in these transactions. It can occur in various forms, such as sexual services provided by sex workers, customers paying for these services, or interactions involving third parties, e.g., pimps. Prostitution can be found across all layers of society, ranging from lower-class prostitution to high-class prostitution, from street prostitution to indoor prostitution, and from overt prostitution to

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covert prostitution. These forms include independent practices or those controlled by pimps. They can be conducted conventionally or through social media/online prostitution, involving either direct or indirect physical contact.

Prostitution comprises a diverse range of gender identities, including women, men, and transgender individuals; it remains a practice, where women are disproportionately represented. Its legal status can vary, and policy design regarding prostitution differs across countries, depending on ideologies and discourses. Consequently, a comprehensive understanding of its phenomenon requires an analysis of complex intersections between social structures, gender dynamics, and legal factors.

Numerous studies have indicated that the perceived dangers associated with sex work are not intrinsic to profession, but rather stem from social and institutional variables influencing working circumstances of sex workers [1, 2]. Restrictive sex work legislation, punitive law enforcement, societal stigma, economic deprivation, rigorous immigration policies, and gender disparity, all constrain and adversely influence the conditions and choices available to individuals engaged in sex work, resulting in diminished opportunities for safer and more autonomous working environments [3].

Proponents of legalization or decriminalization measures enable nations to establish and implement occupational health and safety standards, which will significantly mitigate the challenges women encounter in prostitution. The primary legal stipulations of “occupational health and safety” encompass the obligation of condom utilization during vaginal and anal intercourse (and occasionally oral sex) as well as the statutory right to refuse. In addition to these legal norms, other suggestion is provided in occupational health and safety guidelines authored by sex workers. These recommendations incorporate guidance on managing abusive customers, supplementary warnings, and protections against sexually transmitted infections as well as personal safety. However, these guidelines do not constitute legal standards, and are neither formally monitored nor enforced [4].

Indonesia’s prostitution legislation fundamentally employs a criminalization approach. This is in accordance with Law No. 1 of 2023 regarding the Criminal Code (New Criminal Code), Chapter XV addressing Moral Crimes (additional provisions exist in other chapters). Prostitution-related arrangements are governed under Articles 411, 419, 420, 421, 422, 423, 463, 599, and 607 [5]. In contrast to dominant perspective, a coalition involving progressive politicians, NGOs, academics, and sex workers advocacy organizations, proposes transition towards non-penal strategy to address the issue of prostitution. This perspective suggests that effective policy reform must be grounded in the recognition of sex workers’ fundamental human rights. Consequently, criminal law is applicable solely to instances, which are unequivocally ‘illegal’, including rape, child prostitution, assault, and various forms of extortion and labor exploitation [6, 7].

The relationship between morality and human immunodeficiency virus (HIV) in Indonesia is influenced by the growing populist morality movement that ties moral beliefs to access healthcare services. Criminalization of behaviors, such as sex outside marriage and drug use, creates a moral framework, labelling people living with HIV as the immoral actions. This connection between morality and healthcare hinders the ability of individuals, particularly women of reproductive age, to access essential HIV care. The belief that HIV is a punishment for immoral behavior leads to discrimination of sex workers, drug users, and LGBT individuals. As a result, healthcare providers may deny care or make it difficult for HIV-positive individuals to access services, fearing moral implications of treating those perceived as “guilty” of immoral actions. This moralization perpetuates stigma and reinforces societal discrimination, making it harder to prevent HIV transmission, especially from mother to child. The article proposed removing healthcare provision from this moral framework, de-idealizing the role of women, and re-positioning shame and stigma, to reduce barriers to healthcare access for those living with HIV [8].

Implementation of criminal legislation to address the sex workers’ issue is not the most effective method. A study conducted by Ine Vanwesenbeeck in 2017 [9] characterized the repression and criminalization of sex workers as “waterbed politics”, which makes a bad situation worse. These strict penalties show that when perceiving sex workers solely as a crime, people stop seeing them as human beings. It demonstrates how criminalization and repression diminish the probability that sex workers can be regarded as individuals deserving humane treatment rather than harsh and exploitative one.

Different manifestations of structural and societal stigma and discrimination, encompassing punishing laws, regulations, and practices, exacerbate disparities, and hinder sex workers from safeguarding their health, safety, and well-being. The criminalization of certain behaviors impede the access and acceptance of essential HIV prevention, testing, treatment, and sexual and reproductive health services. Transgender, migratory, and racially or ethnically marginalized sex workers, encounter multi-faceted discrimination that aggravates several obstacles to services, and increases the risk of violence and harassment. Therefore, this study aimed to analyze health policies pertaining to sex workers engaged in prostitution within the right framework for health in Indonesia.

## Discussion

Speaking in the context of women and HIV infection, the concept of vulnerability is highly relevant as it highlights the extent to which individuals, especially women, can make decisions impacting their own lives. Vulnerability is not solely driven by personal factors, but also by existing programs and broader social conditions. According to Mann and Tarantola [10], vulnerability can be categorized into three types: personal, programmatic, and societal. Personal

vulnerability relates to individual factors, such as knowledge, behavior, and biological conditions, which affect a person's ability to make informed decisions about their health, while programmatic vulnerability indicates how policies and programs can either increase or reduce an individual's vulnerability. On the other side, societal vulnerability encompasses broader factors, such as gender inequality, poverty, and social norms, which discriminate against women, restricting them from making free and informed decisions. Gender inequality, in particular, worsens women's vulnerability in intimate relationships (as they often have less power than men), increasing their risk of violence and HIV infection [11].

Decisions regarding sexual and reproductive health have a significant impact on women's health, including protection against HIV/acquired immune deficiency syndrome (AIDS) and other sexually transmitted infections (STIs). These decisions also affect women's ability to achieve their reproductive goals. It is important to acknowledge gender disparity within HIV/AIDS epidemic, which continues to affect women disproportionately. Following the implementation of International Conference on Population and Development (ICPD) Program of Action in 1994, women's empowerment and autonomy have been recognized as fundamental for their access to reproductive healthcare and contraceptive utilization. These elements are equally vital in enabling women to effectively avoid or receive treatment for STIs, including HIV. Despite the women's empowerment movement, their participation in reproductive health decision-making varies due to social and cultural factors related to patriarchy and gender inequality. Gender power differences significantly affect women's agency in sexual relationships, and are considered crucial in increasing the risk of HIV infection among women. Individual factors, such as age, marital status, employment status, income, ethnicity, history of STIs, and unwanted pregnancies, also contribute to women's decisions in terms of contraception. For most married women, their husbands become the primary source of STIs. Therefore, the inability of some wives to negotiate safer sex with their husbands, who may have multiple partners, significantly influences HIV/AIDS transmission [12].

A more effective strategy for reducing the spread of HIV and STIs involves prioritizing the overall well-being and empowerment of sex workers through education and related services. In order to achieve this, provision of comprehensive, need-based interventions, tailored to specific needs of each group is required. Engagement with sex workers should extend beyond health concerns to encompass broader social, legal, and economic concerns, while also confronting stigma and discrimination they encounter. Empowerment should be a central focus, with efforts to provide enhanced and more accessible healthcare services, particularly for diagnosis and treatment of STIs. Harm reduction interventions are crucial and equally important to involve sex workers' pimps, clients, and boyfriends, as power dynamics between men and women as well as between clients and sex workers, which often play a significant role in their vulnerability [13]. In his work, "The history of sexuality", Foucault [14] argues

that a state control over an individual's body and sexuality in the name of public health, can lead to repression. Historians have offered a detailed account of how state discourses and disciplinary practices related to prostitution developed, with scholars agreeing that the issue of prostitution control cannot be separated from the rise of public health discourse as a technology of power. This highlights the complex intersection between state policies, public health, and empowerment of marginalized groups, such as sex workers.

The relationship between state control, prostitution, and HIV prevention, is complex and deeply influenced by power dynamics. Historically, state discourse around prostitution has shifted from considering sex workers as victims to labelling them as "victimizers" responsible for the spread of diseases, including HIV/AIDS. This discursive shift has led to more repressive policies and control measures. Though framed as strategies to curtail HIV transmission, such interventions frequently prove counter-productive, and exacerbate the problem intending to solve by prioritizing controlling prostitution through punishment rather than support, while ignoring the agency of sex workers who actively negotiate their work and attempt to protect their health. These women, typically situated at the intersection of socio-economic marginalization and economic pressure, face significant challenges in enforcing safe sex practices due to power imbalances in their relationships with clients and pimps. Repressive policies, such as police raids and legal punishments, disrupt the supportive networks relied on by sex workers, thereby increasing their vulnerability to violence and unsafe sex. Furthermore, these penalizing measures undermine the ability of sex workers to negotiate condom use with clients, as many clients refuse it, further exacerbating the risk of HIV transmission. Hence, a more effective approach to HIV prevention would involve respecting human rights of sex workers, employing harm reduction strategies, and empowering these women to make informed decisions about their health. The state's role should focus on creating supportive environments rather than punitive systems, which harm sex workers and contribute to HIV spreading [15]. Combining bio-medical approaches with comprehensive prevention packages that include behavioral and structural components as part of a community-based approach, would help reducing HIV infections among sex workers in various environments worldwide. Therefore, the state's role should focus on creating supportive environments instead of punitive systems, which harm sex workers and not prevent HIV spreading [16].

In Indonesia, significant efforts have been made to address the issue through programs of Regular Mass Treatment (RMT) and government policies, such as the 100% condom use strategy. However, these face several challenges due to misconceptions, stigma, and resistance from various stakeholders, including local politicians and business figures, who fear that condom promotion may legitimize prostitution and promote immoral behavior [17-19]. The state has historically viewed sex workers as victims, but the AIDS crisis shifted this narrative to depict them as vectors of disease, further

intensifying repressive control measures. While these measures aim to curb the spread of HIV, they often exacerbate vulnerabilities by disrupting sex workers' networks, increasing economic pressure, and fostering unsafe sex practices due to power imbalances between sex workers and their clients. In order to effectively combat HIV/AIDS, the policies must move beyond moral objections and focus on public health, integrating harm reduction, empowerment, and community-based strategies, with the involvement from local leaders, NGOs, and sex worker organizations. This approach aligns with the UNAIDS principles, indicating great potential for improving health outcomes in high-risk groups, such as sex workers.

Criminalization is often perceived as a solution to societal problems, i.e., public health issues of HIV and drug addiction, assuming that it serves as a deterrent. In the context of HIV, criminalization is used to prevent and scare individuals from engaging in activities, which could lead to HIV transmission. However, there is no scientific evidence to support the success of deterrence in reducing or eliminating crime in Indonesia. The excessive use of criminal law or over-criminalization reflects the government's tendency to rely on criminal justice but it does not provide any real benefits, while highlighting the government's inability to control crime effectively. As a result, criminal law is applied symbolically without addressing the root causes of the issues. In HIV policy, criminalization is counterproductive in the goal of eliminating stigma and discrimination against people with HIV/AIDS and key populations. Instead, it provides additional stigma, as individuals are criminalized on the basis of their HIV status or conduct perceived as immoral divergent. This process further hampers their access to human rights and increases their vulnerability to HIV infection. In fact, even without criminalization, key populations, such as sex workers, transgender people, and drug users, already face violence and discrimination [20].

In Indonesia, stigma surrounding HIV is deeply rooted, often silencing public discussions about its causes and how to address its consequences. Given the cultural taboos around sex and sexuality, many individuals living with HIV, particularly women and female sex workers, are labelled as the primary vectors of the disease, with little attention paid to the role of men. This stigma is evident across the prevention-care continuum in Indonesia, where access to HIV prevention, treatment, and care, varies significantly among groups. Vulnerable populations, such as women, sex workers, men who have sex with men (MSM), people with disabilities, drug users, and prisoners, all face discrimination that hinders their access to essential services.

Stigma often leads to delays in testing, poor health-seeking behavior, and inadequate adherence to treatment. In Indonesia, even within the HIV-positive community, sex workers and marginalized groups feel excluded, further perpetuating an 'us vs. them' mentality. For instance, female sex workers living with HIV report feeling uncomfortable in support groups, and are forced to hide their identity to be accepted. Moreover, internalized stigma, particularly among

women, leads to feelings of shame regarding their desire to have children, further preventing them from accessing reproductive health services and support. This fear of stigma discourages many from seeking the necessary sexual and reproductive health information and treatments needed to prevent HIV and other STIs, thus exacerbating the challenge of addressing HIV in the country.

In Indonesia, the inter-section of stigma, religious norms, and health regulations, has created significant barriers in the fight against HIV, particularly when it comes to condom use as a preventive measure. As emphasized by the tension between religious authorities, i.e., Indonesian Ulema Council (MUI) and government health policies, some issues of sexual autonomy and public health continue to disagree. The MUI's opposition in providing contraceptives to adolescents based on Islamic principles has complicated HIV prevention efforts, despite the country's acknowledgment of the epidemic and its consequences. This debate underscores the challenge of integrating human rights and sexual autonomy into public health system, where condom use, often stigmatized as immoral, remains insufficiently supported by policy and societal norms. As a result, key vulnerable groups, including adolescents, sex workers, and MSM, experience high levels of stigma and limited access to necessary health services. HIV prevention efforts, such as the promotion of condoms, are stymied by these social and legal barriers, reflecting broader power dynamics in Indonesian society. Addressing these challenges, Indonesia requires legal reforms, meaning decriminalization of sexual activities, ensuring everyone can access contraception, and providing comprehensive sexuality education. These changes should be based on human rights, putting personal freedom ahead of traditional moral standards. By doing so, the country can build a more inclusive, health-focused framework that empowers people in making informed sexual health decisions, thereby effectively combating the HIV epidemic [21].

A more comprehensive and integrated approach is necessary to address the HIV epidemic among female sex workers (FSWs), as demonstrated by global evidence of successful interventions in regions, such as sub-Saharan Africa. These findings reveal that a combination approach that addresses both the structural and behavioral factors contributing to HIV vulnerability among FSWs is highly effective. Such an approach includes decriminalizing sex work, providing community-led health services, empowering sex workers, addressing gender-based violence, and ensuring access to essential services, such as HIV testing, treatment, and condom distribution. However, similar strategies often face significant barriers, namely widespread societal stigma, discrimination, and criminalization of sex work, resulting in a lack of access to health services and resources for FSWs.

The influence of religious norms and legal structures, which stigmatize sexual autonomy, complicates the implementation of effective HIV prevention strategies. Criminalization of sex work, for instance, not only exposes FSWs to violence and exploitation, but also creates a sense of fear that deters them from seeking healthcare or engaging in HIV

prevention programs. Moreover, cultural norms that restrict discussions about sex and sexual health contribute to an environment, in which HIV prevention is not openly discussed or prioritized, especially for high-risk groups of FSWs and MSM.

The global recommendations for combating HIV among FSWs provide valuable insights. These emphasize the importance of community empowerment, where sex workers are central to the design and implementation of prevention programs. This participatory approach ensures that interventions are relevant, effective, and tailored to their specific needs. Moreover, legal reforms to decriminalize sex work and remove punitive measures are crucial for improving the overall health and safety of sex workers, as criminalization creates significant barriers to accessing health services, and perpetuates stigma and discrimination. The effectiveness of HIV prevention initiatives could be substantially improved through the implementation of policies, which allow confidential HIV testing and treatment. Such efforts must be complemented by removal of barriers to condom access and delivery of professional development focused on non-discriminatory practices. By addressing these systemic obstacles, the state can ensure that healthcare delivery is both equitable and conducive to broader epidemic control.

Addressing violence faced by sex workers, both from clients and law enforcement, is another critical component of an effective HIV prevention strategy. Many sex workers face sexual and physical violence, which directly increases their vulnerability to HIV/AIDS. Research shows that violence, whether perpetrated by clients, intimate partners, or police, often leads to unprotected sex, further increasing the risk of HIV transmission. Programs focusing on violence prevention, such as legal protection for sex workers and support for peer-led advocacy, are essential for creating a safer environment and improving their ability to manage safer sex practices.

Finally, a cultural shift towards recognizing sexual health as a human right is necessary for overcoming the systemic challenges in Indonesia. HIV prevention efforts must go beyond addressing medical and behavioral aspects of the epidemic to tackle the societal attitudes and legal barriers, which perpetuate stigma and exclusion. Recognizing that everyone has the right to make their own choices about sex is crucial. It helps creating an inclusive healthcare system framework that empowers marginalized communities to make informed decisions about their sexual health. By decriminalizing sex work, reducing stigma, and providing comprehensive accessible services, Indonesia can create a supportive environment for FSWs and other high-risk groups, leading to improved health outcomes and reduction in the spread of HIV. This requires a change in cultural attitudes toward sexual health and human rights as well as policy modifications, where its focus will be on providing people with tools and support they need to protect themselves and their communities from HIV/AIDS.

The legal and health frameworks surrounding the care and protection of sex workers, especially those who are vic-

tims of forced prostitution, have seen significant advancements through various laws, including Law No. 12 of 2022 on Sexual Violence Crime and Law No. 11 of 2009 on Social Welfare. These laws are designed to address the social, legal, and health-related challenges faced by sex workers, acknowledging their specific needs and vulnerability. Law of Sexual Violence Crime ensures that victims of sexual violence, such as sex workers, are entitled to comprehensive treatment, protection, and recovery services. This includes access to healthcare, psychological support, legal services, and rehabilitation, all tailored to their unique circumstances. In addition, it imposes a positive obligation upon the state to ensure non-discriminatory provision of these services, with particular focus on the rights and needs of individuals with disabilities.

However, despite these legal guarantees, significant challenges remain, especially in terms of stigma, criminalization as well as societal and cultural norms, which continue to marginalize sex workers. Their criminalization, in particular, creates barriers to healthcare access, such as condom distribution, HIV testing, and treatment. This is compounded by societal stigma that acts as a formidable deterrent to health-care-seeking behavior, while simultaneously heightening susceptibility to violence and exploitation. This marginalization is further combined with punitive law enforcement practices; the harassment and detention of sex workers, often predicated on the possession of condoms, represent a significant setback for public health initiatives and direct violation of basic human rights.

In terms of health, Indonesia's Health Law (Law No. 17 of 2023) emphasizes the right to health as a fundamental human right, ensuring that every individual, including sex workers, has access to quality and affordable healthcare services. The Health Law's provisions on reproductive health services, such as contraceptives, vaccinations, and HIV prevention, aim to address the specific health risks faced by sex workers. However, the gap between the legal framework and its practical implementation, remains a challenge. Stigma surrounding sex work often results in inadequate healthcare services for sex workers, who may face judgment and discrimination within healthcare facilities, further preventing them from accessing necessary services [5].

The harm reduction model as part of the Health Law's approach, offers a critical strategy to address the health risks faced by sex workers, particularly in the context of HIV prevention. Harm reduction strategies, such as distribution of condoms, HIV testing, and provision of pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP), have been proven effective in reducing HIV transmission among high-risk populations, including sex workers. These measures can significantly decrease the likelihood of HIV infections and other STIs among sex workers and their clients. Nonetheless, it must be accompanied by a cultural shift that recognizes sex work as a legitimate form of work, and treats sex workers with dignity and respect.

Apart from addressing health needs, mental health policies are crucial for supporting sex workers, as they often

experience high levels of psychological distress, trauma, and social isolation. Indonesian government, through Law No. 18 of 2014 on Mental Health, provides a framework for mental health support, including counselling and therapy. In fact, mental health services for sex workers remain inadequate and underdeveloped, with stigma surrounding sex work acting as a formidable deterrent to service engagement. Mental health practitioners must be trained to approach sex workers without judgment, understanding the intersectionality of their experiences, including impacts of gender, race, and socio-economic status on their mental health.

Moreover, social welfare programs outlined in Law No. 11 of 2009, such as social rehabilitation and empowerment programs, play an essential role in re-integrating sex workers into society. These programs offer vocational training, mental health support, and legal services. However, the success of these programs depends on overcoming societal stigma, providing comprehensive support services, and ensuring that they have access to a safe and supportive environment.

In terms of policy and implementation, Indonesia's current approach to sex work and public health reflects a tension between moral and legal frameworks, which regulate sexuality and the need to address health and human rights issues. While legal reforms and harm reduction strategies have the potential to improve the well-being of sex workers, these efforts must be accompanied by a change in societal attitudes. The implementation of non-punitive measures, such as decriminalizing sex work, providing sex worker-friendly services, and reducing police harassment, is important for ensuring that they can access healthcare and support without fear of arrest or discrimination.

## Conclusions

As a multi-faceted issue, prostitution involves various forms, ranging from street-level sex work to online prostitution, and includes both voluntary and coerced participations. The complexity of this practice is influenced by legal, social, and gender dynamics, with criminalization often exacerbating the challenges faced by sex workers. In Indonesia, there is a growing call by criminalized prostitution for a shift in approach towards decriminalization and a focus on human rights and health.

Research has revealed that criminalizing sex work leads to adverse outcomes, including violence, stigma, and limited access to healthcare, particularly in HIV prevention and treatment. A more effective strategy would involve empowering sex workers through comprehensive health services, harm reduction strategies, and decriminalization. Moreover, empowering sex workers and offering them autonomy over their health decisions as well as eliminating punitive measures, would create safer and more supportive environments to work and live in.

The state role should not be limited to punishment, but focus on creating supportive frameworks that allow the protection of sex workers' health, safety, and human rights. In

this context, integrating legal reforms with comprehensive public health measures is important, with harm reduction programs and better access to mental health support. Furthermore, shifting societal attitudes toward recognizing sex work as legitimate as well as reducing stigma will ensure that sex workers can access necessary health services and live with dignity. As a result, the success of these efforts will depend on the alignment of legal frameworks, healthcare systems, and societal perceptions, to create a more inclusive and humane approach to addressing prostitution and its associated risks.

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