Non-Punishment of Women Victims of Human Trafficking: What Can the UK and Indonesia Learn from Each Other in Seeking to Comply with International Law?

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Introduction

Women victims of trafficking are most commonly trafficked for the purposes of sexual exploitation. On a global scale, according to the 2024 United Nations Office on Drugs and Crime Global Report on Trafficking in Persons, 61% of detected victims in 2022 were female. Specifically, 60% of female victims were trafficked for the purpose of sexual exploitation, highlighting the gendered nature of this crime.[1] In the UK, 1546 out of 4937 women (31%) were referred in 2024 to the relevant government authority as potential victims of trafficking on the basis of sexual exploitation, which was greater than any other type of exploitation (the most common type for men, in contrast, was labour exploitation).[2] In Indonesia, between 2020 and 2024, the Ministry of Women's Empowerment and Child Protection documented 1198 cases of adult women who had been victims of human trafficking.[3] Moreover, in 2023, authorities investigated mostly cases related to the abduction of Indonesian women and girls for sex trafficking and commercial sexual exploitation.[4] This problem takes on a new dimension in jurisdictions where the sexual activity into which these women are coerced, such as prostitution, is a criminal offence. The issue, then, is how should these women be treated under domestic criminal law.

The non-punishment principle is a general principle of international law that addresses this very issue.[5] In essence, it states that victims of trafficking should not be punished for their involvement in unlawful activities that they have been compelled to

[1] United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2024* (UN publication, Sales No E.24.XI.11), p.45.
[2] UK Home Office, *Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary 2024* (GOV.UK, 14 March 2025) <https://www.gov.uk/government/statistics/modern-slavery-nrm-and-dtn-statistics-end-of-year-summary-2024/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2024#key-results> accessed 10 June 2025.
[3] Ridwan A, "1,198 Indonesian Adult Women Became Victims of Human Trafficking from 2020-2024" *Databoks* (June 19, 2025) <https://databoks.katadata.co.id/en/demographics/statistics/685257f08e19c/1198-indonesian-adult-women-became-victims-of-human-trafficking-from-2020-2024> accessed 25 June 2025.
[4] US Department of State, *2024 Trafficking in Persons Report: Indonesia* (2024) <https://www.state.gov/reports/2024-trafficking-in-persons-report/indonesia/> accessed 25 June 2025.
[5] 'Implementation of the non-punishment principle', Report of the Special Rapporteur on trafficking in persons, especially women and children, A/HRC/47/34 (17 May 2021), para 20.

commit as a direct consequence of being trafficked.[6] This principle assists the implementation of the United Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children ('the Palermo Protocol').[7] If states are to comply with international law on this important matter of gender equality, they must both (a) uphold the non-punishment principle and (b) protect women who are coerced into prostitution from being treated as perpetrators of a criminal offence.

Both elements are necessary because women are particularly vulnerable to becoming victims of trafficking, in the context of which the criminal offence that they are most likely to commit is prostitution. This connection between non-punishment and criminalisation of prostitution is implicitly recognised by Article 6 of the UN Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW'):

> *"States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."*[8]

Although the law in both Indonesia and England and Wales (hereinafter England) provides for victim protection, in practice women involved in prostitution are often investigated and prosecuted or subject to moral policing even when indicators of trafficking are present, which risks breaching international law obligations by failing to differentiate between voluntary and coerced involvement in prostitution.

Our focus is on how and to what extent the legal framework in each jurisdiction enables these two states to give effect to the non-punishment principle, and what these jurisdictions might learn from each other. It might be said that these two jurisdictions are not conducive to comparison due to their very different contexts, specifically the fact that Indonesia (in the 'Global South') receives far fewer victims of trafficking than

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[6] Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002), Principle 7 and Guideline 4.
[7] United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime*, 2237 UNTS 319, Art. 6.
[8] Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 13, Art. 6.

England (in the 'Global North').[9] However, we show that a comparison of an important aspect of gender equality law between these two jurisdictions is worthwhile. In general, we argue that the relevant legal framework is less well developed in Indonesia than in England, but we also identify areas where England might learn from Indonesia. Our comparison, therefore, subverts the dominant narrative of Global South countries learning from Global North countries in matters concerning gender equality and human rights[10]– the learning should, and does, go both ways.

International Obligations

Both the UK (of which England forms one jurisdiction with Wales) and Indonesia are state parties to the Palermo Protocol and CEDAW. These instruments impose obligations to protect victims of trafficking, including obligations to prevent their further victimisation through criminalisation. However, their regional obligations vary slightly. The UK must comply with Article 26 of the Council of Europe's Convention on Action against Trafficking in Human Beings:

> *"Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."*[11]

Indonesia must comply with Article 14(7) of the 2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children:

> *"Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in*

[9] In Indonesia, there were 1359 referrals of victims of trafficking in 2023 according to the Indonesian Ministry of Social Affairs. In contrast, in the UK, there were 19,125 such referrals in 2024 according to the UK Home Office. See US Department of State (n 4); UK Home Office (n 2).
[10] Committee on the Elimination of Discrimination against Women, *General Recommendation No 33 on Women's Access to Justic*e, CEDAW/C/GC/33, (2013), p. 4.
[11] Council of Europe, *Conventions on Actions against Trafficking in Human Beings*, Cets No. 197, Art. 26.

persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking."[12]

The mandatory force of "shall" in both Conventions is mitigated by the rather mild language of "provide for the possibility" and "consider" respectively. Thus, significant deference is afforded to each state party to decide precisely how it wishes to uphold the non-punishment principle in its own domestic law. The two main ways that are explored below are (1) the decision as to whether to bring a prosecution and (2) the availability of defences to victims of trafficking at trial.

Approach to Prosecuting Victims of Trafficking

England

Decisions on prosecutions in England are made by the Crown Prosecution Service (CPS). The general approach is a two-stage test,[13] but in light of the non-punishment principle, the CPS has developed a more detailed four-stage approach to a decision to prosecute victims: [14]

1. Is there a reason to believe that the person is a victim of modern slavery?
2. Is there clear evidence of a credible common law defence of duress?
3. Is there clear evidence of a statutory defence under section 45 ("section 45 defence") of the Modern Slavery Act 2015 (MSA 2015)?
4. Is it in the public interest to prosecute?

Our focus is on stages 1 and 3, which are unique to prosecuting victims of trafficking.

[12] ASEAN Convention Against Trafficking in Persons, Especially Women and Children, Art. 14(7); See also 'Implementation of the Non-Punishment Principle for Victims of Human Trafficking in ASEAN Member States' (ASEAN-ACT, 2022).
[13] 1) The evidential stage – is there sufficient evidence to provide a realistic prospect of conviction? 2) The public interest stage – is a prosecution in the public interest? See Crown Prosecution Service, *The Code for Crown Prosecutors*, para 4.1ff. <https://www.cps.gov.uk/publication/code-crown-prosecutors> accessed 2 January 2025.
[14] Crown Prosecution Service, *Modern Slavery and human trafficking: offences and defences, including the section 45 defence* (22 October 2024) <https://www.cps.gov.uk/legal-guidance/modern-slavery-and-human-trafficking-offences-and-defences-including-section-45> accessed 2 January 2025.

At stage 1, a central consideration is the National Referral Mechanism (NRM) decision. The NRM is the official system for identifying victims of trafficking. Individuals suspected of being victims of trafficking are referred to the NRM by a 'First Responder' organisation. The CPS is not a 'First Responder' organisation, but prosecutors still have a duty to ask the police to consider a referral if they identify indicators of trafficking.[15] These referrals are usually sent to the Single Competent Authority (SCA), which is part of the Home Office. The SCA will make a preliminary decision whether there are reasonable grounds to believe that the person is a victim of trafficking (the Reasonable Grounds decision), before making a final decision on the balance of probabilities (the Conclusive Grounds decision). A decision by the SCA that on the balance of probabilities a person has been trafficked will almost always be reason to believe the person is indeed a victim of trafficking, and therefore not to pursue the prosecution further.

At stage 3, the prosecution must consider whether it would be unable to disprove the section 45 defence beyond reasonable doubt.[16] In essence, section 45 of the MSA 2015 provides a statutory defence for a defendant who has been compelled to commit a criminal act, where that compulsion is attributable to being trafficked. While the evidential burden rests on the defendant to raise this defence initially, the legal burden then falls on the prosecution.[17] However, victims cannot rely on the section 45 defence if charged with one of the 140 offences enumerated under Schedule 4 of the MSA 2015, which includes the most serious offences like murder and rape, but also offences that may be committed in far less serious ways like robbery and perverting the course of justice.[18]

Thus, the question of whether to bring a prosecution in England primarily turns on considerations relating to a person's status as a victim of trafficking, including any defences that may be available to victims of trafficking, but there is always the final safeguard of considering the public interest too.

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[15] Ibid.
[16] Ibid. Cites *R v CS and Le* [2021] EWCA Crim 134.
[17] *R v MK; R v Gega* [2018] EWCA Crim 667.
[18] See also United Nations Office on Drugs and Crime, *Female Victims of Trafficking for Sexual Exploitation as Defendants: A Case Law Analysis* (2020), p.92.

Indonesia

In Indonesia, the decision to initiate criminal proceedings lies with the public prosecutor, an official within the central Attorney General's Office (*Kejaksaan Agung*).[19] The prosecutor follows a two-stage test. The first stage requires sufficient evidence (*alat bukti*) in accordance with Article 184 of the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*–KUHAP).[20]

The second stage asks whether it is legally appropriate to proceed with the prosecution.[21] This involves a broader legal assessment, considering whether:

a. There is a criminal law that covers the act;
b. The person is believed to have done it;
c. The evidence supports it; and
d. There are no clear legal reasons to stop the prosecution.[22]

A clear legal reason can include the defence afforded to victims of trafficking. The prosecutor must consider the statutory defence provided in Article 18 of Law No. 21 of 2007 on the Eradication of the Crime of Human Trafficking.[23] It provides as follows:

> *A victim who commits a crime under coercion by an offender of the criminal act of trafficking in persons shall not be liable to criminal charges.*

"Coercion" is defined in the Elucidation of Law No.21 of 2007 as:

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[19] Law No. 11 of 2021 on the Prosecution Service of the Republic of Indonesia.
[20] Under Article 184, this requires at least two pieces of valid evidence. For a piece of evidence to be considered valid, it must be demonstrated that it was obtained lawfully, presented in open court, and is relevant to the proof of elements of the crimes.
[21] Law No. 11 of 2021, Art. 30(1)(a); Peraturan Jaksa Agung RI Nomor: PER-036/A/JA/09/2011 *tentang Standar Operasional Prosedur Penanganan Perkara Tindak Pidana Umum* [Attorney General Regulation No. PER-036/A/JA/2011 on the SOP for Handling General Crimes].
[22] Indonesian Criminal Procedure Code, Art. 137; see also, Kejaksaan RI, *Pedoman Jaksa 36 Tahun 2021 tentang Penanganan Perkara Tindak Umum*.
23 Indonesian Criminal Procedure Code, Art. 139; see also, Kejaksaan RI, *Pedoman Jaksa 36 Tahun 2021 tentang Penanganan Perkara Tindak Umum*.; Indonesian Criminal Procedure Code, Art. 140(2); see also, Kejaksaan RI*, Pedoman Jaksa 36 Tahun 2021 tentang Penanganan Perkara Tindak Umum*.

> *[A] condition in which a person/victim is made to undertake an activity which contravenes such person's free will.*[24]

Thus, Article 18 constitutes the primary legal protection for victims of trafficking from criminal liability.

Comparative Discussion

In terms of the decision as to whether to bring a prosecution, Indonesian law, through Article 18, seems to provide a greater scope of protection for victims of trafficking than English law, through the section 45 defence, in two ways.

Firstly, whereas Schedule 4 of the MSA 2015 excludes the application of the section 45 defence to certain offences in English law, Indonesian law does not confine Article 18 in such a way. The Group of Experts on Action against Trafficking in Human Beings (GRETA) expressed concern that Schedule 4 gave a "rather narrow interpretation" of the non-punishment principle.[25] The Home Affairs Committee of the UK House of Commons (Parliament) endorsed GRETA's recommendation that the non-punishment provision should be capable of applying to all offences that victims were compelled to commit.[26] The UK Government, relying on the conclusion in the Independent Review of the Modern Slavery Act that the section 45 defence strikes the right balance, has not indicated that it will follow this recommendation.[27] Thus, English law will remain behind Indonesian law for the foreseeable future and could learn from the Indonesian approach in this regard.

Secondly, although Article 18 of the Law on the Eradication of the Crime of Human Trafficking has also been criticised for the ambiguity around what constitutes "coercion" which can easily lead to prosecutors failing to recognise the individual as a

[24] Elucidation of Law No.21 of 2007 on the Eradication of the Crime of Human Trafficking, Art. 18.
[25] Group of Experts on Action against Trafficking in Human Beings (GRETA), *Evaluation Report: United Kingdom, Third Evaluation Round* (GRETA(2021)12, 2021), para 160.
[26] Home Affairs Committee, *Human Trafficking* (HC 2023–24, 124-I), para 169.
[27] Home Affairs Committee, *Human Trafficking: Government Response to the Committee's First Report* (HC 2023–24, 556-IV), para 61. Secretary of State for the Home Department, *Independent Review of the Modern Slavery Act 2015: Final Report* (CP 100, 2019), para 4.3.3.

victim of trafficking,[28] the definition of coercion in Indonesian law seems to refer to a subjective test, namely whether *that individual's* free will has been contravened, which is likely easier for defendants to satisfy than an objective standard. In contrast, in English law there is an objective condition under section 45 that a "reasonable person" also would have had no realistic alternative to committing the offence in that individual's situation.[29] Although this additional requirement is qualified by reference to that individual's "relevant characteristics", it nonetheless means that victims of trafficking in England have an extra hurdle to cross to invoke the section 45 defence that victims of trafficking in Indonesia do not when invoking Article 18.

However, the approach in England gives greater effect to the non-punishment principle in two ways through a stronger emphasis on avoiding prosecutions against victims of trafficking in the first place.

Firstly, Indonesia does not have an equivalent system to the NRM in England, which plays a vital role at stage 1 of the prosecution decision-making process. While the NRM should not be viewed as a panacea, the establishment of a body, separate from the prosecution, specifically to assess whether individuals are victims of trafficking goes a significant way towards alleviating the difficult burden on such victims to prove that they are victims of trafficking at trial. Indeed, even though the NRM decision is not formally binding, the prosecution may only depart from the NRM decision if the prosecution provides clear reasons that are consistent with the Palermo Protocol and Council of Europe's Convention on Action against Trafficking, following the landmark judgment of the European Court of Human Rights in *V.C.L. v U.K.* in 2021.[30] As such, the NRM decision materially contributes to the non-punishment principle by making it far less likely that a prosecution will be brought against a victim of trafficking because it constitutes an additional opportunity for victims of trafficking to be identified. Establishing such a system may be a next step for Indonesia to consider.

[28] Lintang Mutiara Savana, *Penerapan Prinsip Non-Punishment Sebagai Perlindungan Bagi Korban Perdagangan Orang* (Universitas Indonesia, 2023). See also Nabila Tashandra, *Victim Protection and The Dynamic Situation of Human Trafficking in Indonesia* (IUP, 2019), p.12.
[29] Modern Slavery Act 2015, s 45(1)(d).
[30] Applications nos. 77587/12 and 74603/12 (16 February 2021) at [162].

Secondly, the prosecution in England must consider the public interest in bringing a prosecution at the final stage of its decision-making process, whereas there is no such requirement in Indonesia. The Council of Europe's case study on the non-punishment of victims in the UK suggests that Schedule 4 of the MSA 2015 weakens the prosecution's discretion in assessing the public interest because "a blanket exclusion of a long list of offences from the operation of the defence would 'preclude a genuine balancing of the interests at stake'".[31] However, this critique seems to conflate stage 3 (the section 45 defence) with stage 4 (public interest) of the CPS decision-making process. Even if an offence falls within Schedule 4 so that a section 45 defence cannot be raised, it remains open to the prosecutor not to bring a prosecution because it is nonetheless not in the public interest. The key benefit of assessing the public interest is that, even if the rest of the legal framework does not adequately give effect to the non-punishment principle, the prosecutor's discretion provides a final safeguard. Incorporating this assessment – beyond strictly legal factors – into the decision-making process of Indonesian prosecutors as a final stage may be a more realistic way (and certainly cheaper and quicker than establishing a system like the National Referral Mechanism) to ensure that victims of trafficking are not tried unnecessarily.

We now turn to the criminalisation of prostitution, which is one of the most likely offences to be committed by female victims of trafficking as a direct result of sexual exploitation by traffickers.

Criminalisation Of Prostitution

England

Under section 1 of the Street Offences Act 1959, it is a criminal offence for a person persistently to loiter or solicit in a street or public place for the purpose of prostitution ("section 1 offence"). It should be noted that the section 1 offence does not appear in Schedule 4 of the MSA 2015, and so victims of trafficking in principle can rely on the section 45 defence if charged with this offence.

[31] Council of Europe, *Non-Punishment of Victims/Survivors of Human Trafficking in Practice: A Case Study of the United Kingdom* (2023), p.31.

Indonesia

In Indonesia, there is no specific provision in the Penal Code that criminalises those who solicit for prostitution. In theory, women involved in prostitution could be criminally liable under Article 284 of the Penal Code concerning adultery, but, as a complaint-based offence (*delik aduan*), a prosecution can only be brought if the spouse files a complaint. This approach is an example of how Indonesia incorporates unwritten morality rules into codified criminal law. These norms, which are rooted in customary law, religious teachings (the majority in Islam), and prevailing societal expectations, have historically influenced both statutory law and its interpretation.[32]

The influence of morality is particularly evident in regional laws and bylaws of several special regions of Indonesia. Aceh is one of the provinces in Indonesia that gained its special legal status primarily through a combination of historical struggles, political negotiations, and legal recognition. This status is enshrined in both national legislation and the peace agreement between the Indonesian government and the Free Aceh Movement, as part of the 2005 Helsinki Peace Agreement, which was a key component of the deal. Under this agreement, the central Indonesian government grants special autonomy to Aceh,[33] including the right to implement Islamic law and manage its local politics.[34] Aceh regulates the sexual activity of women particularly strictly.[35] Aceh's bylaws, which reflect a localised enforcement of moral order, often penalise "immoral acts" such as unmarried couples living or staying together, or physical contact between unrelated men and woman.[36]

Aceh is not alone in this regard. Laws criminalising prostitution are also found in different regions of Indonesia. We note two examples here: Article 42(2) of Jakarta

[32] Adriaan Bedner and Stijn van Huis, *The Return of the Native in Indonesian Law: Indigenous Communities in Indonesian Legislation* (2008), p.165; Tim Lindsey, *Islam, Law, and the State in Southeast Asia, Vol. I: Indonesia* (I.B. Taurus, 2012), p.124–126; Lon L. Fuller, *The Morality of Law (Revised Ed.)*, (YUP, 1963), p.97–99.
[33] Arndt Graf, Susanne Schröter and Edwin Wieringa (eds), *Indonesia. Aceh: History, Politics and Culture (Institute of Southeast Asian Studies* 2010), p.386.
[34] Law No. 11 of 2006 on the Governance of Aceh, Art. 125–129.
[35] Qanun Aceh No.6 of 2014 on Jinayat Law, Art. 25.
[36] Dina Afrianty, *Women and Sharia Law in Northern Indonesia: Local Women's NGOs and the Reform of Islamic Law in Aceh*, (Rougledge, 2015), p.54–60.

Regional Regulation No. 8 of 2007 concerning Public Order, and Article 6(4) of Batam City Regional Regulation No. 6 of 2002.

The Jakarta Regional Regulation provides as follows:

> *(2) Every person is prohibited from:*
>
> *a. working as a commercial sex worker…*[37]

The Batam City Regional Regulation provides that

> *(4) Every person caught in the raid shall be arrested and legally processed and/or returned to their place of origin.*

In this provision, "every person" caught in a raid is defined as follows:

> *(4) Individuals detained in raids in this district are predominantly involved in prostitution and gambling activities, both male and female…*[38]

Both examples thus explicitly prohibit and criminalise prostitution.

A crucial development, though, is the new Indonesian Penal Code, which was passed in 2022 and is expected to come into force by 2026. It introduces several stricter provisions, a stronger emphasis on restorative justice, proportional sentencing, and legal clarity. Moreover, its more progressive features are the diversification of criminal sanctions and recognition of corporate criminal liability.[39] However, these developments sit uneasily alongside the retention of morality-based offences. Provisions such as those criminalising adultery,[40] cohabitation,[41] and public indecency[42] risk being applied in ways that disproportionately affect marginalised women, including victims of trafficking who are involved in prostitution.

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[37] Jakarta Regional Regulation No.8 of 2007 on Public Order, Art. 61(2).
[38] Elucidation of Batam City Regional Regulation No.6 of 2002 on Public Order, Art. 6(4).
[39] Law No. 1 of 2023 on the New Indonesia Criminal Code, Art. 2–5, 46, 79–83, 412–427.
[40] Law No. 1 of 2023, Art. 412.
[41] Law No. 1 of 2023, Art. 415.
[42] Law No. 1 of 2023, Art. 421.

Though some of these offences are complaint-based, they reflect a broader tendency, noted above, to embed unwritten moral values, often rooted in social or religious norms, into formal law. This tendency raises a serious concern about whether the new Code is compatible with Indonesia's obligations under international law, particularly the Palermo Protocol, the ASEAN Convention Against Trafficking in Persons, and CEDAW, all of which urge the adoption of protective measures, rather than a punitive approach towards victims.[43] Under the new Code, it seems more likely that morality laws may be enforced in a way that leads to the prosecution of trafficked women for acts committed as a result of coercion or exploitation. If so, the practical impact of the new Code may run counter to the protection of human rights that it claims to uphold.

In the context of the practice of prostitution regulated by Regional Regulations or Islamic Criminal Law, the status of victims of criminal acts of trafficking of people must still be determined by the presence or absence of the element of coercion. In instances where individuals are coerced into commercial sexual activities by perpetrators of trafficking, Article 18 in theory can be invoked even with regards to the Regional Regulations or Islamic Criminal Law[44]. However, in practice, violations of regulations or religious law are often determined by the Sharia Police or court without any investigation into the status of victims of trafficking and the element of coercion. Consequently, these victims are not properly identified and remain liable to criminal charges.[45]

Comparative Discussion

Both countries appear to be heading in the wrong direction in terms of recognising that offences related to prostitution largely serve to target women who are in fact victims of sexual exploitation, rather than perpetrators of crimes. This lack of recognition of the practical realities for such women is particularly striking when it comes to the issue of the criminalisation of prostitution.

[43] ASEAN Convention Against Trafficking in Persons, Especially Women and Children, Art. 14(7); The Palermo Protocol, Art. 6(2)(b); CEDAW (n 8).
[44] Law No. 12 of 2011 on the Formulation of Laws and Regulations, Art. 7.
[45] Edi Yuhermansyah and Rita Zahara, 'Kedudukan PSK sebagai Korban dalam Tindak Pidana Prostitusi' (2018) 6 *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum*.

In England, the All-Party Parliamentary Group on Commercial Sexual Exploitation advocated for the decriminalisation of 'soliciting' in 2021.[46] This proposal builds on the idea that there should be "a shift in the burden of criminality from those who are the most marginalised and vulnerable – to those that create the demand in the first place".[47] A couple of years later, the UK Parliament's Home Affairs Committee also recommended that a review should take place to explore decriminalisation further.[48] The Government's response, however, was that they have "yet to see unequivocal evidence that any one approach is better at tackling the harm and exploitation associated with prostitution".[49] As a country that deems itself to be "a pioneer in combatting modern slavery",[50] this approach of prevarication seems incongruous with its generally progressive approach, especially since the Modern Slavery Act came into force.

In Indonesia, any solace that might be taken from the absence of the criminalisation of women for soliciting sexual services in the Penal Code quickly dissipates in light of the general criminalisation of all extramarital sex that will come into force in the new Penal Code. However, in the current situation, it is notable that the criminal status of prostitution varies between different regions. Given that there is also no national guidance on the operation of Article 18, the current legal framework does not seem to ensure that victims of sexual exploitation who are forced into prostitution are consistently not prosecuted for this type of offence. Furthermore, the two examples of Regional Regulations in Jakarta and Batam City illustrate the paucity of protection for victims of trafficking. In contrast to the section 1 offence in England which requires the soliciting to be "persistent" and to be done on a street or in a public place, these Regional Regulations have a much broader scope that would more likely lead to the misidentification of victims of trafficking as sex workers, thereby compromising their entitlement to the rights afforded to them under the non-punishment principle.

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[46] All-Party Parliamentary Group on Commercial Sexual Exploitation, *Bust the Business Model: How to stop sex trafficking and sexual exploitation in the UK* (2021), p.16.
[47] All-Party Parliamentary Group on Prostitution and the Global Sex Trade, *Shifting the Burden: Inquiry to assess the operation of the current legal settlement on prostitution in England and Wales* (2014), p.2.
[48] Home Affairs Committee, *Human Trafficking* (HC 2023–24, 124-I), para 66.
[49] Home Affairs Committee, *Human Trafficking: Government Response to the Committee's First Report* (HC 2023–24, 556-IV), para 27.
[50] Ibid. para 28.

While to call for decriminalisation at this time may be unrealistic given these recent developments from both governments, the non-punishment principle can still be given effect at least in part through the availability of defences specifically for victims of trafficking. In this regard, the fact that the section 1 offence in England is not listed in Schedule 4 of the MSA 2015, and therefore that the section 45 defence is available, ensures that England adequately adheres to the non-punishment principle. By contrast, Indonesia potentially could be contravening the non-punishment principle depending on the applicability of Article 18 to regional laws in practice.

Conclusion

In summary, both jurisdictions could learn from one another. England gives better effect to the non-punishment principle through its emphasis on avoiding prosecutions in the first place, but Indonesia provides victims of trafficking with a broader defence at trial. That said, the legal framework concerning prostitution is not conducive to the non-punishment principle in either jurisdiction. However, this problem is felt more acutely in Indonesia due to its inextricable link with traditional 'morality' values.

Ultimately, the differences between the two jurisdictions can perhaps be best explained through the general trends in human trafficking, namely that victims of trafficking are usually trafficked *into* countries in the Global North (like the UK) but *out of* countries in the Global South (like Indonesia). In this context, it makes sense that the UK has invested significant resources into establishing the National Referral Mechanism system, whereas Indonesia has no such equivalent. Yet, there are simple steps that Indonesian law could take to ensure it better upholds the non-punishment principle, such as considering the public interest in prosecution decisions and providing national guidance on how Article 18 should affect prosecution decisions. Conversely, England can learn from the broader scope of the defence available to victims of trafficking in Indonesia. However, neither jurisdiction places the emphasis required on protecting women subject to sexual exploitation in terms of its substantive criminal law regarding prostitution. Given that women are far more likely to be victims than men, it is hoped that, even if these offences remain as a matter of law,

prosecutions in reality will be extremely rare due to the other safeguards in place to uphold the non-punishment principle.