



LEGALITY OF SEX TOYS FROM LAW AND ECONOMIC PERSPECTIVE:
A STUDY OF THAILAND

BY

PIYA-ORNTHANAMANEE KHUMPAO

AN INDEPENDENT STUDY SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS
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ABSTRACT

Under the Thai Penal Code and the Customs Act, sex toys are practically prohibited through legal interpretation as obscene objects by law enforcement, despite there is no explicit legal sanction against them. The purpose of preventing people from accessing sex toys is to preserve public morals. However, sex toys are still available, exposed, and sold publicly in main cities throughout Thailand. They are easily observed by people of any age. This Independent Study argues that sexuality is human nature and human right. Human deserves sexual pleasure as long as getting sexual pleasure does not inflict any harm on others. Using sex toys in private (individually and/or as a couple with mutual consent) does not constitute any harm nor degrade public moral. Therefore, sex toys contribute no criminal offence and such over-interpretation as obscene objects shall be lifted.

Nevertheless, the economic analysis illustrates that criminalization and prohibition of sex toys would lead to its black market – higher price and lower quantity. Although it is socially desirable to have fewer sex toys in the market, there will usually be high demand for them because sexual pleasure is natural and, hence, people have lower price elasticity of demand for such things, including pornography. Thus, its deterrent effect is not very effective.

Moreover, sex toys vendors still always exist because higher price incentivizes them to risk being apprehended and may gain benefits from selling low-quality sex toys. Consequently, consumers do not have a choice to select high-quality sex toys at a reasonable price. Then, they are forced to purchase low quality sex toys at a higher price. They also may suffer from health issues, as well as other harms from its dangerous/toxic substances, since lower quality products are manufactured poorly to save costs. A law and economics approach supports decriminalization of sex toys in Thailand. Other measures to control its availability shall be adopted to protect the vulnerable, such as children. Options are i) zoning or regulation on-premises selling sex toys as in Singapore, Japan, and China, ii) regulations of sex toys as medical apparatus like in the state of Alabama, USA, and iii) the prevention of sex toys exposure in the real (physical) appearance (i.e., allowing virtual exposure of sex toys).

Keywords: Pornography, Adult toys, Sex toys, Thailand criminal code, Section 287, Bribery, Black market, Sex toys, Sexual pleasure

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CHAPTER 1

INTRODUCTION

1.1 Background

Libido or sex drive is a part of sexual activities for the sustainability of human race as it is mentioned that “[H]uman sexuality is the way in which we experience and express ourselves as sexual beings”.¹

Sexual intercourse is not only for reproduction or procreation but also for bonding relationship through sharing mutual sexual pleasure between heterosexual partners,² as there are many different birth control options available to prevent pregnancy. Besides, an individual person can sexually please themselves for their own sexual pleasure with masturbation.

Adult toys or, what are well known as, sex toys are objects or devices for genital stimulation to increase sexual satisfaction. They are commonly used during sexual activities, either for sexual enjoyment or treating sexual problems, individually or mutually.

An individual use of sex toys is for anyone who wants to explore new experience beyond normal masturbation, or for those who already have their own partner but have an issue of achieving orgasm during sexual intercourse because partners are not able to sexually satisfy each other properly and sufficiently due to

¹ Spencer A Rathus, *Human Sexuality in a World of Diversity* (Allyn and Bacon, 1993) 2.

² Paul R Abramson and Steven D Pinkerton, *With Pleasure: Thoughts on the Nature of Human Sexuality* (Oxford University Press, 1995) 42-43.

physical or mental limitations, or any other related conditions, or impact on sexual drive problems³

Even though, Thais' perspective on sexuality is nowadays increasingly opened than in the past. Thai movies and series display more deeply heterosexual and homosexual love scenes, expose more obviously naked body parts, and kissing scenes without forced perspective or camera angle techniques to create an illusion of real kisses. Yet, sex toys are still considered to contravene public morality, similar to other sexual practices (prostitution, pornography, swinging, group sex, or swinger clubs, for instance) and may fall under Thailand's Criminal Code in Section 287, being categorized as obscene objects under Thailand's list of prohibited goods. However, sex toys are still widely available on the streets of Bangkok⁴ and elsewhere, including e-commerce channel.

Section 287 of Criminal Code has been enacted for complete prohibition on production, possession, import, or export of any obscene materials. The Criminal Code has been interpreted to restrict supply of sex toys in market in order to reduce or eliminate them since they are deemed to be objects against public morality. However, demand for sex toys does not falter. Consequently, there is a gap for sex toy manufacturers and distributors to seek their benefits⁵ Further consequences, such as safety of sex toys materials, knowledge on sex toy usage, and appropriateness of sex shop establishment and regulations may be of public, or at least users, concerns.

³ 'Sex toys' (Planned Parenthood) <<https://www.plannedparenthood.org/learn/sex-pleasure-and-sexual-dysfunction/sex-and-pleasure/sex-toys>> accessed 30 August 2018.

⁴ Chutimas Suksai and Thaweepon Kummetha, 'Thai cyber sexuality: Liberation, empowerment and suppression' (Global Information Society Watch) <<https://www.giswatch.org/pt-br/node/1145>> accessed 30 August 2018.

⁵ Panadda Peecharoen, 'Legitimacy of Yaoi Manga in Law and Economic Aspect' (M.A. Thesis Thammasat University 2014) 2.

As seen on media concerning the arrest of sex toy distributors, impounded sex toys seized by police were often in high value (more than 1 million Thai Baht); On the other hand, the maximum fine is merely 60,000 Thai Baht. This can be presumed that it is not only insufficient law enforcement but also concerns disproportionate penalties which are not deterring sex toy sales.

In Thailand, sex toys are controversial for over decades because sex toys are often sold in public places. People of all ages can witness a sale of these toys unavoidably. This circumstance does not conform to legislative intent against sex toys. Meanwhile, Japan⁶, China⁷, the Netherlands,⁸ and Singapore⁹ where sex toys are legalized being covered in this study do regulate sex toy markets by enacting other relevant laws and regulations employing zoning or locational limitation, sex toy shape restrictions¹⁰, sex toy material restriction, and age restrictions on accessibility, rather than treating sex toys as objects against public morality through interpretation in law which is expanded beyond prescribed as in Thailand.

The above-mentioned non-conformity may cause negative effect to society which can describe through the assumptions and observations in Table 1.1

⁶ Kinsey Dinan, 'Owed Justice: Thai Women Trafficked Into Debt Bondage in Japan' (Refworld, 1 September 2000) <<https://www.refworld.org/docid/3bdffcf91.html>> accessed 19 February 2019.

⁷ Joanna McMillian, *Sex Science and Morality in China* (Routledge, 2006) 36.

⁸ 'Dutch Criminal Code' (European Judicial Training Network) <http://www.ejtn.eu/PageFiles/6533/2014%20seminars/Omsenie/WetboekvanStrafrecht_ENG_PV.pdf> accessed 30 July 2018.

⁹ Fasiha Nazren, 'Brightly-coloured sex toys available on open display in Changi Airport duty-free shop & Watsons' (Mothership) <<https://mothership.sg/2017/12/sex-toys-singapore-legal>> accessed 22 February 2019.

¹⁰ Evan and Lola, *50 Erotic Role Plays for Lovers* (BookBaby, 2012).

Table 1.1 Main issues and effects of Thailand's actual circumstances on sex toys

No	Issue	Effect
1	Availability of sex toys in public space	Accessibility of minors to sex toys and misuses of sex toys
2	Demand and supply are inconsistent due to the interpretation on sex toys under the Criminal Code which causes a lack of supply	Cheap and low quality sex toys have been raised in higher price; low availability of high-quality, high-standard sex toys; rent seeking behavior of sex toy sellers and law enforcers
3	Lack of knowledge of sex toy consumers	Lack of understanding of sex toys; Lack of awareness on health impacts of sex toys, including materials which may be harmful, and misuses of sex toys.

Note: By the author.

Researches or articles concerning sex toys are barely available in Thailand since there is insufficient study on this issue in Thailand. It may be because sex toys are interpreted and are considered against public morality from the legal perspective.

Literally, the law is enacted under good intention to serve its purpose. On the contrary, it may cause unexpected consequences when applied in the actual situation of the country. This could be applicable to the case of sex toys in Thailand.

1.2 Objective of Study

1.2.1 To examine the interpretation of sex toys under Section 287 of Thailand's Criminal Code where public morality is a key concern.

1.2.2 To investigate the compliance of such Section in practice.

1.2.3 To review laws, other relevant legislations, and regulations in other countries where sex toys are legalized and interpreted and appropriately apply lessons

from those jurisdictions to make policy recommendations for further amendments of this Section in order to optimally regulating sales of sex toys in Thailand.

1.3 Hypotheses

1.3.1 The complete prohibition on distribution of sex toys may be not sufficient for the purpose and intention of legislation and also may cause an unexpected gap for some groups of benefit seekers to intervene.

1.3.2 A total prohibition of sex toys is the deprivation of sexual satisfaction in which it is a fundamental human right. Repetitive, it might be difficult to decrease demand for sex toys. Thailand may adapt and apply law or relevant regulations in other countries where legalizing sex toy to its own, in order to eliminate the gap of benefit seekers and prevent minors from gaining access to sex toys.

1.3.3 Relevant governmental bodies, such as Food and Drug Administration, should participate in monitoring, controlling, and classifying sex toys through regulations for safety and welfare of the society.

1.4 Methodology

This study is composed of different types of research methods, based on documentary research covering laws and regulations, applicable legislations, information from various reliable sources in both physical and online documents to support this study which are collected, including domestic and international academic documents, articles, journals, theses, research reports, and other relevant documents, along with additional information obtained from interviews with relevant government agencies in overseas, and author's own observation together with descriptive research which has been adopted in this study to analyze related factors through law and economic aspects, as well as the relationship among public morals, individual right to privacy, and law.

This study also applies qualitative research methods to analyze aspects of legislation, policies and procedures in law enforcement of the Philippines, the State of Alabama, USA, China, India, Japan, the Netherlands, and Singapore under respective national criminal laws and/or any laws relating to sex toys as study cases.

Legal status on sex toys of countries in this study are categorized into two groups: criminalized and legalized so that the similarity and difference of the legislation, policies and procedures in law enforcement can be compared to indicate the effectiveness of law enforcement. Also, further information and statistics from government agencies, home and overseas, would be employed. Observational research in fieldwork is supplement to explore the actual circumstances.

Moreover, the countries in both groups have enacted legislations on sex toys. Public morality is mutually one of the key issues compelling for such legislations and regulations. In countries where sex toys are legal, there are additional regulations and responsible government officers to limit and control the distribution of sex toys which described in Chapter 3 and 4.

1.5 Expected Benefits

1.5.1 To understand and learn guidelines on efficient and optimal control of sex toy distribution and other products of similar nature for the betterment of society.

1.5.2 To learn how to control or monitor circumstances that may cause offence against public order or public morals under other relevant policies or alternatives, apart from mere enforcement of Criminal Code.

1.5.3 To obtain guidance on the adaptation, interpretation, or amendment of the Criminal Code and law enforcement to increase efficiency consistent with an intention to preserve public morality.

1.6 Scope of Study

This study focuses on sex toy market situation in Thailand. All sex toys mentioned in this study are only for sexual arousal and penetration, excluding other types of sex toys that are related to BDSM (Bondage and discipline, Dominance and submission, and Sadism and Masochism) because it is sexual activities apart from erogenous zones but involved in sexual pleasure from pain and seeing partners being hurt or restrained.¹¹

The connection between pain and pleasure from BDSM is regarded as a variety of sexual activities which is quite complicated for many people because BDSM practices do not give sexual pleasure to practitioners directly from erogenous zones. The practices involve the responses of brain chemicals from giving (neural responses to others' suffering) and receiving pain; physical restriction, punishment, and power exchange (the exchange of physical of emotion pain from humiliation).^{12, 13}

¹¹ William M Cooper, *An Illustrated History of the Rod* (Wordsworth Editions, 1868).

¹² David J Linden, 'The Neurobiology of BDSM Sexual Practice' (Psychology Today, 20 March 2015) <<https://www.psychologytoday.com/us/blog/the-compass-pleasure/2015-03/the-neurobiology-bdsm-sexual-practice>> accessed 11 December 2018.

¹³ Luo Siyang and Zhang Xiao, 'Embodiment and Humiliation Moderation of Neural Responses to Others' Suffering in Female Submissive BDSM Practitioners' (2018) 12 *Frontiers in Neuroscience* 463.

CHAPTER 2

FUNDAMENTALS OF SEX TOYS

Sex toy has always been under a controversial debate in Thailand. Perspective and attitudes towards sex toys are mainly divided into 2 opposite sides from different points of view. Before further discussion, it is better to understand what sex toys are, since the controversy may be a result of gross misunderstandings of sex toys. This Chapter presents fundamental information of sex toys as preliminaries for deeper analyses in Chapters to follow including meaning, history, types, usage, and the importance of knowledge on sex toy use, advantage and disadvantage in order to provide an overview of sex toys.

2.1 Meaning of sex toys

2.2 History of sex toys

2.3 Types of sex toys

2.3.1 Artificial sexual organs and other insertive sex toys

2.3.1.1 Dildo

2.3.1.2 Artificial vagina

2.3.1.3 Butt plug

2.3.1.4 Ben wa balls

2.3.2 Arouser or enhancer

2.3.2.1 Electric Therapeutic Massager Wand

2.3.2.2 Attachment for Electric Therapeutic Massager Wand

2.3.3 Hybrid

2.3.4 Sex doll

2.3.5 Auxiliaries

2.3.5.1 Penile rings

2.3.5.2 Masturbator or tenga eggs

2.4 Applications of Sex Toys

2.5 Advantages and Disadvantages of Sex Toys

2.6 Right to Orgasm/Right to Sexual Pleasure

2.7 Discussions on Sex Toys in Thailand

2.1 Definition of sex toys

Sex toys are devices for sexual enhancers that people use to increase their sexual pleasure,¹⁴ sexual *libido*, or use during sexual activity.¹⁵ They are also called marital aids, adult novelties, and obscene devices, depending on various laws or regulations of countries where they are on sale.

Marital aids is a euphemism for dildos, vibrators, sex toys, costumes, clothing,¹⁶ or any device intended to enhance sexual stimulation and used for sexual pleasure of self and others.¹⁷

Adult novelty (or novelties) is another word referring to sex toys according to relevant laws in some countries or some jurisdictions. Adult novelty is a term often used for sex toys which are not passed through the Food and Drug Administration criteria (FDA).^{18, 19}

For sex toys that have been tested, approved, and regulated by FDA, they can be deemed and labeled as medical aids or medical devices.

¹⁴ 'Sex toys', Cambridge Dictionary <<https://dictionary.cambridge.org/dictionary/english/sex-toy>> accessed 25 August 2018.

¹⁵ Joseph C Segen, *The Illustrated Doctors' Dictionary: A medical dictionary written by a doctor for doctors* (2nd edn, Rakuten, 2011).

¹⁶ *ibid* 15.

¹⁷ 'Marital aid' (The Phrase Finder) <<https://www.phrases.org.uk/meanings/marital-aid.html>> accessed 25 August 2018.

¹⁸ 'Adult Novelties' (The National Association for The Advancement of Science and Art in Sexuality) <<http://naasas.com/adult-novelties.htm>> accessed 25 August 2018.

¹⁹ Emily Stabile, 'Commentary Getting the Government in Bed: How to Regulate the Sex-Toy Industry' (2013) 28 Berkeley Journal of Gender, Law & Justice, Berkeley Law University of California 162.

Obscene devices are referred to sex toys in countries where sex toys are illegal and categorized as prohibited objects.²⁰ Sometimes sex toys are merely called “toys” but not as an object intended for children. It means a gadget or machine regarded as providing amusement for an adult.²¹ A word toy(s) can be found intentionally describing sexual objects.

Sex toys are objects applied to human sexual pleasure. Regardless of their classifications or names they are called. Their sole purpose is to increase and improve sexual pleasure for consumers or users in any types: individual, couple, disability and patients with sexual dysfunction. However, there is some products such as an electric therapeutic massager wand with vibrating function (or well known as Magic Wand or Hitachi Magic Wand, which is a trademark)²², which is not primarily used as a sex toy but it is adaptable to be used as a vibrator for erogenous zone due to its function, along with an attachment further developed as accessories for sexual purpose. This can be also assumed that any products can be sought for development to respond human sexual pleasure upon possibility.

Additionally, a lube product, manufactured by a famous condom company, can be, as claimed on its label, used for normal massage and used as lubricants complemented sexual intercourse, in order to increase the smooth and prevent any hurt while doing sexual activity.²³

²⁰ Zach Biesanz, ‘Dildos, Artificial Vaginas, and Phthalates: How Toxic Sex Toys Illustrate a Broader Problem for Consumer Protection’ (2007) 1 *Law and Inequality: A Journal of Theory and Practice* 203.

²¹ ‘Sex toys’, *Concise Oxford English Dictionary* (12th edn, Oxford University Press, 2011).

²² ‘Magic Wand - Trademark Details’(Justia Trademarks, 4 April 2018) <<https://trademarks.justia.com/722/98/magic-72298601.html>> accessed 30 November 2019.

²³ ‘Lubes and Pleasure Gels’ (Durex) <<https://www.durex.co.uk/collections/sp-lubes-pleasure-gels>> accessed 30 November 2019.

2.2 History of sex toys

The world's oldest dildos from Upper Paleolithic were discovered in *Hohle Fels* Cave near Ulm, Germany by German scientists. They were nearly 30,000 years ago, made of stone, tar, wood and other materials at 8 inches long. Even though there is no evidence to prove that they are used for sexual purposes, but they can be ascertained to be used as such by their shape.²⁴

In the field of archeology, any obvious reasons of inventing dildos cannot be confirmed. There remains only assumptions: they were invented for rituals, being used as weapons, or for individual pleasure. Moreover, there have been phalluses made from stone and made from many pieces of bones same as other equipment such as combs and sewing needle.²⁵

There was an ancient history describing the use of sex toys in women for pain relief suffered from sexual dissatisfaction or lack of sexual activities with their spouse. Even, a nun who appeared in *Vinaya Pitaka* (or 'Basket of Discipline' – a collection of the *Tripitaka* which contains the monastic rules of conduct for monks and nuns) was recorded of using a sex toy.²⁶ She has been tormented by sexual dissatisfaction and decided to take an application of lac ; a material made of lac, made of wood, made of flour, made of clay which has the same function as dildo, following a recommendation by another nun, who was a former king's concubine. Later, the nun had been caught using a lac that was considered as an offence of expiation in accordance with the disciplinary rules. However, the nun has been found not guilty at last, due to the exemption specifying that illness, madness, and the first wrongdoing

²⁴ Alla Peace and John Anderson, *All about Sex... in the Bible* (Xlibris Publishing, 2012) 48.

²⁵ 'A Long, Strange Trip through Dildo History' (Kinkly, 24 May 2013) <<https://www.kinkly.com/2/762/passion-play/sex-toys/a-long-strange-trip-through-dildo-history>> accessed 3 August 2020.

²⁶ Mohan Wijayaratna, *Buddhist Nuns: The Birth and Development of a Women's Monastic Order* (Buddhist Publication Society, 2010) 128.

are exempt from the rules.²⁷ The leniency and tolerance of sex toys can be seen here even with the most restrictive practices of Buddhism.

It was also believed that the first dildo has been found in the period of Greco-Roman Civilization based on an ancient merchant's notebook which mentioned to sex toy called an "*Olisbos*". It was made from clay or wood in phallic shape. The *Olisbos* was enjoyable and satisfied Greek women (and some Greek men) a lot.²⁸

Furthermore, there were bread with a similar shape to penis used as dildos or called bread dildos and olive oil was applied as lubricants. According to Greek beliefs, if women do not have sexual intercourse for a long time, other diseases can occur to them. Hence, dildos can be their sexual assistance aid when their husband were far away from home for months in war.²⁹

In Asia, China has a recorded history about a toy used for women's sexual pleasure. Its appearance was created from wood branches trimmed in phallic shape. Another sex toy for women which was the most weirdest called "*Ben Wa Balls*," small balls made from copper, gold or soil. The Balls were used by women during the Ming dynasty. The women put the Balls into their vagina based on the belief that the balls strengthen the pelvic floor muscles and boosting their sexual pleasure.³⁰ For more details, see 2.3.

In the Middles East, the Thousand and One Nights or also called The Arabian Nights is a collection of traditional Middle Eastern tales. The tales refer to

²⁷ 'Nuns' Expiation (Pacittiya) 4' (Sutta Central) <<https://suttacentral.net/pli-tv-bi-vb-pc4/en/horner>> accessed 30 August 2018.

²⁸ '13 Weird Facts about Sex in Ancient Greece' (Historyly) <<https://old.historyly.com/greek-history/13-weird-facts-about-sex-in-ancient-greece>> accessed 3 August 2020.

²⁹ 'History of Dildos' (Go Ask Alice, 14 February 2020) <<https://goaskalice.columbia.edu/answered-questions/history-dildos>> accessed 3 August 2020.

³⁰ Carina Hsieh and Rachel Varina, 'Everything You Could Ever Want to Know about Ben WA Balls' (Cosmopolitan, 15 December 2021) <<https://www.cosmopolitan.com/sex-love/a13450838/how-to-use-ben-wa-balls>> accessed 16 December 2021.

vegetables, fruit and other penis-shaped objects being used for sexual stimulation and fulfillment.³¹

In 2005, Chinese archaeologists found bronze dildo in a Han dynasty tomb approximately 2,000 years ago.³² Peng Xiaohui, a professor of sexology at Central China Normal University, in the central city of Wuhan stated that sex toys have existed in China for centuries. They were used by the concubines of Chinese emperors who failed to find sexual satisfaction.³³

In the late 19th century, electric vibrators were invented by British doctors. The devices were labeled as medical devices performed by physicians for pain relief of the women who diagnosis suffered from hysteria and the treatment of various ailments.³⁴

For sex toys with vibrating function available were invented when electricity is accessible, so such sex toys were then called and well known as vibrators until now. At that time, their appearances were not different from large electrical appliances. Afterwards, they had been being developed to become smaller and able to be battery operable.³⁵

Sex toys have been in existence throughout human history. They have been established since ancient time and become an accepted part within our society in nowadays, together with human sexual needs and desires. As seen on technological

³¹ 'A Brief History of Sex Toys' (National Geographic Thailand, 6 June 2018) <https://ngthai.com/history/11340/a-brief-history-of-sextoys/?fbclid=IwAR23G_ug3l801T0P-Z82tnrygy8TNhPhCR0UCT7Rxqpz1ogbjltsJl6PTY4> accessed 4 April 2020.

³² Mels van Driel, *With the Hand: A Cultural History of Masturbation* (Reaktion Books, 2012) 62.

³³ 'After long night, Chinese sex toys see new dawn' (Reuters, 20 November 2012) <<https://www.reuters.com/article/china-sex-toys-idUSL3E8LG31I20121120>> accessed 30 August 2018.

³⁴ Rachel P Maines, *The Technology of Orgasm: Hysteria, the Vibrator and Women's Sexual Satisfaction* (The Johns Hopkins University Press, 1999) 82-87.

³⁵ National Geographic Thailand (n 31).

innovation about sex toys, they have been being constantly developed relying on demand driven technology.

Nowadays, sex toys can be easily purchased from drug stores, grocery shops, and convenient stores (for countries where sex toys are legalized). To use sex toys as medical devices still applicable for those who are encountering sexual dysfunction or suffering from orgasm issues, its use shall be prescribed under specialists' care.

2.3 Types of Sex toys

There are many different types of sex toys available with a variety of shapes and functions. Sex toys can be used for individual use or mutual use during sexual activity, for pleasure feeling.³⁶ All genders and sexual orientations use sex toys for individual tastes or preferences in sexual activities.

This study focuses on penetrative sex toys and sex toys for sexual pleasure in erogenous zones without other types of sex toys related to sexual fetishes and kinks like Bondage Discipline Sadism and Masochism (BDSM). Different types of sex toys can be divided and described utility that users may gain from the use as follows.

2.3.1 Artificial sexual organs and other insertive sex toys

This type of sex toy is designed to resemble human genitalia (penis and vagina). The main purpose to use these artificial sexual organs, are for masturbation or sharing with partner used by inserting into vagina or being inserted by penis.

2.3.1.1 Dildos

Non-vibrating sex toys which are designed to be used for vaginal or anal penetration and for manually stimulating surrounding vagina. Dildos are divided into two categories: realistic dildos and non-realistic dildo. For the design of

³⁶ 'A Guide to Sex Toys' (University of California, Santa Barbara)
<<http://www.soc.ucsb.edu/sexinfo/article/guide-sex-toys>> accessed 30 August 2018.

dildos, they provide mainly sub-designs for individual tastes in sexual activities: double-headed dildos and strap-on dildos.

Double-headed dildos are often used by lesbian in pairs. The pairs can be satisfied mutual penetration together at the same time and bask in the orgasm of each other. In addition, double-headed dildos are used by gay males for anal sexual pleasure together at the same time as well.

Strap-on dildos, are specially designed to be strapped onto a person's body or head. They are usually compatible with harnesses being utilized for a role reversal from traditional penile or vaginal sex.³⁷

2.3.1.2 Artificial vagina

A device designed to imitate the female sex organ for male erotic stimulation. Male users can gain simulation in the sensation of sexual intercourse. In a similar to dildos, artificial vaginas also have a realistic design with a narrower anal orifice for anal stimulation. For more intense sexual sensation, vibrating function is featured in the realistic artificial vagina.³⁸

2.3.1.3 Butt plugs

This is a type for rectum use. Butt plugs have a shape similar to a dildo but they are usually shorter than dildo with a flanged end to prevent the device from being lost inside the rectum.³⁹ The butt plugs are for some people who desire to gain anal sex pleasure, either as masturbation or mutual use with a partner.

2.3.1.4 Kegel balls

These balls are commonly well known as *Ben Wa* balls. They are not only used for sexual stimulation but also help to improve bladder control, strengthen vaginal, pelvic floor muscle training for women who had a problem of

³⁷ ibid 36.

³⁸ Subrata Pal, *Design of Artificial Human Joints & Organs* (Springer, 2013) 372.

³⁹ Jack Morin, *Anal Pleasure & Health: A Guide for Men and Women* (Down There Press, 2010) 96.

loosen vaginal after childbirth. *Ben wa* balls, are also referred to as *Ben Wah* balls, Burmese balls, Venus balls or Geisha balls, which are small marble-sized balls.⁴⁰

2.3.2 Arouser or enhancer

2.3.2.1 Electric Therapeutic Massager Wand

It is well known as Magic Wand Massager by its trademark and was formerly known as Hitachi Magic Wand according to the name of manufacturer in Japan and intended to be solely sold as an electric massager, health care device for relieving tension and relaxing sore muscles, not used as sexual equipment at all. With a vibrating function, it can be utilized for women masturbation as it is effectively able to enhance clitoral stimulation and bring to orgasm without penetrating.⁴¹

2.3.2.2 Attachment for Electric Therapeutic Massager Wand

There is an accessory used with the electric therapeutic massager wand as accessories called “attachment for magic wand original.” Two types of attachment are available for both women and men. For men, the attachment is called “sleeve.” Sleeve is an insertable tool. The phallus can be inserted into the sleeve. It increases sexual satisfaction by vibrating around the phallus. For women, the magic wand can be basically used for clitoral stimulation as described above. The attachment for women is a dildo, which specially designed for the magic wand, by attaching to the latter. Hence, it then becomes a dildo with vibrating function for penetration.^{42, 43}

⁴⁰ Mariah Olberman, ‘Health and Fun with Ben Wa Balls’ (Generate Press) <<https://www.ben-wa-balls.org>> accessed 24 November 2018.

⁴¹ Carina Hsieh, ‘A Brief History of the Magic Wand’ (Cosmopolitan, 16 December 2017) <<https://www.cosmopolitan.com/sex-love/a14105499/hitachi-magic-wand-history>> accessed 6 April 2019.

⁴² Jennifer Hussein, ‘33 of the Most Powerful Wand Vibrators You Can Buy Online’ (Allure, 26 July 2023) <<https://www.allure.com/story/best-wand-vibrators-most-powerful-sex-toys>> accessed 27 July 2023.

⁴³ ‘Magic Wand Attachments’ (Hitachi Magic Wand) <<https://hitachi-magic-wand-massagers.co.uk/pages/attachments>> accessed 22 July 2021.

2.3.3 Hybrid

Vibrators are sex toys that has an electrical or mechanical movement for sexual arousal and soothe. They were originally used as a therapy for hysteria patients were prescribed clitoral orgasms as treatment.⁴⁴ Their functions are appropriate for internal and external stimulation, able to stimulate intensively erogenous zone on body by vibrating and use for sexual penetration. Vibrators are claimed that they can help many female users achieve more intense orgasm faster/quicker than manual methods. They are often sold commercially as “personal massagers,” as they can provide light massage muscles on body parts. Moreover, there are vibrators in smaller size known as vibrating eggs, or well known for Thai people as “kai-san.”⁴⁵ They have several functions to suit users’ desires and stimulations such as multiple speed, as well as wireless or non-wireless control.⁴⁶

Vibrators are not only for female masturbation or sexual enhancement. Male can use vibrators to increase sexual sensation for a fundamentally different experience than masturbating with the hand.⁴⁷

2.3.4 Sex dolls

Technological advancements allow sex toys to better resemble real human. The primary motivation of sex doll is to aid one’s sexual pleasure through masturbation without the availability of real human and sex doll may be a satisfactory

⁴⁴ Mara Hvistendahl. ‘The Vibrator’ (2009) 3 Scientific American 81-83.

⁴⁵ Woran J, ‘Heart Shivering. Get to know the different types of ‘vibrators’. What do they look like? How to use them?’ (GQ Thailand, 18 March 2021) <<https://www.gqthailand.com/lifestyle/article/3-types-of-vibrators>> accessed 19 March 2021.

⁴⁶ ‘Give Even Better Oral Sex’ (Men’s Health, 28 February 2019) <<https://www.menshealth.com/sex-women/a26569396/love-egg-oral-sex>> accessed 4 April 2019.

⁴⁷ Generate Press (n 40).

alternative to interpersonal sexual activity.⁴⁸ Sex doll comes in 2 different varieties: 1) inflatable dolls and 2) realistic sex dolls. Both are basically providing orifice for sexual penetration in female sex dolls (mouth, vagina and anus) and realistic dildo in male sex dolls. Highly sophisticated functions are available in more realistic sex toys making them give oral sex, produce lubricants, communicate, and express emotions.⁴⁹

2.3.5 Auxiliaries

2.3.5.1 Penile rings are sex toys that used by being placed at the base of the penis or, for greater sensation, behind the testicles as well. They work by restricting blood flow so that to provide the ability to last longer during intercourse and with a stronger erection. In addition, penile rings provide greater sensation and more intense orgasms to individuals who use them.⁵⁰

2.3.5.2 *Tenga* eggs are sex toys for male as masturbators. Male can gain more enhanced sexual sensation while masturbating. This type of sex toys contained in egg shaped packaging with several surfaces that can give the users different feeling while using them.

⁴⁸ Allison Burr-Miller and Eric Aoki, 'Becoming (Hetero) Sexual? The Hetero-Spectacle of Dollators and Their Real Dolls' (2013) 3 *Sexuality and Culture* 384.

⁴⁹ Jane Wakefield, 'A sex doll that can talk - but is it perfect Harmony?' (BBC, 15 May 2017) <<https://www.bbc.com/news/technology-39859939>> accessed 6 April 2019.

⁵⁰ A Guide to Sex Toys (n 36).

2.4 Applications of Sex Toys

2.4.1 Individual use

Sex toys for individual use is for masturbation purpose. They can be applied to any gender including but not limited to the above-mentioned gender since the change of time, the gender and sexual orientation has continued to change and developed significantly.⁵¹

There are several reasons to use sex toys as individual use for single and non-single people.

2.4.1.1 Single person

(1) Single male

Masturbator, artificial vagina, and sex dolls are usually used for male masturbation, either straight or non-straight men who feel sexually aroused through genitals. Sex toys for anal pleasure such as dildo, vibrator, and butt plug can be also used by straight, non-straight and transgender male.

(2) Single female

Vibrator or dildo are used for female masturbation to enhance vaginal sensation. Butt plug and *Kegel* balls are used for anal pleasure.

2.4.1.2 Non-single people

Masturbation or self-service with sex toys seems to be unnecessary for non-single people or married couples. However, it comes up with several reasons to use sex toys in non-single people who already have partner but still masturbate themselves with sex toys.⁵²

⁵¹ ‘Sexuality Continues to Change and Develop Well into Adulthood, Finds Study’ (Medical Xpress, 2 May 2019) <<https://medicalxpress.com/news/2019-05-sexuality-adulthood.html>> accessed 6 April 2020.

⁵² Anna Borges, ‘7 Pretty Creative Ways to Use Sex Toys with a Partner’ (Glamour, 27 March 2020) <<https://www.glamour.co.za/wellness/love-relationships/7-pretty-creative-ways-to-use-sex-toys-with-a-partner-45655323>> accessed 28 March 2021.

However, to use sex toys alone for a non-single person is deemed a sensitive circumstance as it might upset a partner. Mutual understanding is a very important part of couple's sex life. If couple understands each other, one can either use sex toys without upsetting another or sex toys may even improve couple's sex life if they could utilize them properly mutually.

(1) Individual sexual desire

Level of sexual satisfaction may be not be balanced between partners. The failure of delayed orgasm or achieving orgasms may be experienced by one of the partners. Sex toys can be an alternative to continue the missing gap of sexual satisfaction until an orgasm achievement as expected level.⁵³

(2) Sexual dysfunction disorders

Sexual dysfunction is related to physical or psychological problem that burdens sexual satisfaction. Both male and female have a possibility of sexual dysfunction disorders.⁵⁴ Stress, illness, mental health, or physical health which mostly caused from the decline of health associated, are elements causing sexual dysfunction disorders. People can use sex toys in case their partner cannot perform sexual activity or while their partner are in progress of sexual dysfunction treatment.

(3) Myth

Men are influenced from media about the myth of women's beauty such as advertisements, magazines, and pornography. Big breasts and thinness with sexy shape are main physical appearance that often to be portrayed and desired for. Erotic pictures are produced for men sexual fantasies that is surreal in daily life.⁵⁵

⁵³ Julia Margo, 'Not Everyone can Orgasm from Penetrative Sex. Here's How Sex Toys can help' (The Femedic, 29 August 2018) <<https://thefemic.com/sexual-health/orgasm-penetrative-sex-how-sex-toys-help>> accessed 29 August 2019.

⁵⁴ 'Sexual Dysfunction in Males' (Cleveland Clinic, 27 October 2020) <<https://my.clevelandclinic.org/health/diseases/9122-sexual-dysfunction-in-males>> accessed 10 January 2021.

⁵⁵ Viroj Suttisima, 'Feminine Myth and Erotic Images in Thai Magazines' (M.A. Thesis, Thammasat University 2008).

Due to such influence, it can be seen that sex toys are often made to resemble women in men's myth. This also can assume that men who over-consume those media, sometimes, may be not attracted to human but sex dolls if they cannot find an ideal woman. When it comes to sexual satisfaction, men may not be able to satisfy women's sexual needs. Dr. Amit Agarwal states that men's sex demands on their partners in moving or performing like a porn star can ruin their relationship in case that their partners is unable satisfy them at the first place and women's side, in case that women's demands on achieving multiple orgasms from their male partners. Men could find it disgusting and his sexual enjoyment gets bothered.⁵⁶ In some occasions, women may be viewed negatively. However, sex toys for women are also available to help women achieve multiple orgasms as needed.⁵⁷

According to Cosmopolitan website, women revealed their sex life on multiple orgasms. Some can reach multiple orgasms with their partners, some can reach the orgasms by masturbation along with using sex toys and, interestingly, some women using sex toys with their partners for additionally intense orgasms.⁵⁸

Myths from both sides create problems in relationship and they could withdraw themselves from real relationship and rely on sex toys unless the

⁵⁶ 'What men, women want during sex' (The Times of India, 2 June 2023) <<https://timesofindia.indiatimes.com/life-style/relationships/love-sex/what-men-women-want-during-sex/articleshow/4612763.cms>> accessed 1 September 2023.

⁵⁷ Vincenzo Puppo, *The Female Orgasm Stimulation of The Clitoris and Labia Minora with Fingers Sex Toys and Oral Sex: The Art of Making Love with 100 Illustrations and Links Video-pdf* (New Sexology Project Dr. Vincenzo Puppo, 2021).

⁵⁸ Carina Hsieh, Taylor Andrews, and Gigi Engle, '5 Women Explain What It Feels Like to Experience Multiple Orgasms' (Cosmopolitan, 25 May 2023) <<https://www.cosmopolitan.com/sex-love/advice/a5859/multiple-orgasms-real-talk>> accessed 3 December 2021.

nature of openness and communication between partners lead them in which directions, to enhance a relationship or to lead themselves to conflict.⁵⁹

2.4.2 Couple or Partners

Sex toys are not only for masturbation but they can be applied for mutual use between partners for boosting up partners relationship or for experiencing enjoyment in heterosexual and homosexual partners. Both sexual orientations can be also separated in detail below.

2.4.2.1 Heterosexual Couple

It defines as a couple that comprises of a person who is attracted to another person of the opposite sex,⁶⁰ who are either straight or non-straight.^{61, 62}

(1) Straight

(1.1) Male to female

Male can use a dildo or vibrator on female erogenous zones and vagina to stimulate female sexual sensation before or during sexual intercourse. Butt plug can be presented for anal stimulation as well.⁶³

⁵⁹ Katherine Cullen, 'How Sex Toys Impact Relationships' (Psychology Today, 27 May 2017) <<https://www.psychologytoday.com/us/blog/the-truth-about-exercise-addiction/201705/how-sex-toys-impact-relationships>> accessed 10 January 2019.

⁶⁰ 'Heterosexual', Cambridge Dictionary (Oxford University Press, 2021).

⁶¹ 'Heterosexual', Merriam-Webster (2020) <<https://www.merriam-webster.com/dictionary/heterosexual>> accessed 10 January 2020.

⁶² 'Ladyboy-Tomboy Join Pattaya Mass Wedding' (Khaosod English, 16 February 2014) <<https://www.khaosodenglish.com/life/2014/02/16/1392547933>> accessed 10 January 2019.

⁶³ 'Sex Toy 101' (Online Doctor) <<https://onlinedoctor.superdrug.com/sex-toy-101>> accessed 10 January 2019.

(1.2) Female to male (sex role reversal)

A strap-on dildo or butt plugs can be used for sex role reversal in female to act as male for anal penetration.⁶⁴

(2) Non-straight

Non-straight heterosexual such as Adam (a man who is attracted to tomboys) or Cherry (a woman who is attracted to gay men and ladyboy).⁶⁵ Adam and Cherry can have conventional sexual intercourse with their partner because it could perceive that they are attracted to an opposite sex. They can use sex toys in the same way as straight heterosexual.

2.4.2.2 Homosexual

(1) Male to Male (Gay)

Dildo, double-headed-dildo, vibrator, butt plug or insertable sex toys can be used by gay couple. Male can use a dildo, vibrator, or butt plug for another male.⁶⁶ Gay couple can also use double-headed dildo for anal penetration to gain pleasure together in the same time same as lesbian couple.⁶⁷

(2) Female to Female (Lesbian)

Dildo, vibrators, butt plugs or insertable sex toys can be used by lesbian couple for sexual arousal or penetration.⁶⁸ Double-headed dildo also can make them have mutual sexual pleasure in the same time.⁶⁹

⁶⁴ 'Role Reversal' (Kinkly, 2 January 2018) <<https://www.kinkly.com/definition/7092/role-reversal>> accessed 10 January 2019.

⁶⁵ Ryan General, 'Thailand Has 18 Different Gender Identities' (NextShark, 30 January 2017) <<https://nextshark.com/thailand-18-different-gender-identities>> accessed 6 April 2020.

⁶⁶ Role Reversal (n 64).

⁶⁷ Andrew Schroeder, 'Sex Positions and Tips for Double Dildos' (Lovegasm, 2019) <<https://lovegasm.co/blogs/for-her/sex-positions-and-tips-for-double-dildos>> accessed 10 January 2019.

⁶⁸ *ibid* 67.

⁶⁹ *ibid* 67.

Lesbian couple can switch the role of penetrating and being penetrated by using strap on dildo.⁷⁰ However, all insertable sex toys is usually more preferred to be used by lesbian couple than gay couple.

Table 2.1 Sex toy use by homosexual and heterosexual

Types of Sex Toys	Sexual Orientation			
	Heterosexual		Homosexual	
	Male	Female	Gay	Lesbian
Dildo	✓	✓	✓	✓
Artificial vagina	✓	x	✓	x
Double-headed dildos	x	✓	✓	✓
Butt plug	✓	✓	✓	✓
Ben wa balls	x	✓	✓	✓
Electric Therapeutic Massager Wand	✓	✓	✓	✓
Attachment for Electric Therapeutic Massager Wand	✓	✓	✓	✓
Vibrator	✓	✓	✓	✓
Sex doll	✓	✓	✓	✓
Penis ring	✓	x	✓	x
Masturbator (Tenga eggs)	✓	x	✓	x

Note: Summarized by the author

⁷⁰ Lane Moore, 'A Complete Beginner's Guide to Strap-On Sex' (Cosmopolitan, 16 March 2016) <<https://www.cosmopolitan.com/sex-love/news/a55222/strapon-sex-how-to>> accessed 10 January 2019.

2.5 Advantages and Disadvantages of Sex Toys

Advantages and disadvantage of sex toys are discussed below to comprehend benefits that sex toys provide and negative effects that may inflict on users.

2.5.1 Advantages

It is well-known that sex toy is an innovative device to facilitate human sexual pleasure to be different from conventional sex, including being sexual aid or treatment for sexual problems based upon its primary function that responds to sexual stimulation and gratification in human nature.

2.5.1.1 Improving Relationships

Sexual dissatisfaction in a relationship can cause problems for couples as well as poor relationship can lead to sexual problems. Sex therapists may provide different treatments to solve the couples' sexual problems. Sex toys is part of the treatment that sex therapists may suggest to the couples to experiment with.⁷¹ It can improve sexual performance by extending sexual activity longer between partners or arouse *libido* for each other prior to sexual intercourse and make a long-distance relationship more bearable.⁷² Sex toy can bring new sensations to physical intimacy between partners, like a normal appliance that partner can have it for doing activity together. For couples in a long distance relationship, “Teledildonics” are technological sex in the form of sex toys connected with their respective computer systems providing sexual gratification and transferring a sense of touch between couples including achieving climax to keep the intimacy alive.⁷³ Thus, these sex toys

⁷¹ ‘What is a Sex Therapist and How Can They Help You’ (Depression Alliance) <<https://www.depressionalliance.org/sex-therapist>> accessed 11 December 2018.

⁷² Theia M Powers, *The Little Black Book of Sex Toys: The Sophisticated Guide to Enhancing your Sexual Satisfaction* (Peter Pauper Press, 2011).

⁷³ Marc Buhajiar and Mary Cunen, ‘Cybersexuality Changing the Nature of Sex through Technology’ (L-Università ta' Malta) <<https://www.um.edu.mt/library/oar/bits>

help couple to overcome their limitations and constraints and allow them to maintain their relationship easier.

2.5.1.2 Physical, mental health, and sexual dysfunction treatment

Sexual health is fundamentally associated with physical health and mental health as it is a big part of life affecting or being affected by other aspects of health such as physical, mental, emotional and social health.⁷⁴ Poor physical health is a risk factor of developing mental health problems. Similarly, poor mental health can have negative impact on physical health, leading to an increased risk of some conditions.⁷⁵

Women who have an orgasm problem including other symptoms of sexual female dysfunction such as low sexual desire/libido, impaired arousal, lack of lubricant, or sexual pain during intercourse, possibly may encounter mental and health problems.⁷⁶ Sex toys can be used to promote those sexual health issues.⁷⁷ A study suggested that vibrator can improve sexual function in women as it is associated with health-promoting behaviors and positive sexual function, and rarely associated with side effects. It is further suggested that clinicians may find the study

tream/handle/123456789/11619/cβybersexuality.pdf?sequence=1&isAllowed=y>
accessed 11 December 2018.

⁷⁴ Kyle B Jones, 'Importance of Sexual Health' (American Academy of Family Physicians) <<https://familydoctor.org/importance-of-sexual-health>> accessed 11 December 2018.

⁷⁵ 'Physical health and mental health' (Mental Health Foundation, 18 February 2022) <<https://www.mentalhealth.org.uk/a-to-z/p/physical-health-and-mental-health>> accessed 11 December 2022.

⁷⁶ Theia M Powers (n 72).

⁷⁷ Elina Järvinen, 'Predicting Consumers Purchase Intentions for Sex Toys: An Application of the Theory of Planned Behavior' (M.Sc. Thesis, University of Turku 2017).

data in responding to patients' sexual issues and recommending vibrator use to improve sexual function.⁷⁸

Erectile dysfunction, a symptoms of male sexual dysfunction is due to the blood does not flow and stay in the penis to keep the erection. The symptom can be cured with a constriction rings or cock rings. The ring will restrict the blood flow in penis and cause blood to leave more slowly for longer and increases the total amount of blood in the penis for a stronger erection.⁷⁹

2.5.1.3 Support sex for people with disabilities

Many people often believe that disabled people have improper function in sexual desire due to their non-normative bodies. Disabled people are also sexual beings and deserve to have equal right concerning sexuality same as non-disabled people.⁸⁰

Sex toy can be helpful for disabled people such as people who are suffering from spinal cord injury. The impact of this illness is about the ability of organ movement. Sex toys with hand-free design can bring disabled people gain access to sexual satisfaction.⁸¹

These could help improving disables to achiever a higher level of quality of living.

⁷⁸ Herbenick Debra, Michael Reece, Stephanie Sanders, Brian Dodge, Annahita Ghassemi, and Dennis J Fortenberry, 'Prevalence and Characteristics of Vibrator Use by Women in the United States: Results from a Nationally Representative Study' (2009) 7 The Journal of Sexual Medicine 1857-1866.

⁷⁹ Clair Grainger, 'Penis Rings for Erectile Dysfunction' (Super Drug Online Doctor, 28 November 2019) <<https://onlinedoctor.superdrug.com/penis-rings.html>> accessed 11 December 2019.

⁸⁰ Sonali Shah, 'Disabled People Are Sexual Citizens Too: Supporting Sexual Identity, Well-being, and Safety for Disabled Young People' (2017) 2 Frontiers in Education 1-5.

⁸¹ Kate Naphtali and Stacy L Elliott, *PleasureABLE: Sexual Device Manual for Persons with Disabilities* (Disabilities Health Research Network, 2009).

2.5.1.4 Prevent sexually transmitted diseases/infections and pregnancy

Sex toys can be used as a means to prevent the spread of sexually transmitted diseases/infections if used properly with hygienic practices (using condoms in each use, or when sharing sex toys with partner, cleaning sex toys before/after every single use and drying sex toys after cleaning). Moreover, sex toys can help avoid pregnancy.⁸² At least, sex toys allow human to unbundle sexual pleasure from biological reproduction and its associated risks. Women use sex toys with their female partners (lesbian couple) with condoms as preventive measures to prevent sexually transmitted diseases between women and for their healthy sexuality.⁸³

For those who are living with Human Immunodeficiency Virus (HIV), they can use sex toys, such as vibrators and dildos with condoms, to serve the gap of sexual activity's burden as a means of promoting sexual pleasure and risk reduction of HIV and other sexually transmitted infections transmission possibilities.⁸⁴

2.5.2 Disadvantages

2.5.2.1 Harmful substances from materials

Sex toys are designed for internal use and have direct contact with skin. Toxic materials can be composed in sex toys and may cause harmful effects to consumers' health. Jelly plastic, or known as jelly rubber, is one of the cheapest materials which is widely used in sex toy manufacturing. Consequently, the price of

⁸² Marianne Roberts, 'Top Benefits of Sex Toys' (CLMT Adult Entertainment Portal, 10 May 2017) <<https://www.ourclimateourhealth.org/top-benefits-of-sex-toys>> accessed 11 December 2018.

⁸³ Jeanne M Marrazzo, Patricia Coffey, and Allison Bingham, 'Sexual Practices, Risk Perception and Knowledge of Sexually Transmitted Disease Risk Among Lesbian and Bisexual Women' (2005) 1 NCBI 6-12.

⁸⁴ Satinsky S, Rosenberger J G, Schick V, Novak D S, and Reece M, 'USA Study of Sex Toy Use by HIV-Positive Men Who Have Sex with Other Men: Implications for Sexual Health' (2011) 8 International Journal of STD and AIDS 22 442-448.

sex toy made from jelly rubber is inexpensive. Jelly rubber sex toys contain a toxic chemical called phthalates which leach out of the PVC (Polyvinylchloride) and may be accumulated in human body. A German chemist analyzed 10 sex toys and found out that these sex toys contained 10 or more hazardous chemicals including extraordinarily high amounts of di(2-ethylhexyl) phthalate (DEHP).⁸⁵ Harmful chemical substances in cheap and low quality sex toys also can negatively occur to neurotoxic and/or reproductive systems.⁸⁶

Table 2.2 Hazardous substances found in sex toys and effects

Substance	Effects
DEHP (Bis-2-ethylhexyl phthalate)	Harmful effects on foetus and fertility, effects on liver and kidneys
2-ethylhexane acid	Suspicion of harmful effect on foetus
Phenol	Suspicion of harmful effect on foetus and on fertility
Carbon disulphide	
Trimethyltin chloride	Irreversible neurotoxic effects

Note: Survey and health assessment of chemicals substances in sex toys. Danish Ministry of Environment.⁸⁷

Many of sex toy materials are not only dangerous and harmful by chemical substances but also their type of material that may cause allergic reaction to users and the negative effect due to difficulty of care.

⁸⁵ Zach Biesanz (n 20).

⁸⁶ Sana Loue, *Mental Health Practitioner's Guide to HIV/AIDS* (Springer, 2013).

⁸⁷ Nils Nilsson, Bjørn Malmgren-Hansen, Nils Bernth, and Eva Pedersen, 'Survey and health assesment of chemicals substances in sex toys' (2006) 77 Survey of Chemical Substances in Consumer Products 8.

(1) Porous sex toys.

Due to the surface of porous sex toys. It causes a difficulty in cleaning; thus bacteria can be formed over the toy and can be detrimental to human body and health.⁸⁸

(2) Latex

Latex material can be found in dildos and butt plugs. Latex allergy can cause itching, rashes, asthma or, rarely, anaphylactic shock.⁸⁹

(3) Stainless steel

Stainless steel sex toys can cause skin reactions in people who are allergic to nickel. The symptoms of nickel allergy are rash, itching, dry patches of skin, redness, and blister.⁹⁰

(4) Talc or Talcum powder

Talc or Talcum powder does not contain in sex toys but it is often sold with sex toys or sold separately by claiming that it is able to keep sex toys dry and clean for sex toy renewal.⁹¹ The detrimental effect of using talc with sex toys is women's genital area can increase chances of developing ovarian cancer.⁹²

⁸⁸ 'What's the best way to clean sex toys' (Brown Health Service of Brown University) <<https://www.brown.edu/campus-life/health/services/promotion/content/whats-best-way-clean-sex-toys>> accessed 4 September 2018.

⁸⁹ 'The Ethics of Sex Toys – Part 2' (The F Word, 11 September 2004) <https://thefword.org.uk/2004/09/the_ethics_of_s_1> accessed 4 September 2018.

⁹⁰ 'Nickel allergy' (Mayo Clinic, 3 August 2021) <<https://www.mayoclinic.org/diseases-conditions/nickel-allergy/symptoms-causes/syc-20351529>> accessed 4 September 2022.

⁹¹ The F World (n 89).

⁹² Diana Zuckerman and Danielle Shapiro, 'Talcum Powder and Ovarian Cancer' (National Center for Health Research) <<http://www.center4research.org/talcum-powder-ovarian-cancer>> accessed 4 September 2018.

2.5.2.2 Possibility of Sexual Transmission diseases/infections

Sex toys are used as tools to enhance pleasure they may help reduce sexually transmitted infections. However, if sex toys are used improperly and without following instructions carefully. They may bring the risk of sexual transmission diseases/infections, bacteria, viruses, or any other harmful causes to sex toy users.⁹³

Generally, the purpose of using sex toys for individual use or masturbation is safe and able to reduce and prevent any risks from sexual transmission diseases that may pass on through sexual intercourse from person to person. However, in case of using and sharing sex toys with partners is likely risky as well as direct sexual intercourse without using condoms or sex toys. The use of sex toys for anal intercourse in male homosexual seem to be risk factors for blood-blood transmitted pathogens, such as Hepatitis C as well as for rectal-to-rectal sexually transmitted infections.⁹⁴

2.6 Right to orgasm/right to sexual pleasure

The use of sex toys is concerned with sexual stimulation relating to *libido* in all human beings and relating to basic human rights to have sexual satisfaction as well. According to several researches about sexual rights, sexual intercourse is able to give people more than sexual satisfaction but it can strengthen health, wellbeing and

⁹³ Emma Rapaport, 'Sex Toys Spark Fight between Red Light District and Amsterdam Mayor' (Nltimes.nl, 25 September 2014) <<https://nltimes.nl/2014/09/25/sex-toys-spark-fight-red-light-district-amsterdam-mayor>> accessed 4 September 2018.

⁹⁴ Helen Ward, Sarah Alexander, Caroline Carder, Gillian Dean, Patrick French, Daniel Ivens, Claire Ling, John Paul, W Tong, John White, and Catherine A Ison, 'The prevalence of lymphogranuloma Venereum infection in men who have sex with men: Results of multicentre case finding study' (2009) 3 Sexually Transmitted Infections 85, 173-175.

the living experience of people everywhere.⁹⁵ In academic events where held in Johannesburg, London, New Delhi and Beirut addressing about “[S]exual Rights are Human Rights: What about Sexual Pleasure?” along with the topic from the different medical, legal, and cultural perspectives. However, these events could show that to make sexual matters as taboo may bring the lack of knowledge in sex education. Hence, this could cause other problems to people, especially to young people, thus, sexual intercourse and sexual right are part of human right. Also, it is part of pleasure in human right that everyone deserves to have.^{96, 97} All genders have rights to have such sexual pleasure as sexual rights in human rights because sexual intercourse are not only for reproduction, which does not exclusive for heterosexual.

Refer to World Health Organization working definition, there is the link between sexual rights and existing human rights that are critical to the realization of sexual health, and includes: the rights to equality and non-discrimination, the right to be free from torture or to cruel, inhumane, or degrading treatment or punishment, the right to privacy, the rights to the highest attainable standard of health (including sexual health), the right to marry and to found a family and enter into marriage with free and full consent of the intending spouses, and to equality in and at the dissolution of marriage, the right to decide the number and spacing of one’s children, the rights to

⁹⁵ Sofia Gruskin, Vithika Yadav, Antón Castellanos-Usigli, Gvantsa Khizanishvili, and Eszter Kismödi, ‘Sexual Health, Sexual Rights and Sexual Pleasure: Meaningfully Engaging the Perfect Triangle’ (2019) 1 *Sexual and Reproductive Health Matters* 29–40.

⁹⁶ ‘Sexual rights are human rights; what about sexual pleasure?’ (American University of Beirut, 11 December 2017) <https://www.aub.edu.lb/fhs/news/Pages/sexualrights_nasss.aspx> accessed 5 December 2019.

⁹⁷ Tlaleng Mofokeng, ‘Sexual Pleasure Is a Human Right’ (Teen Vogue, 14 September 2018), <<https://www.teenvogue.com/story/sexual-pleasure-is-a-human-right>> accessed 5 December 2019.

information and education, the rights to freedom of opinion and expression and the right to an effective remedy for violations of fundamental rights.⁹⁸

Conclusively, a total prohibition of sex toys is the deprivation of sexual satisfaction in which it is a fundamental human right. Thus, the legislation that banned sex toys deprives sexual pleasure and shall be deemed against human right.

2.7 Discussions on Sex Toys in Thailand

Thai society's perspective towards sex toys are divided into two groups: a group of supporters and a group of disbelievers. For the first group, they view sex toys as common devices used for masturbation. For the opposition, they argue that Thailand is a Buddhist country, full of morals, and religious traditions. Sex toys are sex-related objects which deemed as obscenity, likely to harm morals and traditions. This is a reason why sex toys are considered as illegal objects.

Similar to the control of pornography in Thailand is aiming to preserve moral in the society, consideration on obscenity is proceeded from person of ordinary prudence's feelings under general moral standards by viewing the obscenity as indecent, disgraceful matter intended to stimulate sexual feelings.⁹⁹

Notwithstanding, Dr. Chanwaree Srisookho, a specialist obstetrician and spokesperson for The Medical Council of Thailand, stated that sex toys are devices for sexual enhancement which is a method of masturbation and not just sexual devices, but can be used for personality treatment, fulfill sexual pleasure for persons who are a physical disability, or for persons who have serious issue about sexual transmission diseases. Sex toys also help reduce a problem of teenage pregnancy along with a variety of benefits when used properly, including reducing sexual crime, building

⁹⁸ 'Sexual Rights Are Human Rights' (International Women's Health Coalition) <<https://iwhc.org/articles/sexual-rights-human-rights>> accessed 5 December 2019.

⁹⁹ Narong Jaiharn, 'Legal Definition of Obscenity' (1986) 2 Law Journal 129.

relationship, and bonding marital life, because nowadays there is more than 50 percent of marriage separation.¹⁰⁰

In fact, the main cause of divorce occurred from different sexual preferences between couples. Yet, due to insufficiently broad perspective towards sexuality in Thai society. The cause of separation or divorce on different sexual preferences is not being openly discussed as much as it should be. Even though there are many sex toys available, there is no guarantee on sex toy standard and quality. Thus, it is not obvious that those sex toys might have any side effects to users. If Thailand could legalize sex toys, sex toys then could be subject to quality control, standards, and hygiene. Age restriction on buying sex toys can prevent minor from access to sex toys.¹⁰¹

There is a campaign to legalize sex toy with the concern of safety, hygiene, packaging standard, and vendor's liability in case of customer claims. The purpose of this campaign is to request sex toys to be classified in "specific controlled items," instead of being criminalized under Section 287 of Thailand Criminal Code. Responsible government sections are also required such as Thai Industrial Standards Institute (TISI), to take a responsibility of inspecting material quality standard and the Thailand Food and Drug Administration (Thailand FDA), to certify the safety and control distribution on sex toys.¹⁰²

¹⁰⁰ 'Doctors Indicates that Sex Toys are not just sexual devices but they are still illegal under Thailand's law according to immorality' (The Prototype, 2 July 2018) <<https://theprototype.pim.ac.th/sextoy>> accessed 4 September 2018.

¹⁰¹ *ibid* 100.

¹⁰² Nisarath Jongwisan, 'To Legalized Sex Toys for Happiness and Safety of Thai people' (Change.org, 2018) <https://www.change.org/p/สภานิติบัญญัติแห่งชาติ-เซ็กส์ทอยถูกกฎหมาย?use_react=false> accessed 4 September 2018.

CHAPTER 3

SEX TOYS FROM PERSPECTIVES OF LAW AND ECONOMICS

After the fundamentals of sex toys have been settled in the last Chapter, this Chapter reflects the realities of the sentiments through the review of laws, legislations, and regulations on sex toys among countries where sex toys are “legalized” or “criminalized” respectively in the first part. Then, relevant concepts of economics are examined. It ends with the discussion on relationship between law and public morals, which is a key motivation of legislation on sex toys.

3.1 Relevant laws and regulations concerning sex toys

There are two main factions of laws on sex toys in various jurisdictions around the world: for and against. Sex toys are legalized in those jurisdictions that lenient to them. Conversely, sex toys are likely to be in jurisdictions where sexually-related matters are taboos. In this Section, laws and regulations in selected countries are reviewed according to the nature of their perspectives towards sex toys.

3.1.1 Criminalization of Sex Toys

Jurisdictions where sex toys are considered illegal but not explicitly illegal and illegal with some exemptions by law in this Study includes Thailand, the Philippines, India, and the State of Alabama, USA. Main features of laws are identified in details under respective criminal codes.

3.1.1.1 Thailand

Sex toys are, although not explicitly illegal, often being interpreted as obscene items and pornographic materials in Section 287¹⁰³ of Thailand Criminal Code. They are prohibited in any form or by any means; trade, public distribution or exhibition, making, production, possession, bringing, or causing to be

¹⁰³ Thailand Criminal Code Section 287.

brought into the Kingdom, sends or causes to be sent out of the Kingdom, takes away or causes to be taken away, or circulates, any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph film, audio and video tapes. A person who commit an offence against this Section, shall be punished with imprisonment not exceeding three years or fined not exceeding sixty thousand (60,000) Baht, or both.¹⁰⁴

Formerly, the amount of fine was six thousand (6,000) Baht. It has been increased to sixty thousand (60,000) Baht in accordance with penalty level amendments executed under Section 10 of Thailand Penal Code Amendment Act (No.26) in 2017.¹⁰⁵

Furthermore, violating the said Section, shall also deem offences against Section 244¹⁰⁶ and/or 246¹⁰⁷ of the Customs Act B.E. 2560 since sex toys fall under the list of prohibited items. Any items in this list are prohibited from either being imported into and exported out of the Kingdom of Thailand, specified obscene objects such as literature, pictures, or any other objects relating to obscenity or pornographic materials. Any person violating this prohibited list will be considered as committing offences and subject to penalties.¹⁰⁸ Since sex toys are interpreted as pornography listed in prohibited items as objects relating to obscenity or pornographic

¹⁰⁴ ‘Offence Relating to Sexuality’ (Thailand Law Online) <<https://www.thailandlawonline.com/laws-in-thailand/thailand-criminal-law-text-translation#276>> accessed 4 September 2018.

¹⁰⁵ ‘Act Promulgating the Criminal Code, B.E. 2499’ (Office of the Council of State, 10 February 2021) <<http://web.krisdika.go.th/data/law/law4/%BB06/%BB06-20-9999-update.pdf>> accessed 4 September 2018.

¹⁰⁶ Thailand Custom Act B.E. 2560 (2017) Section 244.

¹⁰⁷ Thailand Custom Act B.E. 2560 (2017) Section 246.

¹⁰⁸ ‘Prohibited Goods or Restricted Goods’ (Thai Customs, 8 January 2018) <http://www.customs.go.th/cont_strc_simple.php?ini_content=business_160426_03_160930_01_160930_01&ini_menu=menu_goods_control_permit&lang=th&left_menu=menu_goods_control_permit> accessed 9 March 2019.

materials, they must be performed through a transport without customs formality or permissions either by import or export which shall be deemed as violation of the prohibition of the Customs Act under the Section 244. The punishment of this Section provides a sentence of imprisonment for a term not exceeding 10 years or a fine not exceeding 500,000 baht or both.

For the violation under the Section 246, any person who assists violaters to smuggle goods to the Kingdom, he shall be offensive against the Customs Act which provides a sentence of imprisonment for a term not exceeding 5 years and/or a fine not exceeding 500,000 baht as the punishment.¹⁰⁹

Conclusively, in Thailand, sex toys are not mentioned in the laws. However, their legal status is still unclear, being interpreted as pornography. They are not explicitly prohibited by laws.

3.1.1.2 The Philippines

Sex toys are currently having unclear legal status in the Philippines. Article 201¹¹⁰ of Philippines Penal Code refers to Pornography which is considered as obscene objects without mentioning about sex toys or any gadgets used for sexual stimulation.¹¹¹

In 2008, a Senate Bill No. 2464 has been proposed. This Bill is also called the Anti-Obscenity and Pornography Act of 2008 describing that any sexual materials or activities are deemed taboo and cannot publicly be exposed and especially in all forms of mass media. This Bill stated more clearly and could possibly interpret sex toys as any sexual materials than the Philippines Penal Code by stating that “whatever future technologies to be developed, which are calculated to excite,

¹⁰⁹ ‘Customs Act B.E. 2560 (2017)’ (Thai Customs, 17 May 2017)
<http://www.customs.go.th/data_files/ceb80cc6dd718c73b5a44daf60a1efe3.PDF>
accessed 4 September 2018.

¹¹⁰ Philippines Penal Code Article 201.

¹¹¹ ‘Revised Penal Code of the Philippines’ (Chan Robles)
<<http://www.chanrobles.com/revisedpenalcodeofthephilippinesbook2.htm#.XIP0o8AzblV>> accessed 9 March 2019.

stimulate or arouse impure thoughts and prurient interest, regardless of the motive of the author thereof". The purpose of this Bill is to protect the morals of the society. However, this Bill is still pending until now.¹¹²

In 2011, the House Bill No. 4509 has been proposed by law makers and politicians of party list in the Philippines. The Bill specifically concerns about sex toys and they are considered as obscene devices under the Bill. It prohibits the possession and distribution of sex toys including to gadgets that are being used to stimulate human genitals.¹¹³

The reason of proposing Bill No. 4509 is that the proliferation of sex toys in the Philippines. Sex toys are openly displayed in shops or stalls in alarming rate under the concern of accessibility to minors of these obscene devices, along with the concept that sex toys may lead to offences related sexual acts. The aim of this Bill is to penalize the distribution, possession with intent to distribute and production of any obscene device designed or marketed as useful primarily for the physical stimulation of human genital organs for anything of pecuniary value in order to protect the morals of the society.

Nowadays, the House Bill No. 4509 has not been officially approved and not enforced yet. Therefore, there is no law particularly regulating sex toys in the Philippines. The Philippines Penal Code is still effective regulating pornography in a wide scope.

It cannot be concluded that the reason of legislation on pornography or sex toys in the Philippines is to prevent citizens from immorality. However, sex toys can be still found in public such as stalls in markets, physical shops, shopping areas in cities and internet which these are capable of exposing to minors.

¹¹² '14th Congress Senate Bill No. 2464: Anti-Obscenity and Pornography Act of 2008' (Senate of the Philippines, 24 July 2008) <https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=14&q=SBN-2464> accessed 18 February 2019.

¹¹³ Lorelei V Castillo, 'Solons Want to Prohibit the Use of Sex toys and Gadgets' (Press and Public Affairs Bureau, 5 June 2011) <<http://www.congress.gov.ph/press/details.php?pressid=5153>> accessed 18 February 2019.

Nowadays, sex toys are available at physical shops located in many cities of the Philippines such as Manila, Mandaluyong, Pasig, Quezon City, Makati, and Boracay.¹¹⁴

It can be concluded that Thailand and the Philippines' legal status in sex toys remain unclear even though the Philippines have drafted a law which explicitly prohibited the existence of sex toys. However, as long as such law has not approved and enforced until now. Its legal status is similar to Thailand yet the Philippines is quite different from in practice as physical stores are opened in public, not temporary stall markets same as Thailand.

3.1.1.3 India

There is no legal provision under Section 292 of the Indian Penal Code that specifically and explicitly prohibits on the sale or import of sex toys. The Sections mentions about an obscene product including any book, pamphlet, paper, writing, drawing, painting, representation, figure, or any other object if they are lascivious or appeals to the prurient interest.¹¹⁵ Sex toys can be sold unless they are not placed on display and exhibition publicly or labelled as massagers with non-phallic shaped.¹¹⁶

The punishment for those who violate the Section 292 is imprisonment of a maximum of two years for the first conviction with a fine of two thousand Rupees, and five years for a second or subsequent conviction with a fine of five thousand Rupees.

Sex toys are often discreetly marketed and sold on the “grey market” of most major cities. There are no legal concerns on the actual sale of sex

¹¹⁴ ‘10 Sexy Shops for Adults in Metro Manila’ (Spot.ph, 9 February 2017) <<https://www.spot.ph/shopping/the-latest-shopping/69206/sexy-shops-for-adults-in-metro-manila-a30-20170209-lfrm>> accessed 10 March 2019.

¹¹⁵ Indian Penal Code Section 292.

¹¹⁶ Ankita Rao, ‘Startups are searching for legal loopholes to bring sex toys to India’ (Quartz India, 4 March 2015) <<https://qz.com/india/355528/startups-are-searching-forlegal-loopholes-to-bring-sex-toys-to-india>> accessed 10 December 2019.

toys, apparels and ancillary sexual products. However, it claimed that India are unclear about the sale of sex toys.^{117, 118}

The Indian Penal Code is focusing on the exposure of sex toys or any other materials relating to obscenity. Non-realistic sex toys are mostly available in Indian online sex shops. However, realistic sex toys are also available on some Indian online sex shops but the website homepage displays the realistic sex toys in two-dimensional images as a representative. Visitors or buyers are required to access through the two-dimensional image to view fully realistic sex toy images.

Conclusively, sex toys are not explicitly prohibited and in unclear status same as Thailand. Yet, India seems to be more open than Thailand. At least, sex toys are limited to expose explicitly but able to be sold if sellers limit on an exposition of appearances in sex toys.

3.1.1.4 State of Alabama and State of Texas, the United States of America

Most people know that the United States of America categorized as one of countries in the world with high degree of freedom. Alabama, however, is a state where a law against sex toys has been enacted; it is called “Alabama Anti-Obscenity Enforcement Act” which was passed in 1998 by a group of ultra-conservative Christian lawmakers with the concerns that sex toys could lead sex offences. Alabama, thus, conducts full enforcement on this law in order to protect its citizens from immoral activity.

The law prohibits any type of commercial distribution of any device designed or marketed as useful primarily for the stimulation of human genital organs but it does not prohibit and regulate the possession of sex toys. First time

¹¹⁷ Sounak Mitra, ‘Is Online Selling of Sex Toys Illegal?’ (Business Standard, 2019) <https://www.business-standard.com/article/current-affairs/is-online-selling-of-sex-toys-illegal-115012700055_1.html> accessed 10 March 2019.

¹¹⁸ Prathik Sharavi, ‘Is online selling of sex toys illegal in India?’ (iPleaders, 15 February 2018) <<https://blog.iplayers.in/sex-toys-selling-india-legal>> accessed 10 December 2019.

offenders shall be punished with up to US\$10,000 (ten thousand) fine and imprisonment of up to 1 (one) year and repeat offenders could face a 10 (ten) year prison sentence.

The exemption of sex toy use is provided for a bona fide, medical, scientific, educational, legislative, judicial, or law enforcement purpose.¹¹⁹ A prescription from the doctor is required for the purchase of sex toys for medical purpose.

Texas is another state where a law against sex toys is enacted, which defines the offense of Obscenity in Section 43.23 of the Texas Penal Code. This law remains for the prohibition of the sale and distribution of sex toys. The number of sex toys a consumer can have is limited to six. The law also considers sex toys as obscene devices, specifying a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs. There are exemptions same as Alabama which are for medical, psychiatric, judicial, legislative, or law enforcement purpose.¹²⁰

Violating this law, it is deemed to be felony of the second degree¹²¹ and the offender shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 20 (twenty) years or less than 2 (two) years and may be punished by a fine not to exceed US\$10,000 (ten thousand).¹²²

For the State of Alabama, it concludes that the sale of sex toys is explicitly prohibited. Their legal status is clear as its Anti-Obscenity Enforcement Act

¹¹⁹ Jota Borgmann, 'Hunting Expeditions: Perverting Substantive Due Process and Undermining Sexual Privacy in the Pursuit of Moral Trophy Game' (2006) 15 UCLA Women's Law Journal 174.

¹²⁰ 'Penal Code' (Texas Constitution and Statutes) <<https://statutes.capitol.texas.gov/docs/pe/htm/pe.43.htm>> accessed 25 September 2023.

¹²¹ *ibid* 120.

¹²² 'Second Degree Felony' (The Law Office of Kevin Bennett) <<https://www.kevinbennettlaw.com/felonies/second-degree-felony>> accessed 25 September 2023.

providing the role of sex toy in specific activities under exemption. The possession of sex toys are allowed under personal purpose, medical, scientific, educational, legislative, judicial, or law enforcement purpose.

3.1.2 Legalization of Sex Toys

Jurisdictions where sex toys are legalized in this Study includes Japan, the People's Republic of China, the Netherlands, and Singapore. Main features of laws are reviewed as follows.

3.1.2.1 Japan

Sex toys are legal in Japan. According to the interpretation of Article 175¹²³ of the Criminal Code of Japan, which forbids distributing "indecent" materials. It causes most pornography in Japan must be at least partially censored by putting digital mosaic over genitalia.

A law regarding indecent exposure in public is under Article 175 of the Japanese Penal Code, which has been amended by the Act No. 49 of 2013 concerning the distribution of obscene objects, known as 'Japan Obscenity Law' affecting sex toys manufacturing. Realistic sex toys are not allowed to be distributed in Japan in order to not violate this Obscenity Law. Therefore, dildos are designed to resemble animal characters such as Hello Kitty¹²⁴ and Rabbit.¹²⁵ This law is obviously covering adult video. The actor and actress genitalia need to be censored with a mosaic blur effect.

Even though, sex toys are legal in Japan upon the issue of indecent exposure in public is become strictly disciplined under Article 175 stating "A person who distributes, sells or displays in public an obscene document, drawing or other objects shall be punished by imprisonment for not more than 2 years, a fine of

¹²³ Japan Criminal Code Article 175.

¹²⁴ Evan and Lola (n 10).

¹²⁵ Tristan Taormino, *The Big Book of Sex Toys* (Quiver, 2009).

not more than 2,500,000 yen or a petty fine. The same shall apply to a person who possesses the same for the purpose of sale.”¹²⁶

Sex shops are arranged in specific zones in accordance with the Law on Control and Improvement of Amusement Business, or well-known in short title as the Entertainment Businesses Law. This law is under the authority of Japan National Police Agency’s responsibility or National Public Safety Commission. The purpose of this Law is to regulate and restrict the business hours, locations, including specifying licensing, zoning, and other types of regulations for a variety of entertainment venues.¹²⁷ The Law also restricts the entry of minors with the aim to maintain public morals and a healthy environment of youth in society.

3.1.2.2 The People’s Republic of China (PRC)

Pornography is strictly prohibited and forbidden in China in accordance with Criminal Law of the People’s Republic of China under Article 363, 364, 365, 366, and 367. The purpose of these articles is to prohibit production, reproduction, publishing, selling or dissemination of obscene materials because the People’s Republic of China government has taken a strong stance against all adult entertainment activities, including pornography (video and printing), adult theaters, prostitution, strip clubs, and hostess bars, for instance.¹²⁸

Notwithstanding, sex toys are legal in China in accordance with an exception for the definition of obscene materials describing that scientific products about physiological or medical knowledge are not obscene materials.¹²⁹ Sex toys are

¹²⁶ ‘Penal Code of Japan’ (Japanese Law Translation) <<http://www.japanese-lawtranslation.go.jp/law/detail/?id=3130&vm=04&re=02>> accessed 24 July 2018.

¹²⁷ Kinsey Dinan (n 6).

¹²⁸ ‘Criminal Law of the People’s Republic of China’ (International Labour Organization) <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/5375/108071/F-78796243/CHN5375%20Eng3.pdf>> accessed 11 August 2018.

¹²⁹ ‘Criminal Law of the People's Republic of China’ (Ministry of Foreign Affairs of the People's Republic of China) <<http://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>> accessed 18 August 2018.

not classified in the category of obscene materials or pornography but considered as sexual healthcare products under the support of China Sexology Association (CSA). This Association is an organizational member of World Association for Sexual Health (WAS) established for the purpose of treatment of sexual dysfunctions of China's population, educating sexual knowledge and any other responsibilities relating to sexual treatments. It is also a professional body representing medics and academics in the sexology field, taking a lead role in the industry management.¹³⁰

China has become the world's biggest sex toys manufacturer and earned economic value from sex toys with the rapid growth of sex toy industry.¹³¹

3.1.2.3 The Netherlands

The Netherlands has specific business areas for sex zone called "De Wallen," also known as "Red Light District" located in Amsterdam. This zone consists of a variety of sexually-oriented businesses, such as sex shops, peep shows, strip clubs, sex museums, sex theatres, brothels, café shops (where marijuana is also available), nude shows, and live sex shows, to name but a few.

There is no law on sex toys in the Netherlands. Everyone can possess, distribute, purchase or import.¹³² Even though, the Red Light District is publicly accessible due to no age restriction. However, person age of under 18 is not allowed to take any sexual services in the Red Light District. Sex-oriented businesses must be

¹³⁰ Joanna McMillian (n 7) 36.

¹³¹ Felice Newman, *The Whole Lesbian Sex Book: A Passionate Guide for All of Us* (Cleis Press, 2004).

¹³² Interview with an officer of the public information service, Government of the Netherlands, (30 July 2018).

run in the Red Light District area only.¹³³ Also, license for sexually oriented business is required.¹³⁴

3.1.2.4 Singapore

Singapore is a well-known country where laws, regulations, and statutes enacted with strict enforcement. Singapore's legal system is efficient and one of the strictest in the world's ranking.¹³⁵ However, sex toys are legal in Singapore, being considered not as obscene objects. Physical and online sex shops are openly selling the products. Sex toys (non-realistic shape) are available at duty-free shop in Changi Airport and openly displayed in Watsons. Singapore imports sex toys from overseas and has its own sex toy manufacturing.¹³⁶ It is illegal to sell sex toys to underage person below 21 in accordance with Section 293¹³⁷ of Singapore Penal Code.¹³⁸

Law concerning an offence against obscene objects fall under Section 292,¹³⁹ the penalty is up to three months in jail, a fine, or both. According to this Section, realistic sex toys are unavailable in physical shops. By this law, sex toy

¹³³ 'Dutch Criminal Code' (European Judicial Training Network) <http://www.ejtn.eu/PageFiles/6533/2014%20seminars/Omsenie/WetboekvanStrafrecht_ENG_PV.pdf> accessed 30 July 2018.

¹³⁴ 'Licensing and Operation of Sexually Oriented Business Facilities' (Code Publishing, 12 June 2023) <<https://www.codepublishing.com/WA/JeffersonCounty/html/JeffersonCounty05/JeffersonCounty0510.html#5.10.070>> accessed 1 September 2023.

¹³⁵ Calvin WL Ho, 'Overview of Legal Systems in the Asia-Pacific Region: Singapore' (Cornell University Law Library, April 2004) <http://scholarship.law.cornell.edu/lps_lsapr/3> accessed 31 August 2018.

¹³⁶ Fasiha Nazren (n 9).

¹³⁷ Singapore Penal Code Section 293.

¹³⁸ 'Sale, etc., of obscene objects to young person' (Singapore Statutes Online) <<https://sso.agc.gov.sg/Act/PC1871?ValidDate=20171001&ProvIds=pr293-#pr293->> accessed 22 February 2019.

¹³⁹ Singapore Penal Code Section 292.

packaging often does not obviously expose the pictures of private human parts. Even though, the online stores are the most convenient channel for the purchase of sexual products which is accessible to audiences at any age. Most of the online stores' home pages primarily displays term and conditions restricting minors who are under the age of 18 years. Those minors are instructed to avoid entering the sites and be informed to not perform any transactions.¹⁴⁰

Singapore has a specific area for sexually oriented businesses managed by the Urban Redevelopment Authority (URA), Singapore's national land use planning and conservation authority under the Ministry of National Development. The purpose is to set boundaries for sex shops in order to prevent products related to sexual activity from situating within or near residential areas, including private residential estates.¹⁴¹

Planning Act of Singapore defines the meaning of sex shop as a building used for the carrying on of any trade or business where the primary purpose is the sale of products (including sex toys, magazines, clothing or equipment) connected with sexual activity.¹⁴²

In Singapore list of prohibited goods for import and export, there are no mentions of sex toys, pornographic materials, or obscene items.¹⁴³ Also, there is no requirement to obtain a license for the import or sale of adult novelty

¹⁴⁰ 'Term and Conditions' (Lilly Hush) <<https://www.lilyhush.com/terms-and-conditions>> accessed 24 February 2019.

¹⁴¹ 'Development Control' (Urban Redevelopment Authority) <<https://www.ura.gov.sg/uol/guidelines/development-control/change-use-premises/sections/guidelines-different-uses/others/others/sex%20shop>> accessed 24 February 2019.

¹⁴² 'Planning Act' (Singapore Statutes Online) <<https://sso.agc.gov.sg/SL/PA1998-R2?DocDate=20160324>> accessed 23 February 2019.

¹⁴³ 'Controlled & Prohibited Goods for Import' (Singapore Customs) <<https://www.customs.gov.sg/businesses/importing-goods/controlled-and-prohibited-goods-for-import>> accessed 23 February 2019.

products or sex toys because they are not controlled by any particular government agency in Singapore. Those products are able to apply normal import procedures.

Table 3.1 Summary of the Jurisdictions of Countries covered in this study

Prohibition

No	Country	Legality of Sex toys	Punishment	
			Fine	Imprisonment
1	Thailand	No legislation on sex toys but treated as obscene objects.	60,000 THB	Not exceed 3 years
2	The Philippines		None	
3	India		2,000-5,000 INR	2-5 years
4	State of Alabama, USA	Prohibited but exemption provided.	10,000 USD	1-10 years
5	State of Texas, USA		10,000 USD	Less than 2 years or not exceed 20 years

Legalization

No	Country	Legality of Sex toys	Restriction Management
6	Japan	Not categorized in pornography.	Appearance looks in realistic, display in public not allowed and Age restriction under 18.
7	The People's Republic of China		Restriction on pornography in mass media.
8	The Netherlands		Age restriction under 18.
9	Singapore		

Note: Summarized by the author

3.2 Relevant Concepts of Law and Economics for Sex Toys

3.2.1 Gary Becker's Economic Approach: Theory of Crime and Punishment

Becker believes that utility maximizing is the reason of committing a crime based on cost-benefit analysis for criminals because they are rational same as other individuals. There are three factors for criminal decision-making to commit a crime: the benefit from crime, the cost of crime, and probability of being apprehended.¹⁴⁴ Criminals decide to commit a crime when the expected benefit (taken into account the probability of getting away which is $1 -$ the probability of being apprehended) from committing a crime is greater than expected costs (taken into account the probability of being apprehended). In order to deter the criminals, their expected benefit need to be decreased to be lower than their expected cost; so that it could incentivize a criminal not to commit a crime.

These three factors should be adjusted by increasing the severity of penalty which is a modeling tool for criminal deterrence, increasing the opportunity cost or the probability of loss for criminals when being apprehended under the conduct of specific government agencies and appropriate number of law enforcement officers or experts, as well as decreasing the benefit of committing a crime through various policies.

3.2.2 Black Market

A black market in economics is a sector of the economy that transactions occur without government-sanctioned channel and performed against the law or regulations. The government does not have relevant information in record to trace the activities because the transactions are untaxed. Black market may be developed from the excess of demand and the prohibition of that product by the

¹⁴⁴ Gary S Becker, 'Crime and Punishment: An Economic Approach' (1968) 76 Journal of Political Economy 169.

government. The size of the black market depends on underground organizations, a degree of police control, and an absence of regulatory control.¹⁴⁵

Trade in black market where people buy or sell the products illegally, whether the products are prohibited by law or not, due to the difficulty of buying the products in legal channels. Such difficulty causes demand to increase in legal market. Price of products in black market is usually different from legal market because there are certain costs and risks of operating in the black market. These costs must be expressed by a higher supply price for each quantity.¹⁴⁶ The price of black market goods and services can fall above or below legal market prices. Prices are higher when the goods or services are difficult to acquire or produce, dangerous to handle or transport, or challenge to obtain in a legal manner.¹⁴⁷

Another illegal black market product that this study has mentioned as a case study is addictive drugs. There is a paper performed by Gary Baker and his assistant and supporters from academic institutions. They have taken up the drugs as a representation to be analyzed for drug control management instead of complete prohibition. The paper indicates the relationship among supply, demand, social cost for drug control management in order to find guidelines that reduce drug consumption. Moreover, the paper mentioned the method of the reduction by imposing taxes which could allude high benefits for society. The paper focuses on the worth of the increase in the social cost through enforcing punishment of suppliers. The elasticity of demand and supply are utilized to analyze the effectiveness of consumption reduction of drugs when they are made illegal. Enforcement cuts consumption by raising costs of suppliers mainly because of the risk imprisonment and other punishment they would

¹⁴⁵ Tejvan Pettinger, 'Black Market' (Economics Help) <<https://www.economicshelp.org/blog/glossary/black-market>> accessed 23 February 2019.

¹⁴⁶ Kenneth E. Boulding, 'A Note on the Theory of the Black Market' (1947) 13 Canadian Journal of Political Science/Revue Canadienne de Science Politique 115-118.

¹⁴⁷ Amy Fontinelle, 'How Black Market works' (Investopedia, 31 December 2021) <<https://www.investopedia.com/articles/economics/12/mechanics-black-market.asp>> accessed 23 February 2022.

rick. The increase in costs from taxation leads to higher prices, which in turn induces lower consumption. The interaction between the elasticity of demand and the effects of enforcement and punishment of apprehended suppliers on the overall cost of supplying and consuming that goods must be considered.¹⁴⁸

Taxes can be a much more effective way to reduce consumption, whatever the elasticity of demand and supply would be. It is still necessary to discourage production in the underground economy as producers try to avoid paying the tax. However, in case the producer finds a way or an option to produce their products legally in order to avoid paying taxes. The enforcement only has to raise the cost of production in the underground economy above the cost of producing legally in order to discourage illegal production. The paper also mentioned about the general analysis which could apply to other efforts to reduce quantity by making production of any goods or services illegal, such as, prostitution, or restrictions on sales of various goods to minors. The paper emphasizes the importance to the analysis of the elasticity of demand of an illegal product is that when demand is inelastic, quantity reductions through enforcement against illegal producers is very costly. The demand for drugs is assumed to depend on the market price of drugs that is affected by the costs imposed on traffickers through enforcement and punishment, such as confiscation of drugs and imprisonment. The demand for drugs also depends on the costs imposed by the government on drug users.¹⁴⁹

In a research paper titled *Forbidden Transactions and Black Markets* by Chenlin Gu, Alvin E. Roth, and Qingyun Wu. The paper concludes that the ban sometimes inadvertently causes forbidden transactions in the black market to rise and become active and the punishment may come to be seen as causing harm itself.

¹⁴⁸ Gary S Becker, Kevin M Murphy and Michael Grossman, 'The Market for Illegal Goods: The Case of Drugs' (2006) 114 *Journal of Political Economy* 38-60.

¹⁴⁹ *ibid* 148.

However, the paper also has to consider harm reduction measures beside the extinction of the black market.¹⁵⁰

Illegal narcotics or illegal drugs markets are still represented for the black market issue. Due to a big population of drugs buyers and sellers, harsh punishments and strict enforcement are necessary to be applied for controlling the market of illegal narcotics and deterring these sellers and buyers.¹⁵¹

The paper mentions making the forbidden transactions legal instead of being transactions in black market in order to make the market safe and reliable so that there will be participants joining the market (move from black market to legal market – for lesser forbidden transactions) because when transactions is forbidden, things become unsafe including illegal products in black market or concerned persons such as both buyers or sellers due to the risk penalization. This paper has a different analysis about effective laws. It is mentioned that the effective law depends on social support and perspective. By considering the proportion of repugnance in black market and the severity of punishment for participants in black market.¹⁵²

“[I]f the market is insufficiently repugnant in extent or intensity, even substantial legal penalties “on the books” may be insufficient to deter participation if those penalties cannot gain enough social support to be reliably enforced. Note also that if the feasible punishment is not too large, and if the extent of repugnance among the population is low, then even the maximum intensity of repugnance among those who wish to ban the market may be insufficient to control the black market. And as an illegal market becomes larger, it becomes more likely that those who wish to participate in it can do so without encountering those who

¹⁵⁰ Chenlin Gu, Alvin E Rothy, and Qingyun Wu, ‘Forbidden Transactions and Black Markets’ (Stanford University, 2019) <<http://web.stanford.edu/~wqy/research/Forbidden%20transactions%20and%20black%20markets.pdf>> accessed 5 December 2019.

¹⁵¹ *ibid* 150.

¹⁵² *ibid* 150.

would penalize them. Consequently, black markets that have operated successfully for a long time become increasingly hard to eliminate if the underlying social parameters and legal punishments cannot be changed.”¹⁵³

Conclusively, the paper suggests that policy makers may take a role to influence the extent or intensity of repugnance in social perspective through education and public relations besides increasing punishment in an effective way. This is because legislators do not have easy or direct access to who feels how much repugnance, this is likely to be more difficult than passing legislation. At the very least, changing widespread attitudes takes time. Increasing mandated punishments beyond what social repugnance will support can be counterproductive if it makes citizens less likely to report illegal transactions and juries less likely to convict. So we may never be able to completely eliminate some markets, despite the fact that they cause considerable harm. Hence harm reduction should be in our portfolio of design tools for dealing with repugnant markets that we can not extinguish despite the harm they might do.¹⁵⁴

The law which aims to substantially eliminate the black market is not as effective as the law wishes it to be. Therefore, to build up awareness in society in an indirect way, not in a direct way like law enforcement may be able to reach the understanding of the society, in the matter of harm matters especially. For those who are connected with the black market, the understanding may be to help them have more consideration on selecting goods from black market which do not cause harm to them. When they found out it could be harmful, they may step away from the black market without being pressured by law.¹⁵⁵

Criminal law or criminalization always come with a purpose of bringing peace to society. However, it is important to make it in neutral or in appropriate level in order to build an effectiveness for society (enforce morals, social

¹⁵³ *ibid* 150.

¹⁵⁴ *ibid* 150.

¹⁵⁵ *ibid* 150.

services, avoidance of legal restraints on law enforcement. Especially, when the criminalization is too strict. It probably unintentionally causes problems to the administration of criminal justice and the enforcement of the criminal law which also affects society. An article titled “the Crisis of Overcriminalization” described a negative effect of overcriminalization in several cases: enforcement of morals, sex offenses, abortion, gambling and narcotics, provision of social services, the drunk, the creditor and the deserted mother, and avoiding restraints on law enforcements. However, sex offences are a topic that an author aims to focus on, since sex toys are often involving in sex offences in criminal code or penal code in some countries.¹⁵⁶

The article expands perspectives with descriptions about the effects of criminalization in other dimensions to clarify that the criminalization sometimes is not a completely effective tool for society and is incapable of being applied in actual circumstances. Especially, the criminalization which involves in consensual private rights.¹⁵⁷

“[T]he adverse consequences to effective law enforcement of attempting to achieve conformity with private moral standards through use of the criminal law.”¹⁵⁸

“[P]ressures to criminalize persistently block practical assessments of what the criminal law is good for and what it is not.”¹⁵⁹

Criminalization is a moral thing to take action for in society as mentioned above. However, to utilize the criminalization ought to be in appropriate or neutral level. Because criminalization may hide actual consequences or prevent a proof of reactions of citizens who are caught under such criminalization.¹⁶⁰

¹⁵⁶ Sanford H Kadish, 'The Crisis of Overcriminalization' (1967) 374 *Combating Crime* 157-170.

¹⁵⁷ *ibid* 156.

¹⁵⁸ *ibid* 156.

¹⁵⁹ *ibid* 156.

¹⁶⁰ *ibid* 156.

“[I]ndications are that this response may ultimately do more harm than good by blocking off politically harder, but more likely. Problematic also has been the use of criminal sanctions to enforce economic regulatory measures. The problems of overcriminalization in just three kinds of situations, in each of which the costs paid primarily affect law enforcement. These are the situations in which the criminal law is used: (1) to declare or enforce public standards of private morality, (2) as a means of providing social services in default of other public agencies, and (3) as a disingenuous means of permitting police to do indirectly what the law forbids them to do directly.”¹⁶¹

The author has selected the topics regarding sex offenses, gambling and narcotics, and the drunk in order to indicate, clarify and analyze the method of criminalization in each perspectives.

Sex offences are the classic instance of the use of the criminal law to enforce a moral code which is related to sex practices. The sex offences includes the laws prohibiting extra-marital and abnormal sexual intercourse between a man and a woman. However, these laws cause discriminatory enforcement against persons selected for prosecution on grounds unrelated to the evil against which these laws are purportedly addressed.¹⁶²

For an instance, the criminalization of consensual adult homosexuality represents another attempt to legislate private morality. It raises somewhat different problems from heterosexual offenses. However, such criminalization causes the cost of enforcement to be wasteful.¹⁶³

It is plain sense that criminal law is a highly specialized tool of social control, useful for certain purposes but not for others; that when improperly used it is capable of producing more evil than good; that the decision to criminalize any

¹⁶¹ *ibid* 156.

¹⁶² Marilyn Strathern, 'Sexual Offences and Criminal Codes' (1979) 5 *The Cambridge Journal of Anthropology* 4-31.

¹⁶³ *ibid* 162.

particular behavior must follow only after an assessment and balancing of gains and losses. This obvious injunction of rationality has been noted widely for over 250 years, from Jeremy Bentham, to the National Crime Commission, by moralistic philosophers as well as the utilitarian ones. Those whose daily business is the administration of the criminal law have, on occasion, exhibited acute awareness of the folly of departing from it. The need for restraint seems to be recognized by those who deal with the criminal laws, but not by those who make them or by the general public which lives under them.¹⁶⁴

One hopes that attempts to set out the facts and to particularize the perils of over criminalization may ultimately affect the decisions of the legislatures. But past experiences gives little cause for optimism. Perhaps part of the explanation of the lack of success is the inherent limitation of any rational appeal against conduct which is moved by powerful irrational drives. Explaining to legislatures why it does more harm than good to criminalize drunkenness or homosexuality, for example, has as little effect (and for the same reasons) as explaining to alcoholics or homosexuals that their behavior does them more harm than good. It may be that the best hope for the future lies in efforts to understand more subtly and comprehensively than we do now the dynamics of the legislative (and, it must be added, popular) drive to criminalize. The sociologists, the social psychologists, the political scientists, the survey research people, will have to be conscripted for any effort of this kind.¹⁶⁵

We also have a degree of understanding of the effect of representative political processes on the choice of sanctions and the dynamics of law enforcement by the police. Perhaps by further substantial research along these lines research which would put the process of over-criminalization by popularly elected legislators itself under the microscope, we will understand better the societal forces which have unfailingly produced it. Understanding, of course, is not control, and control may prove as hopeless with it as without it. But scientific progress over the past one hundred years has dramatized the control over the physical environment

¹⁶⁴ *ibid* 162.

¹⁶⁵ *ibid* 162.

which comes from knowledge of its forces. It may prove possible to exert in like manner at least some measure of control over the social environment. It is an alternative worth pursuing.¹⁶⁶

When the government makes the product illegal including sex toys as the foremost illegal product in this study, a black market is subsequently created.¹⁶⁷

3.2.3 Theory of Law enforcement

Sir Robert Peel, the Father of Modern Policing, introduced a principles of law enforcement stated that police goal is to prevent crime which is more important than catching criminals and punishing them.¹⁶⁸ Appearance of police officers affects the possibility of criminal offences because the police officers are considered as law enforcers carrying penalties that could deter the occurrence of crime by fearing people who tend to commit a crime.¹⁶⁹ In aspect of law and economics, law as a tool for behavioral adjustment in society to society desire paths and as a tool for criminal deterrence.¹⁷⁰

Corruption is a form of bribery causing law enforcement to work inefficiently because the law enforcers reduce their duty and sanction for the violation

¹⁶⁶ *ibid* 162.

¹⁶⁷ Mike Moffatt, 'The Effects of a Black Market on Supply and Demand' (ThoughtCo., 24 September 2018) <<https://www.thoughtco.com/effects-of-black-markets-using-supply-and-demand-1146967>> accessed 9 March 2019.

¹⁶⁸ 'Sir Robert Peel's Policing Principles' (Law Enforcement Action Partnership) <<https://lawenforcementactionpartnership.org/peel-policing-principles>> accessed 23 February 2019.

¹⁶⁹ Pattanakorn Soongnart, 'Crime Prevention Measurement on Crosswalk Bridges in the Bangkok Metropolitan Area' (M.A. Thammasat University 2008) 19.

¹⁷⁰ Pokpong Junvith, 'Introduction to Law and Economics' (Pokpong) <http://pokpong.org/wp-content/uploads/intro_lawandecon_presentation.pdf> accessed 9 March 2019.

in return of accepting the bribe offered from violators or criminals.¹⁷¹ Thus, law enforcers trade-off their public duties to enforce laws for their private benefits.

3.2.4 Theory of Criminalization

General principles of criminalization from the perspective of criminal law theory and constitutional theory have been discussed in Tatjana Hörnle's article: Theories of Criminalization. The article suggests that criminal statutes have to be compatible with positive constitutional law. According to most modern legal systems, the constitution is the most important principle upon matters of criminalization.¹⁷²

Notions such as harm to others or protected legal goods (or *Rechtsgüterschutz* in German) could be included in a model constitution. “[C]riminal prohibitions are only permissible as far as they are necessary to prevent harm to others” or “criminal norms must not be enacted in order to promote morality”.¹⁷³

Constitutional courts in many countries have different decisions about the criminalization and the perspective of criminal law. The courts in English-speaking countries apply the harm principle concepts for the decision. Germany applies the protection of legal goods concept or the protection of individuals against harm, or defense of individuals' rights, or protection of moral or protection of collective interests which can be referred to the heartland of criminalization theory.¹⁷⁴

In the German Federal Constitutional Court, a case concerning incest between adult siblings was not to be criticized for legislative purposes. On the other hand, the U.S. Supreme Court has the Texan anti-sodomy laws violating the constitution. The German Court seems to be more flexible than the U.S. Supreme Court since the German Court left open whether the protection of morality might be considered a legitimate purpose for criminal laws, while the U.S. Supreme Court did

¹⁷¹ Mitchell A Polinsky and Steven Shavell, *The Theory of Public Enforcement of Law* (North-Holland, 2007) 440-441.

¹⁷² Tatjana Hörnle, *Theories of Criminalization*, (Oxford University Press, 2014) 1-25.

¹⁷³ *ibid* 172.

¹⁷⁴ *ibid* 172.

not accept incest between adult siblings as a legitimate purpose. In spite of incest between adult siblings (consensual incest) or engaging in same sex activity, it did not cause harm to others and was consensual. If those sexual activities occur without consent, it can be decided as rape under common criminal law.¹⁷⁵

There is also a further opinion of a theorist who has mentioned that punishment theory is not necessarily committed to legal moralism as criminalization theory. The issue upon which collective interests or harm to others are the points that legislatures should propel to enact criminal prohibitions. In the end, this article ended up in concluding that describing that the theorists' opinion on criminalization theory should not be expected due to considerable influence on law-making which is related to academia and the political system best limited, and the constraints and coercions in political processes differ rather radically from the legal theorist's position.¹⁷⁶

However, the article seems to have an expectation on the notions of criminal law theorists' traditional focus on harm principle even though it is opponent to paternalism and moralism. Therefore, the interaction with constitutional theory deserves to be taken more seriously.¹⁷⁷

Robert P. George provides the concept of public morality which is a concern that goes beyond considerations of law and public policy because public morals have an effect to the activities of private parties, either good or bad. However, sometimes the private actions of private parties can directly or indirectly invoke public consequences. Yet, such activities are governed by moral norms, including all norms related to justice to refrain from actions that produce harmful public consequences.¹⁷⁸

The Article has taken up the matters among public morality, public health and safety to indicate the difference of their effect in order to emphasize harmful public consequences. Hence, the negative effect between cigarettes and

¹⁷⁵ *ibid* 172.

¹⁷⁶ *ibid* 172.

¹⁷⁷ *ibid* 172.

¹⁷⁸ Robert P George, 'The Concept of Public Morality' (2000) 45 *American Journal of Jurisprudence* 17-32.

pornography has been provided in the article. In case of cigarettes, it can cause toxic environmental pollutants that affects the public when breathing (people naturally have to breathe and avoid the pollutants by breathing difficultly) but in case of pornography can be avoided the morally harmful effects of pornography simply by declining to purchase and look at it. (It can say that people can make a choice to react on pornography).¹⁷⁹

Public morals laws, like health and safety regulations, regulate private conduct insofar as it harms, or threatens to harm, the public interest. Sometimes, the term "private," when used to describe or classify conduct, is meant to refer to conduct that does not bear on the public interest, or which is not legitimately subject to government prohibition or restriction even if it does affect the public interest.¹⁸⁰

A paper titled “the Moral Foundations of Criminal Liability” by Mouaid Al Qudah. It is quite different from other academic sources about theory of criminalization because the paper does not aim to provide a general theory of criminalization but it focuses on and explore some moral principles and concepts which serve as a foundation and justification for criminalization and the imposition of criminal liability. In this paper, with a general question “what is a crime?” However, the answer is still not obvious. Therefore, an exploration of the moral foundations of criminal liability through answering this question has been considered from two possible perspectives: positivist theory and non-positivist theory.¹⁸¹

Positivism defines crime and provides a justification for the criminalization of certain behaviors and the imposition of criminal liability is on factors outside the scope of morality.¹⁸²

¹⁷⁹ *ibid* 178.

¹⁸⁰ *ibid* 178.

¹⁸¹ Al M Qudah, ‘The Moral Foundations of Criminal Liability’ (2014) 2 Intellectual Properties Rights 116.

¹⁸² *ibid* 181.

On the other hand, non-positivist theory seeks to provide a moral justification for criminalization and the imposition of criminal liability. This theory involves in the protection individual autonomy, individual rights, community, welfare and the underlying issue of harm in its various forms.¹⁸³

*“For instance, it is a crime to infringe upon an individual’s right to life by killing, right to personal safety by causing physical injury, and right to property by stealing or causing damage to it. Furthermore, the emphasis on the prevention of harm to the general welfare and common good of the community has resulted in actions such as causing pollution and producing unsafe products being denounced and criminalized by criminal law. Moreover, the justification for the criminalization of certain offensive behaviors lies in maintaining the common morality of a society. These theories which seek to address the question ‘what is a crime’ largely focus on the outcome or potential outcome of the behavior. This is apparent from the focus on the consequences affecting an individual as a victim of crime, in terms of an interference with individual autonomy or particular rights. The theories also conceive of the community as being the victim of criminal activities, in terms of an interference with community welfare or social cohesion. However, it is clear that the focus on the consequences or potential consequences of the criminal behavior fails to provide an adequate theory of why an individual can be convicted of a criminal offence when they may not have physically carried out the actions which in themselves caused the criminal consequence. It is apparent that the exercise of individual autonomy to influence the individual autonomy of another (a co-offender or an innocent agent) is an important reason for criminalizing complicit behavior. Noticeably, criminal law is not only concerned with the criminalization of harmful conduct and its consequences (which has largely been the focus of this paper), but also with explaining why the actor should be held accountable for such conduct and consequences”.*¹⁸⁴

¹⁸³ *ibid* 181.

¹⁸⁴ *ibid* 181.

In this part, the author is not going to mention about sex toys but cannabis instead upon author's review from an article of Mesnard from University of London discussing about illegal cannabis market evictions. Cannabis have similar matters with sex toys in respect of law. Cannabis can be used for both medical and recreational objectives but as medical objectives, it is more globally applicable so far when compared with sex toys.¹⁸⁵

Therefore, the use of cannabis for creational objectives is now focused in this study since there is a relation between perspective of law and economics that the owner of this article aimed to propose. Mesnard has given the perspective of legalization of cannabis by mentioning that the benefits of legalization on cannabis is worthier than prohibiting through organizations established for controlling illegal market.¹⁸⁶

To legalize cannabis efficiently, it will decrease crime and the rule of law stronger. Besides, the legalization will prevent accessibility of young people from cannabis. Hence, the quantity of consumption of cannabis may also lower as well. Moreover, government is able to utilize the legalization as a way to gain taxes for the state.¹⁸⁷

The price of cannabis is connected to a consumer's demand. The article proposed that legal cannabis must be managed by price including production or distribution costs in order that illegal cannabis and its relevant activities could be eliminated as eviction price. In this proposal, the cannabis users would have a lower interest in illegal cannabis and it then becomes a price mechanism the same as normal

¹⁸⁵ Alice Mesnard, 'Economics of Legalizing Cannabis – Pricing and Policing and Policing are Crucial' (The Conversation, 29 July 2019) <<https://theconversation.com/economics-of-legalising-cannabis-pricing-and-policing-are-crucial-119914>> accessed 28 December 2019.

¹⁸⁶ *ibid* 185.

¹⁸⁷ *ibid* 185.

goods sold in legal market combined with the government sanctions by policies to control consumption.¹⁸⁸

On the other hand, the governments may use to increase the eviction price are to deter consumers from buying illegal cannabis through enforced sanctions or warning them against the dangers of using illegal cannabis compared to high-quality, safe products supplied on the legal market.¹⁸⁹

There is an evidence proving that high quality-cannabis which is illegally sold in London at a rough price (because there is no standard for price control under the law or rule). In meanwhile, the price of illegal cannabis in the US is up to three times when compared to production cost based on the US market. This is why the proposal of this article should be considered. The combination must be applied for the right balance between reducing criminality and avoiding increases in cannabis consumption under legalization.¹⁹⁰

The article is also based on Mesnard and her colleagues' research which was inspired by cannabis legalization in Canada and Uruguay. The stated objectives in both countries was to combat drug-related crime. The evidence from Canada suggests that illegal transactions linked to the black market shrunk as a result of legalization. However, the combat did not work so well because the illegal market still persists due to a shortage of legal cannabis. This is the reason that to propose more effective policies to control the overall consumption of cannabis. Therefore, more effective policies is suggested to propose to control the overall consumption of cannabis, not only focus on eliminating the illegal market without other policies to support. Government could gain more income from selling and taxing legal cannabis so that it may enable the police to reallocate their efforts towards other crimes, improving police effectiveness against class-A drugs and non-drug crimes.¹⁹¹

¹⁸⁸ *ibid* 185.

¹⁸⁹ *ibid* 185.

¹⁹⁰ *ibid* 185.

¹⁹¹ *ibid* 185.

An article provided by Dubber aims to analyze moral issues regarding the offence of incest in particular through his article named Constitutional Law and The Criminalization of Incest.¹⁹²

Incest may provoke health issues such as public, genetic and psychological as it is an important aspect of the public policy. It is most frequently voiced health-related rationale referred to the possibility of genetic defects in the children of an incestuous relationship. However, Empirical evidence for this claim has been hard to come by and this would not distinguish children of relatives from children of other persons who are more likely to produce genetic defects in their offspring. Alternatively, the health rationale is framed not in public but in individual terms.¹⁹³

“From this more general perspective, what matters is not that incest is an offence against the moral police but that it is an offence against police, not that it is a morals offence but that it is a police offence.”¹⁹⁴

Offenses related to sex under the Thailand Criminal Code, sexual intercourse between relatives which has been committed or reserved for without consent or rape only, that is to say, according to Thailand Criminal Code, sexual intercourse that offenders commits without the other party’s consent. This is called a violation of rights and a violation of severe physical freedom of others. Such action is a violation of sexual freedom.¹⁹⁵

¹⁹² Markus D Dubber, ‘Policing Morality: Constitutional Law and the Criminalization of Incest’ (2011) 61 University of Toronto Law Journal 737-759.

¹⁹³ *ibid* 192.

¹⁹⁴ *ibid* 192.

¹⁹⁵ Kanit Na Nakorn, *Criminal Law: Offenses* (Thammasat University Press, 2000) 186.

Incest is taboo but with consent between both party. It is not an action committed against Thailand Criminal Code even though such action is condemned and against public morality severely (immorality).¹⁹⁶

Sir Peter Gross or Lord Justice Gross, the Senior Presiding Judge for England and Wales made his speeches as a lecture for conference titled “What is Crime?” which are expressed from his own. He mentioned that the title provides a wonderfully broad canvas. In spite of dictionary definition, the meaning of crime is still quite stuck for the discussion.¹⁹⁷

Crime is referred to a universal purpose for criminalization or by identifying some universally accepted ingredients such as public wrongs and harms would be extremely difficult. However, practical terms can be into consideration on the process and likely outcomes. He added that crime does not rely on private rights or corresponding private wrongs.¹⁹⁸

“[T]he function of the criminal law is to preserve public order and decency, to protect the citizen from what is injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are especially vulnerable ... It is not the function of the law to intervene in the private lives of our citizens.”¹⁹⁹

However, he did not really mean to seek the answer for the question but explore and present different perspectives regarding the limits of crime though his

¹⁹⁶ Supatra Yodkhul, ‘Offense of Incest’ (LL.M. Thesis Thammasat University 2015) 77.

¹⁹⁷ Peter Gross, ‘What is crime?: A lecture for the ‘The Limits of Criminalisation’ (Courts and Tribunals Judiciary) <<https://www.judiciary.uk/wp-content/uploads/2014/05/spj-speech-limits-criminalisation-conference-250414.pdf>> accessed 5 December 2019.

¹⁹⁸ *ibid* 197.

¹⁹⁹ *ibid* 197.

question in the conclusion. He emphasized about the scope and the limitation of objective harm as distinct from comprising the means by which society enforces its moral standards. Moreover, he emphasized the scope, limitation and range for criminalization regarding harm to other and an effect of the public health on criminal law through consideration.²⁰⁰

3.3 Relationship between Law and Public Morals

Public morals can always be seen as a principal justification in laws against pornography or obscene materials in many countries. It is difficult to provide the obvious definition because the meaning of public morals is broad and can be changed upon government policy, social conditions, economy, and the change of public perspective over time.

In Thailand, there is plenty of news concerning the arrest of sex toy vendors. In the news, sex toys are often claimed that they are offensive against public morals. For instance, a Thai girl was arrested for allegedly selling sex toys via facebook. The police addressed after the arrest that sex toys are a harmful cause to society and part of sexual crime which could be a cause of many social problems.²⁰¹

Public morals is referred to an action that may affect negatively to society under moral and ethical standards enforced in a society, legal structures, or social pressure, and applied to public life, to the content of media and to conduct in public places. The idea of morality comes from different perspectives by considering on the most desirable individual benefits. The definition of public morality is quite wide and may raise controversy and debate in public policies. The India Constitution's framers, people who were sent by the state legislatures to attend the Constitutional Convention and were assigned the task of revising the contents of constitution, have

²⁰⁰ *ibid* 197.

²⁰¹ 'A sex toy woman vender on facebook arrested, high income gained until more warehouse rented for stocking sex toys' (Daily news, 6 July 2017) <<https://www.daily news.co.th/regional/583898>> accessed 14 December 2018.

provided open space which does not define public morality in a straight manner since because it is subject to juridical interpretation responding to the changing demands of time.²⁰²

There are controversies discussing about sex toys and public morals. Anti-obscenity statutes enacted by governments in a few states of the United States of America including Alabama, Mississippi, and Virginia. The purpose of such statutes was based on “Public Morality” following traditional Christian ideals that sexual intercourse between men and women is the only way of sex activity for procreation. However, there was an argument supporting sexual privacy under the US Constitution which usually guarantees that people may have freedom of expression and speech. Either heterosexual or homosexual intercourse is still collectively deemed as sexual intercourse. Sexual privacy could extend to the right to use sex toys as part of the freedom of sexual expression.²⁰³

The use of sex toys is a sexual behavior of any individual in the privacy of its own home. Government may not infringe upon individual right to private sexual conduct on public morality grounds. Considering sexual behavior as immoral is insufficient to support the prohibition on individuals’ decisions concerning the intimacies of their physical relationships. However, the statutes are suitable for minors who can be easily coerced, may not easily refuse consent, public conducts, or prostitution as potentially valid.²⁰⁴

However, there are findings discovered that pornography is not consistently associated with sexual crimes or sexual offences. To legalize pornography

²⁰² Ranjita Chakraborty, ‘Managing Public Morality: The Politics of Public Policy in India’ (2009) 2 The Indian Journal of Political Science 1099-1108.

²⁰³ *ibid* 202.

²⁰⁴ Michael Maselli, ‘The War on Sex Toys’ (Seton Hall University) <https://scholarship.shu.edu/student_scholarship/64> accessed 30 November 2018.

material has more positive effect than negative effect. The limit of sexual expression or sexual orientation is a main element of sexual crime.²⁰⁵

Courts are an important institution where having a role to give to political efficacy to elite intellectual views that lack the necessary support to be successful in the ordinary political process, because it dramatically shifts the burdens of legislative inertia to proponents of public morality, and because it establishes the legal norms that indirectly but powerfully contribute to the formation of future public opinion.²⁰⁶

The issues involved in public morality including polygamy, adult incest, no-fault divorce, pornography, drug use, prostitution, adultery, fornication, contraception, homosexual acts, bestiality, suicide, assisted suicide, euthanasia, gambling, drunkenness, animal cruelty, desecration of corpses, public vulgarity, public nudity, abortion, dueling, gladiatorial contests, and sumptuary laws.²⁰⁷

However, some of these issues have been harmful as the paper mentions that “[s]ome of these issues are closer to the focal cases of public morality than others”.²⁰⁸

Their closeness to the central issue varies along four types: from more serious to less serious evils, from more to less "self-regarding," from more strictly moral harms to mixed physical/moral harms, and from more strictly moral harms to harms involving offensiveness to others.²⁰⁹

²⁰⁵ Milton Diamond, ‘Pornography, public acceptance and sex related crime: A review’ (2018) 5 International Journal of Law and Psychiatry 304-314.

²⁰⁶ Christopher Wolfe, ‘Public Morality and the Modern Supreme Court’ (2000) 1 American Journal of Jurisprudence 65-92.

²⁰⁷ *ibid* 206.

²⁰⁸ *ibid* 206.

²⁰⁹ *ibid* 206.

3.3.1 The Exception of the Public Morals under Article XX (a) of GATT

1994

Public morals is not only applied to legislation at national level but also applied to laws at international level in General Agreement on Tariffs and Trade (GATT). Public morals is specified as Public Morals Exception under Article XX (a) of the GATT.

WTO members are able to maintain trade-restrictive measures under the Article XX (a) of GATT in case of necessity to protect public morals in accordance with the requirement of General Exceptions under Article XX specifying that WTO members may adopt measures for restrictive trade practice by protecting their societal values and interests with necessary reasons even though the applied measures are inconsistent with rules and regulations of GATT but WTO members are obligated not to apply the exceptions listed in paragraph (a) to (j), specified clause of the Article arbitrarily or unjustifiably resulting in discrimination between WTO members where same conditions prevail and that the measures does not amount to disguised restrictions on the international trade.²¹⁰

“[S]ubject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.”²¹¹

The WTO panel in *United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services (US – Gambling)* noted that the

²¹⁰ Andrew J Kelly, ‘GATT Obstacle: International Trade as a Barrier to Enforcement of Environmental Conservation on the High Seas’ (1988) 12 Florida Journal of International Law 157-159.

²¹¹ ‘Analytical Index of The GATT’ (World Trade Organization) <https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art20_e.pdf> accessed 30 November 2018.

content of the concept of public morals can vary in time and space, depending upon a range of factors, including prevailing social, cultural, ethical, and religious values.

A controversial issue has arisen in South Korea concerning the ban of import on life-size sex dolls through a petition under the concern about public morals. The details in petition described that the sex dolls can be modified by replicating real people or celebrities faces without consent. While the Seoul High Court has formerly decided that sex dolls are manufactured for personal use and should not be restricted same as pornography under South Korean Law. The decision was later upheld by Korea Supreme Court.²¹² Moreover, such petition has proposed to South Korean President Moon Jae-In on July 8, 2019 and currently pending.²¹³

Sex toys are not illegal in South Korea. There are many sex toy importers and manufacturers in South Korea.²¹⁴ Adult shops are also available in main streets of high-profile spots such as Itaewon, Gangnam, Hongdae, and Myeongdong.²¹⁵

3.3.2 Offences against Public Morals and Infringement of the Right to Privacy

The criminalization of sex toys using public morals as justification causes sex toys to be viewed as shameful things implicitly and unacceptable in society, even though the use of sex toys is under the right to privacy. It also could make some

²¹² ‘Court Ruling Allowing Life-Size Sex Dolls Amasses Widespread Backlash in South Korea’ (The Independent, 3 August 2019) <<https://www.independent.co.uk/news/world/asia/south-korea-sex-dolls-porn-taboo-seoul-high-court-moon-jae-in-pornography-a9037116.html>> accessed 22 November 2019.

²¹³ ‘National Petition’ (The Republic of Korea, Cheong Wa Dae) <<https://www1.president.go.kr/petitions/581300>> accessed 22 November 2019.

²¹⁴ Yi Whan-woo, ‘Sex toy market is growing rapidly’ (The Korea Times, 11 May 2014) <https://www.koreatimes.co.kr/www/nation/2023/09/719_156838.html> accessed 22 November 2019.

²¹⁵ Yeji J Lee, ‘A Look Inside the Thriving Adult Shops of South Korea’ (10 Magazine, August 10, 2018) <<https://10mag.com/a-look-inside-the-thriving-adult-shops-of-south-korea>> accessed 22 November 2019.

people view the individual use of sex toys as a sin which may cause social or cyber bullying. The right to privacy of people who are found using sex toys could be violated and be bullied.

There was a case about the infringement of right to privacy on sex toy issue in Thailand. Four employees of Kerry Express Thailand opened a female customer's damaged parcel which contained sex toys without permission. The employees took pictures of the sex toys and one of four employees posted the pictures on social media with bullying captions. The post also persuaded other people to give bullying comments and ask for the customer personal information. These actions of the four employee caused suffering to the customer and made her thought of committing a suicide. Kerry Express Thailand is a delivery company that four employees were working for, immediately laid off them, and assisted the customer for all possible legal actions against the employees because their actions violated the company ethics.²¹⁶ This case has been finally resolved. On the other hand, if this situation was to happen to other victims of bullying that has no assistance from concerned third party or corporate ethical issue involved, the bullied would probably in severe distress.²¹⁷

This should be a case study that can be a guideline for legislation on sex toys in order to protect the right to privacy of using sex toys. While Thai society is opened wider towards sexuality, criminal law should be able to interpret the transactions regarding sex toys fairly and optimally.

Infringement of right to privacy can be also considered as a crime that possibly cause negative effects to other people. "Various types of personal information often come under privacy concerns. For various reasons, individuals may

²¹⁶ 'Delivery employee laid bare sex toys in damaged parcel' (Bangkok Post, 30 April 2019) <<https://www.bangkokpost.com/thailand/general/1669568/delivery-employee-laid-bare-sex-toys-in-damaged-parcel>> accessed 1 May 2019.

²¹⁷ Ivneet K Walia, 'Infringement of Right to Privacy as a Crime' (2010) SSRN Electronic Journal <<http://dx.doi.org/10.2139/ssrn.1591081>> accessed 1 September 2023.

not wish for personal information such as their religion, sexual orientation, political affiliations, or personal activities to be revealed. This may be to avoid discrimination, personal embarrassment, or damage to one's professional reputation.”²¹⁸ The use of sex toys reflects sexual orientation. Therefore, the proper balance between two negative effects from the ban and the use of sex toys shall be achieved. Banning sex toys may infringe right to privacy; while allowing sex toys may cause harm to society.

3.4 The necessity of knowledge on sex toy use

Instructions for the use of goods or any appliances are usually necessary for users to utilize their goods properly to achieve the purpose that goods are intended for. If the users have a lack of knowledge in using the goods, they may not obtain the benefit sufficiently or even may be harm in the worst case.

The use of sex toys is no exemption. There was a case of lack of knowledge using penile ring to increase penis size. A penis ring stuck a man's penis. He could not take the ring off by himself, then medical operation needed. A doctor indicated that it was probably caused by penile ischemia.²¹⁹

When sex toys are considered as pornography under the interpretation of section of 287 of Thailand Criminal Code, it induces low quality sex toys to be imported by smuggling and being sold at a higher price in a black market than a non-intervened market price. However, the higher price of sex toys is still in acceptable price range for purchasers. High quality sex toys are driven out of the black market and are not in target of smuggling because the pricier prices could be far too high to get anyone to buy. Lower quality products usually came with limited or no instruction since their producers need to save costs and they have incentive to hide or not reveal important information about the products from customers, otherwise, customers may realize that

²¹⁸ *ibid* 217.

²¹⁹ ‘Using a penis ring as a fashion, more use more worse. Expert says helpless for sexual sensation. ‘(Manager Online, 28 November, 2018) <<https://mgronline.com/live/detail/9610000118823>> accessed 1 May 2019.

their products are of low quality. Consuming lower quality products prevents consumers to have proper and sufficient knowledge on goods they are consuming and they might be exposed to a certain operational risk. Again sex toys are not exempted from this threat. Moreover, because sex toys are illegal, consumers are not protected by product liability law as well.



CHAPTER 4

ANALYSIS OF LAWS ON SEX TOYS AND SEX TOY MARKET IN THAILAND

The aim of this Chapter is to analyze factors affecting the sex toy market in Thailand, since the effectiveness of legislation and law enforcement seem not sufficient to completely prohibit the availability of sex toys as obscene objects or pornographic materials by any means under Thailand Criminal Code and Customs Act, B.E. 2560 (2017).

This Chapter composes the status of sex toys in Thailand under laws and regulations under Criminal Code and Customs Act considering as obscene objects or pornographic materials. Nevertheless, its enforcement is not effective as it intended.

News on apprehension of sex toys mentioned in this Chapter indicate potential huge demand for sex toys in Thailand. Some consumers are equipped to pay an expensive or a higher price for acquiring sex toys upon their sexual desires.

Collected information on numerical data and diagrams are employed to explain a consistency of the sale of sex toys even though many sex toys sellers or dealers have been arrested previously but there are still selling sex toys.

Sex toys are categorized in pornography since there is no specific laws and regulations on them; thus, “Pornography versus Sex Toys” are being analyzed in this Chapter because there is a matter of interpretation and judgment involved.

Becker’s Model is mentioned in this Chapter as well to analyze a criminal act and show a motivation of committing a crime for a criminal and an effective alternative to deter a crime in a parallel to reserve society costs at the same time.

4.1 Pornography *versus* Sex Toys

The definition of pornography under the Thai laws is focusing on viewer's feelings and mind.²²⁰ Its definition has been extended to implicitly include sex toys as they are types of objects that can stimulate sexual desire as mentioned in Section 287 of Thailand Criminal Code.

Since there is no objective definition for pornography, to consider what can be interpreted as pornography according to Section 287, Supreme Court's decisions are examined. The precedent set by the Supreme Court defines "pornography refers to a thing that causes feelings of disgracefulness, indecency, vulgarity to viewers and induces to lasciviousness. In the majority of such pornography appear in forms of images of naked human, human (male or female) genitals, sexual intercourse, or a description that leads to imagination on lasciviousness. In case of the classification of pornography as art, such as drawings of naked women body shape with genitals painted faded or blurred to not look disgusting, disgraceful, and induce to lasciviousness when being seen by viewers, it is not considered as pornography".²²¹

In Thai laws, sex toys are considered as "pornography," being classified in the same category of pornographic media and "any obscene materials:" drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematographic film, audio and video tapes, or any other thing which is obscene. In any case, these are collectively called "pornography".

Thailand's Royal Institute Dictionary provides the meaning for pornography that it is vulgar, indecent, disgusting to moral people such as pornographic books, words, or acts. Pornography or *la-mok* is influenced by Pali (read as La-ma-ka) which means badness, depravedness, vulgarity, and sin. In Thai ancient documents,

²²⁰ Naring Jaiharn, 'The Meaning of Obscene Things' (Thammasat University) <<http://www.tulawcenter.org/sites/default/files/Nitisat%20Journal%20Vol.16%20Iss.2.pdf>> accessed 12 September 2017.

²²¹ Supreme Court Judgment No. 1223/2508<<http://supremecourt.or.th/search>> accessed 25 July 2023.

pornography has several meanings in vicious ways: depraved, vulgar, inauspicious, or evil.²²²

Narong Jaiharn has given the meaning of pornography as a thing that may cause viewers to feel disgusting and disgraceful when seeing, leading to sin and sexual desire. Pornography mostly exposes image of human naked bodies, male and female genitals, or human sexual activities, or narrations to stimulate imagination of sexual intercourse which is not for academic purpose which can be perceived to be produced for sexual arousal.²²³ However, there is no specific definition providing to explain or clarify specific structure of pornography in each type in writing for initial consideration but available only the meaning provided that what pornography is.

When speaking to a role of pornography which should be about the cause of libido. Pornography is mostly represented as an image of human naked body or any media showing sexual activities for the purpose of causing sexual desire.²²⁴ Of course, if these are shown in public. Viewers may have the feelings as mentioned in above paragraph.

On the contrary, sex toys are devices to relieve libido. Even they are available in public, it would hardly cause people nearby to get aroused while seeing the toys. Some shapes of sex toys cannot even be recognized as well.

Section 287 of the criminal law was established to maintain order in the society with the intention of both the good of society and the legal consequences of pornography which is a sexual provocation, has an effect of inducing consumers to express their sexuality or doing sexual acts against other people leading to social problems.

²²² ‘Royal Institute Dictionary Online’, Office of the Royal Society <<http://www.royin.go.th/?knowledges=ลามก-13-สิงหาคม-2555>> accessed 28 June 2019.

²²³ Narong Jaiharn, ‘The Meaning of ‘Pornography’ in Legal Terms’ (2016) 1 Nitisat Journal 125.

²²⁴ Ithipol Preetiprasong, ‘Due to the Criminal Code, Section 287’ (Go to know, 28 March 2012) <<https://www.gotoknow.org/posts/101055>> accessed 25 July 2022.

A study from an Article in Psychology Public Policy and Law under a subject Objectivity is a Myth for You but Not for Me or Police: A Bias Blind Spot for Viewing and Remembering Criminal Events, shows perceptions in legal interpretation on criminal which could be a probable cause of inaccurate legal interpretation.²²⁵

Interpretation bias becomes a crucial effect for judgment on crime; beliefs, past experiences, and emotions. Sex toys, they are invented for specific purposes. But due to interpretation bias as they are involved with sexual activities, relating to beliefs in the past that sex was taboo things. This has caused a blind spot that sex is nature for human beings. Everyone has their own right to their own body.

Even the Thailand Criminal Code as previous said, it has not up to date for subcategory of things relating sex toys to specify a appropriate penalty properly. For instance, in term of pornography in mass media or any representation of sexual behaviour sexually explicit materials intended to arouse the reader or viewer includes speech, writings, statues, pictures, images, or films. It would say this involves to disgusting, disgraceful, and induce to lasciviousness when being seen by viewers.

On the other hand, sex toys are for specific purposes basically. As known in Chapter 2 that sex toys themselves are unable to sexually arouse viewers yet for using when users need them to relieve their libido by touching. However, age restriction for purchase can be set in the law.

We can see that there are methods to control sexual materials in appropriate status if the interpretation is legally accurate. Interpretations are very important for legislation and for fairness to society. Multiple interpretations, are constantly causing conflicts in society as long as the blind spot which are from beliefs or bias in remains.

Time has changed. The interpretation of Thai Criminal Code may be not applicable properly in the present time. Court keeps using precedents to deal with new cases. Undoubtedly, controversy have been constantly occurring among law and

²²⁵ Kristyn A Jones, William E Crozier, and Deryn Strange, ‘Objectivity is a myth for you but not for me or police: A bias blind spot for viewing and remembering criminal events’ (2018) 2 Psychology, Public Policy, and Law 259–270.

people. Sex toys are just devices to relieve libido or to satisfy sexual desire whenever users have the feelings of it, but there are not devices that arouse or stimulate people to have libido to cause a harm to anyone. Especially, there are sex toys in many shapes which are not alike sexual organs at all but they are considered as offenses against the law. We can see that the consideration on apprehension of sex toys are still occurring through law enforcers and people accept or need to accept their consideration and judge.

The difference between subjective and objective interpretation which has an influence to interpret circumstances in court becoming an issue of misunderstanding among people under the same object or situation. For the latter topic, subjective and objective “*Mens Rea*” are discussed below.

Subjective *mens rea* is about defendant’s mind and an internal view in mind.²²⁶ On other hand, objective *mens rea* is about detecting defendant’s intent from external view or what apparent to the third party (in which the court included). The difference is for a clarification on defendant’s intent if they have committed a crime or not.²²⁷

In term of definition of *mens rea*, it is unavailable in a criminal statute. Similar to a word of pornography which has been remaining ambiguous, the prosecution uses case laws when dealing with new cases. This makes the law controversial sometimes. It is supposed to be clarified and separated methods or forms of explaining for mutual understanding.²²⁸

Law can hardly filter apparently subjective elements out of any such determination. Even the Court assumed an arresting officer’s consideration is always objective.²²⁹

²²⁶ Jonathan Herring, *Concentrate Criminal Law* (6th edn, Oxford University Press, 2018) 32.

²²⁷ *R v Woollin* [1999] AC 82.

²²⁸ *R v Moloney* [1985] AC 905.

²²⁹ ‘Differences between Subjective and Objective in Mens Rea’ (LawTeacher, November 2013) <<https://www.lawteacher.net/free-law-essays/criminal-law/differenc>

4.2 Interpretation and Judgment on Pornography

Pornography or *la-mok* in Thai meaning has a very broad meaning. Since the general meaning of pornography is available but there is no specific definition in legal term, it is, therefore, inevitable that law enforcing and judicial personnel have to assert subjective interpretation towards current and relevant circumstances.²³⁰ Similarly, the judgment on pornographic images could be varied because there are different standards of obscenity in different countries. Whether contents of pornographic images meet obscenity standards and are deemed as pornography are subject to laws or judgments in respective jurisdictions, the precedent by Supreme Court Judgment then shall be applicable to relevant legal norms for the judge on pornography since there is no legal norms for the judge on pornographic images as pornography in legal provisions.²³¹

It is suggested that a principle for consideration on pornography must be based on a person of ordinary prudence's standard in current social perspectives with moral standard in middle range. By seeing and being able to consider on what (s)he sees if it is disgraceful, depraved, and with a purpose of lust, differentiated from art or medical purpose.²³²

In case of Honorable Surrogate Penis,²³³ or well known in Thai as *Palad Khik*, which is a kind of Thai amulet in the shape of penis, crafted upon Thai people's

es-between-subjective-and-objective-in-mens-rea-7716.php?vref=1> accessed 10 March 2019.

²³⁰ Panadda Peecharoen (n 5).

²³¹ Jompon Pitaksantayothin, 'Pornographic Images: Obscenity Laws and Morality' (2006) 1 Journal of Social Sciences, Naresuan University 81-83.

²³² *ibid* 231.

²³³ Madonna Gauding, *The Signs and Symbols Bible: The Definitive Guide to Mysterious Markings* (Sterling Publishing, 2009) 347.

beliefs, it is not deemed as pornography or an obscene material by law, because it is considered and viewed as holy, for a purpose of worship, and related to religious beliefs.²³⁴ However, Thai laws do not specifically address an exception for other materials designed in genital shape under specific purposes. Even though *Palad-khik* does not bring disgraceful feelings to some individuals but it still possibly causes a disturbance to other individuals or viewers when seeing it due to its phallic shape.²³⁵

However, both sex toys and Palad-Khik have their own purpose in use. Sex toys normally are used when people want to relieve their libido, not to cause them to have a libido for personal use in private area or residence without causing a disturbance in public. No harm to other people at all. Also, Palad-Khik is used for an individual belief in some people who has a faith in it. It also may be perceived that libido would not be active when people seeing by its conditions.

Therefore, the law is suggested to consider and focus on purpose and negative effect which may cause to society by specifying or narrowing the definition of pornography in order to reduce controversy and correspond to the change of time.

²³⁴ Pitya Bunnag, 'Palad Khik and Ong Kha Chat' (Silpa-Mag, 28 May 2022) <https://www.silpa-mag.com/history/article_9760> accessed 30 June 2019.

²³⁵ *ibid* 234.

4.3 Legal Status of Sex Toys in Thailand

As mentioned in 3.1.1.1, there are two primary laws governing sex toys in Thailand: Section 287 of Penal Code (Prohibition of Production, Possession, Sales and Distribution of Obscene Items) and the Customs Act B.E. 2560 (Section 242: Avoidance of Customs Procedures; Section 244: Avoidance of Restrictions and/or Prohibition of Goods; and Section 246: Disposal of Goods violating Section 242 and 244). Therefore, sex toys are completely banned in Thailand and it is a crime to make, possess, transact, and/or distribute them domestically and internationally.

4.4 Ineffectiveness of Penalties on Sex Toy Distribution

Besides the issue of law enforcement, severity of penalty should be also considered in the availability of sex toy market in Thailand. News reports^{236, 237, 238} concerning the apprehension of sex toy vendors frequently publicized that impounded sex toys seized by law enforcement agencies were often in high value (more than 1,000,000 Thai Baht) while the amount of fine imposed under Section 287 of Thailand Penal Code is only 60,000 Thai Baht maximum. There is no evidence and information showing further legal action in court or imprisonment. However, sex toy stalls, which

²³⁶ ‘Sex Toys Warehouse Worth Over 1 Million Thai Baht Impounded and Comprehended, publicly available on sale via Facebook and Line Application’ (Thairath Online, 1 July 2021) <<https://www.thairath.co.th/news/crime/2129277>> accessed 2 July 2021.

²³⁷ ‘A Sex Toy - Aphrodisiac Dealer Arrested with 2,500 Items of Exhibit Worth Millions Baht’ (Khaosod Online, 3 April 2019) <https://www.khaosod.co.th/breaking-news/news_2378166> accessed 2 July 2021.

²³⁸ ‘2 Sex Toys Dealer Guys arrested with 5,000 Items of Exhibit Worth 3 Millions Baht’ (PPTV Online, 17 August 2021) <<https://www.pptvhd36.com/news/อาชญากรรม/154228>> accessed 18 August 2021.

have been detected and seized, are still currently existing. This indicates that the fine is unable to deter sex toy vendors to re-engage their criminal activity.

To show the potential market value of Sex Toy can be indicated by the calculation the potential market value of Sex Toy based on Becker's model: The Economics of Crime and Punishment as described earlier in Chapter 3.

By giving a numerical sample, the seller invests 1 million Thai Baht. Since they know that they would gain the expected benefits exceed the expected costs. Meaning that they would earn benefits from selling each type of sex toys up to 50-100% as shown in Table 4.2 or in multiples.

Including the costs of any foregone legal alternatives, the punishment comes with imprisonment not exceeding three years or fined not exceeding sixty thousand (60,000) Baht, or both. When comparing to the gains and losses, it is clearly seen the effect on their decisions.

Moreover, law case relating sex toys in search of pornography or any words in searching about sex toys is not found on Supreme Court Judgments website.²³⁹ This could be assumed that sex toy case probably ended up with the fine penalty. The seller are assumed to allocate time to criminal activity as the marginal benefits exceed the marginal costs.

However, it found 2 law cases with a keyword of pornography or *wat thu la mok* in Thai in term of tape or television material as a business or for a benefit.

Roughly, expected benefits is a million baht. What if they have been fined for 60,000 Baht. It can be calculated in 6% as a percentage and the rest would be the cost of smuggling and a bribe provided to some law enforcers. Even though there is no number of bribe reported. The total price of sex toys are determined upon the bribe they shall pay.

However, It can be assumed that the gap between marginal costs and marginal benefits are still at the seller's acceptance after paying all relevant costs as

²³⁹ Supreme Court Judgment No. 2610/2023 <<http://supremecourt.or.th/search>> accessed 25 July 2023.

a win-win situation. Consumers would be an individual who inevitably bears exceeded costs beyond legal market price and the risk of low-quality due to their demand.

Therefore, if no court in legal actions but either the fine penalty paid or a bribe to smoothen their sex toy business due to the illegalization. The seller shall spare a portion of their marginal benefits for either the bribe or the fine penalty. That could be an explicit cause for the reason why illegal sex toy in Thailand is higher than legal sex toys.

Table 4.1 Supreme Court Judgments and Sentences of Thailand on Criminal Code 287

No	Supreme Court Judgment Reference	Offences	Final Judgment
1	3213/2526 ²⁴⁰	The possession a pornographic video tape for the purpose of trade by charging customers a rental fee.	Suspended sentence and the exhibits are not confiscated.
2	2875/2531 ²⁴¹	The public showing or display of pornographic images via film tapes for purposes of commercial advantage.	Imprisonment for 3 months, a fine of 2,000 baht, a suspended sentence of 2 years, the exhibits are confiscated.

²⁴⁰ Supreme Court Judgment no. 3213/2526 <<http://deka.supremecourt.or.th>> accessed 30 June 2023.

²⁴¹ Supreme Court Judgment no. 2875/2531 <<http://deka.supremecourt.or.th>> accessed 30 June 2023.

Table 4.1 Summary table of the Supreme Court Judgments and Sentences of Thailand on Criminal Code 287 (Cont.)

No	Supreme Court Judgment Reference	Offences	Final Judgment
3	3510/2531 ²⁴²	The possession and distribution of obscene publications for the purpose of commercial advantage as a means of books.	Due to the defendant's confession, the punishment is reduced a half for 1 month imprisonment and 15 days a fine of 1,500 baht, and an imprisonment suspended for 1 year as the defendant has not done an offence before.
4	6301/2533 ²⁴³	The production and possession of a pornographic print which is an image with the intent to provoke a direct carnal desire.	Imprisonment for 6 months and a fine of 4,000 Thai Baht. A suspended sentence of 2 years for imprisonment. Failure to pay the fine to be dealt with according to the Criminal Code section 29, 30. (The defendant shall pay the fine within 30 days from the date of this judgment.) The exhibits are confiscated.

²⁴² Supreme Court Judgment no. 3510/2531 <<http://deka.supremecourt.or.th>> accessed 30 June 2023.

²⁴³ Supreme Court Judgment no. 6301/2533 <<http://deka.supremecourt.or.th>> accessed 30 June 2023.

Table 4.1 Summary table of the Supreme Court Judgments and Sentences of Thailand on Criminal Code 287 (Cont.)

No	Supreme Court Judgment Reference	Offences	Final Judgment
5	2205/2545 ²⁴⁴	Proliferation of pornographic Video-CD Movies and and obscene materials for the purpose of trade.	Fine 500 baht. Failure to pay the fine to be dealt with according to the Criminal Code section 29, 30. (The defendant shall pay the fine within 30 days from the date of this judgment.)
6	1552/2546 ²⁴⁵	Distribution of pornographic Video-CD Movies	Imprisonment for 6 months and a fine of 6,000 Thai Baht. The punishment is reduced a half for 6 months imprisonment and a fine of 6,000 Thai Baht due to the defendant's confession. Imprisonment suspended for 2 years. In case of failure to pay the fine to be dealt with under the Criminal Code, sections 29

²⁴⁴ Supreme Court Judgment no. 2205/2545 <<http://deka.supremecourt.or.th>> accessed 30 June 2023.

²⁴⁵ Supreme Court Judgment no. 1552/2546 <<http://deka.supremecourt.or.th>> accessed 30 June 2023.

Table 4.1 Summary table of the Supreme Court Judgments and Sentences of Thailand on Criminal Code 287 (Cont.)

No	Supreme Court Judgment Reference	Offences	Final Judgment
			and 30 (The defendant shall pay the fine within 30 days from the date of this judgment.). The exhibits are confiscated.
7	3278/2554 ²⁴⁶	Proliferation of obscene materials	Imprisonment for 2 months, a fine of 5,000 baht, an imprisonment suspended for 1 year as the defendant has never been imprisoned before. Imprisonment suspended for 2 years according to Section 56 of the Criminal Code. In case of failure to pay the fine to be dealt with under the Criminal Code, sections 29 and 30 (The defendant shall pay the fine within 30 days from the date of this judgment.)

Note: Summarized by the author

²⁴⁶ Supreme Court Judgment no. 3278/2554 <<http://deka.supremecourt.or.th>> accessed 30 June 2023.

In conclusion, all of the Judgments upon pornography as shown above, offenders have a punishment of a fine minimum of 500 Baht and maximum of 6,000 Baht and have a punishment of imprisonment for a minimum of 1 month and 15 days and maximum of 6 years. However, most of offenders have received “probational sentence” or “probation” which means the court has concluded that the defendant has actually committed an offence. The court believes that releasing the defendant would be more beneficial than imprisoning them. If the defendant violates the terms of the probational sentence or re-commits same/similar offense, the court may order them to serve the original prison term imposed in accordance with Section 56.

Moreover, it can be seen clearly that there is no any case of offences relating sex toys. As a consequence, sex toys may be not controlled under the law efficiently as expansion of interpretation on pornography is far beyond the prescription in the law, this could cause a possibility of corruption.

4.5 Demand and Supply on Sex Toys in Thailand

News about apprehension of sex toy vendors with a large amount of compounded sex toys can imply huge potential of demand for sex toys.²⁴⁷ This potential attracts vendors to sell sex toys even though they know that their action is against the law but they still smuggle many sex toys to sell because they can gain the benefits from consumer’s willingness to pay with the help of law that pushes the price further up.

Consumer demand is a potential factor that influence innovation and encourage the development of new technologies.²⁴⁸ Sex toys are products that always has development of technological innovation. From ancient times to present days, sex

²⁴⁷ 2 Sex Toys Dealer Guys arrested with 5,000 Items of Exhibit Worth 3 Millions Baht (n 238).

²⁴⁸ ‘Measuring Innovation: A New Perspective’ (Organisation for Economic Co-operation and Development, 14 October 2015) <<https://www.oecd.org/site/innovationstrategy/45188012.pdf>> accessed 9 March 2019.

toy invention has been continuously developed to facilitate consumers in higher levels with multi-functions of technology as described in Chapter 2.

Libido is the energy of the sexual drive as a component of the life instinct. In term used in psychoanalytic theory to describe the energy created by the survival and sexual instincts. This is the reason that human beings are sexual beings²⁴⁹ as previously mentioned in Chapter 1

Libido or sex drive is a part of sexual activities for the sustainability of human race as it is mentioned that “[H]uman sexuality is the way in which we experience and express ourselves as sexual beings”

Sexual intercourse is not only for reproduction or procreation but also for bonding relationship through sharing mutual sexual pleasure between heterosexual partners, as there are many different birth control options available to prevent pregnancy. Besides, an individual person can sexually please themselves for their own sexual pleasure with masturbation.

Sex toys are not just for fun or entertainment that some people may understand. They also can be used as sexual aid or treatment for sexual problems and improving relationships. Sex toys may be suggested by sex therapists to the couples to experiment with them as treatment or sex life improvement.²⁵⁰ It can improve sexual performance by extending sexual activity longer between partners or arouse *libido* for each other prior to sexual intercourse and make a long-distance relationship more bearable.²⁵¹ In case of medical aspects of health issues such as physical, mental health, and sexual dysfunction treatment. It is known that sexual health is fundamentally associated with physical health and mental health as it is a big part of life affecting or being affected by other aspects of health such as physical, mental,

²⁴⁹ Spencer A Rathus (n 1).

²⁵⁰ ‘What is a Sex Therapist and How Can They Help You’ (Depression Alliance) <<https://www.depressionalliance.org/sex-therapist>> accessed 11 December 2018.

²⁵¹ Theia M Powers (n 72).

emotional and social health.²⁵² Poor mental health can have negative impact on physical health, leading to an increased risk of some conditions.²⁵³ Orgasm problem in women is likely related to health issue that may have caused from sexual female dysfunction such as low sexual desire/libido, impaired arousal, lack of lubricant, or sexual pain during intercourse. These possibly may encounter mental and health problems.²⁵⁴ A study suggested that vibrator can improve sexual function in women as it is associated with health-promoting behaviors and positive sexual function, and rarely associated with side effects. Erectile dysfunction in men, a symptoms of male sexual dysfunction. The symptom can be cured with a constriction rings or cock rings and artificial vagina. The ring will restrict the blood flow in penis and cause blood to leave more slowly for longer and increases the total amount of blood in the penis for a stronger erection.²⁵⁵ Not only in the case of erectile dysfunction, but also for men who are very forceful in sexual activities because of fear of losing erection we utilize artificial vagina and learning to defocus from intravaginal ejaculation and rather focus on sense of pleasure and connection.²⁵⁶ Sex toys can be utilized for fulfilling and balancing sexual activities.

For people with disabilities, sex toy are helpful for disabled people with the technology of hand-free design can bring disabled people gain access to sexual satisfaction.²⁵⁷

²⁵² Kyle B Jones (n 74).

²⁵³ 'Physical health and mental health' (Mental Health Foundation, 18 February 2022) <<https://www.mentalhealth.org.uk/a-to-z/p/physical-health-and-mental-health>> accessed 11 December 2022.

²⁵⁴ Theia M Powers (n 72).

²⁵⁵ Clair Grainger (n 79).

²⁵⁶ 'Treatment Options for Erectile and Sexual Dysfunction' (Doctor Paduch) <<https://doctorpaduch.com/clinical-information/treatment-options-erectile-sexual-dysfunction>> accessed 11 December 2018.

²⁵⁷ Theia M Powers (n 72).

Sex toys can be used as a means to prevent the spread of sexually transmitted diseases/infections if used properly with hygienic practices. Moreover, sex toys can help avoid pregnancy.²⁵⁸ For those who are living with Human Immunodeficiency Virus (HIV), they can use sex toys, such as vibrators and dildos with condoms, to serve the gap of sexual activity's burden as a means of promoting sexual pleasure and risk reduction of HIV and other sexually transmitted infections transmission possibilities.²⁵⁹

It is difficult to deny sex activities of daily living. Generally, people are seeking for sexual activities in many aspects: reproduction, relaxation, and marital life fulfillment. When compared to cooking, sex toys can be like seasonings or ingredients to level up a simple menu become tasty dish making consumers enjoy the dish better.

As sex toys are apparently illegal by law, thus, there is no sex toy industry or manufacturer in Thailand. This limits its supply and excess demand for sex toys in the country is evident. Smuggling sex toys from overseas ensues. Also, due to a risk associated with smuggling and other related costs that sex toy dealers have to bear, prices of sex toys are increased above their market prices. However, remaining consumers are still willing to purchase those smuggled products, even though some of them have left the market because of higher prices.

In term of the mechanism of black market where goods or services are performed illegally. For a simple definition black market in economics term, it is referred to the unlawful nature of the business which is related to the government sanction mainly aiming for price controls and tax imposition.^{260, 261} Thus, this causes a reduction in the supply which makes the price for such products very high. However,

²⁵⁸ Marianne Roberts (n 82).

²⁵⁹ Satinsky S, Rosenberger J G, Schick V, Novak D S, and Reece M (n 84).

²⁶⁰ Shaline Wayne and Douglas Hawks, 'The Black Market' (Study.com, 2022) <<https://study.com/learn/lesson/black-market-impact-examples.html>> accessed 24 October 2022.

²⁶¹ Will Kenton, 'Black Market' (Investopedia, 29 May 2021) <<https://www.investopedia.com/terms/b/blackmarket.asp>> accessed 24 October 2022.

in case of sex toys in black market can adapt to this diagram as there is an effect to supply and demand. Sex toys are considered as illegal product, it causes lack of supply in sex toys in contrast to excessive demands of consumers.

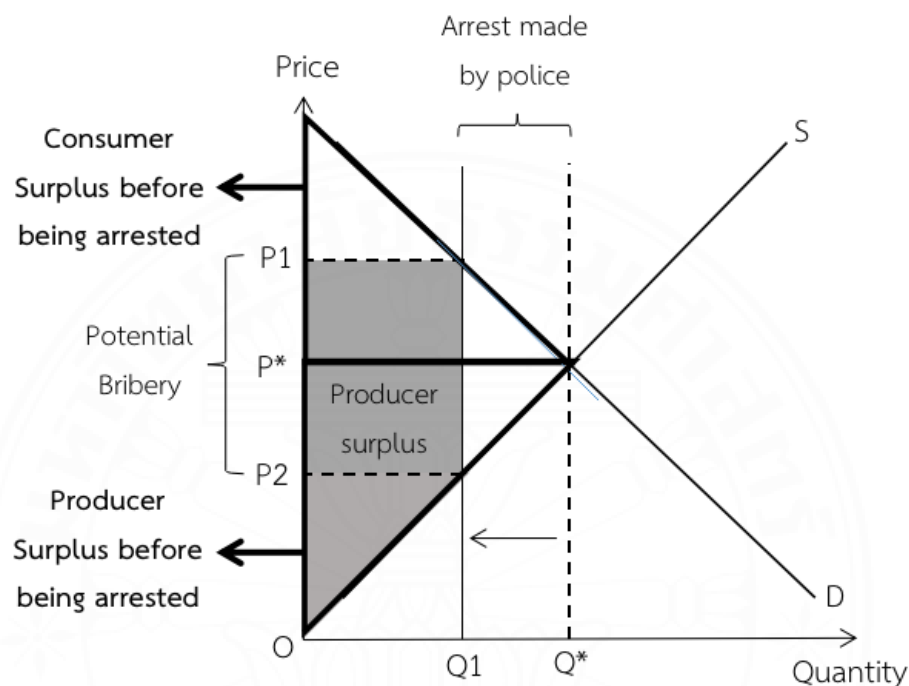


Figure 4.1 Black market. *Note Summarized by the author.*

Normally, demand normally remains stable as well as supply which is ready to be shipped to Thailand from manufacturing countries. A graph can be illustrated in D (for Demand) and S (for Supply) as an original position. In case that sex toys are allowed to sell in Thailand legally, supply and demand curves intersect at the equilibrium price. At the point of intersection, the price and quantity demanded are at P^* and Q^* respectively.

When sex toys are being interpreted as pornography, it is legally impossible to import sex toys into Thailand. In a meanwhile, demand in sex toys is still the same so it has brought negative effects such as the entry of relatively inefficient suppliers, corruption, and higher price sex toys with low quality.

In term of quantity, it causes Q^* to be restricted to Q_1 as intended because police would arrest them but the police cannot arrest all, some of them would be

shifted through. Vendors perceive that they could earn profits from limited quantity. Thus, surpluses will belong to Producer as the price added up more than the price of their willingness to sell shown in the shaded area on Figure 4.1, while the arrest reducing quantity of sex toys as intended.

Figure 4.1, illustrates the price went up from P^* to P_1 when police arresting sex toys. It can be seen that the price goes up to P_1 according to the existing demand and restricted quantity. Therefore, from P_2 to P_1 may be viewed as potential bribery to permit for limited quality smuggling and performing in black market which is the difference between P_1 and P^* is as high as 56.25%-100% as mentioned in Table 4.2. There is a possibility that bribery is involved with law enforcement agencies, as it may cause negative effects to the society because bribery induces law enforcement agencies not to perform their duties properly²⁶² or to perform their duties using discretion and in partial manner and, consequently, the effectiveness of law enforcement is reduced or even adverse.

Bribery is coming from the black market surplus sharing between the smugglers and the authorities at the expenses of consumers. Black market surplus is a good motivation for distributors or sellers. In order to smoothen the smuggling, it would rely on law enforcers by an exchange through bribery. However, as long as the smuggling can earn high profits for smugglers at. It is still worth for them even the profits need to be shared because of the consumer's willingness to pay in black market surplus

Legal cases relating to sex toys in Thailand are unavailable. Only news concerning its confiscation and apprehension of sex toy vendors could be periodically observed. There are summarized as follow.

²⁶² 'Police Involved with Bribery' (HG.org Legal Resources) <<https://www.hg.org/legal-articles/police-involved-with-bribery-48240>> accessed 9 March 2019.

In 2011, sex toys seized together with illicit sexual enhancement supplements in Nana and Bangkok's Chinatown District. The total value is five hundred thousand Baht.²⁶³

In 2017, sex toys and sex enhancement products worth 1.4 million Baht were confiscated. Due to large order from customers, the vendor needed to rent more warehouse to store sex toys.²⁶⁴

In 2018, 195 pieces of sex toys seized, comprise of 49 pieces of artificial vagina, 146 pieces of artificial phallus, and other sexual enhancement substances/pills, worth 1 million Baht.²⁶⁵

In 2019, more than 2,500 pieces of sex toys were worth 1 million Thai baht seized. The vender confessed that sex toys were ordered by customers via Line application.²⁶⁶ In the same year, sex toys, aphrodisiacs, and counterfeit Viagra worth 2 million Baht were seized on Tuesday night from 10 stalls operating in Bangkok's Nana area.²⁶⁷

In 2020, Sex toys and aphrodisiacs worth 1 million Thai baht stored in an unknown warehouse in Bangpli District, Samut Prakarn province were raided by

²⁶³ 'Police raid sex toy stalls and illicit sexual enhancement supplements in Nana and Bangkok's Chinatown District' (Manager Online, 2 August 2011) <<https://m.mgonline.com/qol/detail/954000095683>> accessed 9 March 2019.

²⁶⁴ 'Illicit Gamma-Hydroxybutyric vendors arrested' (Bangkok Biz News, 6 July 2017) <<http://www.bangkokbiznews.com/news/detail/763344>> accessed 9 March 2019.

²⁶⁵ 'A man with an International Academic Degree in Chef Arrested Accused of Selling Sexual Enhancement and Sex toys' (E Jan) <<https://ejan.co/news/5bc0797349582>> accessed 9 March 2019.

²⁶⁶ 'Sex toy Warehouse raid' (Thai Post) <<https://www.thaipost.net//main/detail/32888>> accessed 9 March 2019.

²⁶⁷ 'Police seize sex toys, 'Viagra' worth Bt2m in Nana raid' (The Nation Thailand, 6 February 2019) <<http://www.nationthailand.com/national/30363644>> accessed 9 March 2019.

police officers from The Economic Crime Suppression Division (ECD) according to the whereabouts information about the smuggling of prohibited items.²⁶⁸ As we may know Bangpli District is a district where has the most land area in Samut Prakarn province. It is an appropriate land area and location for many factories or manufacturing companies due to the convenience of transportation by land, sea and air.

In 2021, police arrested sex toy seller upon a customer's complaint about inefficient products after a vibrator that she bought from the shop exploded while using. The details of explosion is the vibrator smoke started coming from the wire and exploded. Surprisingly, she is not the only customer who encountered a situation about the quality of sex toys from this shop but also previous customers had complained about it before. The complaints reached Consumer Protection Police Division (CPPD) until an investigation started.²⁶⁹



²⁶⁸ 'ECD police officers raid a warehouse storing sex toys and seized them which worth a million Thai baht' (Thairath Online, 15 June 2020) <https://www.thairath.co.th/news/crime/1869579?fbclid=IwAR1gyvMN65lr17QeB8Eyl39gTRQ1RIOO_VxqeYPboQvHrmeZ7pLGUeQGVzs> accessed 17 June 2020.

²⁶⁹ 'Consumer Protection Police Division Seized a Plenty of Sex Toys upon a Customer's Complaints on the Poor Quality' (Thairath Online, 10 June 2021) <<https://www.thairath.co.th/news/crime/2112545>> accessed 24 October 2022.



Figure 4.2 A Vibrator exploded while an user was using it. Note Thairath Online.

According to the news about the apprehension of sex toys, the average price per piece of sex toys can be calculated as follows;

In 2018, there were each types of sex toys seized for 195 pieces worth 1,000,000 Baht, when roughly calculated excluding sexual enhancement substances/pills. The price would be 4,600 Baht per piece.

In 2019, 2,500 pieces of sex toys worth 1 million Baht. Therefore, it would be 400 Baht per piece.

In 2022, 5,000 pieces of sex toys worth 3 million Baht. Therefore, it would be 600 Baht per piece.²⁷⁰

Since sex toys sellers do not normally distribute only 1 type and the news mostly do not clarify the types of sex toys which have been seized. Therefore, the author has further performed a survey about the price of sex toys in Thailand and in the country where it is legal which are USA, UK, Singapore, Australia, and Canada. Also, the price of each type of sex toy is based on the most similar shape and functions. Surprisingly, the difference in materials and quality is quite notable.

In a meanwhile, most of sex toys in Thailand have not been certified or provided proper details information about the products but the prices are marked up higher than sex toys in the country where is legal.

²⁷⁰ PPTV Online (n 238).

Consequently, the price range on average is between 400 and 4,000 Baht for illegal sex toy market in Thailand as per above calculation. Due to low cost labour, most of smuggled sex toys are from China both by vessel or by air which are not certified or guaranteed for the safety of users.

Table 4.2 is the comparison between the average price of sex toys in Thailand and in the countries where it is legal so that we could see how much the price has been marked up.

Table 4.2 Markup percentage calculated from average prices of illegal market and legal market in sex toy products

Type	Illegal Market (Thai Baht)	Legal Market (Thai Baht)	Markup Percentage (%)
Realistic Dildo (No other functions)	1,000 - 1,500	600 - 1,000	56.25%
Vibrator (Lipstick shape)	600	300	100%
Artificial vagina	800	400	100%
Butt plug (Vibrating function)	1,000	600	66.67%
Average Mark-Up			80.73%

Note: Field Work, Online Sex Toy Shop, E-commerce Platform and Social Media Platforms, and Author's Calculation.

It can be seen in Table 4.2 that the average price of in Thailand is higher than the average price of sex toys in legal markets, by on average, 80.73 percent (ranging between 56.25 to 100 percent). This implies that the above markup percentage is corresponding to the Black Market graph in Figure 4.1.

At Thailand's side for illegal market, collected information are based on the price from the author's fieldwork, social media platforms (Facebook: Toys for Adults in Pattaya, 7Exit Sex Toys, Sextoy By MK / Instagram: seedsext toys, sextoy.byme, sextoyhonestbee and sexsonight / Twitter: Happygirl.thingx, sextoy_st and toytothai) and sex toy websites (dildozz.com, toysanookvip.com, angelspleasure.com and

sexytoygroup.com) based in Thailand. For legal markets, the collected information are taken from Walmart, a retail store in the USA, sex toy websites in legal market countries (parfumdreams.de, shopstarship.com, cirillas.com and thelovestore.com) and online market places (Amazon, eBay and AliExpress) in China, Western and European countries.

The author collected from a well-known e-commerce platform: Amazon, eBay, AliExpress, Walmart store website, online sex toy shops, Social media platforms: Facebook, Instagram and Twitter including Field work performed by author. What the author often found during the collection is one type of sex toys having different design and functions. Only these differences can affect to the price. Therefore, the average price has been collected and based on same or similar types and functions.

It shows that the price in China is only around half of the price in Thailand, so, it is attractive to smuggle for sellers in Thailand.

This can be assumed that the price would either go to the smugglers' pocket or the legal enforcers or shared between both. It is well-known that sex toy business could make a lot of money for smugglers. For high volume of smuggling, it is usually involved with bribery of border crossing.²⁷¹ In term of the high price of sex toys, it involves with consumer surplus. Due to the illegality and in term of the social welfare, consumers are meant to pay sex toys at the higher price with being less concerned about the quality or safety.

The outbreak of COVID-19 prevents the close encounter among people due to the higher risk of infection; thus, the demand for sex toys and entertainments relating sexual activities (i.e. Onlyfans or other online platforms

²⁷¹ 'A Journey of Sex toys: An Underground Trade and Multinational Business' (Manager Online, 17 July 2006) <<https://m.mgronline.com/live/detail/9490000091689>> accessed 9 March 2019.

and numbers of searches in porn website), is significantly increasing as they are substitute for intimate sexual activities.²⁷²

We can see that even though sex toys are illegal but the vendors still decide to violate the law by smuggling a large amount of sex toys into the country. It is because what they could earn is more than what they would loss and they also could reduce their risk through a bribe or an improper penalty cause which does not discourage the sellers.

Another interesting matter is products, services, or business related to sexuality usually meet difficulty of achieving elimination by stopping it completely or making it disappear. “[T]he demand for sex probably does not change much over time.”²⁷³ Consumer pleasure is a crucial factor concerned with demand, especially sexual pleasure which is an intrinsic component of human nature. Other illegal businesses relating to sexual services and sexual activities, such as sex tourism²⁷⁴ and prostitution are also facing similar situations to sex toys. Demand for both sexual businesses are overwhelming and primary drivers in the market for sexuality. In case of prostitution, its consumer demand influences exploitation on human due to such overwhelming demand.²⁷⁵ Nevertheless, most humans are sexually active but it is not

²⁷² Maria Mellor, ‘Coronavirus has created a sex toy boom. A baby boom may not follow’ (Wired, 3 April 2020) <<https://www.wired.co.uk/article/coronavirus-pandemicsex-toys>> accessed 17 June 2020.

²⁷³ ‘The Economics of Prostitution: Sex, lies and statistics’ (Economist, 22 March 2014) <<https://www.economist.com/united-states/2014/03/22/sex-lies-and-statistics>> accessed 9 March 2019.

²⁷⁴ Linda Smith and Samantha H Vardaman, ‘The Problem of Demand in Combating Sex Trafficking’ (Cairn) <<https://www.cairn.info/revue-internationale-de-droitpenal-2010-3-page-607.htm#>> accessed 9 March 2019.

²⁷⁵ ‘Good Practices and Tools in Reducing the Demand for Exploitative Service’ (United Nations Office on Drugs and Crime, 9 December 2019) <https://www.unodc.org/documents/treaties/organized_crime/2010_CTOC_COP_WG4/WG4_2010_3_E.pdf> accessed 9 March 2019.

all of them choose sex toys. Of course, using sex toys may make people better off, yet there are many obstacles such as feeling of alienation/non-natural or difficulty of use as well as legal barrier making those toys hard to obtain. It can be assumed that when demand to be involved with individual satisfaction, especially sexual activity or sexual behavior, it is less likely to respond to the increase in price and, subsequently, the reduction in demand. Economically speaking, the demand for sex toys are rather inelastic (i.e. it does not reduce as much as its price increases).

Likelihood of using sex toys is related and extended to sexual behavior of individual privacy and preference from conventional sexual behaviors.²⁷⁶ They are likely to use sex toys as complementary practices for masturbation and intercourse with partners upon human sexual desire.²⁷⁷

4.6 Availability of Sex Toys in Thailand

The availability of sex toys in Thailand is obviously associated with smuggling by vendors. The vendors accept the risk because it is worthy. Sex toy vendors gain extra benefits in form of profits by selling sex toys at higher price as final price. The composition of final price contains several layers. Normally, when illegal goods are smuggled, the vendors have to bear other related expense besides the risk of being caught by authorities. The vendors mostly focus on the amount of benefits they would gain more than the concern about product quality or consumer safety. Thus, they prefer to smuggle cheap and low quality in order to reap an extra profit between a purchased price and a final price since sex toys are illegal and there is no any relevant government section to be responsible to or control the quality for consumer protection.

²⁷⁶ Michael Maselli (n 204).

²⁷⁷ Eric Swank, 'Adventures with the 'Plastic Man': Sex Toys, Compulsory Heterosexuality, and the Politics of Women's Sexual Pleasure' (2013) 4 *Sexuality & Culture* 666-685.

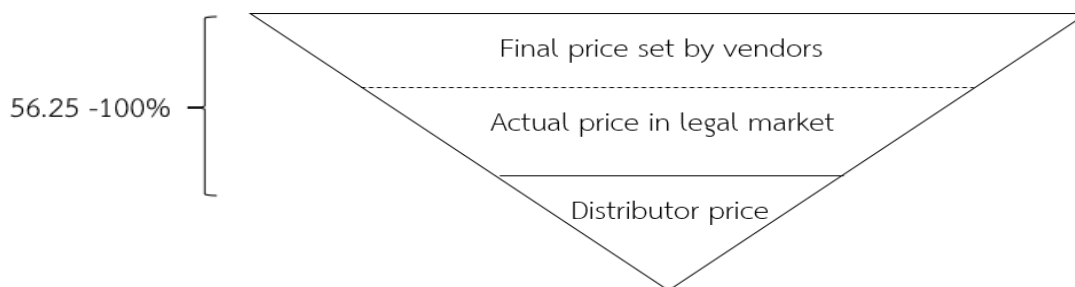


Figure 4.3 Difference of price in reverse triangle that sex toy vendors may gain.

The extraordinary high final price may partly be paid as a bribe that the vendors pay to law enforcers to facilitate their business operation by reducing the probability of apprehension.²⁷⁸ The price then will be charged to consumers. However, the benefit from selling sex toys is a part of motivation to persuade the vendors to enter to this black market.

4.7 The Effectiveness of Criminal Law Enforcement on Sex Toys

There are two economic theories which are 1) Theory of Criminal Behavior and Crime and Punishment (Becker's Model)²⁷⁹ and 2) Theory of Criminal Behavior.²⁸⁰ Both theories are applied to this Study to indicate a cause of non-enforcement or low enforcement making the law ineffective even though the penalty is high.

4.7.1 Theory of Criminal Behavior and Crime and Punishment or The Becker's Model was devised by Gary Becker in 1968. It is about the criminal's decision

²⁷⁸ Peter B Pashigian, 'On the Control of Crime and Bribery' (1975) 4 Journal of Legal Studies 311-326.

²⁷⁹ Gary S Becker, 'Crime and Punishment: An Economic Approach' In National Bureau of Economic Research, Essays in the Economics of Crime and Punishment (National Bureau of Economic Research, 1974) 1-54.

²⁸⁰ Nuno Garoupa, 'Economic Theory of Criminal Behavior' In Gerben Bruinsma and David Weisburd, Encyclopedia of Criminology and Criminal Justice (Springer, 2014) 1280-1286.

on committing a crime is that when the expected benefits exceed the expected costs.²⁸¹

However, penalties have costs to society. Especially imprisonments which affect to social costs. Because society pay tax to government but the tax needs to be shared to expenditures on police, lawyers, judges, prisons, prison guards, supervisory personnel, buildings, food, and others. Therefore, to deter a crime is to increase probability of apprehension or emphasize on severe penalties. The imposition of punishments with severe penalties is easier to operate and lower cost equally effecting to the expected cost if criminals are punished.²⁸²

4.7.2 Theory of Criminal Behavior which is a theory to indicate the possibility that everyone can become criminal considering based on factors they use to evaluate their utility for the benefits they could gain in return from committing a crime. Factors are composed by the expected cost or the cost of crime, the risk of punishment, the possibility of social stigma and eventual psychological costs. These factors must be adjusted to reduce the expected utility_or benefits to deter crime.²⁸³

Upon these theories, in case the existing penalty is insufficient to deter a crime or unable to enforce as intended due to the bribery. It would be suggested to revert tax as society costs to be tax which is responsible by the seller as a government income and the consumer might have a chance to buy better quality for sex toys. Although, if the penalty is adjusted to be more severe. As long as, some law enforcers accept the bribery. The law would probably remain useful for society. Moreover, society costs would go for an amendment of the law as well.

Based on the calculated numbers in Table 4.2 above, it can be seen that fine for penalty is just 60,000 Thai Baht. When examining the value of apprehended sex toys and the difference in price between legal and illegal sex toys markets, it could prove that the penalty is too low in comparison to the black market surplus that smugglers could earn.

²⁸¹ *ibid* 280.

²⁸² *ibid* 280.

²⁸³ *ibid* 280.

According to the author's observation, there was a police booth located not far from sex toy stalls in Nana area of Central Bangkok. Opening time of these stalls in this area usually starts in the afternoon until nighttime. These stalls had been captured by police in 2011.²⁸⁴ However, the stalls have already resumed their sales and currently selling. Such stalls cannot escape from police's eyes. Any layperson can see them. This indicates that law enforcement agencies, like local police officers, do not perform their duties properly and due fully. Bribery is therefore susceptible or there is an unexplainable cause for the lack of legal enforcement against sex toys if they are treated obscene objects which are prohibited by law.

A sex toy consumer and a friend of sex toy online distributors mentioned that the smuggling of sex toys with a large number is usually involved with bribery.²⁸⁵

In term of analysis on a total value between sex toys and arrest rate, the author calculates relevant components such as the total value of arrested sex toys based on author's research, costs of being arrested for offenders being punished under the Criminal Code and Customs Act in order to clarify the effectiveness of law enforcement upon the assumption.

²⁸⁴ Manager Online (n 271).

²⁸⁵ Supaporn Nipanon, 'Paths of Sextoys: Underground Trade and International Business' (Food and Drug Administration, 2019) <<http://elib.fda.moph.go.th/library/default.asp?page2=subdetail&id=4495>> accessed 9 March 2019.

Table 4.3 Calculation of Expected Benefit and Cost for Selling.

Year	Value of Sex Toys Arrested (Baht)	Average Value of Sex Toys Arrested from 2011-2022 (Baht)	Calculated Profit in Black Market* (Baht)	
2011	500,000	1,316,667	1,062,945.27	
2017	1,400,000			
2018	1,000,000			
2019	1,000,000			
2020	1,000,000			
2022	3,000,000			
Total	7,900,000			
*Calculated based on average mark-up of 80.73% in Table 4.2				
Types of Law	Amount of Fine (Baht)	Term of Imprisonment (Months)	Wage (Baht) Minimum / Bachelor	Costs of Being Arrested (Loss of Income) (Baht)
Criminal Code	60,000	36	9,000	324,000
			15,000	540,000
Customs Act	500,000	120	9,000	1,080,000
			15,000	1,800,000

Note: Summarized by the author.

Upon the table above, from year 2011 to 2022, the information taken from page 103-106, the average value of sex toys is at 1,316,667 Baht. When finding out the markup price of sex toys for these years based on the percentage at 80.73% as mentioned in Table 4.2, so the total of markup price is at 1,062,945.27 Baht.

Costs of being arrested under the Criminal Code and Customer Act showing the punishment of these laws is in brief in order to compare with costs that offenders would lost when they are definitely arrested.

Total costs of being arrested under the amount of fine and the loss of income will be depending on the opportunity costs of a seller. Since we do not know exact opportunity cost, it could be estimated by using the minimum wage and the lowest initial income of a person graduated with Bachelor's degree.

Their opportunity costs are approximately:

(1) Minimum wage (9,000 Baht) = 1,964,000 Baht

(2) Bachelor's degree wage (15,000 Baht) = 2,900,000 Baht

Therefore, the markup price profited in Black market is 1,062,945.27 Baht when compared to costs of being arrested at 1,964,000 Baht or 2,900,000 Baht, the costs of being arrested are higher than the markup price in which it should be able to deter sex toys in Thailand. Nevertheless, sellers or smugglers are still existing in the black market. This implies that the probability of apprehension is significantly low.

Upon the analysis of Becker's model, the possibility of being arrested and possibility of escape in Table 4.4 and 4.5 respectively: $pB > (1-p)C$, can be calculated as below.

Table 4.4 Calculation of *Probability of Escape and Being Arrested Assuming a Seller with Minimum Wage*

Minimum Wage				
Probability Rate (p)	pB	Value (Greater or Less)	(1-p)C	Calculated Potential for Bribery
0.1	106,294.53	<	1,767,600	956,650.74
0.2	212,589.05	<	1,571,200	850,356.22
0.3	318,883.58	<	1,374,800	744,061.69
0.4	425,178.11	<	1,178,400	637,767.16
0.5	531,472.64	<	982,000	531,472.64
0.6	637,767.16	<	785,600	425,178.11
0.7	744,061.69	>	589,200	318,883.58
0.8	850,356.22	>	392,800	212,589.05
0.9	956,650.74	>	196,400	106,294.53
1.0	1,062,945.27			

Note: By the author.

Table 4.5 Calculation of Probability of Escape and Being Arrested Assuming a Seller has a Bachelor's Degree

Bachelor's Degree Wage				
Probability Rate (p)	pB	Value	(1-p)C	Paid Amount for Bribery
0.1	106,294.53	<	2,610,000	956,650.74
0.2	212,589.05	<	2,320,000	850,356.22
0.3	318,883.58	<	2,030,000	744,061.69
0.4	425,178.11	<	1,740,000	637,767.16
0.5	531,472.64	<	1,450,000	531,472.64
0.6	637,767.16	<	1,160,000	425,178.11
0.7	744,061.69	<	870,000	318,883.58
0.8	850,356.22	>	580,000	212,589.05
0.9	956,650.74	>	290,000	106,294.53
1.0	1,062,945.27			

Note: By the author.

There are matters about a probability of being arrested and probability of escape. Upon the analysis of probability model, it found out that if the probability of escape is more than 70% for those who earn minimum wage, and more than 80% for those who earn Bachelor's degree wage, they will continue selling sex toys. In reverse, if the probability of being arrested is more than 30% for those who earn minimum wage and more than 20% who earn Bachelor's degree wage, they would stop selling sex toys. In case that the probability of being arrested is at 100%, no one will sell any sex toy as well due to effective high penalties for both fine and imprisonment.

There are different circumstances between those who earn minimum wage and those who earn Bachelor's degree wage. People who earn minimum wage tend to engage in the sex toy market more than those who earn a Bachelor's degree wage due to the cost of being arrested and their opportunities to work legally elsewhere.

This can be assumed in 2 main points are; laws are not enforced effectively by officers, and/or sellers or smugglers bribe enforced officers.

Table 4.6 Calculation of Value of Sex Toys Market Size in Thailand.

Description	Bachelor's Degree Wage	Minimum Wage
Percentage of being arrested in sex toy market	20%	30%
Average value of sex toys arrested	1,316,667 Baht	
Value of sex toy market (100%)	6,583,335 Baht (Maximum market size)	4,388,890 Baht (Minimum market size)
Number of sex toys in market at cheapest price (400 Baht per piece)	16,458 pieces	10,972 pieces
Number of sex toys in market at highest price (4,000 Baht per piece)	1,646 pieces	1,097 pieces

Note: By the author

In order to find out how big the value of sex toy market size is, when it is given the average value of sex toys arrested at 1,316,667 Baht (Q*-Q1) for both group of people who have minimum wage and Bachelor's Degree wage, it would be able to show the value of sex toy market is between and 4,388,890 Baht in minimum and 6,583,335 Baht in maximum Baht. The amount of these average value can indicate the number of sex toy which is calculated from cheapest price and highest price based on the price of sex toys arrested as mentioned earlier.

Table 4.7 Calculation of Value of Corruption.

Description	Average price of global market	Percentage of markup price	Maximum Possible Value of corruption per piece	Number of sex toys (0-Q1)	Maximum value of corruption (P1-P2)	Number of sex toys (0-Q1)	Maximum value of corruption (P1-P2)
				70%		80%	
Minimum price	300	80.74%	242.22	7,680	1,860,250	8,778	2,126,207.16
Maximum price	1,000		807.40	11,520	9,301,248	13,166	10,630,228.40

Note: By the author.

When the value of sex toys market size has been calculated, we can do a further calculation to see its maximum possible value of corruption $(P1-P2)(Q1)$. In Table 4.7, average price of global market is used for finding the value of corruption. By putting 80.74% of the calculated percentage of markup price, it then shows the value of corruption per piece.

The number of sex toy at 70% and 80%, escape rates can be found from the total value of sex toy market. Potential value of corruption is ranging between 1,860,250 Baht and 9,301,248 Baht for 70% of the market being let go by bribed officers. Also, potential value of corruption is between 2,126,207.16 Baht and 10,630,228.40 Baht for 80% of the market.

Consequently, it is apparent how big profits is and learn the reason why how attractive this market is to smugglers and ineffective law enforcers.

According to price theory, it is commonly believed that the price of specific goods or services is determined by the interaction of supply and demand in a market. If the price goes up, the quantity demanded decreases. The quantity demanded increases when the price decreases. Law limits the quantity of illegal sex toys in the black market, but there is no impact on demand. Demand in sex toys is still in its existing position. As a consequence of existing demand and other relevant benefits as

described and shown in Figure 4.1 at page 90 causing the price of sex toys significantly increases.

As outlined in Table 4.2 on page 95, the price can be analyzed through fieldwork, online sex toys shops, e-commerce platforms, and social media platforms. It can be seen that the price of sex toys between illegal market and legal market are different from each other up to 100% for margin or in average mark-up as 80.73% which well motivates sex toy vendors to engage to this black market.

The penalties for those who violate the Criminal Code and the Customs Act is sufficiently severe to eliminate the engagement of sex toy market as mentioned in Chapter 3 at page 35-37. The calculation of expected benefit and cost for selling in Table 4.3 at page 102-103 also shows that the costs of being arrested are higher than the mark-up price. It is reasonable to indicate the lack of effectiveness on law enforcement about sex toys as mentioned in Table 4.1 Supreme Court Judgments and Sentences of Thailand on Criminal Code 287 at page 82-85. There have been no cases of offenses related to sexually explicit toys, which means there is no judgment regarding the Customs Act. Second, the actual penalties for pornography under the Criminal Code did not result as prescribed by the laws, for an instance, the amount of fine in law was 6,000 Thai Baht (before the amendment to 60,000 Thai Baht in B.E. 2560). The fine was set at a range between 500 Thai Baht and 6,000 Thai Baht, with the minimum being 500 and the maximum being 6,000. The defendant's confession resulted in a reduction of 6,000 Thai Baht from the actual fine. Hence, it implies that no offenders in court have ever been fined the maximum amount.

Under the law, the period of imprisonment is not exceeding 3 years. The actual sentence for imprisonment was from 1 month and 15 days, up to 6 months, but it was a probational sentence for 1 year or 2 years. It implies that no offenders were imprisoned immediately after the judgment.

Regarding the calculation of escape and arrest probabilities using Becker's model as described in Table 4.4 and 4.5 on pages 103-105. The calculation shows how huge potential value of corruption which is 70-80% of market and also how high possibility of escape affecting to the probability of being arrested becomes lower than

20-30% (1-p). The calculation mentioned earlier could be related to this, which could be why there are no cases related to sexual toys found and pursued in court.



CHAPTER 5

CONCLUSIONS AND POLICY RECOMMENDATIONS

5.1 Conclusion

The Section 287 of Criminal Code, which was enacted in 1956 (B.E. 2499), emphasizes the importance of public morality. Pornography, despite being prescribed by the Criminal Code, has the potential to have negative consequences on individuals. Therefore, sex toys should be used in private residences without disrupting anyone's sight, as their sights are the basis of their perception of pleasantness, disgust, and shame.

However, due to its connection to sexuality, which has been considered taboo in Thai society, particularly in earlier times. The interpretation is extended beyond the original objective.

The Section 287 does not explicitly mention or describe about sex toys but practically prohibited through legal interpretation as obscene objects and considered to contravene public morality, similar to other sexual practices due to its connection to sexuality categorized in “pornography”, which has been considered taboo in Thai society as above mentioned. In term of the Supreme Court Judgment in Chapter 4, no offences relating sex toys ever been convicted.

Even though high penalties are prescribed in the Section 287 and the Customs Act, the study found out that there were benefit seekers in sex toys market constantly and them, criminals, still committed a crime even though their costs of being arrested are significantly higher than their benefits from crime. This indicates that those laws may not either be enforced effectively or there may be a corruption by law enforcers from the analysis of a total value between Sex toys and Arrest Rate in Chapter 4.

Sex toys are barely responsive to change in price because of its inelastic demand. Thus, it seems to be not possible to completely prohibit the distribution of

sex toys due to mismatch between demand and supply which has sexual right as a motivation.

Upon the results of the author's fieldwork and all information provided in the previous chapters indicated that sexual right is main part of human right and human being. People have the right to do any sexual matters as long as it is not harmful to others. Especially, all sexual activity which occurs in private residence or places where can be seen invisibly.

Social's perspective has the potential to influence significantly the effectiveness of law. It would say that sex toys could be an equipment or tools of personal sexual satisfaction for those who can do whatever with their own body or with others with mutual consent which is regarded as the individual right of human beings. It seems to be not obviously correct and fair if this is considered as immoral or offences public morality. Not only Criminal Code 287 should be considered for betterment in society but also Child Protection Act which would be strongly suggested in order to protect minors in overall aspects; to protect children or minors from being abused by adults including temping or misleading wrongfully for adult benefits as the children or minors are not ready to involve sexual matters. Thus, minors shall be prevented from access to sex toys.

Sex toy trade occurred in visible areas like sex toy stall market with the public display of sex toys. It should be crucial matters that the government must take into account for effective control in order to prevent minors from accessing to sex toys or inappropriate areas. This should be an actual matter of public morality.

Moreover, physically, safety and quality come first as well. In case sex toys are legalized and for the products themselves which must be of decent quality consistent and worth paying for. Therefore, besides the legalization of sex toys, government agencies in Thailand could play a part on verification of sex toy's quality and safety.

Furthermore, this research shows that human beings have a tendency to make matters related to sexuality difficult to control. Sexual toys are frequently utilized as equipment in private settings.

Since the outbreak of COVID-19, intimate relationship of human is discouraged to prevent the disease to spread; thus, sexual interaction is also significantly reduced. Sex toys serve as substitute to human touch in satisfying sexual desire. It surprisingly found out that the amount of purchase order of sex toys have been highly increased during the pandemic.²⁸⁶ In addition, a phenomenon of attitude changed in China during the pandemic. There are the increasing growth of the sale of sex toys.

“Quite a lot of women, who are sexually active have a very open attitude towards using sex toys. They see it as very natural and normal.”²⁸⁷

It can assume that the vision of those who in charge about sexually oriented business know that people would enjoy activities relating sexuality when they stay at home for long.

As we know sexuality can be diverse sexual activities taken by more than two persons, including orgy. These might be unacceptable for some group people who have a conservative mind. Yet, these activities are often taken place in secret and invisible places or private residences. Particularly, all are made over mutual consents. People have different perspectives but perspective is also changing over time. When referring to the Office of the Council of State website, it found out that none of sex toy case or any offence relating sex toys has never been brought to criminal

²⁸⁶ Gabrielle Drolet, ‘Sellers of Sex Toys Capitalized on All That Alone Time’ (The New York Times, 7 July 2020) <<https://www.nytimes.com/2020/06/07/style/sex-toys-online-coronavirus.html>> accessed 25 July 2020.

²⁸⁷ Agence France-Presse, ‘Chinese Millennial Women Stimulate Growth in Sex Toy Demand During Covid-19 Lockdown, as Attitudes Change’ (South China Morning Post, 20 October 2020) <<https://www.scmp.com/lifestyle/health-wellness/article/3106277/chinese-millennial-women-stimulate-growth-sex-toy-demand>> accessed 21 October 2020.

proceedings. It can be assumed that the sex toy case can be compromised and condoned.²⁸⁸

Hence, the author has recommendations and hopes that this study would help to change perspectives towards sex toys which are subset of sexual right and human right. Also, science and technology innovation has a significant effect to the change of society living due to the change of culture over time.²⁸⁹ According to the author, laws should be updated according to current time and people's perspectives. In regards to the definition of pornography, it is essential to exclude sex toys and categorize them in the same way as pornography in mass media.

5.2 Recommendations

Sex toy trading should be regulated instead of the ban. It may produce real benefits for society by legalizing sex toys under government control which could cause its price to decrease and its quality to be improved.²⁹⁰ Therefore, everyone in the society would be better off.

Interpretation in law is somewhat discriminatory. It must take into consideration carefully in each case of each circumstances in order to achieve the objective of law because sometimes interpretation cannot achieve its objective as intended and it also may adversely harm citizens.

²⁸⁸ 'Legal Opinion and Judgment' (Office of the Council of State) <<https://www.krisdika.go.th/th/diagnosis-sentence>> accessed 5 December 2019.

²⁸⁹ 'Changes in culture over time' (Watthanathamthai) <<https://sites.google.com/site/httpswantakarncomsite/home/khwam-hmay-khxng-wathnthrrm-thiy/khwam-sakhay-khxng-wathnthrrm-1/prapheth-khxng-wathnthrrm/kar-peliynpaelng-wathnthrrm-tamkal-wela>> accessed 5 December 2019.

²⁹⁰ Hugh Rockoff, 'Price Controls' (The Library of Economics and Liberty) <<https://www.econlib.org/library/Enc/PriceControls.html>> accessed 22 August 2020.

Perspectives of people towards sexuality has been being constantly changed. Laws should be appropriately enforced upon circumstances. Instead of apprehending the sellers or dealers in stall market, it must be replaced with zoning, licensing, or limitation of precise sex toys visibility in public space, for instance.

All the information that the author used in this study shows that it is hard to completely prohibit sexually oriented business unless the policy for controlling such product are being applied strictly.

Consequently, sex toys can be made legal but shall be regulated or controlled by Food and Drugs Administration or other relevant government agencies to ensure their quality and safety as follows.

5.2.1 Food and Drug Administration or FDA

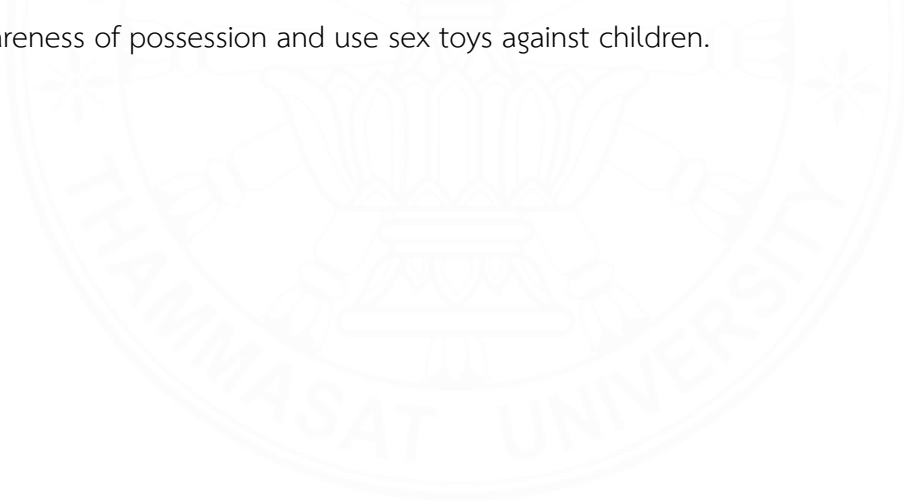
FDA may assure the safety and efficacy on sex toys by requiring them to be made materials by food grade silicone or safe materials which can contact to skin internally and externally. The sex toys that comply with such regulations would be certified under FDA logo associated with accurate instructions on how to use. The involvement of FDA is able to impose proper standards and regulations on health protection to ensure the safety from hazardous substances, regulate the manufacturing, marketing, and distribution in order to prevent consumers from risk and being harmed by low quality sex toys. The practical prohibition is a barrier that prevents consumers from being aware of these standards and regulations.

5.2.2 Department of Industrial Works

Some types of sex toys are assembled with electric parts, charger and motors as electric devices. The Department may take part to control on them for safety and being environmentally friendly under Thai Industrial Standards Institute (TISI) or well known as TISI Certification. This Department can promote awareness to importers and manufacturers of sex toys, should take into account the electrical safety, mechanical safety requirements and batteries safety standards during the usage and charging condition for consumer's safety as well. Otherwise, consumers may be at risk and may encounter an explosion caused by a device, as shown in Figure 4.2 on page 105.

5.2.3 National Child Protection Committee

Child Protection Act B.E. 2546 (2003) already exists in Thailand with the purpose of providing a care and protection of children for their benefit and welfare. The act is suggested to extend for preventing children access to sex toys. Sellers may get punished if they sell sex toys to minors. For preventing children or minors from risks of abuse and exploitation relating sex toys, some adults may use sex toys to children for their satisfaction somehow either with or without consents as children has inefficient self-protection. For instance, children may not know what sex toys are. Children may innocently bring the toys in public, may be abused or exploited either sexually or non-sexually by adults. If the act has been amended, then, it may increase adults' awareness to keep sex toys out of reach of children and concern about the use of sex toy properly. In term of adult stores, zoning policy should be applied for prevent the access of minors and an appearance of sex toys in public. At the moment, sex toys are exposed in public allowing minors to be accessible and there is low awareness of possession and use sex toys against children.



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