

## A COMPARATIVE APPROACH TO THE IMPLEMENTATION OF EXPLOITATION AND ELECTRONIC CHILD SEXUAL ABUSE CRIMES IN ASEAN COUNTRIES

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**Abstract:** ASEAN adopted the Additional Protocol on the Online Sexual Abuse of Children. Additional protocols are tools used around the world to combat child sexual exploitation. This research aims to study how effective the application of additional protocols is, what has been achieved, and the problems encountered. Studies show that the governments of several ASEAN countries have not really implemented this additional protocol because it is considered not important. Even if these children are aware or not that what is happening to them is abnormal and unacceptable, the term child sexual abuse refers to various activities of sexual intercourse with children under the age of 18. Adults or classmates can do it, and usually involves individuals or groups taking advantage of an imbalance of power. Perpetrators often use authority, power, manipulation, or deception without apparent coercion.

**Keywords:** Children; Exploitation; Online Sexual Harassment

### INTRODUCTION

Eleven members of ASEAN make up Southeast Asia. Timor Leste participated in the ASEAN membership process in 2011 and is expected to join the organization in 2017. Sexual exploitation of children is a vicious crime that continues despite decades of international efforts to combat it. At the same time, much progress has been made in the fight against the SEC, such as introducing laws against the SEC, improving child protection systems, and increasing the prosecution of child offenders. Sexual exploitation of children despite decades of international efforts to combat it. The UN approved the World Congress Against Commercial Sexual Exploitation of Children (WCCSEC) and the

Convention on the Rights of the Child (CRC). Still, crimes against children continue despite international efforts. While much progress has been made in the fight against the SEC, improving child protection systems, and increasing the prosecution of child sex offenders.(Hunt L, 2016)

To complement the rules in the Convention on the Rights of the Child, the UN Committee on the Rights of the Child issued new regulations. The protocols of the Convention on the use of children as victims, the sale of child prostitution, and child pornography are intended to assist countries around the world in taking action against child exploitation. ASEAN region takes part in the ratification of laws protecting children from sexual and economic exploitation.(Davy, 2017) The UN Committee on the Rights of the Child issued new rules to add to the rules of the

Convention on the Rights of the Child of this child is very much in place against all Asean countries to conduct an Implementation of the Protocol to the International Convention on the Sale of Children, Child Prostitution and Child Pornography to help countries in the world to combat the sexual exploitation of children.

ASEAN is the report of ASEAN countries on the implementation of the prioritized protocols of the Convention on the Rights of the Child, which adhere to the recommendations outlined on forms of exploitation or Child Prostitution and Pornography. Current laws applicable to SEC cases are compromised by the failure to adequately define, criminalize, and/or punish sexual offenses against children. All forms of criminalized SEC, including newer forms of abuse, go unpunished in many countries in Southeast Asia. Perpetrators will only face a low risk of imprisonment if the material is intended for commercial trade. Many countries restrict the use of outdated materials obscene or banned publication laws that fail to adequately address the evolving nature of the phenomenon (Davy, 2017).

Regional efforts to prevent and combat SEC have mainly centered on cooperation under the ASEAN framework. ASEAN countries have participated in the formulation of various declarations and agreements relating to child protection, including the protection of children from SEC. Indonesia ratified the ASEAN Declaration on the Protection of Children from All Forms of Online Exploitation and Abuse in 2019. With their implementation, Indonesia is dedicated to enhancing professional capabilities, establishing specialized units to investigate OCSEA crimes, improving data collection systems, raising public awareness, and engaging the private sector.(Davy, 2017)

Despite the fact that Indonesia adheres to the ASEAN Regional Plan of

Action on the Elimination of Violence Against Children 2016-2025, which calls for the development of prevention measures and revision of OCSEA laws, several government representatives said that the government's current efforts to address OCSEA are limited. Interviewees specifically stated that there are several areas that could be improved, particularly in terms of OCSEA coordination, awareness, capacity, funding and data collection. The Ministry of Communication and Information started the Online Child Protection Road Map in 2017. The aim is to provide input to all relevant parties, including governments, law enforcement organizations, businesses, civil society and community organizations on what they should do to ensure that children have safer access online. The government wants to finalize the Road Map and make it a presidential decree that all mandated government agencies must comply with. The Road Map will only be finalized and formally adopted in June 2022.(ECPAT Indonesia, 2022)

Internet service providers are expressly required by law to filter, stop or block content containing sexually explicit images of children. Furthermore, neither businesses nor people who disseminate, trade or distribute such content are subject to any legal obligations. Instead, local ISPs are required to block harmful content, such as "pornography", and cooperate with law enforcement. The list of websites that must be blocked is maintained by the Ministry of Communications and Information Technology. In addition, it collaborates with the Negative Content Crawling Engine, which helps find inappropriate content and prevent its spread. through participation in the OCSEA project.(ECPAT Indonesia, 2022)

While there is an inter-agency anti-pornography task force, this research does not reveal how much involvement civil

society organizations had in planning the response to OCSEA. OCSEA victims and caregivers are just two of the services provided by civil society organizations. Similar to where they live and grow up, children are vulnerable to online sexual exploitation and abuse. However, the lack of data makes it difficult to understand the different types of harm caused or to provide in-depth advice for public policy, both for prevention and response. Through its Safe Online initiative, the Global Partnership to End Crime made the decision to invest in research to strengthen knowledge about online child sexual exploitation and abuse (OCSEA) in light of the partnership's mandate to combat criminal activity. WeProtect's 2018 Global Alliance Threat Assessment guided this choice (ECPAT Indonesia, 2022).

## **METHOD**

In examining a problem that is being studied in this study, researchers use normative juridical research methods. This research method is an element that absolutely must exist in a research that has a function to develop legal science. (Soerjono, 1989)

## **ANALYSIS AND DISCUSSION**

### **A. Legal Norms related to Online Exploitation and Sexualization of Children in Indonesia and ASEAN**

Establishment of the Convention on the Rights of the Child (OHCHR) in 1990 offenders may be sentenced to ten years in prison. Function of CSEM Law No. 39 of 1999 on Human Rights. Therefore, this creation is considered to have contributed to Law No. 39 of 1999 on Human Rights. The Trafficking in Persons Act, 21 of 2007 on the Eradication of Criminal Acts, refers to the lack of trafficking activities. In one ministry, this relates to the application of rules regarding the implementation of

restitution to child victims of crime. Government Regulation on Women's Empowerment and Child Protection Number 8 of 2020. Another view on the subject of this country as a state party, Indonesia ratified the Optional Protocol.

Of the ten ASEAN countries, only six (or six) countries - Cambodia, Philippines, Laos, Thailand, Vietnam, and even Timor Leste - have reported their initial reports to the UN Committee on the Rights of the Child. The other four countries, namely Brunei, Myanmar, Malaysia, and Indonesia, have not submitted their initial reports.

*This chapter will focus on the threat of online child sexual exploitation and abuse (OCSEA) in Indonesia, starting with children's perceptions of risky online practices and their involvement in them. No national crime data is available. However, in an effort to provide an in-depth picture of the nature of offenses against children, this chapter uses a variety of sources, including foreign law enforcement data, mandated reports from technology companies to NCMEC related to Indonesia, surveys with frontline workers, and interviews and discussions with children themselves.*

The calculations are not intended to provide a comprehensive picture of the prevalence of OCSEA. First, there are no national crime statistics or case studies involving law enforcement. Low reporting rates in household surveys may also be due to issues related to privacy, social discomfort when discussing sex, and the stigma associated with sexual abuse and exploitation. In addition, some children may be concerned about punishment as producing, possessing or viewing pornography is against the law. In addition, researchers are less likely to be given permission to speak to children in homes where sexual abuse has occurred.

Although these external studies cannot be validated by Indonesian law enforcement in the same way as approved statistics, they can still be used to collect data on the prevalence of OCSEA and law enforcement activities in Indonesia through Disrupting Contextual Harm. Additional data sources related to this include information from international law enforcement organizations and the NCMEC CyberTipline (Ahmad Sofian and Deden Ramadani, 2019).

In the definitions provided by the Disrupting Harm project, OCSEA is intended to encompass CSAM, live streaming of child sexual abuse, and online grooming of children for sexual purposes. Additionally, these concepts are used here to organize and present findings from the Disrupting Harm research. The experiences or offenses in question often appear sequentially or in combination. Furthermore, OCSEA does not only occur in digital environments, as described in the "Continuum of Online and Offline Child Sexual Exploitation and Abuse" box. As a tool or a direct record of sexual exploitation and abuse, digital technologies can also be utilized. Many of the follow-up questions involved small subsamples because a small number of children reported experiencing OCSEA, possible treatment, and other unwanted online experiences. In these situations, when the sample size is less than 50, absolute numbers will be presented instead of percentages to prevent data misrepresentation. Watch out for sexual violence and exploitation. As there are many different ways and places for children to occur, many of the survey questions listed below allow for more than one answer, so the percentages and figures presented may add up to more than 100%. Finally, only differences of five percentage points or more between age groups, boys and girls, or urban and rural areas are reported (Zikry, 2023).

Indonesia's Pornography Law covers images and videos depicting immoral acts or sexual exploitation that are contrary to social morality in terms of the act of taking time in public. This definition was challenged in 2010 on the grounds that it was too broad, only concerned with cultural and traditional performances, and discriminated against women. However, the Constitutional Court deemed that the definition was accurate and did not contradict the law. CSAM defines "pornography" as "any kind of pornography involving children or adults acting like children. Therefore, the Indonesian law specifically addresses written, audio, and visual content. The law also potentially prohibits digitally generated CSAM, such as photoshopping of real children." Into realistic images.(Anugerah Rizki Akbari, 2022) The Pornography Law explicitly states CSAM and other acts related to pornography are illegal. The following are examples of prohibited acts: production, distribution, broadcasting, import, export, offer, sale, or purchase. The law further criminalizes access to CSAM by prohibiting the lending or provision of pornography, including CSAM. In addition, it promotes ownership and passive viewing.

Without intending to distribute, CSAM commits an offense. The Requirements Act in this case takes into account the entire prohibition mechanism by prohibiting anyone from transmitting and distributing access to any data containing child sexual abuse. This is part of the Electronic Information and Transactions Act (ECITA) No. 11 of 2008 which regulates electronic information and transactions. Under Indonesian law, intentionally attending a child pornography show is not illegal. Moreover, this happens when these programs are broadcast live. The Pornography Law, which prohibits "using

another person as a model for pornographic content" and "presenting oneself or containing inappropriate elements in a broadcast, namely pornography," is the only legal reference to pornographic performances (Anugerah Rizki Akbari, 2022). Meanwhile, based on the TPKS Law regarding "this inappropriate act shows an indecent thing for the broadcast because the purpose of the intention of the process of action is very disturbing to the victim's mentality and the non-physical form (*no body contact*) and is not limited to the form of whistling, playing pandanhan and speech that has sexual nuances, so that it falls into the category of pornography making the victim feel uncomfortable and dignity is undermined For example: uploading photos of other people who are in public places and feeling uncomfortable about the actions of the perpetrator and shared on social media.

### **B. The Weaknesses of Indonesia's Legal Norms on Child Online Sexual and Exploitation**

Indonesia only regulates child sexual exploitation as part of other criminal offenses, such as pornography in this Law, child pornography is included in the core criminal offense, which is illegal pornography as well as in the Crime of Trafficking in Persons, which only regulates the exploitation of children for exploitation. Data on suspected child sexual exploitation in Indonesia from CyberTips from NCMEC between 2017 and 2019. Federal law in the United States mandates that companies offering electronic services (e.g., cases of suspected child exploitation must be reported to NCMEC's CyberTipline by (e.g., technology companies). This reporting is optional for non-electronic providers. Most platforms do not notify NCMEC

about child exploitation. As a result, not much is known about how common OCSEA is across various well-known platforms. The Women and Child Protection Unit, the Cybercrime Directorate, its sub-directorate, and the Digital Forensics Unit were mentioned as the most relevant law enforcement units of the National Police in addressing OCSEA during the Disrupting Harm research. The Women and Children Protection Unit, often staffed by female law enforcement officers with technical training, is tasked with investigating crimes against women and children in provincial and district police forces. The Directorate of Cybercrime is authorized to investigate online offenses, including OCSEA (Muhammad Ardiansyah Arifin; et.all, 2020).

An official from the Directorate of Cyber Crime at the National Police Headquarters stated: "When it comes to online-related cases, that's our job at the Provincial Police and the Directorate of Cyber Crime at the National Police Headquarters. At Polda, there are 34 sub-directories devoted to cybercrime in Indonesia". The government representative emphasized that the cybercrime sub-directory does not have officers in the district-level police units and only exists at the provincial level. This division works closely with the Women and Child Protection Division. NCMEC sent CyberTips to the Digital Forensics Unit, a law enforcement agency in Indonesia. The difficulties faced by law enforcement in responding to OCSEA in Indonesia were mentioned in interviews with government representatives and law enforcement officials. The issues and gaps listed below are merely respondents' perceptions and do not represent complete evidence. These countries have specific ministries or agencies to deal with victims

of violence against women and children, such as the Ministry of Social Affairs or state agencies that specifically run rehabilitation programs for victims of such violence. Implementation of the optional protocols on sale of children, child prostitution, and pornography also appears to be similar for countries that have not submitted initial reports after ratification of the optional protocols. In addition to countries that have not yet provided initial reports on optional protocols, legal, rehabilitation and reintegration, and regional cooperation have been carried out.

According to the author, the improvements that ASEAN countries should pay attention to are mainly in setting legal definitions that are in accordance with the optional protocol on the sale of children and online sexualization of children. This is important so that this protocol can be implemented in accordance with the goal to end child sexual exploitation worldwide. To prevent online sexual exploitation of children in the ASEAN region and create a brighter future for children in the region.

## CONCLUSION

Most ASEAN countries have ratified the Convention on the Rights of the Child. However, not all ratifying countries have implemented all the responsibilities given by the protocol. Some have not even submitted initial reports after two years of ratification. The countries that have not ratified are Indonesia, Myanmar, Brunei Darussalam and Malaysia. These countries have not submitted their initial reports to the UN Committee on the Rights of the Child as a form of commitment. The legal norms of the optional protocol on the sale of children and online sexualization of children have been undertaken by all ratifying ASEAN countries.

The element of "buying" has disappeared in defining child prostitution

in the optional protocol when it was ratified by Indonesia. The experiences or offenses in question often appear sequentially or in combination. Digital technology can also be used as a form of facilitating or directly recording sexual exploitation and abuse. Meanwhile, based on the TPKS Law regarding the existence of non-physical acts is a criminal offense for victims of sexual abuse.

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