

Disrupting Harm

Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.

Legal Analysis of OCSEA related Provisions in Indonesia

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This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Global Partnership to End Violence against Children does not constitute endorsement.

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International, Regional and National Commitments and Legislation on Sexual Exploitation of Children

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council		
International Instruments	Date of ratification/accession	
Convention on the Rights of the Child - 1989	5 September 1990	
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000	24 September 2012	
Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure - 2011	No action	
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)	28 March 2000	
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organised Crime)	28 September 2009	
Regional Instruments	Date of ratification/accession	
ASEAN Convention against Trafficking in Persons, Especially Women and Children - 2015	27 November 2007	
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (OPSC review)	No action	Due date: 24 September 2014

General Issues Related to Children's Rights

Under Indonesian Law, a **child** is “a person under eighteen years of age, including unborn”¹ and this definition is consistent across all national legislation. The Civil Code, the Criminal Code and the Criminal Procedure Code refer to children using the alternative term ‘minors’ but that fact does not dilute the equal treatment that children receive under the Indonesian legislation.

According to the Law on the Juvenile Justice System, children can be formally prosecuted at the age of 12.² Under the previous law (Law No. 3 of 1997 on Juvenile Court), the **minimum age of criminal responsibility** was eight years.³ Although the Law on the Juvenile Justice System is applicable to all child victims, witnesses and offenders below the age of 18,⁴ by virtue of Article 20 of this law, a child who commits a crime before turning 18 and is brought before the Court of Session after they are older than 18 years but below 21 years, they are also considered a child and is entitled to protection under this law.⁵

In terms of the **legal working age**, Article 68 of the Manpower Act prohibits entrepreneurs to employ children.⁶ However, the employment of children aged between 13 and 15 years old is allowed for light work as long as the job does not stunt or disrupt their physical, mental and social development.⁷ The Manpower Act also allows children over 14 years of age to work as part of a school's education curriculum or training.⁸ Additionally, Article 74 of the Manpower Act prohibits forced labour and establishes the minimum age for hazardous work at eighteen, and the Government identifies hazardous occupations or activities prohibited for children the Ministerial Decree No.235: Jobs that Jeopardise the Health, Safety or Morals of Children.⁹

Indonesian law fixes 16 as the **minimum legal age for marriage** for girls and 19 for boys.¹⁰ In 2019, the Constitutional Court of Indonesia delivered an important decision wherein it observed how difference in minimum legal ages of marriage for men and women impacted their basic or constitutional rights and led to discrimination.¹¹

Therefore, the court had ordered the legislators to make changes to the Law Number 1 of 1974 concerning Marriage within a maximum period of 3 (three) years. Consequently, Indonesia's parliament raised the minimum age of marriage for girls to 19, an amendment law which must be implemented within a period

¹ Government of Indonesia (2002). [Law of the Republic of Indonesia No. 23 of 2002 on Child Protection](#), Article 1 (1); Government of Indonesia (2007). [Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes](#), Article 1 (5).

² Government of Indonesia (2012). [Law No. 11 of 2012 on the Juvenile Justice System](#), Article 1 (3).

³ Government of Indonesia (1997). [Law No. 3 of 1997 on Juvenile Court](#), Article 4.

⁴ Government of Indonesia (2012). [Law No. 11 of 2012 on the Juvenile Justice System](#), Article 1(3)-(5).

⁵ Government of Indonesia (2012). [Law No. 11 of 2012 on the Juvenile Justice System](#), Article 20.

⁶ Government of Indonesia (2003). [Act of the Republic of Indonesia No. 13 of 2003 concerning Manpower](#), Article 68.

⁷ Government of Indonesia (2003). [Act of the Republic of Indonesia No. 13 of 2003 concerning Manpower](#), Article 69.

⁸ Government of Indonesia (2003). [Act of the Republic of Indonesia No. 13 of 2003 concerning Manpower](#), Article 70.

⁹ Government of Indonesia (2003). [Minister of Manpower and Transmigration Decree No. Kep.235/MEN/2003 concerning Jobs that Jeopardise the Health, Safety and Morals of Children](#), Annex F.

¹⁰ Government of Indonesia (1847). [Law No. 1 of 1974 on Marriage](#), Article 29.

¹¹ Constitutional Court of Indonesia (2019). [Decision of the Constitutional Court No. 22 / PUU-XV / 2017](#).

of three years.¹² Parents, however, can still ask for a court to issue a “dispensation” which provides legal permission for underage girls and boys to marry.

The **age of sexual consent** is 15 years for girls as stated by Article 287 of the Criminal Code.¹³ According to the text, “any person who out of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or, if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years”.¹⁴ This provision clearly excludes boys as victims of statutory rape. In addition, the Criminal Code establishes an exception for criminal responsibility in case of reasonable belief that the girl has reached the age of 15 years.¹⁵ Moreover, Article 288 of the Criminal Code applies to sexual intercourse with a married female child.¹⁶ The provision states that “any person who in marriage has carnal knowledge of a woman of whom he knows or reasonably should presume that she is [not] yet marriageable, shall, if the act results in bodily harm, be punished by a maximum imprisonment of four years”.

Similarly, Article 290 (2) of the Criminal Code criminalises the commitment of “obscene acts with someone who he knows or reasonably should presume that he has not yet reached the age of fifteen years or, if it is not obvious from her age, not yet marriageable”.

Furthermore, in most provinces in Indonesia homosexual relations are legal, but the age of sexual consent is set at 18 years.¹⁷ Nevertheless, due to Islamic-based laws, these provisions do not apply in all the Indonesian territory. For instance, in the Aceh province, Muslim males and females can only have sex after marriage and homosexual relations are criminalised.¹⁸

Finally, the Indonesian legislation does not provide criteria to determine whether the consent for sexual activities between peers under the age of 18 is **voluntary, well-informed and mutual** nor a **close-in-age exemption**.

Online Child Sexual Exploitation and Abuse

Article 28B (2) of the Indonesian Constitution states that “every child has the right to survive; grow and develop, and shall have the right to protection from violence and discrimination”.¹⁹

In Indonesia, the offences relating to online child sexual exploitation and abuse (OCSEA), like child sexual abuse material,²⁰ are mainly addressed through a special law passed in 2008 titled Law No. 44 of 2008 on

¹² House of Representatives of the Republic of Indonesia (2019). [Paripurna DPR Sepakat 19 Tahun Jadi Batas Usia Minimal Perkawinan](#). Statement on Indonesia’s House of Representatives’ website.

¹³ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 287.

¹⁴ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 287.

¹⁵ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Articles 287(1), 290(2), 290(3) and 292.

¹⁶ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 288.

¹⁷ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 292.

¹⁸ Government of Aceh (2006). Law No. 11 of 2006, Articles 24-33.

¹⁹ Government of Indonesia (1945). [Constitution of the Republic of Indonesia](#), Article 28B (2).

²⁰ ECPAT prefers the term ‘child sexual exploitation material’ or ‘child sexual abuse material’ over the often in legal context still used ‘child pornography’ in line with the recently widely adopted Terminology Guidelines. ECPAT International. (2016).

Pornography. Additionally, the Criminal Code and the Child Protection Act contain provisions criminalising “pornography”, albeit implicitly.

The Law No. 44 of 2008 on Pornography defines pornography as “sexuality material produced by human in a form of picture, sketch, illustration, photo, writing, sound, audio, motion picture, animation, cartoon, lyrics, body movements, or other communication messages through various media communication and/or performance in public, which include indecency or sexual exploitation which is against social morality”.²¹ This definition was challenged in 2010 on the grounds that it was too broad, targeted cultural and traditional performances and discriminated against women, but the Constitutional Court ruled that the definition was clear and did not violate the Constitution.²² ‘Child pornography’ is defined as “all kind of pornography that involve the child or include an adult who act like a child”.²³

Therefore, the definition of ‘child pornography’ explicitly covers visual, **audio** and **written** material, and it possibly criminalises **virtual child sexual abuse material** that is, computer or digitally generated child sexual abuse material, including realistic images of non-existing children.

Pursuant to Article 4 (1) of the Law No. 44 of 2008 on Pornography, it is prohibited to **produce**, create, multiply, copy, **distribute**, broadcast, **import**, **export**, **offer**, **sell** or purchase, rent or provide pornography, including child sexual abuse material.²⁴ Those who violate this provision shall be punished with imprisonment for a minimum of six months and a maximum of 12 years and/or fine of a minimum of 250 million rupiahs to a maximum of 6 billion rupiahs (approx. US\$ 17,056 to 409,349 as of April 2021), increased in one third of its respective maximum when involving children.²⁵

Similarly, Article 282(2) of the Criminal Code criminalises the production, importation, convey in transit, exportation, storage, offering for **dissemination** of writings, portraits or objects offensive to decency and contemplates a punishment of a maximum imprisonment of nine months or a maximum fine of 4,500 rupiahs (approx. US\$ 0.31 as of April 2021).²⁶ Furthermore, Article 533 penalises the public exhibition or display of writings or portraits that arouse or stimulate the sensuality of the youth, including children under 17 years of age, with fine of maximum 3,000 rupiahs (approx. US\$ 0.20 as of April 2021) or maximum light imprisonment up to three days.²⁷ Fines provided for these two offences are not appropriate to the severity of the crime.

Additionally, Article 4 (2) of the Law on Pornography prohibits any person from providing pornography services that explicitly shows nakedness or appearance that gives the impression of nakedness, explicitly shows genital organs, exploits or shows activities, or offers or advertises sexual services, directly or

“Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016”. P. 39. Bangkok: ECPAT.

²¹ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 1 (1).

²² BBC (2010). [Indonesia upholds anti-pornography bill](#), BBC News, Jakarta, 25 March 2010.

²³ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Elucidation of Article 4 (1) (f).

²⁴ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 29.

²⁵ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Articles 11, 29 and 37.

²⁶ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 282(2).

²⁷ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 533.

indirectly.²⁸ Pornography services are defined as all kind of pornography services provided by a person individually or a corporation through direct performance, cable TV, terrestrial TV, radio, telephone, Internet, and other electronic communication and newspaper, magazines, and other printed materials.²⁹ Those who contravene Article 4 (2) of the Law No. 44 of 2008 shall be punished with imprisonment of a minimum of six months and a maximum of six years or with a fine ranging from 250 million rupiahs to 3 billion rupiahs (approx. US\$ 17,056 to 204,674 as of April 2021), a punishment that should be increased in one third of its respective maximum when the crime involves children.³⁰

Article 5 of Law 44 of 2008 criminalises **obtaining access to child sexual abuse material** by prohibiting any person to lend or download pornographic material as referred in Article 4 (1)³¹ of the same text, and defines downloading as “to transfer or to take file from technology and communication system”.³² Any person who profits from pornography as referred to in Article 5 of the Law on Pornography shall be punished with imprisonment of a minimum of six months and a maximum of six years or a fine of a minimum of 250 million rupiahs and a maximum of 6 billion rupiahs (approx. US\$ 17,056 to 409,349 as of April 2021).³³

Regarding the criminalisation of the **mere possession of child sexual abuse material**, Article 6 of Law No. 44 of 2008 prohibits any person from “sounding, showing, taking benefit from, owning, or keeping pornography product as referred to in Article 4 paragraph (1), except those having the authority given by the laws”.³⁴ Pursuant to Article 32 of the same text, those who possess child sexual abuse material are punished with a maximum of four years imprisonment or a maximum of 2 billion rupiahs fine (approx. US\$ 136,449 as of April 2021).³⁵

The Indonesian legislation specifically addresses conducts happening in the **online environment** or through information and communication technologies as referred in Articles 4, 5 and 31 of Law No. 44 of 2008.

Article 74 of the Manpower Act includes all kinds of jobs that make use of, procure, or offer children for the production of pornographic performances as one of the worst forms of child labour.³⁶ In connection to this provision, Article 9, in relation to Article 11 of the Law on Pornography, prohibits any person from “causing a child to be an object or model of pornographic content”. Those who violate Article 9 shall be punished with imprisonment ranging from one year to 12 years or with a fine from 500 million rupiahs to 6 billion rupiahs (approx. US\$ 34,112 to 409,349 as of April 2021), incremented in one third.³⁷

²⁸ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 4 (2).

²⁹ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 1 (2).

³⁰ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Articles 30 and 37.

³¹ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 5.

³² Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Elucidation Article 5.

³³ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 31.

³⁴ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 6.

³⁵ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 32.

³⁶ Government of Indonesia (2003). [Act of the Republic of Indonesia No. 13 of 2003 concerning Manpower](#), Article 74.

³⁷ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Articles 9, 35 and 37.

Furthermore, Article 76E of the amended Child Protection Law states that “everyone is prohibited from committing violence or threat of violence, **coercion**, deception trick, commit a series of lies, or persuade the Child to do or let committed obscene acts” (unofficial translation).³⁸ Those who violate Article 76E shall be subject to a maximum term of imprisonment of 15 years and a minimum term of five years, and a maximum fine of 5 billion rupiahs (approx. US\$ 341,124 as of April 2021).³⁹ Accordingly, the coercion of children to participate in pornographic performances could also be criminalised through this provision, although the penalties are lower than those established in Article 9 of the Law on Pornography.

On the other hand, **knowingly attending pornographic performances** involving children is not explicitly criminalised under the Indonesian legislation, nor is it when these performances are live streamed online. The only reference to pornographic performances is made in Article 10 of Law No. 44 of 2008, a provision which prohibits any person from “showing himself or other people in performances or in front of public that describes nakedness, sexual exploitation, sexual intercourse, or other that contains pornography elements”,⁴⁰ defining other pornography as sexual violence or masturbation.⁴¹ Those who violate Article 10 shall be penalised with a maximum imprisonment of 10 years or a maximum fine of 5 billion rupiahs⁴² (approx. US\$ 341,124 as of April 2021). However, in the absence of any provision that **excludes children’s liability**, this provision has the potential risk of criminalising children who are sexually exploited as they “show themselves” in these performances.

Indonesia does not clearly define **online grooming** nor does it have an explicit provision which criminalises it.

Article 7 of the Law No. 44 of 2008 on Pornography prohibits any person from funding or facilitating acts that involve pornography as defined in Article 4 of the same text, a definition that includes child sexual abuse material. Those who contravene Article 7 shall be penalised with imprisonment for a minimum of 2 years and a maximum of 15 years or with a fine ranging from 1 billion rupiahs to 7.5 billion rupiahs (approx. US\$ 68,224 to 511,686 as of April 2021).

Additionally, Article 12 of the 2008 Law on Pornography prohibits asking, soliciting, taking benefit from, letting, abusing power or forcing children to use pornography products or services. Pursuant to Article 38 of the same law, those who violate this provision shall be punished with imprisonment for a minimum of six months and a maximum of six years or with a fine of a minimum of 250 million rupiahs and a maximum of 3 billion rupiahs (approx. USD 17,056 to 204,674 as of April 2021).

Indonesia does not have legislation regarding **sexting**, **online sexual harassment** or **sexual extortion**, legal loopholes that leave victims of these crimes unprotected.

³⁸ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 76E.

³⁹ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 76E.

⁴⁰ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 10.

⁴¹ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Elucidation Article 10.

⁴² Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 36.

Besides, the **attempt** to commit offences is not regulated in Law No. 44 of 2008, so the general provisions established in the Criminal Code apply.⁴³ According to Article 53 of the Criminal Code, an attempt to commit a crime is punishable if the intention of the offender has revealed itself by a commencement of the performance and the performance is not completed only because of circumstances independent of his will. The maximum of the basic punishments imposed on the crime in case of attempt shall be mitigated by one third and additional punishments for attempts are the same as for the completed crime.⁴⁴

The **ignorance of the age of the victim** as an excuse to be pleaded by the offender in excuse of his/her conducts it is not explicitly regulated under Indonesian legislation, creating a loophole that could be used by child sex offenders.

Indonesian law does not have provisions that explicitly compel **ISPs** to filter and/or block any child sexual abuse material and report companies and/or individuals disseminating, trading or distributing these materials. However, Article 17 of the Law on Pornography requires the government and regional governments to prevent the production, distribution and usage of pornography,⁴⁵ including child sexual abuse material, and, in order to do so, governmental and regional authorities are allowed to cut off networks of production and distribution of pornography products or pornography services, including blockage of pornography through the Internet; supervise the production, distribution, and usage of pornography; and co-operate and coordinate with other parties, in and outside of the country, in prevention of production, distribution, and usage of pornography.⁴⁶ Moreover, regional authorities are entitled to develop communication systems, information and education in the framework of prevention of pornography in its region.⁴⁷

In 2014, the Minister of Communication and Information issued Regulation No. 19 of 2014 on Controlling Internet Websites Containing Negative Content.⁴⁸ The regulations provides, inter alia, for the establishment of a 'TRUST+ Positif List, a database system containing names of websites with negative content, including 'pornography'.⁴⁹ The regulations impose duties on ISPs to block all websites featuring in the 'TRUST + Positif List'.⁵⁰ Furthermore, ISPs are required to maintain their database of prohibited websites in accordance with this list and update it on a regular basis.⁵¹ ISPs that fail to block websites on the 'TRUST+ Positif' list may incur administrative or criminal liabilities under the Law No. 36 of 1999 on Telecommunications, Law No. 44 of 2008 on Pornography and Law No. 11 of 2008 on Information and Electronic Transactions.⁵²

⁴³ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 44.

⁴⁴ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 53.

⁴⁵ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 17.

⁴⁶ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Articles 18 and 19.

⁴⁷ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 19 (d).

⁴⁸ Government of Indonesia (2014). [Regulation No. 19 of 2014 on Controlling Internet Websites Containing Negative Content](#).

⁴⁹ Note: The database can be accessed [here](#).

⁵⁰ Government of Indonesia (2014). [Regulation No. 19 of 2014 on Controlling Internet Websites Containing Negative Content](#).

⁵¹ Government of Indonesia (2014). [Regulation No. 19 of 2014 on Controlling Internet Websites Containing Negative Content](#).

⁵² Government of Indonesia (2014). [Regulation No. 19 of 2014 on Controlling Internet Websites Containing Negative Content](#).

More recently, in 2019, the Government of Indonesia issued the Government Regulation No. 71 of 2019 which authorises the government to block access to prohibited content.⁵³ Prohibited content includes “electronic information and/or an electronic document that contains or promotes”, *inter alia*, “pornography” and violence against children.⁵⁴

Lastly, Indonesian legislation does not currently incorporate any regulations that require **cybercafé owners** to identify users and report and prevent OCSEA cases.

EXTRATERRITORIALITY AND EXTRADITION

Article 5 of the Criminal Code establishes jurisdiction over any offence or illegal conduct committed abroad by an Indonesian national (**active extraterritorial jurisdiction**), as long as it is also considered a crime in the country where it occurs⁵⁵ (**double criminality principle**). In addition, Article 9 of the same text declares that restrictions on jurisdiction are subject to international law.⁵⁶ In view of article 5, it can be assumed that Indonesia is only partially in line with OPSC obligations, as the country does not explicitly recognise extraterritorial jurisdiction over child sexual exploitation offences in the additional circumstances listed under the OPSC, namely, where the relevant offence is committed by habitual residents, and over OPSC crimes committed against victims of Indonesian nationality (**passive extraterritorial jurisdiction**).

To complement the framework on extraterritoriality, Article 2 of the Electronic Information and Transactions (EIT) Law states that “This Law shall apply to any person who commits any of the acts governed by this Law, both within and outside of Indonesia’s jurisdiction, which has legal effect within and/or outside the jurisdiction of Indonesia, and is detrimental to the interests of Indonesia” (unofficial translation).⁵⁷ As noted in the definitions contained in the EIT Law, the term “person” refers to Indonesian citizens, foreign citizens and legal entities, thus expanding the application of the principle of extraterritoriality for crimes committed through ICTs.

With regard to **extradition**, Indonesia passed the Law No. 7 of 1979 on Extradition. According to its Article 2, extradition must be conducted based on a treaty and, if there is lack of treaty, it should be conducted based on good relationship and if the interest of the Republic of Indonesia requires it.⁵⁸ Article 4 indicates that extradition shall be conducted against offences that are listed in the “List of **extraditable offences**” (principle of double criminality) or based on policy of the requested country against other offences excluded in the list.⁵⁹ Notwithstanding, OCSEA-related offences are not explicitly included in that list.⁶⁰ Furthermore, it is important to mention that, according to Article 8 of the Law on Extradition, a request

⁵³ Government of Indonesia. (2019). [Regulation No. 71 of 2019 on Electronic Systems](#), Article 95.

⁵⁴ Government of Indonesia. (2019). [Regulation No. 71 of 2019 on Electronic Systems](#), Article 96.

⁵⁵ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 5.

⁵⁶ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 9.

⁵⁷ Government of Indonesia (2008). [Law No. 11 of 2008 concerning Electronic Information and Transactions](#), Article 2.

⁵⁸ Government of Indonesia (1979). [Law No. 7 of 1979 concerning Extradition](#), Article 2.

⁵⁹ Government of Indonesia (1979). [Law No. 7 of 1979 concerning Extradition](#), Article 4.

⁶⁰ Government of Indonesia (1979). [Law No. 7 of 1979 concerning Extradition](#) Annex: List of Extraditable Offences.

for **extradition may be refused** if an offence charged was committed completely or partially within the territory of the Republic of Indonesia.⁶¹

Based on the preceding information, it seems accurate to conclude that Indonesia is partially in line with its obligations emanating from the OPSC. Further regulations are needed to ensure OCSEA-related crimes established under the OPSC are recognised as extraditable, and that the OPSC is used as a basis for extradition in the absence of an extradition treaty with a requesting State, as Article 5 OPSC foresees. It is also necessary to enact by law that when extradition is denied, the State must submit the case to domestic courts for national prosecution.

Other OCSEA-Related Provisions

With regard to the **confiscation** of assets or proceeds derived from offences, Article 39 of the Criminal Procedure Code establishes the seizure of proceeds derived from offences, goods used to commit an offence or in its preparation, goods used to obstruct the investigation, goods specially made and intended for the commission of the offence, and other goods with a direct link with the offence. In relation to OCSEA-related offences, Article 41 of the Law on Pornography provides for the confiscation of proceeds or income for corporations as an additional penalty together with the freezing or revocation of business license and the revocation of legal entity status.

Advertising or promoting OCSEA offences is not criminalised under Indonesian Law and the only reference to these terms can be found in Article 4 (2) of Law No.44 of 2008, a provision that prohibits any person to procure pornographic services that offer or advertise sexual services, directly or indirectly.⁶²

The Law on Pornography recognises the **criminal liability of legal entities** for the production or commercialisation of pornography including child sexual abuse material because corporations, both legal entities and non-legal entities, are included in the term “any person” as defined in Article 1 (3) of the same text.⁶³ Accordingly, Article 40 (1) of the Law on Pornography declares that “in the event pornography action is performed by or in the name of a corporation, criminal prosecution and penalisation can be imposed on the corporation and/or its directors”.⁶⁴ Legal entities can be charged with a maximum fine three times the criminal fine provided for the crime⁶⁵ and they can be penalised with additional charges in the form of freezing out their business license, revocation of their business license, expropriation of assets derived from criminal actions, and revocation of their legal entity status.⁶⁶

The EIT Law also recognises the criminal liability of legal entities by including in the definition of “person” “an individual, whether an Indonesian citizen, foreign citizen, or legal entity”.⁶⁷

⁶¹ Government of Indonesia (1979). [Law No. 7 of 1979 concerning Extradition](#), Article 8.

⁶² Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 4 (2) (d).

⁶³ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 1 (3).

⁶⁴ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 40 (1).

⁶⁵ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 40 (7).

⁶⁶ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 41.

⁶⁷ Government of Indonesia (2008). [Law No. 11 of 2008 concerning Electronic Information and Transactions](#), Article 1 (21).

Similarly, Article 90 of the Child Protection law recognises the liability of legal entities by stating that if any of the above-mentioned offences is committed by a body corporate, “then the relevant sanctions shall be imposed upon the management and/or the said body corporate”,⁶⁸ and “fines imposed shall be increased by one third (1/3)”.⁶⁹

Indonesian legislation does not explicitly provide for the establishment of a **national sex offender registry**. However, Regulation No. 199/2016, which amended the 2002 Law on Child Protection and will remain in effect until revision of the 2012 Child Protection Law is finalised, provided for the publication of offenders’ names,⁷⁰ remaining unclear whether the regulation establishes a sex offender registry. Moreover, Indonesian law does not explicitly prohibit convicted sex offenders to **hold positions involving or facilitating contact with children** but contains a generic provision that allows the deprivation of the right to be a legal manager or a counsellor and to be a guardian, co-guardian, curator or cocurator over other children as well as his or her own.⁷¹

Recidivism is addressed in Chapter XXXI of Book II of the Criminal Code, Articles 486 to 488, but none of these provisions apply to Article 282 (the only article in the Criminal Code applicable to child sexual abuse material). However, Article 282 (3) of the Criminal Code contains a paragraph on recidivism by stating that “if the offender makes an occupation or a habit of the commission of the crime described in the first paragraph, a maximum imprisonment of two years and eight months or a maximum fine of 75,000 rupiahs (approx. US\$ 5.12 as of April 2021) may be imposed”⁷² but the law does not define what a “habit” means. Besides, the Law on Pornography does not contain any provision hardening penalties for recidivists.

Regarding **data retention and preservation** of digital evidence, Article 24 of the Law on Pornography defines evidence, besides the definition given in the Criminal Procedure Code, as material that contains writing or picture in a form of printed or non-printed, electronic, optic, or other form of data keeping; and data that is kept in Internet and other communication channels.⁷³ Article 25 of the same law allows investigators to open access, to examine, and to make copy of electronic data that is kept in computer files, Internet, optic media, and other electronic data keeping and, accordingly, data owners, data keepers, or electronic service providers shall surrender and/or open electronic data requested by the investigator.⁷⁴

The Electronic Information and Transactions Law and the Regulation No. 82 of 2012 concerning Electronic System and Transaction Operation also provide for data retention. According to Article 16 (1) of the EIT Law and Article 21 of the Regulation that develops it, electronic systems operators shall redisplay electronic information and/or electronic documents completely in accordance with the format and retention period determined based on the Regulation, to the extent not provided otherwise by separated

⁶⁸ Government of Indonesia (2002). [Law No. 23 of 2002 on Child Protection](#), Article 90 (1).

⁶⁹ Government of Indonesia (2002). [Law No. 23 of 2002 on Child Protection](#), Article 90 (2).

⁷⁰ Government of Indonesia (2016). [Regulation No. 99 of 2016 on the second amendment to Law No. 23 of 2002](#), Article 81 (6).

⁷¹ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 35 (4).

⁷² Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 282 (3).

⁷³ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 24.

⁷⁴ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 25.

laws.⁷⁵ However, neither the law nor the regulation refer to the obligation of following the **principle of best interest of the child** in the retention and preservation of digital evidence.

Access to Justice and Remedies

National complaint mechanisms and reporting

First of all, the Indonesian legislation does not have provisions which **require professionals working with children and institutions or private citizens to report suspected cases of OCSEA** to the authorities. Nevertheless, Article 20 of the Law on Pornography states that “society can participate in prevention of production, distribution and usage of pornography”⁷⁶ and, according to Article 21 of the Law on Pornography, this participation can be done by reporting the breach of the law or by filing a representative lawsuit to the Court.⁷⁷

Additionally, Article 67A of the Law on Child Protection imposes on all individuals residing in Indonesia the duty to protect children from being influenced by or from gaining access to pornography.⁷⁸ However, this is more aspirational in nature than mandatory.

For those who report the crime to authorities, Article 22 of the Law on Pornography declares their right to have **legal protection** in accordance with the laws.⁷⁹ Plus, the Child Protection Law established a Child Protection Commission in charge of receiving public complaints about possible violations of the Child Protection Act and reporting them to the authorities.⁸⁰

Indonesian law does not generally require a victim’s complaint or report as a condition for launching an investigation or prosecution; however, a few articles in the Penal Code are excluded from this general rule.⁸¹ Furthermore, Article 72 of the Criminal Code specifies that when the victim of a crime is a minor and a complaint is required for prosecution of the crime, a legal representative can file such complaint on the child victim’s behalf.⁸²

An **anonymous complaint** is not sufficient to open an investigation as, according to Article 103 of the Criminal Procedure Code, a report or complaint can be made in writing or verbally, but in both cases it must be signed by the reporting party or the complainant.⁸³

Public Prosecutors can accept and examine the dossier of a case under investigation, as stated by Article 14 (a) of the Criminal Procedure Code, and shall prosecute a criminal case occurring in their jurisdiction in

⁷⁵ Government of Indonesia (2008). [Law No. 11 of 2008 concerning Electronic Information and Transactions](#), Article 16 (1) and Government of Indonesia (2012). [Regulation No. 82/2012 concerning Electronic System and Transaction Operation](#), Article 21.

⁷⁶ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 20.

⁷⁷ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 21 (1) (a) and (b).

⁷⁸ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 67A.

⁷⁹ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 22.

⁸⁰ Government of Indonesia (2002). [Law No. 23/2002 on Child Protection](#), Article 67B (last amended in 2016).

⁸¹ One of those exceptions is Article 293 of the Criminal Code, which criminalises the intentional abuse of power over a minor or the promise of any form of compensation to induce a minor to commit or tolerate obscenity.

⁸² Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 72.

⁸³ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 103.

accordance with the provisions of the law.⁸⁴ Public Prosecutors can also request investigators to complete investigations⁸⁵ but there is no specific duty to initiate investigations of OCSEA crimes *ex-officio*.

Article 78 of the Criminal Code comprises the rules on **statutes of limitations**, but does not include special provisions related to child sexual abuse. In general terms, proceedings can be initiated within six years for crimes punished with imprisonment not exceeding three years, 12 years for crimes punished by imprisonment exceeding three years, and within 18 years for crimes punishable by death or life imprisonment.⁸⁶

Child-sensitive justice

General protection to witnesses and victims is granted in Law No. 13 of 2006,⁸⁷ but special protection for children can be found in the Child Protection Law. Article 59 of the Child Protection Law provides for special protection to children, including “children who find themselves being exploited economically or sexually”,⁸⁸ “children who are victims of pornography”,⁸⁹ “child victims of abduction, sale and/or trafficking”,⁹⁰ and “child victims of sexual crimes”,⁹¹ although these terms are not defined in the law. In general, this special protection consists of prompt treatment, including physical, psychological and social treatment and/or rehabilitation, and prevention of diseases and other health problems; psychosocial assistance from treatment to recovery; provision of social assistance for children who come from poor families; and providing protection and assistance in every court proceeding.⁹² Nevertheless, none of the provisions contained in the Child Protection law refer to the establishment of **child-friendly interview methods** for child victims of OCSEA, and the only reference to judicial proceedings is found in Article 64 of the amended Child Protection law, when granting children an objective and impartial justice in a trial closed to the public.⁹³

First, the special protection granted to “children who find themselves being economically or sexually exploited” includes the dissemination of relevant provisions of laws and regulations to the Protection of Children who are exploited economically and/or sexually; monitoring, reporting and giving sanctions; and involving various companies, trade unions, non-governmental organisations, and the community in the elimination of economic and/or sexual exploitation of children.⁹⁴ Second, Article 67B of the Child Protection Law, as introduced by the 2014 Amendment, incorporates special protection for children who are victims of pornography by providing assistance to foster social, physical and **mental health recovery**.⁹⁵ Third, the protection provided for child victims of sexual crimes is made through education in reproductive health, religious values, and moral values; social rehabilitation, psychosocial assistance from treatment to

⁸⁴ Government of Indonesia (1981). [Law No. 8 of 1981 concerning the Criminal Procedure](#), Article 15.

⁸⁵ Government of Indonesia (1981). [Law No. 8 of 1981 concerning the Criminal Procedure](#), Article 137.

⁸⁶ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 78.

⁸⁷ Government of Indonesia (2006). [Law No. 13 of 2006 concerning Protection of Witness and Victim](#), Article 5.

⁸⁸ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 59 (d).

⁸⁹ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 59 (f).

⁹⁰ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 59 (h).

⁹¹ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 59 (j).

⁹² Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 59A.

⁹³ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 64 (h).

⁹⁴ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 66.

⁹⁵ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 67B.

recovery; and providing protection and assistance at every level of inspection starting from investigation, prosecution, until the examination in a court hearing.⁹⁶

Furthermore, Article 64 of the Child Protection law, as amended in 2014, also includes the government's responsibility of providing effective **legal assistance**,⁹⁷ but it does not clarify whether or not such assistance is free of charge.

Regarding the participation and **support provided by non-governmental organisations**, Article 72 of the amended Child Protection law recognises the role of the community in the protection of children, and defines community as individuals, child protection institutions, social welfare institutions, social organisations, institutions education, mass media, and the business world.⁹⁸ However, the listed activities do not include the assistance and support to child victims by NGOs during investigations and judicial proceedings.

Further, the new wording given by the 2014 Amendment of the Child Protection law suppressed the existing **right to access to information** regarding the development of the legal process⁹⁹ originally implemented by Law 23 of 2002 on Child Protection.

Even if there are no provisions ensuring the respect of **children's privacy**, Article 64 of the Child Protection law, as amended in 2014, grants special protection to children who are dealing with the law, and includes ensuring that the **child's identity** is not released through the media. Correspondingly, the Code of Conduct in Journalism, approved by the Decree of Press Council No. 03/SK-DK/III/2006, prohibits the disclosure of the identity of child victims or child offenders.¹⁰⁰

Finally, the Indonesian legislation does not contain explicit provisions and measures to **protect child victims and their families or witnesses on their behalf from intimidation and retaliation** nor to protect the safety and integrity of those who are involved in helping child victims. Nevertheless, under the Law No. 13 of 2006, all victims and witnesses are entitled to "obtain the protection of personal safety, family, and property, and free of threat with respect to the testimony to be, being, or has been given".¹⁰¹ This could apply to child victims of OCSEA.

There are also regional regulations concerning the protection of children against violent acts, such as the Regional Regulation of the Special Capital Province of Jakarta No. 8/2011.¹⁰²

⁹⁶ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 69A.

⁹⁷ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 64 (c).

⁹⁸ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 72.

⁹⁹ Government of Indonesia (2002). [Law No. 23/2002 on Child Protection](#), Article 64.

¹⁰⁰ Government of Indonesia (2006). [Code of Conduct in Journalism](#), Article 5.

¹⁰¹ Government of Indonesia (2006). [Law No. 13 of 2006 concerning Protection of Witness and Victim](#), Article 5(1).

¹⁰² Regional Government of Jakarta (2011). [Regional Regulation of the Special Capital Province of Jakarta No. 8/2011](#)

Access to recovery and reintegration

Article 44 of the Child Protection law, as amended in 2014, includes **rehabilitation** in the health care services that the government must ensure and also incorporates psychological and social treatment and/or rehabilitation as part of the special protection awarded to child victims of child sexual abuse material, sexual crimes and sexual exploitation.¹⁰³ Accordingly, Article 67B of the Child Protection Law, as amended in 2014, states that “special protection for children who are victims of pornography, as referred to in Article 59 paragraph (2) letter f, is implemented through efforts to foster, assist and recover social, physical and mental health”¹⁰⁴ (unofficial translation).

Moreover, Article 64 of the Child Protection law, as amended in 2014, grants **special protection** to children who are in conflict with the law or victims of crimes, and eliminates the distinction between children who find themselves in conflict with the law and children who are victims of criminal acts, as initially stipulated by Law No. 23 of 2002 on Child Protection. The new wording suppresses the general responsibility of the government and the community to provide rehabilitation and physical, mental and social safety guarantees to child victims and witnesses.¹⁰⁵

Finally, the Law on Pornography also provides for the protection of child victims of OCSEA related offences by stating that “government, social institutions, education institutions, religious institutions, families, and/or society must give education, guidance and social recovery, physical and mental health of any child who has become victim or doer of pornography”.¹⁰⁶

Access to compensation

According to Article 71D of the Child Protection Law, as amended in 2014, every child victim of child sexual abuse material, children exploited economically and/or sexually or child victims of sexual crimes have the right to submit a complaint before the courts claiming the **restitution of the damages** and the responsibility of the perpetrators.¹⁰⁷ Children can pursue an **independent civil case** in order to seek compensation or jointly in a criminal proceeding, according to Articles 98 to 101 of the Criminal Procedure Law.¹⁰⁸

The 2014 Amendment of the Child Protection Law included a Chapter on the operating funds for the implementation of Child Protection, which are a responsibility of national and regional governments.¹⁰⁹ However, it is not clear whether child victims of OCSEA have the possibility to seek compensation through **country-managed funds** or not.

¹⁰³ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 59A (a), 67B (a) and 69A (b) and (c).

¹⁰⁴ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 67B.

¹⁰⁵ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 64.

¹⁰⁶ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 16(1).

¹⁰⁷ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated)), Article 71D.

¹⁰⁸ Government of Indonesia (1981). [Law No. 8 of 1981 concerning the Criminal Procedure](#) Articles 98-101.

¹⁰⁹ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 71E.