

Indonesia's Role in Preventing Transnational *Cyber Pornography of Children* in the Southeast Asian Region Viewed From a Political Law Approach



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ABSTRACT: Indonesia, which is a member of the Southeast Asian region called the *Association of Southeast Asian Nations* (ASEAN), must have a duty and role to prevent *Cyber Pornography of children* in the Southeast Asian region. In this research, a normative juridical research method is used with a political law study approach. Indonesia's role in preventing *Transnational Cyber Pornography of Children* in the Southeast Asian Region Viewed from the Political Approach of Law is by ratifying the *Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* into Law Number 10 of 2012, then Indonesia also became a country that followed *The Declaration on the Elimination of Violence against Women and against Children*, which was approved in 2013 which aims to encourage regional cooperation in supporting national level actions in ending violence against children, especially the crime of *Cyber Pornography* in ASEAN. Indonesia also followed the follow-up of *The Declaration on the Elimination of Violence against Women and against Children* in 2013, namely the ASEAN National Action Plan on the *Elimination of Violence against Children 2016-2025*, held a 2012 Conference through ECPAT Indonesia's Agency on child protection attended by ASEAN countries. Indonesia was also represented by the Indonesian Child Protection Commission and ECPAT attended the *German Southeast Asian Center of Excellence for Public Policy and Good Governance* (CPG) Conference located at the Faculty of Law, Thammasat University in Thailand, the purpose of this conference was to address the problem of child pornography and the conclusion of this conference required cross-country and cross-regional cooperation in combating child pornography. Suggestions that can be given are revamping the rules (making special international treaties) and the need for cross-border child pornography crimes to be designated as serious and extraditable crimes.

KEYWORDS: Indonesia's Role, Transnational Prevention, Child *Cyber Pornography*, Southeast Asia Region, Political Law Approach.

I. INTRODUCTION

Globalisation and the development of science and technology, especially information and communication technology, have contributed to the increase in the creation, dissemination, and use of pornography which has a negative influence on the morals and noble personality of the Indonesian nation, threatening the life and social order of Indonesian society. The widespread development of pornography in society has also resulted in an increase in immoral acts and sexual abuse¹.

Children's freedom to access the internet without family supervision and lack of understanding of the threats that can arise in cyberspace make them vulnerable as victims of sexual crimes through the internet media. Survey results show that in 2014, the number of internet users in Indonesia reached 38,191,873 people, while mobile phone users reached 281,963,665 people out of a total population of 251,160,124. The data illustrates that internet penetration among Indonesians is very high, and some of them even have more than one mobile phone. This is because smartphones make it easier for users to access the internet.²

The 1945 Constitution of the Republic of Indonesia in Article 28B paragraph (2) states that:

"Every child has the right to survival, growth and development and the right to protection from violence and discrimination."

¹ Explanation of Law Number 44 Year 2008 on Pornography

² Atem, 2016, "The Threat of *Cyber Pornography* to Children", *Journal of Community Morals*, Vol.1/No.2/December 2016, pp 107-121.

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The provisions of Article 28B paragraph (2) are implemented in Law Number 44 Year 2008 on Pornography and the provisions regarding child pornography are found in Article 4 paragraph (1) letter f. Article 4 paragraph (1) states that "Every person is prohibited from producing, making, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, selling, leasing, or providing pornography that explicitly contains:

- a. "sexual intercourse, including deviant sexual intercourse;
- b. sexual violence;
- c. masturbation or masturbation;
- d. nudity or the appearance of nudity;
- e. genitals; or
- f. child pornography."

Article 4 paragraph (1) of Law No. 44/2008 on Pornography is in line with Article 27 paragraph (1) of Law No. 11/2008 which states that:

"Every person intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have content that violates decency".

The ITE Law also emphasizes criminal sanctions and fines for people who access or download images or videos of child pornography. In addition to this, this law also regulates the perpetrators who participate in spreading child pornography content, perpetrators who produce for commercial purposes child pornography content can also be charged with this law. Against these crimes, the government provides a reporting service facility for cases of child *cyber pornography* crimes. That there are provisions as applicable in the law, pornography in the form of pornography either on the internet or anywhere else is prohibited.³

The protection of children from acts of pornography is emphasised in Article 76I of Law Number 35 of 2014 concerning the Amendment to Law Number 23 of 2002 concerning Child Protection which stipulates that:

"Every person is prohibited from placing, allowing, committing, ordering to commit, or participating in the economic and/or sexual exploitation of children".

Although it has been clearly regulated in the legislation above related to the crime of child pornography, the crime of pornography continues to experience an increasing number of cases every year, as evidenced by data from the Indonesian Child Protection Commission, which noted that there were complaints of pornography and *cyber crime cases* involving children in 2016 as many as 587 cases, then in 2017 to 608 cases and in 2018 it rose to 679 cases. Of course, based on this data, there are threats that must be faced by both the government, society, and even parents to anticipate in protecting children from the negative influence of the internet and other online media. There are also several cases of dissemination of pornographic content carried out by third parties without the knowledge and permission of the content creator or the legal subject in the content. Content that was originally created for personal use is then disseminated by irresponsible parties via the internet to the detriment of the owner, creator, and the party in the content, this certainly violates the right to privacy and other human rights.⁴

In 1967, the *Association of Southeast Asian Nations* (ASEAN) was established as a regional organization with international status. However, ASEAN has a much lower level of international presence compared to other regional organizations such as the European Union. Several facts show the lack of recognition of ASEAN as a strong entity. First, in the settlement of the dispute between Indonesia and Malaysia over Sipadan Ligita, ASEAN failed to maximise its role through the *ASEAN High Council* to resolve international disputes between its member states. Instead, Indonesia and Malaysia chose to resolve the dispute through the International Court of Justice. Secondly, human rights issues that occur in ASEAN member states are never taken seriously by ASEAN, due to the application of the principle of non-intervention which is the basis of ASEAN policy.⁵

Cyber pornography cases do not only occur in Indonesia, but Malaysia, which is one of the countries in the Southeast Asian region, has experienced this. Malaysia occupies the top position in the number of child pornography cases on the internet in the Southeast Asian region, as seen from the number of Malaysian IP addresses that are most widely used to upload and download child pornography photos and visuals. Data revealed by Malaysian Police Assistant Commissioner Ong Chin Lan at the "*Cyber Protection for Children*" seminar in Kuala Lumpur showed that nearly 20,000 IP addresses in Malaysia were involved in such activities. This number of IP addresses is the highest in Southeast Asia. In 2015, the Netherlands police based in Malaysia also provided data showing that around 17,338 IP addresses involved in child pornography originated from Malaysia.⁶

³Herlita Eryke, "Cyberporn", *KUTEI Scientific Journal*, Issue 19 September 2010, p. 36.

⁴Salter, Michael and Thomas Crofts, "*Responding to Revenge Porn: Challenges to Online Legal Impunity*", *New Views on Pornography: Sexuality, Politics, and the Law*, 2015, pp. 233- 256.

⁵Pratomo, E. (2009). "Prospects and Challenges of International Law in ASEAN and Indonesia after the ASEAN Charter in terms of International Treaties", *Ius Quia Iustum Law Journal*, Vol.16/No.1/2009, pp 60-72.

⁶<https://www.viva.co.id/berita/dunia/1002755-seram-konsumsi-pornografi-anak-paling-tinggi-di-malaysia> accessed on 20 June 2023, at 13:14 WIB.

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Indonesia, which is a member of the Southeast Asian region called the *Association of Southeast Asian Nations* (ASEAN), must have a duty and role to prevent child *cyber pornography* in the Southeast Asian region. Child sexual exploitation is a crime that continues to plague Southeast Asia despite decades of international efforts to combat it, Indonesia must play a role in the prevention of child *cyber pornography* in accordance with one of the principles of ASEAN countries, namely joint commitment and collective responsibility in promoting peace, security and prosperity in the ASEAN region⁷.

Based on the explanation above, the problem formulation is:

How is Indonesia's Role in the Prevention of Transnational *Cyber Pornography of Children* in the Southeast Asian Region Viewed from the Political Approach of Law?

II. RESEARCH METHODS

In this research, a normative juridical research method is used with a political law study approach. According to Soerjono Soekanto, the normative juridical research method is a library legal research conducted by examining library materials or secondary data.⁸ The legal-political approach includes concepts, principles, fundamental policies, and statements of will from the government involving law formation, law determination, law application, and law enforcement. It also involves the function of law enforcement institutions and guidance to determine the direction, form, and content of the law to be made, as well as the direction of legal development to be built to achieve goals.⁹

III. RESEARCH RESULTS AND DISCUSSION

To know and examine Indonesia's role in preventing transnational *cyber child pornography* in the Southeast Asian region cannot be separated from *Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography*. The Additional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography was adopted and opened for signature, ratification, and supplementation by General Assembly resolution A/RES/54/263 on 25 May 2000. The Protocol subsequently entered into force on 18 January 2002.¹⁰

Indonesia has ratified the *Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography*. Indonesia has ratified through "Law Number 10 Year 2012 on the Ratification of the Additional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography". The purpose of ratification is contained in consideration letter b, namely:

"that Indonesia as part of the community the international community must actively participate in order to prevent, eradicate, and punish the perpetrators of the offence. crimes of sale of children, child prostitution, and pornography children embodied in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children. Children, Child Prostitution and Child Pornography (Optional Protocol to the Convention on the Rights of the Child concerning Sale of Children, Child Prostitution, and Child Pornography)"

The purpose of the Indonesian government based on Article 28 paragraph (2) of the 1945 Constitution is the basis for the issuance of Law No.10 of 2012 concerning "Ratification of the Additional Protocol to the Convention on the Rights of the Child Concerning the Sale of Children, Child Prostitution and Child Pornography", this is confirmed in the general explanation which reads:

"In order to realize one of the objectives of the Government of the Republic of Indonesia, namely to provide protection and welfare for children, every child has the right to survival, growth and development and the right to protection from violence and discrimination as stated in the amendment to the 1945 Constitution of the Republic of Indonesia Article 28B paragraph (2). The development of children's welfare, including the provision of opportunities to develop their rights, is not only the responsibility of parents, family, nation and state but also requires international cooperation".

The Protocol promotes legal reforms that prohibit and criminalize the practices of child trafficking, child prostitution, and child pornography.¹¹ To achieve the objectives of the Convention on the Rights of the Child and implement its provisions, especially

⁷ <https://setnasasean.id/tentang-asean> accessed on 20 June 2023, at 02:19 WIB.

⁸ Soerjono Soekanto and Sri Mahmudji, 2003, Normative Legal Research, A Brief Overview, Jakarta: Raja Grafindo Persada, p. 13.

⁹ Isharyanto, 2016, Politics of Law, Surakarta: Kekata Group, p. 11

¹⁰ Rosmalinda, 2021, The Role of Child Protection Organisers in Protecting and Fulfilling Rights, Pasuruan: Qiara Media, p. 56.

¹¹ <http://bankdata.kpai.go.id/files/2016/06/LAMPIRAN-UUDNOMOR-10-TAHUN-2012-TENTANG-PROTOKOL-OPSIONAL-KONVENSI-HAK-HAK-ANAK-MENGENAI-PENJUALAN-ANAK-PROSTITUSI-ANAK.pdf> accessed on 20 June 2023, at 13:43 WIB.

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Articles 1, 11, 21, 32, 33, 34, 35, and 36, the Additional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography requires states parties to take measures deemed necessary to protect children from the practice of selling children, child prostitution, and child pornography.¹² According to Arief Gosita, child protection is an effort to create conditions and situations that enable the implementation of children's rights and obligations in a humane manner. Therefore, every child's rights must be upheld in order to achieve the goal of the birth of a healthy young generation for the survival of the nation.¹³

Based on the drafting of the ASEAN Declaration on 20 December 1997 in Manila, various types of cybercrimes were discussed, including (1) *Cyber Terrorism*, which refers to electronic attacks through computer networks that target critical infrastructure and have the potential to cause negative impacts on a country's social and economic activities; (2) *Cyber Pornography*, which includes the dissemination of obscene material, indecent acts, and child pornography; (3) *Cyber Harassment*, which involves sexual harassment through email, websites, or chat programs; (4) *Cyber Stalking*, the crime of bullying through the use of computers and the Internet; (5) Hacking, the use of programming skills for unlawful purposes; (6) Carding (credit card fraud), which occurs when someone who is not the owner of the credit card uses the card illegally.¹⁴ The Asean Declaration has not yet formulated provisions on the protection of children from pornography.

Regulations regarding the protection of children in the Southeast Asian region who are victims of sexual violence are regulated in *The Declaration on the Elimination of Violence against Women and against Children*, which was approved in 2013. According to Sefriani, this declaration acts as a means to increase international cooperation, as it is an international treaty and the Indonesian government also participates in this declaration.¹⁵ Following the *Declaration on the Elimination of Violence against Women and against Children*, approved in 2013, countries in the Southeast Asian Region took steps through the declaration that have the potential to promote regional cooperation in support of national-level action to end violence against children. In 2015, the ASEAN Regional Plan of Action on the Elimination of Violence against Children 2016-2025 (RPA) was approved. This is a major effort in achieving the goals of the Declaration on the Elimination of violence against children and women. The RPA also contributes significantly to the implementation of the 2030 Sustainable Development Agenda and the achievement of *Sustainable Development Goals* (SDG) targets. Four of the targets in the Sustainable Development Goals Agenda explicitly call for an end to sexual violence against children, including *trafficking, prostitution, pornography, and forced/early marriage*.¹⁶

Transnational *cyber pornography* crimes as the dissemination of pornographic videos, chats with pornographic discussions, participation in pornographic groups, and then also the process of approaching children through online media with the aim of luring, manipulating, or inciting children to engage in sexual activity.¹⁷ The crime of pornography committed against minors online is a form of sexual crime. Sexual violence is a form of threatening and coercive behaviour.¹⁸ Transnational/cross-border crimes develop along with the progress of the times, especially in the era of globalisation which updates various aspects such as in the fields of trade, communication, industry, and so on. The globalisation factor, supported by various data completeness, is also one of the factors in the development of transnational crimes. Transnational crime cases also have their own impact on the sustainability of a country.¹⁹ In recent years, transnational crime has involved various types of criminal activity including art theft, computer crime, illegal immigration, piracy, and writing crime. These activities occur at both national and transnational levels. Transnational criminal organisations have diverse structures, outlooks and members, yet they pose a serious challenge to law enforcement at both national and regional levels. One of the main reasons is their focus on loose networks rather than overly formal and organised structures.

In November 2016, several representatives from Southeast Asian countries gathered at a conference aimed at addressing the issue of child pornography. The event was organised by the *German Southeast Asian Center of Excellence for Public Policy and Good Governance* (CPG) located at the Faculty of Law at Thammasat University in Thailand. The conference involved speakers from various sectors, including academics, practitioners, law enforcement, NGOs, and state representatives. In his opening remarks,

¹² Rosmalinda, *Op.Cit.*, p 58.

¹³ Arief Gosita in Harrys Pratama Teguh, *Criminal Law for Child Protection in Indonesia*, (Bandung: CV Pustaka Setia), 2020, p. 122. 122.

¹⁴ Atem, *Op.Cit.*, pp 107-121.

¹⁵ Farida, E. (2009). "The Effectiveness of the Asean Charter for Asean as an International Organisation", *Qistie Journal of Legal Studies*, 3(3).

¹⁶ Afrooz Kaviani Johnson, (2017) Ending Violence Against Children in ASEAN Member; States-Baseline Study of Priority Areas Under The ASEAN Regional Plan Of Action on The Elimination of Violence Against Children A Snapshot As of 2016, ASEAN, see also in Deanna Davy, (2017) Regional Overview: Sexual Exploitation of Children in Southeast Asia, ECPAT International, p 5.

¹⁷ Sushanty, Vera Rimbawani. "Cyberspace Pornography According to the Criminal Code, Pornography Law and Electronic Information Law", *Journal of Legal Ideas* Vol.1/No.1 2019, pp. 113.

¹⁸ Ismantoro Dwi Yuwono, *Application of Law in Cases of Sexual Violence Against Children*, (Yogyakarta: Medpress Digital, 2015), pp 1-7.

¹⁹ Muhammad Naseh, et al, "Characteristics of Transnational Organised Crime Perpetrators in Indonesia and Europe", *Journal of International Relations*, Vol. 8 No. 1, 2019, pp. 53.

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Henning Glaser, Director of CPG, stated that child pornography is increasing rapidly in the current technological era. Therefore, it is important for ASEAN countries to understand each other and work together in addressing this issue, given that the regional context and scope in ASEAN have significant similarities. This conference is expected to be the beginning of a joint commitment in combating child pornography in ASEAN. Indonesian delegates who attended the conference included Andy Ardian from ECPAT Indonesia and Ms Maria Advianti, KPAI Commissioner for child pornography. In his presentation, Andy said that the situation of child pornography in Indonesia has also increased, but efforts to tackle it are still limited. Although Indonesia has ratified the Additional Protocol to the Convention on the Rights of the Child on child trafficking, child prostitution, and child pornography, no significant steps have been taken by Indonesia to address these issues. In 2012, ECPAT Indonesia organised the Southeast Asia Regional Conference in Jakarta on protecting children from online situations. At the conclusion of the conference, speakers and participants recognised that the problem of child pornography is becoming more widespread as digital technology advances. Country-based approaches have not been able to solve this problem, hence the need for cross-country and cross-regional cooperation in combating child pornography. This problem is not just a problem of one country, but a common problem that requires closer cooperation between countries.²⁰

The Indonesian government has an important role in carrying out security and prevention duties in transnational crime cases. Given the importance of transnational crime prevention efforts, the government must cooperate with other countries through cooperation and extradition agreements related to these crimes. Indonesia's active participation in *cyber pornography* prevention efforts can be seen from the ratification of international treaties, cooperation with ASEAN countries, and the role of government agencies in dealing with the threat. This has successfully reduced cases of *cyber pornography* crimes.

The Additional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Article 2 reads:

For the purpose of the present Protocol:

- (a). "Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b). Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c). Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes".

The three definitions above are legal concepts that need to be understood in relation to the *sale of children*, *child prostitution* and *child pornography*. The practice of *sale of children* can be defined as an act or transaction in which a child is transferred from one person or group of people to another by providing a wage or other consideration.²¹ Furthermore, *child prostitution* refers to the use of a child in sexual activities for a fee or other consideration. Lastly, *child pornography* is any form of display or representation that involves children in explicit sexual activities or displays parts of a child's body for sexual purposes.²² Considering the growth and development of children will be severely disrupted if they have been affected by cyber pornography crimes.²³ Legal protection for child victims or minors from exposure to pornography aims to provide a sense of comfort, and so that victims do not experience mental depression or other bad influences.²⁴ The protection of children is whole, thorough, and comprehensive. This leads to prevention messages that advise adolescents not to correspond online with strangers, provide identical identifying information, or go alone to meet individuals they have only met online. Children's rights are an integral part of human rights as well as international instruments.²⁵ Every country is responsible for combating organized crime at the national level, still, domestic efforts are not enough to combat such transnational crimes, closer and effective international cooperation is needed given the diversity in laws and procedures²⁶.

IV. CONCLUSIONS AND SUGGESTIONS

Indonesia's Role in the Prevention of Transnational Cyber Pornography of Children in the Southeast Asian Region Viewed from the Political Approach of Law is by ratifying the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and

²⁰ <https://ecpatindonesia.org/berita/konferensi-regional-asia-tenggara-dalam-memerangi-pornografi-anak-bangkok/> accessed on 20 June 2023.

²¹ Rosmalinda, Op.Cit., p 61

²² *Ibid.*

²³ Ahmad Sofian and Deden Ramadani, "Implementation of the Optional Protocol on Trafficking, Prostitution, and Child Pornography in Indonesia", PKS Journal, Vol. 19 No. 1, 2020, p. 26. 26.

²⁴ Fajaruddin, "Legal Protection of Child Victims of Pornography", Journal of Varia Justicia, Vol. 10 No. 2, 2014, pp. 34.

²⁵ T. Riza Zarzani, "Conception of Child Protection from Commercial Sexual Exploitation of Children in International Law and its Application in National Law", Journal of De Lega Lata, Vol. 2 No. 2, 2017, p. 406. 406.

²⁶ Tom Obokata, 2017, "The Value of International Law in Combating Transnational Organised Crime in the Asia-Pacific", Asian Journal of International Law, Vol.7/2017, p 40.

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Child Pornography into Law Number 10 Year 2012, then Indonesia also became a country that participated in The Declaration on the Elimination of Violence against Women and against Children, which was approved in 2013 which aims to encourage regional cooperation in supporting national level actions in ending violence against children, especially the crime of Cyber Pornography in ASEAN. Indonesia also followed up on The Declaration on the Elimination of Violence against Women and against Children in 2013, namely the ASEAN National Action Plan on the Elimination of Violence against Children 2016-2025, held a 2012 Conference through ECPAT Indonesia on child protection attended by ASEAN countries. Indonesia was also represented by the Indonesian Child Protection Commission and ECPAT attended the German Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG) Conference located at the Faculty of Law, Thammasat University in Thailand, the purpose of this conference was to address the issue of child pornography and the conclusion of this conference required cross-country and cross-regional cooperation in combating child pornography.

Suggestions that can be given are revamping the rules (special international treaties are made) and the need for cross-border child pornography crimes to be designated as serious and extraditable crimes.

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