**Implementation Optional Protocol of the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography in Indonesia**

1. **Background:**

Indonesia ratified the Optional Protocol of the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography in 2012 through Law Number 10 of 2012 on Ratification of the The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. The purpose of ratifying this Protocol is for the rights of children victims of sexual exploitation to be fulfilled, to enhance international cooperation in punishing perpetrators of exploitation by extradition, and strengthen institutions and staff who assist victims of sexual exploitation and provide protection to persons involved in victim assistance. Protocol ratified, it recommended harmonizing its laws and regulations so that all these objectives optimally minimize cases of child sexual exploitation and fulfill victims' rights. In addition, it is hoping to have valid data related to the number of cases and victims of child sexual exploitation, which has been challenging to obtain with certainty.

Table of Cases of Child Sales, Child Prostitution and Child Pornography 2016 – 2020

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Trafficking and Exploitation** | **2016** | **2017** | **2018** | **2019** | **2020** |
| Child victim of trafficking | 72 | 58 | 65 | 56 | 28 |
| Child victim of prostitution | 181 | 193 | 173 | 135 | 52 |
| Child as a recruiter | 0 | 0 | 0 | 0 | 4 |
| Illegal adoption children | 0 | 0 | 0 | 0 | 11 |
| Child victim of online sexual crimes | 112 | 126 | 116 | 87 | 103 |
| Child perpetrators of online sexual crimes | 94 | 102 | 96 | 101 | 9 |
| Child victims of pornography on social media | 188 | 142 | 134 | 148 | 91 |
| Children of victims exposed to pornography | 103 | 110 | 112 | 94 | 46 |
| **Total:** | **750** | **731** | **696** | **621** | **344** |

The data above shows that cases of Child Sales, Child Prostitution and Child Pornography from 2016 to 2020 are still high and relatively stable; this is undoubtedly critical homework for the Indonesian Government to solve cases of child sexual exploitation in Indonesia. One of the data collections that the Government still carries out is through the Indonesian Child Protection Commission. The data collection method through the Indonesian child protection commission, Direct complaints, Print and Online Media Monitoring, Child Protection Data Bank Complaints, and the Indonesian child protection commission Partner Agency Data all provinces in Indonesia. Specifically, the data collected by the Indonesian child protection commission can be seen in the table above.

ECPAT Indonesia, during 2021, also conducted searches through online media and found 74 cases of child sexual violence and exploitation in Indonesia. Of the 74 cases dominated by sexual intercourse and sexual abuse against children, various modes include flirting, using threats, utilizing vulnerability, threatening violence, utilizing unfair power relations, grooming, and sextortion.[[1]](#footnote-1) Cases of child sexual violence and exploitation in religious institutions and organizations in 2021 increased significantly from the previous year. In 2020, cases of child sexual violence and exploitation in religious institutions/organizations were 19 cases, while in 2021, cases increased to 74 cases. The age of the perpetrators of child sexual abuse and exploitation is of various ages from 18 years to 56 years, which is dominated by men about 98%.

The Covid-19 pandemic in Indonesia began to enter in early 2020; restrictions on community activities implemented by the Indonesian Government at the beginning of the pandemic did not reduce cases of child sexual exploitation in Indonesia but instead increased cases, especially cases of child sexual exploitation in the online realm. In the first half of 2020, ECPAT Indonesia surveyed 1203 child responses related to child vulnerability to online child sexual exploitation during the covid-19 pandemic. The result is about 25% or about 287 children who experience bad experiences while internet during this pandemic. The most common forms of bad experiences include being sent disrespectful and profanity writing/text messages sent pictures/videos that make it uncomfortable to be sent images/videos featuring pornography.

It was further found that not all children want to say when experiencing sexual abuse online. Some 65.4 percent said they never told of their sexual harassment or online sexual assault. Only 35.5 percent said the bad experience to others. From the percentage, parents and friends become the figure they choose as friends to tell stories from the bad experience.

Head of The Police Cyber Crime Unit at the Talkshow with ECPAT Indonesia stated that about 90% of children under 18 years in Indonesia had been exposed to pornography; this phenomenon is alarming. In addition, from data recorded by the Indonesian Child Protection Commission between 2011 and 2017, 2,068 cases related to child pornography and cybercrime.

The many cases of child sexual violence and exploitation that occur in Indonesia lately could be due to the lack of a child protection system from sexual violence and exploitation in Indonesia. Indonesia is currently not maximal in harmonizing the The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. There are several elements of crime/criminal contained in this optional ProtocolProtocol, one of which is the element "buying" in the definition of child prostitution, instead of disappearing its element when ratified by the Indonesian Government. In contrast, in the original document of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography issued by the United Nations Committee on the Rights of the Child, the element "Buying" in the definition of Child Prostitution is regulated as one of the criminal elements that can ensnare perpetrators who buy children in prostitution cases. This Protocol calls for legal reform to prohibit and fund child trafficking, child prostitution, and child pornography activities. This Protocol underscores the above-defined definition of these phenomena to help harmonize the child's rights as a victim and encourage the recovery and reintegration of these victims.

1. **Criminal Law Regulations Related to Child Sexual Exploitation in Indonesia**

The Convention on the Rights of the Child (OHCHR) was in 1990, but legal in Indonesia has only been realized through the birth of Law No.23 of 2002 on Child Protection and revised into Law number 35 of 2014 on Amendments to Law No.23 of 2002 on Child Protection. The last revision became Law No.17 of 2016 on the Second Amendment to Law No.23 of 2002 on Child Protection. In this Law stated, perpetrators of child sexual exploitation are threatened with ten years in prison or a maximum fine of Rp 100 million. Other laws related to CSEM include Law No.39 of 1999 on Human Rights, Law No.23 of 2004 on the Elimination of Domestic Violence, Law No.21 of 2007 on the Elimination of The Crime of Trafficking in Persons, Law No.11 of 2008 on Electronic Transactions and Information, Law No.44 of 2008 on Pornography Act - Law No.1 of 2000 on Ratification of the ILO Convention 182.

In addition to the Law, the Indonesian Government also makes the Rule of Law to regulate the technical course of implementation in the Law, Such as Government Regulation No.9 of 2008 on Procedures and Mechanisms for Services for Witnesses or Victims of Human Trafficking, Government Regulation No.43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Criminal Acts and Regulation of the Minister of Women Empowerment and Child Protection No.8 of 2020 concerning Standards of Servants for Children Who Are Victims or Perpetrators of Pornography. Indonesia has also ratified the The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC Protocol) passed through Law No.10 of 2012 on the Ratification of optional protocols. By ratifying this Optional Protocol, Indonesia as a State Party should implement this Convention.

**Table: Map of Criminalization of Child Sexual Exploitation Practices in Indonesia**

|  |  |  |  |
| --- | --- | --- | --- |
| No | Rule | Sub | Section |
| 1 | Law No. 23 of 2002 on Child Protection  Law No. 35 of 2014 on Amendments to Law No. 23 on Child Protection  Law No. 17 of 2016 on the Second Amendment to Law No. 23 on Child Protection | Sexual exploitation  Sexual exploitation  Sexual exploitation | Section 66, 78, 81, 82 dan 88  Section 66, 67A, 67B, 69A, 76D, 76I, 81 dan 88  Section 66, 67A, 67B, 69A, 76D, 76I, 81 dan 88 |
| 2 | Law No.23 of 2004 on the Elimination of Domestic Violence, | Sexual violence | Section 8 (b) |
| 3 | Law No.21 of 2007 on the Elimination of Trafficking in Persons, | Trafficking of children for sexual purposes | Section 6, 17 |
| 4 | Law No.11 of 2008 on Electronic Transactions and Information, | Distributing and/or  transmit and/or make accessible Electronic Information and/or  Electronic documents that have a charge that violates decency | Section 27 (1), 45 (1) and 52 (1) |
| 5 | Law No.44 of 2008 on Pornography | Child pornography | Section 11, 12, 15, 16, 37 and 38 |

1. **Weaknesses of Laws and Regulations in Indonesia Related to Child Sexual Exploitation.**

Indonesia does not currently have any laws specifically governing the issue of child sexual exploitation. The Law only includes the sexual exploitation of children separately as part of other criminal regulations, such as the act on pornography; in this Law, child pornography becomes part of its core criminal act, namely the illegal pornography, Likewise, contained in the Criminal Act of Trafficking in Persons, where the trafficking of children for exploitation is only included in this section of the Law.

There is no specialist on child sexual exploitation, but child protection is integrated into child protection laws. In terms of the classification of criminal acts, child sexual exploitation is a particular criminal offense, not a general criminal. Therefore, then the arrangement formula becomes lex specialist.

However, as described above, unfortunately, child protection laws do not place the criminal act of child sexual exploitation in a particular chapter; even more tragically, the problem of child prostitution is not defined, so it is challenging to fund the perpetrators of this crime. Another problem is that despite efforts to unification of child sexual exploitation in child protection laws, the reality is that it is difficult to unification.

Another weakness committed by the Indonesian Government is the non-use of the Optional Protocol of the Convention on the Rights of the Child regarding the Sale of Children, Child Prostitution, and Child Pornography, even though this Protocol is complete in regulating the prevention, enforcement, and recovery related to child sexual exploitation. In 2014 and 2016, the Child Protection Act was revised to complement the previously fundamental child protection laws. In 2014 when the Child Protection Act was first revised, it turned out that the issue of child sexual exploitation was not included in the revised draft of the Child Protection Act; in the first revision of the Child Protection Act, they focused only heavily on expanding child protection. Specifically, names for child sexual exploitation such as child prostitution and child pornography were not included in the revision of the Child Protection Act in 2014.

In addition to the expansion of child-specific protection, the revision of the Child Protection Act in 2014 aggravated the punishment of perpetrators of child sex crimes by raising penalties for perpetrators who have closeness to victims, such as parents, teachers, guardians, and caregivers. However, the revision of the Child Protection Act forgot to regulate the recovery for victims of child sexual crimes as mandated by the Optional Protocol of the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography-related to the recovery of victims of child sexual exploitation in Indonesia.

ECPAT Indonesia sees the issue of Government regulations in lieu of legislation of the Republic Indonesia No.1 of 2016 on the Second Amendment to the Law on the Child Protection as a form of panic of the Indonesian Government in addressing child sexual crimes that increased drastically in that year and previous years despite revising the aw on the Child Protection in 2014. After the 2014 Law on the Child Protection was revised, in 2016 the Child Protection Act was revised for the second time due to an increase in cases of child sexual abuse in Indonesia at the time, but the Indonesian Government made the same mistake as in 2014, the Optional Protocol of the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography not as a reference in revising the Child Protection Law a second time, even though cases of sexual exploitation of children are also increasing rapidly not only cases of sexual violence. The Indonesian Government at that time only focused on the imposition of punishment for child sex offenders in Indonesia, especially at that time the President Republic of Indonesia issued a presidential regulation instead of legislation (Perppu) in which this regulation was made when there was an emergency that occurred in the country at that time.

The second revision of the Child Protection Law also focuses on punishing perpetrators who we think violate human rights, such as the death penalty and chemical castration. However, again, the need for victims of recovery and rehabilitation was not facilitated in the second revision of the Child Protection Law, and the Indonesian Government repeated the same mistake by not carrying out the mandate of the Optional Protocol of the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography which they ratified in 2012.

Related to Child Prostitution, law enforcement often has problems in processing child prostitution crimes. This is because the definition of child prostitution has not been stated in the act. The Law that is often used by law enforcement is Law No. 23 of 2002 on Child Protection and Law No.35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection.

When comparing it with Law number 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection with Law number 10 of 2012 on Ratification of Optional Protocols, ECPAT Indonesia found that the criminal element of "buying" was not mentioned, both in Law number 35 of 2014 and Law number 10 of 2012 on Ratification of Optional Protocols.

In fact, in the optional protocol translation of Law number 10 of 2012 on Ratification of optional protocols, and also attached in Law number 10 of 2012, the word buy is mentioned in the translation of the optional ProtocolProtocol:

*"... (b) offer, obtain, buy or provide a child for prostitution, as referred to in Article 2;"*

The absence of a criminal element of buying in both laws causes problems, especially with regard to law enforcement of child sex service buyers. Based on the record of handling cases conducted by ECPAT Indonesia in assisting cases against victims of child sexual exploitation in jagakarsa and cakung areas, law enforcement tends to use article 88 of Law No.35 of 2014 to be imposed on pimps and pimps who are indeed charged to. Meanwhile, for people who buy sexual services do not get any demands alias can live freely. Perpetrators who buy should be subject to articles 81 and 82 of Law No.35 of 2014 concerning sexual abuse and child abuse. ECPAT Indonesia, efforts to demand buyers of child sex services have never been made. The police even think that the activity of buying child sex services is a private matter for the perpetrator, not the business of law enforcement.

From the laws and regulations related to child prostitution above, it can be concluded that regulations related to child prostitution still require harmonization with optional protocols. Aspects that need to be emphasized are related to the definition of child prostitution and the criminal element of child prostitution. For laws and regulations regarding the sale of children and child pornography, it is currently considered sufficient to punish perpetrators who commit these two crimes for elements of concern in the crime of trafficking in persons and child pornography is still relevant to use although not fully well defined as contained in the Optional Protocol of the Convention on the Rights of the Child, Child Prostitution and Child Pornography.

1. **The Importance of Reintegration and Rehabilitation for children victims of child sexual exploitation**

Article 59 of Law No.35 of 2014 on Amendments to Law No.23 of 2002 on Child Protection has guaranteed that economically and sexually exploited children and victims of trafficking are entitled to special protection, one of which is rehabilitation. For victims of pornography, there is government regulation No.40 of 2011 on the development, assistance, and recovery of children who are victims or perpetrators of pornography.

Related to rehabilitation for children, the Government of Indonesia already has 15 Children's Social Protection Houses (RPSA). The existence of the safe house is facilitated by the Ministry of Social Affairs of the Republic of Indonesia. Procedurally, children who are victims of violence are placed in the rehabilitation center for six months. The children get psychological assistance from social workers, education, and foster parents during the rehabilitation process.

Regarding rehabilitation and reintegration efforts, ECPAT Indonesia still doubts the rehabilitation efforts undertaken by the Government against victims of child trafficking, child prostitution, and child pornography. This is because victims of violations set out in this optional Protocol get the same rehabilitation processes and stages as victims of sexual abuse, sexual violence, and other cases. Cases related to child trafficking, child prostitution, and child pornography require unique and specific rehabilitation treatment. The existence of time limits in the rehabilitation process is also feared to limit the rehabilitation treatment received by victims by social workers at RPSA. The rehabilitation process should refer to the recovery of victims from trauma is instead feared to be a normal process according to the deadline of the victim being in the rehabilitation place.

Related to social reintegration, ECPAT Indonesia also found that the process of social reintegration carried out only prepares victims but has not prepared the readiness of families or the surrounding community. This causes the potential for victims to experience violence again is very likely to occur. In addition, ECPAT Indonesia also found that the Government of Indonesia has never conducted monitoring and evaluation efforts on children who are victims after being returned to their place of origin. This monitoring and evaluation effort is vital to know how much the Ministry of Social Affairs has carried out the success rate of the social reintegration process through RPSA.

1. **Recommendations**
2. The Indonesian Government should conduct an inventory of child prostitution, child sales, and child pornography, including its spread in the Indonesia region so that the local Government understands what to do.
3. Encourage the Indonesian Government to clarify the rule of Law regarding child prostitution, which has been broad in its understanding because of the non-use of the Optional Protocol of the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography as a reference when revising the Child Protection Act.
4. Requires law enforcement to increase their knowledge in resolving child abuse cases, even if the victim or the victim's family does not want to continue the case so that the perpetrator can still be punished and does not cause new victims again.
5. Encourage the Indonesian Government to make a state report related to implementing the Optional Protocol of the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography which has been ten years after Ratification has never been made.
6. Harmonize regulations related to the definition and elements of criminal acts on Child Trafficking, Child Prostitution, and Child Pornography under Law No.10 of 2012. This harmonization involves the Ministry of Women Empowerment and Child Protection, the Ministry of Law and Human Rights, the Police, the Supreme Court, the Attorney General's Office, the House of Representatives (DPR).
7. Maximize recovery for victims of child sexual exploitation following the mandate of the Optional Protocol of the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography by increasing the capacity of the staff of victim rehabilitation services in Indonesia.
8. Building an Integrated Data Collection System related to Victims of Child Trafficking, Child Prostitution, and Child Pornography

1. Tabulating data on cases of child sexual violence and exploitation cases in Indonesia 2021, ECPAT Indonesia. [↑](#footnote-ref-1)