

# A JURIDICAL ANALYSIS OF THE CRIMINAL LIABILITY OF PERPETRATORS OF ONLINE CHILD SEXUAL EXPLOITATION

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Received 26 Sep 2025 • Revised 30 Oct 2025 • Published 29 Nov 2025

## Abstract

This study analyzes the criminal liability of perpetrators of child sexual exploitation conducted through online media under Indonesian criminal law. The research applies a normative juridical method with statutory and case approaches. The findings reveal that perpetrators can be held criminally liable if proven to have committed the offense with culpability, as stipulated in the Indonesian Criminal Code, the Child Protection Law, the Electronic Information and Transactions Law, and the Pornography Law. Although the existing legal framework is relatively adequate, law enforcement remains hampered by difficulties in digital evidence collection, overlapping regulations, and low levels of public digital literacy. The study highlights the need for legal reform and preventive strategies focusing on digital literacy and child protection to strengthen the national legal system and ensure comprehensive protection for children in cyberspace in accordance with the best interest of the child principle.

**Keywords:** Criminal Liability, Child Sexual Exploitation, Online Media, Criminal Law, Child Protection

## INTRODUCTION

Indonesia expressly declares itself a state governed by the rule of law (*rechtsstaat*), as explicitly mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (“UUD NRI 1945”), which states: “Indonesia is a state based on the rule of law.” This constitutional affirmation is not merely a formal declaration, but a fundamental principle that forms the spirit and essence of the entire administration of national and state life. This means that all actions of the State, the Government, law-enforcement authorities, and citizens must at all times be subject to and grounded in the supremacy of law that is just, certain, and accountable. As a state based on the rule of law, Indonesia adheres to the *rechtsstaat* doctrine rooted in the continental European legal tradition, which emphasizes the recognition and protection of human rights, the separation and balance of powers (*trias politica*), an independent and impartial judiciary, and the principle of legality in all governmental actions (Fauzi, 2023).

Children, as the future generation of the nation, constitute a valuable asset that must be protected to ensure their optimal physical, mental, and social development. In the context of protecting children from online-based sexual exploitation, Indonesia’s status as a rule-of-law state imposes both a profound moral obligation and a constitutional duty upon the State. The State cannot remain passive or merely provide reactive responses when its children become victims of crimes against humanity committed in cyberspace. The State is required to be proactively present through responsive legislation, firm and impartial law enforcement, and comprehensive, integrated preventive policies. For when the law fails to protect those who are most vulnerable—children—the legitimacy of the rule of law itself begins to erode, and public trust in legal institutions is increasingly diminished. Nevertheless, in reality, many children in Indonesia continue to experience violations of their rights, particularly in the form of sexual exploitation.

Law Number 23 of 2002 concerning Child Protection (“Child Protection Law”) stipulates that a child is any individual under eighteen years of age, including a child who is still in the womb. In the legal context, child protection is defined as a systematic effort to ensure the fulfillment of children’s rights so that they may live, grow, and participate in society in a proper and dignified manner in accordance with humanitarian principles (Renggong, 2016). Child protection also aims to ensure that children are free from violence, exploitation, and discrimination. However, in practice, many children continue to fall victim to violations of their rights, particularly in the form of sexual exploitation that degrades their dignity and threatens their development. Such crimes deprive children of their right to live safely and with dignity, while causing severe psychological and social impacts. Therefore, the responsibility to protect children who are victims of sexual exploitation does not rest solely on the State but constitutes a collective obligation of society, reflecting the principle of child protection as mandated within Indonesia’s legal framework.

Sexual exploitation of children constitutes not only a violation of criminal law but also a crime that fundamentally undermines moral and humanitarian values. Child victims commonly suffer physical injury, psychological distress, and the loss of a sense of safety that should, by law, be guaranteed by the State. The rapid development of information technology has expanded the sphere in which such crimes occur, as child sexual exploitation now transpires not only through direct physical contact but also through digital or online media (Lestari, 2019). Thus, sexual violence is regarded as a traumatic experience inflicted upon victims—particularly women—whose rights are violated and diminished.

Incidents of sexual violence require urgent and specialized handling so that victims may obtain comprehensive justice and recovery (Rahmi et al., 2023). Cases of sexual violence against children have become increasingly prevalent and have even drawn serious global concern (Gustianti et al., 2022). Evidence demonstrates that sexual violence is not a general phenomenon alone; rather, young girls frequently become primary targets, especially in the context of sexual offences, which directly threaten their rights and developmental well-being (Rahmi, 2024). For these reasons, every child is entitled to full protection from all forms of threats to their person.

Advancements in information and communication technology in the digital era have triggered significant impacts across numerous dimensions of human life, including social interaction, economic activity, and legal development. The internet and social media have evolved beyond mere tools of communication and entertainment; they have simultaneously opened avenues for various forms of cybercrime. One increasingly prevalent form of such crime is the online sexual exploitation of children. This phenomenon presents a grave threat, as offenders exploit technological sophistication to engage in indecent acts, distribute child pornography, and even exploit minors economically and sexually. Online child sexual exploitation constitutes not only a violation of the law but also a breach of fundamental moral and humanitarian principles.

From a juridical perspective, Indonesia has enacted several legal instruments governing the protection of children from sexual crimes, including the Child Protection Law and its amendments, as

well as Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection into Law ("EIT Law"). Nevertheless, the effectiveness of law enforcement against perpetrators of online child sexual exploitation remains hindered by numerous obstacles. These challenges include the inherent difficulty of proving cybercrime, the limited capacity of investigators in tracing digital footprints, and the dynamic nature of cyber-offences, which continue to evolve alongside technological advances (Simanjuntak, 2021).

Sexual exploitation of children, particularly when perpetrated through online platforms, has recently become an extremely serious and alarming threat in Indonesia. This crime is no longer confined to physical contact but has transformed into more hidden, systematic, and widespread forms—ranging from sexual extortion through threats of distributing private photos or videos (sextortion), coercing children to produce self-generated pornographic material, to trafficking children for live-streamed sexual exploitation. The impact is devastating—not only psychologically destroying a child's future but also leaving lifelong trauma that is difficult to heal.

This research aims to examine and analyze the legal provisions concerning the criminal act of online child sexual exploitation as governed by Indonesia's statutory framework. It further seeks to understand comprehensively the forms of criminal liability applicable to perpetrators of online child sexual exploitation, both from the perspective of Indonesia's positive criminal law and its practical application within the criminal justice system. Moreover, this study seeks to identify the obstacles encountered in the enforcement of laws governing such offences. Accordingly, this research is expected to contribute to strengthening the national legal system in addressing cybercrimes against children while enhancing legal protection for children as a vulnerable group in the digital era.

Based on the foregoing background, the research problem addressed in this study is twofold: (1) what forms of criminal liability may be imposed on perpetrators of online child sexual exploitation under Indonesia's positive criminal law; and (2) what factors hinder the enforcement of laws concerning sexual exploitation of minors (child grooming) committed through social media. This research endeavors to provide a comprehensive analysis of the mechanisms of perpetrator liability while identifying structural, juridical, and technical barriers that affect the effectiveness of law enforcement in cases of child sexual exploitation facilitated by digital technology.

## METHODS

This research is designed by adopting a normative juridical legal research method, an approach most appropriate when the object of study concerns the law in its prescriptive form (*das sollen*), rather than empirical realities of "what occurs" (*das sein*). This approach is deliberately selected because the primary focus of the study lies in the identification, interpretation, and in-depth analysis of the substantive legal norms that exist and apply in Indonesia, particularly those governing the protection of children from forms of sexual exploitation facilitated by information technology, as reflected in the Child Protection Law and its amendments, the EIT Law, the Pornography Law, and their respective implementing regulations.

Given its normative character, this research does not involve the collection of primary data through interviews, questionnaires, or field observations. Instead, it relies entirely on secondary legal materials. These materials include statutory and regulatory instruments at various hierarchical levels; doctrines and authoritative opinions of scholars in criminal law and criminology; judicial precedents or court decisions (at the district court, appellate, cassation, and judicial review levels) that have permanent legal force and are relevant to cases of online child sexual exploitation; as well as other scholarly literature that supports the construction of legal arguments. Through a systematic examination of these sources, this research seeks to identify consistency, gaps, and weaknesses within the existing positive law, while also formulating recommendations that may serve as input for the refinement of future legal policies (Soekanto & Mamudji, 2014).

The data sources in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutes and court decisions that constitute the main objects of study. Secondary legal materials include literature, books, academic journals, and previous studies relevant to the research topic. Meanwhile, tertiary legal materials comprise legal dictionaries, encyclopedias, and other sources that clarify the legal terminology or concepts employed. The data collection technique is conducted through library research by gathering, reviewing, and identifying various relevant legal materials (Fansuri & Matheus, 2022). The collected data are then analyzed using a qualitative descriptive analysis method, namely by describing, interpreting, and correlating the applicable legal norms with theoretical perspectives and their practical application within Indonesia's criminal justice system.

## RESULT AND DISCUSSION

### Forms of Criminal Liability for Perpetrators of Online Child Sexual Exploitation Under Indonesian Positive Criminal Law

The imposition of criminal punishment upon an individual cannot be carried out automatically merely because the act committed is contrary to law. Even when the act has fulfilled all elements of a criminal offence as stipulated by statute and no legal justification exists, the imposition of criminal sanctions still requires a lawful process grounded in the principles of legality and due process. Such fulfilment of statutory elements alone is insufficient to constitute a basis for punishment. Within the criminal justice system, sentencing is not solely dependent on the fulfilment of the objective elements of an offence, but must also be accompanied by the presence of subjective elements in the form of culpability on the part of the perpetrator. Therefore, to hold a person criminally liable for a criminal act, it must be proven that the individual possessed the capacity for responsibility and committed the act with awareness and free will (Saleh, 2010).

In other words, criminal punishment is not imposed solely on the basis that an unlawful act has occurred, but also upon proof that the perpetrator is deserving of blame for such conduct. The element of culpability (subjective guilt) serves as an essential foundation of criminal liability, for only in the presence of culpability may an individual be punished fairly and in accordance with the fundamental principle of criminal law: there is no punishment without fault (*geen straf zonder schuld*). Absent such culpability, the imposition of punishment would contravene the principles of justice and the established doctrines of criminal law (Lamintang, 2011).

The discussion of criminal liability essentially pertains to the individual who commits the crime. Criminal law differentiates between the elements of an act that constitute a criminal offence and the personal attributes of the perpetrator. Thus, a person who commits an act classified as a crime is not automatically subject to criminal penalty; such penalty depends on whether the individual possesses the capacity to be held criminally responsible (Simons, 2012). Conversely, a person who is punished for a criminal act has been proven not only to have committed the act but also to be criminally accountable for it. Criminal liability consists of three principal elements: capacity for responsibility, the presence of culpability, and the absence of justification or excuse (Sudarto, 2007). In the context of online child sexual exploitation, a perpetrator may be held criminally liable if it is proven that they acted intentionally and knowingly, with an understanding of the harmful consequences inflicted upon the victim (Marlina, 2015).

In addition to principal penalties, perpetrators may also be subjected to additional sanctions in the form of restitution or compensation to the victim. This provision aligns with the principles of child protection, which emphasize the restoration of the child's condition as an embodiment of restorative justice (Marlina, 2015). Several studies have shown that restitution plays an important role, as child victims of sexual exploitation often suffer severe psychological trauma, thereby requiring both material and moral support to assist their mental and social recovery process (Ulinuha, 2013).

Forms of criminal liability for perpetrators of online child sexual exploitation are regulated under various laws and regulations, including:

1. The Indonesian Criminal Code, Article 296 of the Indonesian Criminal Code provides that any person who intentionally causes or facilitates obscene acts by another person as a livelihood or habit shall be subject to imprisonment for a maximum of one year and four months or a fine of up to fifteen thousand rupiah. Meanwhile, Article 506 of the KUHP stipulates that any procurer who derives profit from obscene acts committed by another person shall be subject to imprisonment for a maximum of one year.
2. The Child Protection Law (as amended by Law Number 35 of 2014 ("Law 35/2014")), Article 88 provides that any person who exploits a child, whether economically or sexually, for the purpose of obtaining a benefit for themselves or another person, shall be subject to imprisonment for a maximum of ten years and/or a fine of up to two hundred million rupiah.
3. Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking, pursuant to Article 2 paragraph (1), any person who recruits, transports, or receives another person by means of violence, threats, or any other method for the purpose of exploitation, including sexual exploitation, shall be subject to imprisonment for a minimum of three years and a maximum of fifteen years, and a fine ranging from one hundred twenty million to one billion rupiah..
4. EIT Law, Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) provides that any person who intentionally and without right distributes, transmits, or makes accessible electronic information containing content that violates decency shall be subject to imprisonment for a maximum of six years and/or a fine of up to one billion rupiah.

5. The Pornography Law, article 30 in conjunction with Article 4 paragraph (2) stipulates that any person who provides pornographic services shall be subject to imprisonment for a minimum of six months and a maximum of six years, as well as a fine ranging from two hundred fifty million to three billion rupiah.

The Bandung High Court Decision Number 427/Pid.Sus/2023/PT BDG constitutes an example of the application of legal norms under the Child Protection Law and its amendments, particularly with respect to the criminal act of child sexual exploitation. In this case, the defendant, Achmad Asry Siregar alias Paci, was declared legally and convincingly proven guilty of committing the criminal act of “placing, allowing, committing, ordering the commission of, or participating in the abduction, sale, and/or trafficking of a child,” as stipulated in Article 83 in conjunction with Article 76F of Law 35/2014. The Bogor District Court imposed a sentence of 3 years and 6 months’ imprisonment and a fine of IDR 100,000,000, which was subsequently affirmed by the Bandung High Court.

In relation to the theory of criminal liability discussed in this journal, the decision demonstrates that the judges properly applied the principle of *geen straf zonder schuld* (no punishment without fault). The defendant was assessed as having the capacity for criminal responsibility, having acted with intent (*dolus*), and understanding the consequences of his conduct. This satisfies the element of fault as the basis for criminal liability under Indonesian criminal law doctrine, as articulated by Lamintang and Roeslan Saleh (Lamintang, 2011) (Saleh, 2010). Thus, the imposition of punishment on the defendant is consistent with the principle of criminal law requiring subjective culpability as the foundation of sentencing.

Furthermore, the panel of judges explicitly emphasized that the purpose of punishment is not solely retributive but also educational and preventive in nature. The judges’ considerations align with the child protection principles set out in Article 2 letter (d) of the Child Protection Law, namely the principle of the best interests of the child. In this context, the judges not only considered justice for society but also ensured that the rights of the child victim were protected, for example through the return of the victim’s belongings submitted as evidence and safeguards to prevent revictimization during the judicial process.

The form of criminal liability reflected in this decision parallels the concept of liability applicable to perpetrators of online child sexual exploitation. Although the instant case occurred in a physical (offline) setting, whereas this journal primarily examines exploitation through digital media, the elements of the offense remain identical—namely, acts of selling, trading, or exploiting a child for economic or sexual purposes. This demonstrates that the same legal framework can be applied to both conventional and online child exploitation, provided that culpability and criminal intent can be established. The decision also illustrates that law enforcement in conventional cases tends to be relatively more straightforward compared to acts of exploitation committed through digital means. In the case of Achmad Asry Siregar, evidence and the perpetrator could be physically presented in court, whereas in the context of online child exploitation, evidentiary processes are often hindered by limitations in digital forensics, perpetrator anonymity, and overlapping regulations among the Child Protection Law, the Electronic Information and Transactions Law, and the Pornography Law. Accordingly, this decision underscores the importance of enhancing the capacity of law enforcement officials to address the more complex and cross-jurisdictional nature of child exploitation cases in the digital realm.

### **Factors Hindering Law Enforcement Against the Criminal Act of Sexual Exploitation of Minors (Child Grooming) Committed Through Social Media**

The development of information technology has brought significant social and legal consequences, including the escalation of sexual exploitation of children through online platforms. This phenomenon is no longer sporadic in nature but has evolved into a systematic pattern of crime with complex modes of operation: grooming through social media, the production of exploitative content, and even cross-border online trafficking. Data from the Indonesian Child Protection Commission indicate that during the first semester of 2024, there were 47 cases of online child sexual exploitation involving 58 suspects, as well as the blocking of more than 15,000 child pornography websites in cooperation with the Criminal Investigation Agency of the Indonesian National Police and the Ministry of Communication and Informatics (Komisi Perlindungan Anak Indonesia (KPAI), 2024).

These findings demonstrate that while technological advancements accelerate the flow of information, they simultaneously expand opportunities for offenders to exploit the vulnerabilities of children. Although Indonesia has enacted legal instruments such as the Child Protection Law and its amendments, the Electronic Information and Transactions Law, and the Pornography Law, these regulations are deemed insufficient to fully address the evolving nature of online-based sexual exploitation.

In the practical enforcement of laws against the criminal act of child sexual exploitation committed through online platforms, several fundamental obstacles undermine the effectiveness of legal protection. These obstacles may be described as follows:

1. Normative Barriers (Regulatory Gaps in Legislation)

The national legal framework—such as the Child Protection Law and its amendments, the EIT Law, and the Pornography Law—does not explicitly regulate specific forms of online child sexual exploitation, such as child grooming, sextortion, and live-streaming abuse. As a consequence, law enforcement authorities often encounter difficulties in applying the appropriate criminal provisions, particularly when the element of “exploitation” occurs virtually without physical contact (Mursid et al., 2024). This creates a legal vacuum that impedes legal certainty for victims and reduces the effectiveness of criminal law enforcement.

2. Technical Barriers (Challenges in Evidence Collection and Digital Forensics)

In terms of evidentiary processes, many cases of online child sexual exploitation face obstacles because electronic evidence is difficult to secure. Perpetrators frequently use end-to-end encryption technologies, anonymous identities, and quickly deleted digital traces (Dewi et al., 2024). Moreover, much of the activity takes place within dark web forums that cannot be accessed without cross-border cooperation. Limitations in law enforcement officers’ digital forensic capabilities, along with inadequate digital laboratory facilities in various regions, further exacerbate the situation. Accordingly, these technical barriers are substantial, as they directly affect the evidentiary process—an essential component of criminal adjudication.

3. Institutional Barriers (Coordination and Capacity Among Agencies)

The handling of online child sexual exploitation cases involves multiple institutions: the Ministry of Women’s Empowerment and Child Protection, the Ministry of Communication and Informatics, the Criminal Investigation Agency of the Indonesian National Police, the Indonesian Child Protection Commission, and even Interpol. However, coordination among these institutions remains suboptimal (Fitrianna & Taun, 2023). Overlapping authorities and the absence of an integrated data system hinder efficient case handling. In addition, human resource capacity in cyber law enforcement remains limited. Insufficient digital analytical skills and slow inter-agency coordination often lead to delayed case handling and, ultimately, impunity for offenders.

4. Socio-Cultural Barriers (Low Digital Literacy and Victim Stigmatization)

Low levels of digital literacy among the public mean that children and parents lack sufficient ability to detect indicators of online exploitation (KemenPPPA & Bareskrim Polri, 2024). Victims frequently do not realize that they have become subjects of sexual exploitation, and even when they are aware, they are often reluctant to report due to shame, fear, or distrust of legal processes. Additionally, societal tendencies toward victim-blaming further hinder victim recovery and weaken the deterrent effect on offenders. These social barriers reflect that child legal protection is not merely a normative issue but also involves deep sociological dimensions.

As a responsive measure, the government has issued Government Regulation Number 17 of 2025 on the Governance of Electronic System Operations in Child Protection, which obligates electronic system operators to prevent, detect, and report child exploitation content. In addition, the Ministry of Women’s Empowerment and Child Protection and the Ministry of Communication and Informatics, in cooperation with the Criminal Investigation Agency of the Indonesian National Police, are strengthening digital literacy initiatives and cyber-forensic training for law enforcement officers. However, the effectiveness of these policies remains highly dependent on sustained inter-agency coordination and international cooperation. Reactive law enforcement must shift toward preventive and technology-adaptive approaches, placing the best interests of the child as the fundamental basis for all policies.

## CONCLUSION

A critical juridical assessment of criminal liability for perpetrators of online child sexual exploitation demonstrates that this offense represents a technologically driven and increasingly sophisticated form of criminality that targets a highly vulnerable group—children. The harm inflicted extends beyond immediate physical and psychological injury and produces long-term developmental, social, and moral consequences. Under Indonesian criminal law, liability may be imposed insofar as the elements of culpability are satisfied pursuant to the Criminal Code, the Child Protection Law, the EIT Law, and the Pornography Law; however, enforcement remains impeded by the inherent complexity of digital evidence, insufficient forensic and technical capabilities among law-enforcement officers, and inadequate inter-agency coordination.

Decision No. 427/Pid.Sus/2023/PT BDG illustrates an application of criminal liability principles consistent with doctrinal criminal law and the protective mandate of child-rights legislation, even though

the case did not involve online media. The judgment affirms the State's duty to ensure both law enforcement and the protection of the child's best interests. Nevertheless, reforms remain necessary, particularly the strengthening of digital-forensic capacity and the modernization of substantive and procedural norms to address emerging cyber-enabled exploitation.

Persistent obstacles—including digital-evidence complexity, limited institutional competence, low societal digital literacy, and entrenched victim-blaming—underscore that punitive measures alone are insufficient. An integrated preventive framework is required, encompassing digital education, stricter online-content supervision, public-awareness initiatives, and adaptive regulatory policies attuned to technological change. A comprehensive child-protection ecosystem therefore requires coordinated efforts among the Government, law-enforcement authorities, educational institutions, and communities. All measures must remain anchored in the best-interests-of-the-child principle, which functions as the normative foundation for every policy and legal intervention concerning children, ensuring the protection of their rights, dignity, and welfare in the increasingly complex digital landscape.

Policy recommendations that can be promptly operationalized include the establishment of an inter-agency task force specifically mandated to address online child sexual exploitation. This task force shall operate under the coordination of the Coordinating Ministry for Human Development and Cultural Affairs and consist of the National Police, the Ministry of Communication and Informatics, the Ministry of Women's Empowerment and Child Protection, and the National Cyber and Encryption Agency. Its mandate shall encompass continuous monitoring of digital platforms, the establishment of rapid-response mechanisms for public reports, and the facilitation of international cooperation—including with Interpol—for the handling of cross-border cases. To ensure operational effectiveness, the task force shall be supported by an adequate annual budget allocation of no less than IDR 100 billion, particularly for the procurement and development of artificial-intelligence-based technologies capable of detecting and blocking harmful content in real time.

On the preventive side, the government shall strengthen the child-protection regime through the imposition of mandatory digital-literacy curricula across all levels of primary and secondary education. An amendment to the National Education System Law is required to formally incorporate digital literacy—including materials on the prevention of online child sexual exploitation (OCSE)—as a compulsory subject under the supervision of the Ministry of Education, Culture, Research, and Technology in coordination with the Digital Commission. The curriculum shall cover fundamental topics such as child grooming, sextortion, digital security, and ethical social-media practices, with a target for nationwide implementation no later than two years from enactment and subject to annual evaluations to assess its effectiveness.

To support evidence-based law enforcement grounded in digital forensics, the National Police shall issue a Chief of Police Regulation specifically governing technical guidelines for digital-forensic procedures in OCSE cases. This regulation shall include standard procedures for the collection and preservation of evidence—including the extraction of communication metadata, Internet Protocol (IP) tracing, and analysis of electronic devices—and shall mandate specialized training for investigators handling cybercrimes against children. The guidelines shall take effect within one year from issuance and be accompanied by an independent audit mechanism to evaluate compliance and the effectiveness of their implementation.

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