

**CHILD PORNOGRAPHY IN CYBERSPACE:
AN ANALYSIS OF THE LAWS IN COMBATING THE
CRIME IN ASEAN COUNTRIES**

BY

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ABSTRACT

Facilitated by the globalisation of information and communication technologies and the Internet, the crime of online child pornography (OCP) is an increasingly pervasive concern, and its negative implications and dimensions are profound in today's society. It is a transnational illegal activity leading to the victimisation of children and provoking their re-victimisation each time materials of their abuse and exploitation are accessed. With the steady increase of this heinous crime, it is significant that a legal combatant is created to overcome it effectively. There have been various research endeavours examining the legal mechanisms related to OCP; however, a research avenue that is significantly lacking is the exploration of this mechanism in addressing the crime in the Association of South East Asian Nations (ASEAN). Thus, this thesis aims to critically explore the legal framework on OCP in the ASEAN region to identify the merits and demerits in the relevant laws. In order to achieve this aim, the thesis utilises a doctrinal approach to gather relevant data, which are analysed and the findings disclosed. The thesis begins by exploring the proliferation of the crime to reveal its enormous scope. Then, the international mechanisms dealing with OCP are examined to discover appropriate approaches that can be used as a benchmark to embolden ASEAN's national legal frameworks. Consequently, the current efficiency of the national laws in the ASEAN countries in governing the crime is analysed. The main finding of this thesis is that OCP is becoming a prevalent problem in the region, and that several ASEAN countries have undertaken stringent measures to curb it, while others are taking steps to address the crime. The thesis also indicates several shortcomings in the existing legislation and further highlights that appropriate implementation of an anti-child pornography law can give productive results across the region. Based on the findings, suggestions to improve the efficiency of the legal framework in tackling OCP in the ASEAN region are proposed, primarily by advocating for a dynamic, legally binding regional treaty that includes a comprehensive list of substantive criminal laws pertaining to the exploitation and abuse of children in pornography, leading to the conclusion of this thesis.

خلاصة البحث

بفضل عولمة تكنولوجيا المعلومات والاتصالات والإنترنت، أصبحت جريمة استغلال الأطفال في المواد الإباحية على الإنترنت (OCP) مصدر قلق متزايد الانتشار، وآثارها السلبية وأبعادها عميقة في مجتمع اليوم. إنه نشاط غير قانوني عبر وطني يؤدي إلى إيذاء الأطفال وإثارة تعرضهم للإيذاء مرة أخرى في كل مرة يتم فيها الوصول إلى مواد إساءة المعاملة والاستغلال. مع الزيادة المطردة في هذه الجريمة النكراء، من المهم أن يتم إنشاء محارب قانوني للتغلب عليها بشكل فعال. كانت هناك العديد من المساعي البحثية لفحص الآليات القانونية المتعلقة بـ OCP؛ ومع ذلك، فإن وسيلة البحث التي تفتقر إلى حد كبير هي استكشاف هذه الآلية في معالجة الجريمة في رابطة دول جنوب شرق آسيا (آسيان). وبالتالي، تهدف هذه الأطروحة إلى استكشاف نقدي للإطار القانوني لـ OCP في منطقة آسيان لتحديد المزايا والعيوب في القوانين ذات الصلة. من أجل تحقيق هذا الهدف، تستخدم الأطروحة نهجًا عقائديًا لجمع البيانات ذات الصلة، والتي يتم تحليلها والكشف عن النتائج. تبدأ الأطروحة باستكشاف انتشار الجريمة للكشف عن نطاقها الهائل. بعد ذلك، يتم فحص الآليات الدولية التي تتعامل مع OCP لاكتشاف الأساليب المناسبة التي يمكن استخدامها كمعيار لتقوية الأطر القانونية الوطنية لرابطة دول جنوب شرق آسيا. وبالتالي، يتم تحليل الكفاءة الحالية للقوانين الوطنية في دول آسيان في إدارة الجريمة. النتيجة الرئيسية لهذه الأطروحة هي أن المكتب الشريف للفوسفات أصبح مشكلة سائدة في المنطقة وأن العديد من دول آسيان قد اتخذت تدابير صارمة للحد منها، في حين أن البعض الآخر يتخذ خطوات لمعالجة الجريمة. تشير الأطروحة أيضًا إلى العديد من أوجه القصور في التشريعات الحالية وتبرز كذلك أن التنفيذ المناسب لقانون مكافحة استغلال الأطفال في المواد الإباحية يمكن أن يعطي نتائج مثمرة في جميع أنحاء المنطقة. بناءً على النتائج، تم اقتراح اقتراحات لتحسين كفاءة الإطار القانوني في معالجة OCP في منطقة آسيان، في المقام الأول من خلال الدعوة إلى معاهدة إقليمية ديناميكية وملزمة قانونًا تتضمن قائمة شاملة من القوانين الجنائية الموضوعية المتعلقة بالاستغلال والانتهاك من الأطفال في المواد الإباحية، مما أدى إلى اختتام هذه الأطروحة.

APPROVAL PAGE

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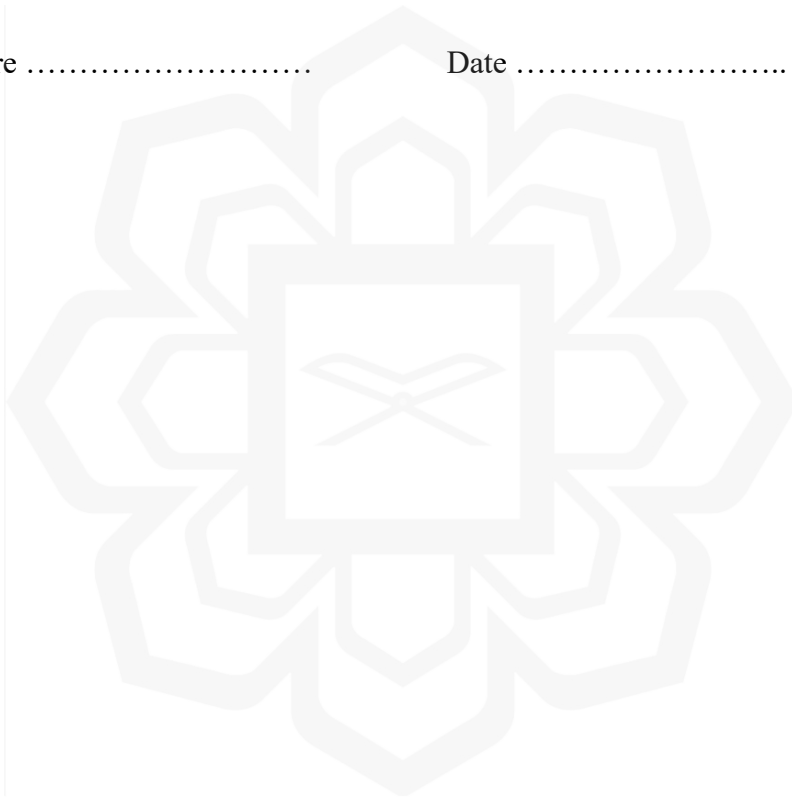
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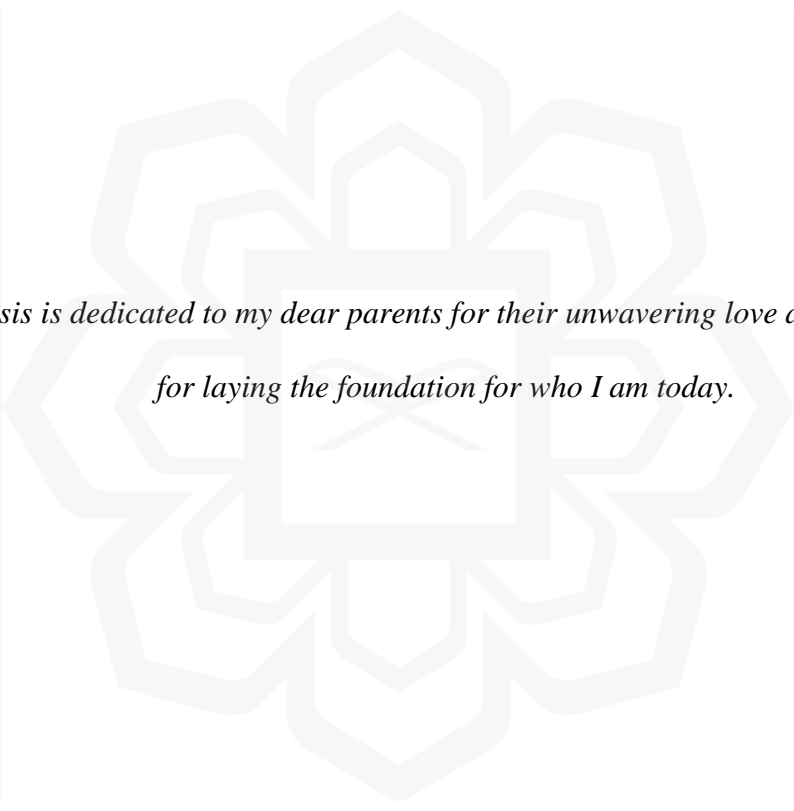
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*This thesis is dedicated to my dear parents for their unwavering love and support and
for laying the foundation for who I am today.*

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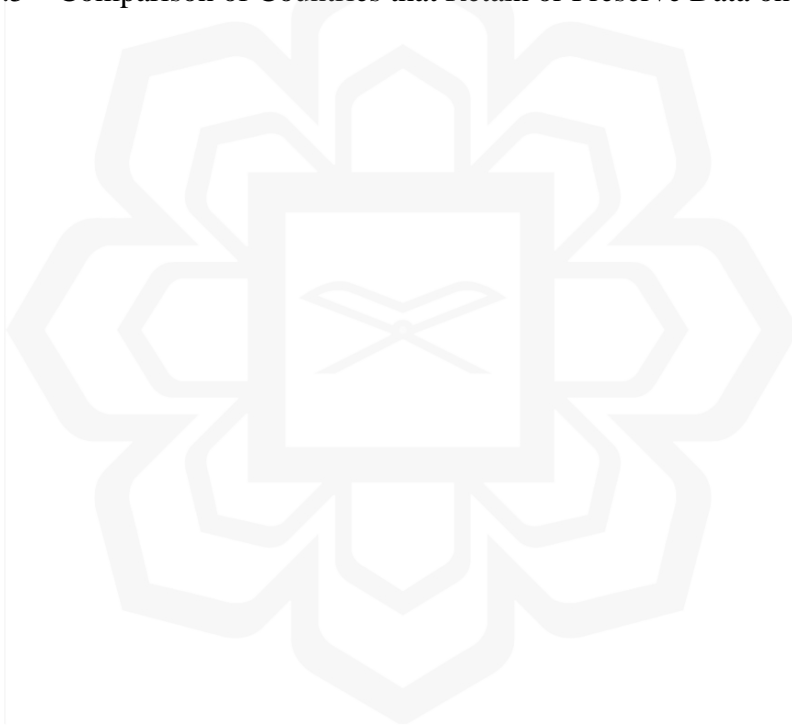
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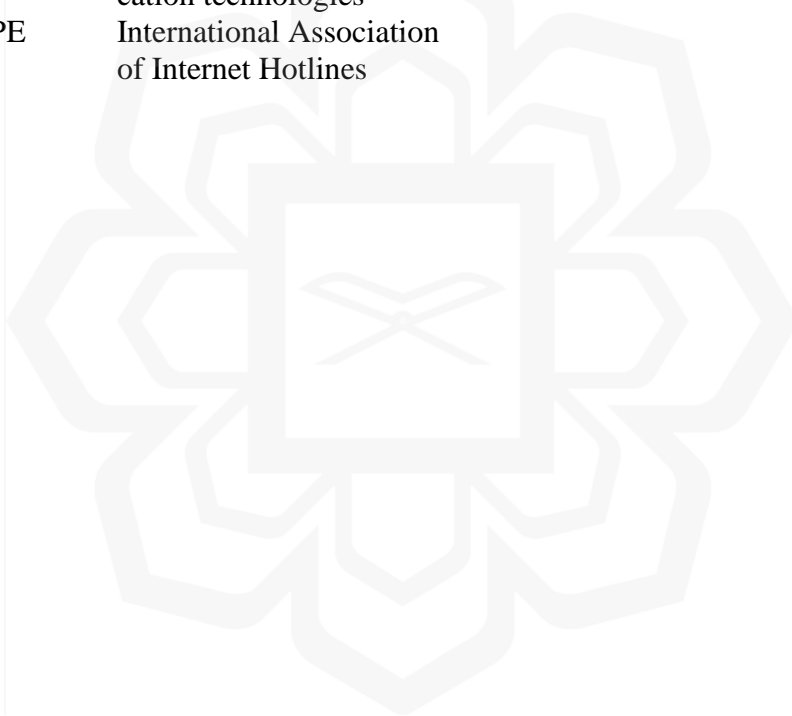
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Broadcasting Act 1994 (Chapter 28) (Singapore)
Broadcasting Act 1997 (Chapter 180) (Brunei)
Child Act 2001 (Act 611) (Malaysia)
Child Protection Act 2003 (Thailand)
Child Trafficking and Pornography Act 1998 (Ireland)
Children and Young Persons Act 1993 (Chapter 38) (Singapore)
Children and Young Persons Act 2006 (Chapter 219) (Brunei)
Civil and Commercial Code 1925 (Thailand)
Communications and Multimedia Act 1998 (Act 588) (Malaysia)
Computer Related Crime Act 2007 (Thailand)
Council of Europe Convention on Cybercrime
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse
Crimes Act 1900 (A1900-40) (ACT) (Australia)
Crimes Act 1900 (No.40) (NSW) (Australia)
Crimes and Criminal Procedure, U.S. Code 18 (1948) (US)
Criminal Code 1956 (Thailand)
Criminal Code 2010 (Cambodia)
Criminal Code 2015 (Vietnam)
Criminal Code Act 1995 (Act No.12 of 1995) (Cth) (Australia)
Criminal Code (RSC 1985, c C-46) (Canada)
Crime Control and Law Enforcement, U.S. Code 34 (1956) (US)
Criminal Procedure Code 2010 (Chapter 68) (Singapore)
Cybercrime Prevention Act of 2012 (Philippines)
Cybercrimes (Prohibition, Prevention, Etc) Act, 2015 (Nigeria)
Electronic Transactions Act 2000 (Chapter 196) (Brunei)
Electronic Transactions Act 2010 (Chapter 88) (Singapore)
Electronic Transaction Law 2004 (Myanmar)
Evidence Act 1950 (Act 56) (Malaysia)
Films Act 1981(Chapter 107) (Singapore)
Film Censorship Act 2002 (Act 620) (Malaysia)
ILO Convention (No.182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
Labour Law 2013 (Laos)
Law No.11 of 2008 concerning Electronic Information and Transactions (Indonesia)
Law No.12 of 1996 Promulgating the Child Law (Egypt)
Law No.12 of 2011 on the Formulation of Law and Regulations (Indonesia)
Law No.13 of 2003 concerning Manpower (Indonesia)
Law No.23 of 2002 on Child Protection (Indonesia)
Law No.36 of 1999 on Telecommunications (Indonesia)

Law No.44 of 2008 about Pornography (Indonesia)
 Law on Children 2016 (Vietnam)
 Law on Cybersecurity 2018 (Vietnam)
 Law on Information Technology 2006 (Vietnam)
 Law on Making Legislation 2012 (Laos)
 Law on Prevention and Combating Cyber Crime 2015 (Laos)
 Law on Preventing and Combating Violence against Women and Children 2014 (Laos)
 Law on Promulgation of Normative Documents 2015 (Vietnam)
 Law on the Protection of Rights and Interests of Children 2007 (Laos)
 Law on Suppression of Human Trafficking and Sexual Exploitation 2008 (Cambodia)
 Law on Telecommunications 2009 (Vietnam)
 Law on Telecommunication 2011 (Laos)
 Law on Telecommunications 2015(Cambodia)
 Medical Practitioners and Dentists Act (Chapter 112) (Brunei)
 Organic Law No.10/1995 of the Criminal Code (Spain)
 Penal Code 1861 (Myanmar)
 Penal Code 1871 (Chapter 224) (Singapore)
 Penal Code 1936 (Act 574) (Malaysia)
 Penal Code 1951 (Chapter 22) (Brunei)
 Penal Code 1982 (Indonesia)
 Penal Code (XLV of 1860) (Pakistan)
 Penal Law 2005 (Laos)
 Personal Data Protection Act 2010 (Act 709) (Malaysia)
 Personal Data Protection Act 2012 (Singapore)
 Prevention of Child Pornography Ordinance 2003 (Chapter 579) (Hong Kong)
 Printing Presses and Publications Act 1984 (Act 301) (Malaysia)
 Protection of Children Act 1978 (Chapter 37) (UK)
 Revised Penal Code of the Philippines (Philippines)
 Special Protection against Abuse, Exploitation and Discrimination Act of 1992 (Philippines)
 Sexual Offences Act 2003 (Chapter 42) (UK)
 Sexual Offences against Children Act 2017 (Act 792) (Malaysia)
 Telecommunications, U. S. Code 47 (1947) (US)
 The Child Law 1993 (Myanmar)
 The Electronic Transactions Act 2001 (Thailand)
 The Electronic Transactions Law 2004 (Myanmar)
 The United Nations Convention against Transnational Organized Crime
 The United Nations Convention on the Rights of the Child
 The United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
 The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
 Undesirable Publications Act 1951 (Chapter 25) (Brunei)
 Undesirable Publications Act 1967 (Chapter 338) (Singapore)
 Youth Law 2005 (Vietnam)

LIST OF ABBREVIATIONS

AGC	Attorney-General’s Chambers	INTERPOL	International Criminal Police Organisation
AMS	ASEAN member states	ISPs	Internet service providers
APAC-FCACP	Asia-Pacific Financial Coalition against Child Pornography	IWF	Internet Watch Foundation
ASEAN	Association of South East Asian Nations	MCMC	Malaysian Communications and Multimedia Commission
CCA 2007	Computer Related Crime Act 2007 (Thailand)	NCB	National Central Bureau
CMA 1998	Communication and Multimedia Act 1998 (Malaysia)	NCMEC	National Centre for Missing and Exploited Children
CMC Code	Communications and Multimedia Content Code (Malaysia)	NGO	non-governmental organisation
CoE	Council of Europe	OCP	online child pornography
COP	Child Online Initiative	OPSC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
CPM	child pornographic materials	P2P	peer-to-peer
CPPA 1996	Child Pornography Prevention Act 1996 (US)	RPA on EVAC	Regional Plan of Action on the Elimination of Violence against Children
CRC	United Nations Convention on the Rights of the Child	TSE Law	Law on Suppression of Human Trafficking and Sexual Exploitation 2008 (Cambodia)
CSEC	commercial sexual exploitation of children	SAC	sexual abuse of children
CYPA 1993	Children and Young Persons Act 1993 (Singapore)	SEC	sexual exploitation of children
CYPA 2006	Children and Young Persons Act 2006 (Brunei)	SGSM	self-generated sexual materials
ECPAT	End child prostitution, child pornography and trafficking of children for sexual purposes	SOAC 2017	Sexual Offences against Children Act 2017 (Malaysia)

ECHR	European Court of Human Rights	UK	United Kingdom
EIT Law	Law No. 11 of 2008 concerning Electronic Information and Transactions (Indonesia)	UN	United Nations
FBI	US Federal Bureau of Investigation	UNICEF	United Nations Children's Fund
FCACP	Financial Coalition against Child Pornography	UNODC	United Nations Office on Drugs and Crime
ICMEC	International Centre for Missing and Exploited Children	US	United States of America
ICSE database	International Child Sexual Exploitation database	VCP	virtual child pornography
ICTs	information and communication technologies	VGT	Virtual Global Task Force
INHOPE	International Association of Internet Hotlines		



CHAPTER ONE

INTRODUCTION AND BACKGROUND OF RESEARCH

1.1 INTRODUCTION TO THE RESEARCH

Every day, innumerable children across the globe are sexually abused and exploited, and the distribution of the images and videos of this violence is not a new phenomenon as the crime has been a global problem for many decades. Prior to the birth of the Internet, child pornographic materials (henceforth abbreviated as CPM) were expensive, with difficulties and dangers to produce, disseminate, and acquire this illicit material. Crime scenes were also limited to physical locations, but now a virtual hunting ground has been created for sexual predators. The role of information and communication technologies (ICTs) and the Internet in fuelling the crime of child pornography is enormous as its advent has made it a more prominent and widespread societal problem. Today, the crime has become an issue of international proportion because of the opportunities provided by the Internet, as it has made materials constituting children involved in pornography widely accessible and transferable.¹ The Internet is not at fault here, but rather it has opened a portal for predators to prey on children who take advantage of the ubiquitous and transnational nature of the medium. It is a multi-billion-dollar industry and, alarmingly, among the fastest-growing businesses online.²

¹ Catherine Beaulieu, *Strengthening Laws Addressing Child Sexual Exploitation: A Practical Guide*, (Bangkok: ECPAT International, 2008), 71; International Centre for Missing and Exploited Children, “Framing implementation: A supplement to child pornography: Model legislation and global review,” International Centre for Missing and Exploited Children, 1, <<https://www.icmec.org/framing-implementation-a-supplement-to-child-pornography-model-legislation-global-review/>> (accessed 6 January, 2022); Office of the Special Representative of the Secretary-General on Violence against Children, *Releasing Children’s Potential and Minimizing Risks: ICTs, the Internet and Violence against Children*, (New York: United Nations Publications, 2016), 21, 22, <<https://violenceagainstchildren.un.org/news/releasing-childrens-potential-and-minimizing-risks-icts-Internet-and-violence-against-0>>; Steven Malby and et al, “Study on the effects of new information technologies on the abuse and exploitation of children,” United Nations Office on Drugs and Crime, 15, 16, <http://www.unodc.org/documents/organized-crime/cybercrime/Study_on_the_Effects.pdf> (accessed 9 January, 2022); United Nations Children’s Fund Innocenti Research Centre, *Child Safety Online: Global Challenges and Strategies*, (Florence: United Nations Children’s Fund Innocenti Research Centre, 2012), 1.

² Carolyn Hamilton, *Legal Protection from Violence: Analysis of Domestic Laws Related to Violence Against Children in ASEAN Member States*, (Bangkok: United Nations Children’s Fund East Asia and Pacific Regional Office, 2015), 142; Deanna Davy, “Regional overview: Sexual exploitation of children in Southeast Asia,” ECPAT International, 52, 53, <www.ecpat.org/wp-content/uploads/2018/02/Re-

Child pornography are materials that depicts children's erotic behaviour and is intended to cause sexual excitement.³ It is a grave violation of children's rights, demeaning children in the worst possible way and causing irreversible harm to them.⁴ As a result, it must be stopped. To fight this menace and safeguard children, having an effective anti-child pornography legislation is a necessity. Since online child pornography (henceforth abbreviated as OCP) is a global menace, the international community has responded by adopting several legal initiatives, and governments worldwide have enacted legal regimes to address the problem that emerging technology poses to child pornography. The international instruments that strengthen children's protection from the crime are the UN Convention on the Rights of the Child (henceforth referred to as CRC), the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (henceforth referred to as OPSC⁵) and the two treaties of the Council of Europe (henceforth referred to as CoE), namely the Convention on Cybercrime (also known and henceforth referred to as the Budapest Convention⁶) and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (also known and henceforth referred to as the Lanzarote Convention⁷).

The severity of the crime in the Association of South East Asian Nations (ASEAN) and the threat it poses to the children in the region is also immense. ASEAN is a regional legal entity comprising 10 Southeast Asian countries, namely Brunei, Cam-

gional-Overview_Southeast-Asia.pdf> (accessed 6 January, 2022); Eliana Riggio and et al, "Power, impunity and anonymity: Understanding the forces driving the demand for sexual exploitation of children," ECPAT International, 16, 49, <<https://www.ecpat.org/wp-content/uploads/2016/05/PowerImpunityandAnonymity.pdf>> (accessed 6 January, 2022).

³ Merriam-Webster's Dictionary of Law, 1st ed., s.v. "pornography."

⁴ Convention on the Rights of the Child (adopted 20 January 1989, entered into force 2 September 1990) 1577 UNTS 196 (CRC), Arts 34, 35. Among the numerous rights of children enshrined in the Convention is the right to protect children from all forms of sexual exploitation, including child prostitution, child pornography and trafficking. These articles form the foundation of international legal protection for children against sexual exploitation and abuse. See also Beaulieu, 40, 69; Hamilton, 143.

⁵ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 177 (OPSC).

⁶ Convention on Cybercrime (adopted 23 January 2001, entered into force 1 July 2004) 185 ETS (Budapest Convention).

⁷ Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (adopted 25 October 2007, entered into force 1 July 2010) 201 CETS (Lanzarote Convention).

bodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.⁸ The perpetrators of child pornography target some countries in the region as an important hub to commit the crime,⁹ mainly due to the country's economic position, the ease of facilities with which they can obtain children for their sexual gratification, and the inadequate legal measures protecting the children.¹⁰ Additionally, the rapid expansion in Internet connectivity and mobile broadband in the ASEAN region has also enhanced the scale and danger of OCP. This is further adjoined by the widespread use of the medium amongst children, mostly starting at a young age.¹¹ For instance, about 60 per cent of Indonesian children have access to the Internet through their mobile devices.¹²

The heightening Internet penetration with a significant percentage of children being online, mirrored by press reports identifying countries such as Cambodia, Malaysia, Philippines and Thailand as major sources for CPM,¹³ indicates that the crime of

⁸ Association of Southeast Asian Nations, "About ASEAN," Association of Southeast Asian Nations, <<https://asean.org/asean/about-asean/>> (accessed 6 January, 2022); Mahidol University, "Child rights situation analysis within the ASEAN region," Save the Children International, 4, <<https://resourcecentre.savethechildren.net/library/child-rights-situation-analysis-within-asean-region>> (accessed 11 January, 2022).

⁹ A. R. Mubarak, "Child Safety Issues in Cyberspace: A Critical Theory on Trends and Challenges in the ASEAN Region," *International Journal of Computer Applications*, vol. 129, no. 1 (2015): 50,51; Davy, 52, 53; ECPAT International, "The commercial sexual exploitation of children in East and Southeast Asia: Developments, progress, challenges and recommended strategies for civil society," ECPAT International, 18-20, <https://www.ecpat.org/wp-content/uploads/2016/04/CSEC-Overview_South-EastAsia.pdf> (accessed 3 January, 2022).

¹⁰ Discussed further in statement of the problem. See also Ann Kangas and et al, "What works to prevent online and offline child sexual exploitation and abuse? Review of national education strategies in East Asia and the Pacific," United Nations Children's Fund, 9, <<https://www.unicef.org/eap/reports/what-works-prevent-online-and-offline-child-sexual-exploitation-and-abuse>> (accessed 9 January, 2022); Davy, 15, 22; ECPAT International, "The commercial sexual...", 12; Office of the Special Representative of the Secretary-General on Violence against Children, 29, 31 for key driving factors facilitating the crime.

¹¹ Afroz Kaviani Johnson and et al, *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*, (Jakarta: ASEAN Secretariat, 2017), <https://www.unicef.org/Ending_violence_against_children_in_ASEAN_Member_States.pdf>; Davy, 51, 52.

¹² Rajnesh D. Singh, "Mapping Online Child Safety in Asia and the Pacific," *Asia & the Pacific Policy Studies*, vol. 5, no. 3 (2018): 652.

¹³ Syahirah Abdul Shukor and et al, "Victimisation of Children and Women on the Internet in Malaysia: A Legal Discourse," *International Journal for Studies on Children, Women, Elderly and Disabled*, vol. 2 (June 2017): 4; United Nations Office on Drugs and Crime, "Transnational organized crime in Southeast Asia: Evolution, growth and impact," United Nations Office on Drugs and Crime, 79, <https://www.unodc.org/documents/southeastasiaandpacific/Publications/2019/SEA_TOCTA_2019_web.pdf> (accessed 9 January, 2022).