

 **Indonesia**



ECPAT International has developed [a legal checklist](https://ecpat.org/wp-content/uploads/2021/09/SECTT-Checklist_ENG-1.pdf) for governments providing guidance for legal interventions and measures to adopt in order to improve their national legal frameworks. This will help to effectively address the crime of sexual exploitation of children in travel and tourism, including its online elements.

The legal checklist was developed based on the recommendations of the first [Global Study](https://ecpat.org/wp-content/uploads/2021/08/Global-Report-Offenders-on-the-Move.pdf) on sexual exploitation of children in the context of travel and tourism. Following the development of this legal checklist, ECPAT International conducted country legal analysis for Indonesia and other countries in Southeast Asia, as well as Africa, Asia and the Americas.

The country analysis serves as a baseline to indicate and track the implementation status of the legal interventions within and across the four regions. It provides governments with clear directions for improving their actions with respect to child protection against sexual exploitation in the context of travel and tourism, including its online elements.

The table below allows easy assessment of existing legislation against the 24 measures of the legal checklist. It will be updated as the laws and policies change. An [explanatory note](https://ecpat.org/wp-content/uploads/2021/08/SECTT-Checklist_ENG_Explanatory-note.pdf) and an [assessment matrix](https://ecpat.org/wp-content/uploads/2021/09/Assesment-Matrix_2021SEP_ENG_v2.pdf) can be consulted for further reference.

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|  | **Recommendations** | **Implemented** | **Legislation** |
|  | Establish by law **extra-territorial jurisdiction**, within the parameters of Article 4 OPSC, for all offences of sexual exploitation of children, including those occurring in the online environment. | **Partially** | Article 5 of the Criminal Code establishes jurisdiction over any offence or illegal conduct committed abroad by an Indonesian national (active extraterritorial jurisdiction), as long as it is also considered a crime in the country where it occurs (double criminality principle). In addition, Article 9 of the same text declares that restrictions on jurisdiction are subject to international law. In view of article 5, it can be assumed that Indonesia is only partially in line with OPSC obligations, as the country does not explicitly recognise extraterritorial jurisdiction over child sexual exploitation offences in the additional circumstances listed under the OPSC, namely, where the relevant offence is committed by habitual residents, and over OPSC crimes committed against victims of Indonesian nationality (passive extraterritorial jurisdiction). |
|  | Include in extradition treaties the sexual exploitation of children as **extraditable offences** and apply when appropriate the rules of article 5 OPSC, regardless the nationality of the (alleged) offender. | **Partially** | Indonesia’s rules on extradition can be found in the Extradition Law (1979). Article 2 specifies that extradition must be treaty-based or otherwise be granted in accordance with national interests. Furthermore, article 4 establishes the possibility of extraditing offenders for crimes on the “*List of extraditable crimes*” and for other crimes, at the discretion of the requesting State. Amongst the extraditable offences, the list refers to rape or sexual assault; procuring, or trafficking in, women and young persons for immoral purposes; living on the earnings of prostitution; any other offence against the law relating to prostitution; aiding, abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit, an offence described in a preceding item. It is however important to note that the principle is that a request for the extradition of a national of the Republic of Indonesia shall be refused (Article 7) and Indonesia may refuse to grant extradition if the crime is committed wholly or in part in national territory (article 8). |
|  | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. |  **No** | See above under 1 and 2 |
|  | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. |  **No** | Article 78 of the Criminal Code comprises the rules on statutes of limitations, and does not include special provisions related to child sexual abuse. In general terms, proceedings can be initiated within six years for crimes punished with imprisonment not exceeding three years, 12 years for crimes punished by imprisonment exceeding three years, and within 18 years for crimes punishable by death or life imprisonment. |
|  | Set up **conditions for any travel** by persons convicted of sexual exploitation of children. | **Partially** | Through the Indonesian Immigration Law UU6-2011, Immigration Officer has for obligation to refuse entry to foreigners on the territory of Indonesia who are notably involved in transnational organised crime; included in the list of criminals to be captured from a foreign country; or included in the network or the practice of prostitution, trafficking and human smuggling (Article 13).These foreigners who were denied entry are to be placed under surveillance while waiting for the return process is concerned. In addition, visa application shall be rejected in the case of an applicant who is involved in transnational organised crime; included in the network or the practice of prostitution, trafficking and human smuggling. This however only concerns entry of foreigners, not when they leave, and does not concerns all offences of sexual exploitation. |
|  | Ensure **consistency in the definition of a ‘child’** as anyone under the age of 18 for all crimes of sexual exploitation, regardless of the age of sexual consent | **Yes** | Under Indonesian Law, a child is “a person under eighteen years of age, including unborn” and this definition is consistent across all national legislation. The Civil Code, the Criminal Code and the Criminal Procedure Code refer to children using the alternative term ‘minors’ but that fact does not dilute the equal treatment that children receive under Indonesian legislation. |
|  | Ensure that the **age of sexual consent** for both males and females is 18 and a close in age exemption (up to 3 years) is provided for consensual sexual relationships between adolescents in order to allow voluntary, well-informed and mutual sexual contact between close in age peers and to prevent criminalization of young people in willing sexual relationships. |  **No** | The age of sexual consent is 15 years for girls as stated by Article 287 of the Criminal Code. According to the text, “any person who out of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or, if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years”. This provision clearly excludes boys as victims of statutory rape. In addition, the Criminal Code establishes an exception for criminal responsibility in case of reasonable belief that the girl has reached the age of 15 years.  |
|  | Have a law or regulation establishing a **mechanism for centrally registering sex offenders** that has been implemented/setup. | **No** | A draft law on the Elimination of Sexual Violence, which might cover this aspect is currently under deliberation in the Indonesian House of Representatives (as of November 2020).In 2016 the gang rape of a 14-year-old girl in Sumatra led to protests calling for more severe punishment of child sex offenders. Consequently, a “*presidential regulation*” was issued providing for increased punishment. Regulation No. 1/2016, which amended the 2002 Law on Child Protection, will remain in effect until revision of the 2012 Child Protection Law is finalised. The regulation provides for increased sentences, including the death penalty, life imprisonment, chemical castration and use of tracking devices, as well as publication of offenders’ names. There is no law in Indonesia that regulates central registration of sex offenders.  |
|  | Establish **bail conditions** that prohibit individual accused of sexual offences against children from traveling outside of the country. | **Yes** | There is no bail system in Indonesia; however, investigators, prosecutors and judges, in accordance with their respective authorities, can grant a suspension of detention. |
|  | Provide in law that the **mere attempt** to commit a crime of sexual exploitation of children is criminalised. | **Yes** | According to Article 53 of the Criminal Code, an attempt to commit a crime is punishable if the intention of the offender has revealed itself by a commencement of the performance and the performance is not completed only because of circumstances independent of his will. The maximum of the basic punishments imposed on the crime in case of attempt shall be mitigated by one third and additional punishments for attempts are the same as for the completed crime. |
|  | Impose more severe sentences for **reoffending** in case of sexual exploitation against children, e.g. by defining reoffending as an aggravating circumstance, regardless of whether the crimes were perpetrated abroad or in-country. | **Partially** | Recidivism is addressed in Chapter XXXI of Book II of the Criminal Code, Articles 486 to 488, but not for all crimes of sexual exploitation of children as these provisions are not applicable to Article 282 (the only article in the Criminal Code applicable to child sexual abuse materials). However, Article 282 (3) of the Criminal Code contains a paragraph on recidivism by stating that “if the offender makes an occupation or a habit of the commission of the crime described in the first paragraph, a maximum imprisonment of two years and eight months or a maximum fine of 75,000 rupiahs may be imposed” but the law does not define what a “habit” means. Besides, the Law on Pornography does not contain any provision hardening penalties for recidivists. |
|  | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. | **No** | No provisions on mandatory reporting are included in national legislation.  |
|  | Establish obligatory government-regulated child protection standards for the tourism industry for example, attach responsibility to an appropriate regulatory authority and/or implement industry specific **national codes for child protection** as a legal requirement for the travel and tourism industry to operate. | **No** | Law No. 35/2014 provides liability to the private sector to participate in the protection of children in Indonesia. This also this also applies to the tourism industry.However, no industry specific national codes for child protection and regulatory authorities are provided by law.  |
|  | Ensure the **liability of travel and tourism businesses** (in operations and supply chains) for criminal conduct including:* Organising travel arrangements or transportation that are explicitly or implicitly meant to create or facilitate opportunities to engage (involve) children in sexual activities;
* Procuring, aiding or abetting the exploitative sexual conduct with a child;
* Advertising or promoting sexual exploitation of children;
* Benefitting, by any means, from any form of sexual exploitation of a child (or children) in the context of their travel and tourism business.
 | **No** | In the absence of specific rules on SECTT, some rules are however applicable to corporations that could apply to held tourism companies liable when they are engaged in activities related to the sexual exploitation of children. This is however insufficient. Article 88 of the Child Protection Act, read in conjunction with Article 90, allows imposinga criminal penalty on the management and/or the corporation when the corporation has economically or sexually exploits a child in order to benefit itself or others. In addition, through article 40 of the pornography law 44/2008, if pornography is committed by or on behalf of a corporation, criminal prosecution and improper can be made against the corporation and / or its management |
|  | Criminalise the **grooming of children for sexual purposes** (often called ‘solicitation’ in law) including through Internet and other communication technologies to facilitate either online or offline sexual exploitation. | **No** | Indonesia does not clearly define online grooming nor does it have an explicit provision which criminalises it. However, Article 82 of the Child Protection Act criminalises anyone who deliberately commits violence, or threat of violence, forces, does tricks, tells a series of lies, or persuades a child to do, or let obscene acts to happen. Article 290 of the Criminal Code subjects to sentence anyone who seduces someone whom he knows or reasonably should presume that he has not yet reached the age of fifteen years or, if it is not obvious from the age, is not yet marriageable, to commit or tolerate obscene acts or to have carnal knowledge, out of marriage, of a third party.Article 12 of the Anti-Pornography Law criminalises several conducts, such as inviting, enticing, taking advantage or coercing children into pornography or pornographic content. However, the provisions do not correspond fully to the definition of “*online grooming*” established under the Lanzarote Convention. |
|  | Establish legislation requiring for a **criminal background check** for every person (national or non-national) applying for work with or for children or who is currently working with or for children. Introduce legislation prohibiting convicted sex offenders to hold positions involving or facilitating contact with children. | **Partially** | Every person applying for a job in Indonesia is usually required by both private and government employers to obtain a Police Record Certificate (SKCK) explaining whether a person has been involved in a crime in his/her life. The certificate is issued by the police at the request of the job seeker, although not required by law, has become customary in Indonesia. |
|  | Regulate and monitor the use of volunteers (including in **‘voluntourism’**) in settings and activities that involve direct contact with children, particularly prohibiting visits to orphanages/residential care settings in favour of redirecting the industry towards solutions that support community-based care. |  **No** |  |
|  | Ratify and implement relevant **regional and international instruments** related to child’s rights and sexual exploitation of children. | **Partially** | * Convention on the Rights of the Child (CRC) Ratified in 1990
* Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography Ratified in 2012
* Optional Protocol to the CRC on a Communications Procedure (OP3 CRC) Not signed
* ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182 Ratified in 2000
* Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Ratified in 2009
* United Nations World Tourism Organisation (UNWTO) Framework Convention on Tourism Ethics Ratified in 2020
* Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) - Not Ratified
* Council of Europe Convention on Cybercrime (Budapest Convention) – Not ratified
* ASEAN Convention Against Trafficking in Person, Especially Women and Children – Ratified in 2007
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|  | Establish **protection measures** for child victims at any stage of the legal process against the suspected offender. | **Partially** | General protection to witnesses and victims is granted in Law No. 13 of 2006, but special protection for children can be found in the Child Protection Law. Article 59 of the Child Protection Law provides for special protection to children, including “children who find themselves being exploited economically or sexually”, “children who are victims of pornography”, “child victims of abduction, sale and/or trafficking”, and “child victims of sexual crimes”, although these terms are not defined in the law. In general, this special protection consists of prompt treatment, including physical, psychological and social treatment and/or rehabilitation, and prevention of diseases and other health problems; psychosocial assistance from treatment to recovery; provision of social assistance for children who come from poor families; and providing protection and assistance in every Court proceeding.Furthermore, Article 64 of the Child Protection law, as amended in 2014, also includes the government’s responsibility of providing effective legal assistance, but it does not clarify whether or not such assistance is free of charge. |
|  | Establish **child-friendly interviewing practices by professionally trained police**. | **No** | None of the provisions contained in the Child Protection law refer to the establishment of child-friendly interview methods for child victims of OCSEA, and the only reference to judicial proceedings is found on Article 64 of the amended Child Protection law, when granting children an objective and impartial justice in a trial closed to the public. Indonesia has a child protection commission (KPAI) that operates based on the revision of the child protection law (UU No. 35/2014). KPAI has the task of supervising the implementation of the protection and fulfilment of children's rights, providing input and suggestions in the formulation of policies and collecting data and information regarding child protection. A Child Advocacy Center does not exist in the country. |
|  | Ensure that national legislation provides the **right for child victims to receive support in their recovery and rehabilitation**, including accessing re-integration services. | **Yes** | Article 44 of the Child Protection law, as amended in 2014, includes rehabilitation in the health care services that the government must ensure and also incorporates psychological and social treatment and/or rehabilitation as part of the special protection awarded to child victims of child sexual abuse material, sexual crimes and sexual exploitation. Accordingly, Article 67B of the Child Protection Law, as amended in 2014, states that “special protection for children who are victims of pornography, as referred to in Article 59 paragraph (2) letter f, is implemented through efforts to foster, assist and recover social, physical and mental health” (unofficial translation). |
|  | Establish a **national reporting mechanism (e.g. hotline)** that coordinates access to services, and helps to overcome reluctance to report sexual exploitation of children. | **Yes** | The child helpline TESA 129 is operative since 2005.  |
|  | Create **data retention and** preservation laws, regulations and procedures, to ensure the retention and preservation of digital evidence and enable cooperation with law enforcement which applies to ISPs, mobile phone companies, digital social media and communication companies, cloud storage companies, based in/operating in national jurisdiction. | **Yes** | The Electronic Information and Transactions Law and the Regulation No. 82 of 2012 concerning Electronic System and Transaction Operation provide for data retention. According to Article 16 (1) of the EIT Law and Article 21 of the Regulation No. 82/2012 concerning Electronic System and Transaction Operation, electronic systems operators shall redisplay electronic information and/or electronic documents completely in accordance with the format and retention period determined based on the Regulation, to the extent not provided otherwise by separated laws.  |
|  | Ensure that national legislation provides the **right for all child victims of sexual exploitation to seek compensation** in national courts from convicted perpetrators who harmed them and/or through state-managed funds.  | **Yes** | Article 98 of the Criminal Procedural Code allows a victim to sue for compensation for any loss arising out of any crime during criminal proceedings regarding that crime.According to Article 71D of the Child Protection Law, as amended in 2014, every child victim of child sexual abuse material, children exploited economically and/or sexually or child victims of sexual crimes have the right to submit a complaint before the Courts claiming the restitution of the damages and the responsibility of the perpetrators. |

**Legal sources:**

[Act of the Republic of Indonesia No. 13 of 2003 concerning Manpower](https://www.ilo.org/dyn/travail/docs/760/Indonesian%2BLabour%2BLaw%2B-%2BAct%2B13%2Bof%2B2003.pdf)

[Child Protection Law (as amended in 2014)](https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98588/117398/F1211362854/IDN98588%20Idn.pdf)

[Law No. 7 of 1979 concerning Extradition](https://www.unodc.org/res/cld/document/idn/law_number_7_year_1979_concerning_extradition_html/I.41_Law_of_1_YR_1979_on_Extradition.pdf)

[Law No. 13 of 2006 concerning Protection of Witness and Victim](https://www.legal-tools.org/doc/51b8a3/pdf/)

[Law No. 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons](http://apmigration.ilo.org/resources/indonesian-law-on-anti-trafficking)

[Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes](http://apmigration.ilo.org/resources/indonesian-law-on-anti-trafficking/at_download/file1)

[Law No. 44 of 2008 on Pornography](http://peraturan.go.id/common/dokumen/ln/2008/uu44-2008.pdf)

[Law No. 11 of 2008 concerning Electronic Information and Transactions](http://www.flevin.com/id/lgso/translations/JICA%20Mirror/english/4846_UU_11_2008_e.html)

[Law of the Republic of Indonesia No. 23 of 2002 on Child Protection](https://www.refworld.org/category%2CLEGAL%2C%2CLEGISLATION%2CIDN%2C54eef1e04%2C0.html)

[Penal Code of the Republic of Indonesia](https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf), 1999