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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Criminal Liability of Digital Platforms for Facilitating Online Child Sexual Exploitation

Yuriswandi

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: Yuriswandi.std@unissula.ac.id

Abstract. *The rapid development of information and communication technology in the digital era has fundamentally transformed how society interacts, while creating a dark space for transnational crimes such as Online Child Sexual Exploitation (OCSE), with digital platforms ranging from social media to instant messaging applications often serving as the primary medium for disseminating child sexual exploitation material, yet the legal regime protecting electronic system providers tends to hide behind the safe harbor doctrine, granting immunity on the grounds that they are merely passive intermediaries, creating an accountability gap when platform algorithms actively distribute illegal content and companies fail to implement adequate moderation for cost efficiency. This research aims to formulate a framework of criminal liability for digital platforms facilitating child sexual exploitation in cyberspace, using a normative legal method with statutory and conceptual approaches. The findings indicate that platforms can no longer rely absolutely on intermediary immunity when facing extraordinary crimes against children; under corporate criminal liability theory, they may be held accountable if proven to have a corporate culture tolerating violations or lacking safety-by-design mechanisms, requiring criminal law reform in Indonesia to regulate mandatory reporting obligations and proportional sanctions, including revenue-based fines and license revocation.*

Keywords: *Criminal; Digital; Liability; Platforms; Sexual.*

1. Introduction

The Fourth Industrial Revolution, marked by the massive penetration of the internet and digitalization across various sectors of life, has radically transformed the architecture of social interaction in global society. The internet has eliminated geographical boundaries, facilitated access to information, and created a digital economic ecosystem worth trillions of dollars. Behind all these advances in civilization, cyberspace has also generated asymmetric challenges

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in the form of security threats that exploit technological loopholes. One of the darkest and most urgent phenomena emerging from the dark side of digitalization is the rise of exploitative cybercrime targeting the most vulnerable group in society: children.

Online Child Sexual Exploitation (OCSE) has evolved into an extraordinarily large-scale and systemic transnational organized crime. Unlike conventional physical exploitation, OCSE encompasses a broad spectrum of offenses, including the production and distribution of Child Sexual Abuse Material (CSAM), sexual extortion (sextortion), psychological manipulation (grooming), and live-streamed sexual abuse paid for by cyber predators from different parts of the world. The characteristics of the digital environment offering anonymity, rapid distribution, and digital traces that are difficult to erase completely cause this exploitation to inflict permanent trauma on child victims, which is repeatedly reinforced each time the content is accessed or downloaded by other users.

Within this cybercrime landscape, there has been a significant shift in the locus delicti from closed physical spaces to virtual spaces managed by multinational private entities. Digital platforms including giant social media companies, search engines, cloud storage services, and end-to-end encrypted messaging applications—have become the primary infrastructure that, whether intentionally or through negligence, facilitates the supply chain of this crime. Predators exploit platform features to locate victims, build networks for exchanging illegal files, and conceal financial transactions, often without being detected by the platform's own security systems.

A fundamental issue arises because modern digital platforms no longer operate merely as neutral or passive information transmission channels (mere conduits). Instead, their business models heavily depend on data mining and recommendation algorithms specifically designed to maximize user retention and engagement. These algorithms often function without regard to the morality of content; systems automatically promote, categorize, and distribute content that generates high engagement. Ironically, this often facilitates predators in finding communities with similar sexual deviance, effectively making platforms function as content aggregators.

Although they possess full control over their technological architecture, digital platform corporations frequently shelter behind the legal doctrine of intermediary immunity or safe harbor. Originally designed in the early internet era to protect freedom of expression and technological innovation, this doctrine assumes that platforms cannot be held legally responsible for illegal content uploaded by third parties (their users). Their responsibility is limited to reactive measures through a “notice and takedown” mechanism, whereby platforms

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are only obligated to remove content after receiving reports from users or law enforcement authorities indicating that the content violates the law.

This reactive safe harbor paradigm has proven to be highly inadequate and dangerous when confronted with child sexual exploitation crimes. The notice-and-takedown mechanism requires exploitation to occur first and the content to spread exponentially in the digital space before the platform responds. This approach is inherently inconsistent with the universally recognized principle of the best interests of the child in international law, which requires active preventive measures to ensure that children do not become victims of crime in the first place.

In Indonesia, regulations concerning cybercrime and child protection are dispersed across various legal instruments, such as the Electronic Information and Transactions Law (ITE Law), the Child Protection Law, and the Sexual Violence Crimes Law (TPKS Law). Although these legal instruments impose severe sanctions on individuals who produce or distribute child exploitation content, there remains a crucial regulatory vacuum regarding the formulation of criminal liability specifically for digital platform corporations that fail to moderate such content. Existing legal policies are still unable to systematically hold technology corporations accountable for negligence in securing their digital ecosystems.

Modern criminal law developments have, in fact, provided a theoretical framework of corporate criminal liability that can be used to prosecute business entities that commit crimes, whether intentionally or through gross negligence. The concepts of strict liability and vicarious liability pave the way for law enforcement authorities to prosecute corporations without having to prove traditional criminal intent (*mens rea*), but rather by demonstrating that the corporation lacks an adequate culture of legal compliance or deliberately disregards its duty of care in order to reduce operational security costs.

The greatest challenge in realizing such criminal liability is the significant asymmetry of information and power between states and global technology giants. Law enforcement is often hindered by issues of extraterritorial jurisdiction, as the servers, data, and headquarters of digital platform corporations are located outside Indonesia's sovereign legal territory. Furthermore, platforms frequently invoke user data privacy protections and human rights considerations to refuse the disclosure of encrypted information or proactive cooperation with law enforcement agencies in detecting and independently reporting child sexual exploitation content.

In response to these complexities, this paper systematically examines the theoretical and doctrinal foundations of criminal liability for digital platforms that facilitate online child sexual

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exploitation. The analysis focuses on dismantling safe harbor immunity, constructing platform negligence as a corporate criminal offense, and formulating progressive criminal law policy recommendations. Establishing such accountability is both a sociological and juridical necessity to ensure that technological innovation no longer sacrifices humanity's most valuable future its children.

2. Research Methods

This research is a normative (doctrinal) legal study that examines law as a system of norms consisting of principles, rules, and positive legal regulations. The primary focus of this research is to assess the synchronization of the existing legal framework and formulate new legal prescriptions regarding the liability of digital platform corporations. The research approaches employed include: Statutory Approach: Conducted by examining legislative products and regulations related to criminal law, cybercrime, and child protection in order to identify gaps and weaknesses in existing norms. Conceptual Approach: Applied by exploring doctrines, principles of international law, and modern criminal law theories concerning corporate criminal liability and digital content moderation. The legal materials used focus on statutory legal sources (primary legal materials), including: the Indonesian Criminal Code (including Law No. 1 of 2023 concerning the National Criminal Code), Law No. 1 of 2024 concerning the Second Amendment to the Electronic Information and Transactions Law, Law No. 12 of 2022 concerning Sexual Violence Crimes, Law No. 35 of 2014 concerning Amendments to the Child Protection Law, and Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases Involving Corporations. These primary legal materials are supported by secondary legal materials in the form of criminal law textbooks and national and international scientific journals relevant to the topic discussed.

3. Results and Discussion

3.1. Legal Construction of the Crime of Online Child Sexual Exploitation and Platform Involvement

Understanding the position of digital platforms within the architecture of Online Child Sexual Exploitation (OCSE) crimes requires a deconstruction of the characteristics of the crime itself. Fundamentally, OCSE must be classified as an extraordinary transnational crime because its destructive impact not only violates the physical integrity of victims but also permanently destroys the psychological future of children. Unlike conventional morality-related offenses, OCSE mediated through digital technology triggers massive and endless revictimization. The

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digital traces of such violence are stored on servers across continents, duplicated exponentially, and become dark commodities continuously traded in cyberspace.

The most common form of this crime is often linguistically reduced to “child pornography.” This term is legally and morally misleading because it assumes the existence of consent, which a child can never provide. International legal conventions and global guidelines explicitly use the terminology Child Sexual Abuse Material (CSAM). This terminology emphasizes that every image, video, or audio recording produced is forensic evidence of a real act of sexual violence. Therefore, distributing such material in cyberspace is not merely an issue of circulating illegal content but rather an extension of the chain of sexual violence itself.

Over the last decade, the modus operandi of predators has evolved by exploiting the security architecture offered by Web 2.0 and 3.0. They no longer rely solely on secret forums on the Dark Web but now boldly operate on the Surface Web using mainstream social media and commercial cloud-computing services. The use of End-to-End Encryption (E2EE) technology in instant messaging applications has created a kind of impenetrable virtual vault. While E2EE is crucial for protecting the privacy of citizens’ communications in general, this feature also provides an absolute technical shield for pedophile networks to share CSAM without detection by any third party.

The involvement of digital platforms in this criminal landscape becomes increasingly problematic due to the characteristics of the machine-learning-based algorithms they employ. Recommendation algorithms, which constitute the financial lifeblood of platforms, are blindly designed to curate and present content that generates the highest level of user engagement. In many documented cases, these algorithms have inadvertently connected predators with one another by recommending private groups, search keywords, or underage user profiles. When platform technology actively organizes and facilitates connections among predators, the platform can no longer be regarded as a passive entity but has instead transformed into a catalyst for crime.

Within criminal law, the qualification of a platform’s act of “facilitation” can be constructed through the concept of omission or crimes of commission by omission. Platforms commit wrongdoing not by actively creating CSAM but by failing to act when they possess the technical capacity to prevent such crimes. This omission becomes legally relevant because platforms exercise full authority over their virtual spaces, possess artificial intelligence (AI) technologies capable of filtering images, yet choose to ignore these moral and legal obligations to reduce operational costs or maintain data traffic volumes.

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Positive law must also establish a clear demarcation between pure communication channel providers (*mere conduits*), such as Internet Service Providers (ISPs), and digital platforms that process, store, and present content (content hosts and aggregators). ISPs merely transmit data packets without modifying or knowing their contents, making it logically inappropriate to burden them with moderation responsibilities. In contrast, social media platforms and messaging applications possess terms of service granting them the right to remove content and block users. This veto power over content logically gives rise to an inherent obligation to ensure that their platforms remain free from exploitation that threatens children's lives.

The normative foundation requiring platforms to intervene is firmly rooted in international human rights instruments, particularly the Convention on the Rights of the Child (CRC), which has been ratified by most countries in the world, including Indonesia. These principles have subsequently been translated into the business sphere through UNICEF's Children's Rights and Business Principles (CRBP). This doctrine requires all corporate entities, including digital technology giants, to ensure that their operations, products, and supply chains do not adversely affect or endanger child protection, either directly or through intermediary services.

In conclusion, the involvement of digital platform corporations in online child sexual exploitation can no longer be viewed merely as an anomaly of technological systems. There exists a very real causal relationship between platform architecture design, recommendation algorithm efficiency, inadequate moderation, and the massive distribution of child sexual abuse material. When digital platforms deliberately turn a blind eye to the misuse of their services and fail to implement adequate detection systems, their passive involvement fulfills the material element that may be qualified as facilitation of child exploitation offenses, thereby demanding full legal accountability.

3.2. Evaluation of the Safe Harbor Doctrine and the Urgency of Corporate Criminal Liability for Platforms

The intermediary immunity doctrine, or safe harbor, serves as the historical foundation underlying the exponential growth of the global internet industry. This doctrine originated from Section 230 of the Communications Decency Act (CDA) in the United States in 1996, which essentially states that providers of interactive computer services shall not be treated as publishers or speakers of information provided by third parties. This legal protection was designed during a period when the internet was still a fragile entity and aimed solely at shielding early service providers from waves of defamation lawsuits that could have stifled technological innovation at its infancy.

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The adoption of the safe harbor doctrine spread globally and became an industry standard in various jurisdictions, including Indonesia. This arrangement was implicitly and explicitly incorporated through the Minister of Communication and Informatics Circular Letter on Safe Harbor Policy and later reinforced within the Electronic Information and Transactions (ITE) Law. It grants immunity from liability to Electronic System Operators (ESOs) provided they have established a “notice and takedown” mechanism. As long as ESOs cooperatively remove content or terminate access upon receiving a valid report, they are considered immune from criminal prosecution and civil liability for the existence of illegal content within their systems.

However, relying on the notice-and-takedown mechanism as the sole legal shield becomes fatally flawed when confronted with extreme crimes such as OCSE. The primary criticism of this system is its entirely reactive (*ex post facto*) nature. By the time child sexual abuse material is reported and eventually removed by a platform, the child has already been exploited, and the video has most likely been downloaded by thousands of other users for re-uploading elsewhere. In the context of child protection, action taken after trauma has occurred represents a systemic failure. Consequently, the rationale underlying safe harbor loses its legitimacy because it fails to provide fundamental preventive protection.

Faced with this doctrinal impasse, the international legal community has begun shifting from passive safe harbor protections toward proactive legal obligations known as the duty of care principle. This shift is evident in Europe through the enactment of the Digital Services Act (DSA) and in the United Kingdom through the Online Safety Act. These modern regulations abolish absolute immunity for major platforms and require them to conduct regular systemic risk assessments and implement effective mitigation measures before harmful content is uploaded. They are required to automatically filter and block the dissemination of CSAM without waiting for reports from the public or law enforcement agencies.

Within Indonesian national law, holding digital platform entities accountable for proactive negligence requires the application of the theory of corporate criminal liability. Doctrinally, corporations have long been recognized as subjects of criminal law in Indonesia, a status procedurally reinforced through Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations and fully accommodated within the National Criminal Code (Law No. 1 of 2023). These regulations state that corporate crimes occur when acts are committed by individuals holding functional positions, are carried out for the corporation’s benefit, or when the corporation fails to take preventive measures required by regulation.

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Proving the element of fault or criminal intent in technology corporations often becomes an obstacle for law enforcement because corporations do not possess biological reasoning like human beings. However, modern criminal law adopts the corporate culture theory, under which **mens rea** is not sought in the active intent of directors to commit crimes but rather extracted from the corporation's operational culture. If a platform employs an extremely limited content moderation team, relies on cost-saving algorithms that disregard safety, and structurally tolerates abusive material, such institutional culture legally satisfies the criteria for criminal fault.

In the context of OCSE dissemination, the most relevant form of criminal liability applicable to digital platforms is liability by omission. When a platform statistically and empirically realizes because it has repeatedly occurred—that its system is being used to distribute CSAM, yet fails or refuses to use technological instruments such as hash-matching technology to intercept the circulation of such material, the platform has neglected its legal obligations. This deliberate systemic negligence aimed at preserving financial profit margins constitutes the essence of unlawful conduct within the context of exploitative cybercrime.

In conclusion, the application of the safe harbor doctrine cannot and should not be absolute, particularly when platforms are confronted with extraordinary crimes involving child victims. Digital platforms fulfill all theoretical prerequisites as subjects of corporate criminal law, possessing both the capability (technological and financial resources) and the moral-legal obligation to prevent criminal acts within the infrastructures they create. When due diligence instruments are ignored, the protective shield of safe harbor must be removed, and criminal law must impose accountability on corporate entities that systematically facilitate criminal conduct.

3.3. Formulation of Criminal Law Policy (Penal Policy) Toward Digital Platforms in Indonesia

An assessment of current criminal law policy in Indonesia demonstrates that existing legal instruments remain fragmented and have not comprehensively addressed the core issue of corporate moderation responsibilities. Law Number 1 of 2024 concerning the Second Amendment to the ITE Law regulates the prohibition of distributing content violating public decency, yet its criminalization focus remains centered on individual actors (**natural persons**). Similarly, the Child Protection Law and the Sexual Violence Crime Law (TPKS), although revolutionary in protecting victims, do not explicitly prescribe the operational moderation standards that digital platform operators are imperatively required to follow.

The most fundamental weakness of the current legislative design is the absence of a specific criminal provision targeting Electronic System Operators (ESOs) when they are systemically

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negligent in preventing the circulation of Child Sexual Abuse Material (CSAM). Indonesian law remains within a comfortable administrative zone, granting authority to the Ministry of Communication and Informatics to impose administrative sanctions such as fines or access restrictions without constructing such conduct as a pure criminal offense by the corporation itself. Consequently, platforms regard administrative fines merely as a cost of doing business, easily offset by profits generated from massive user data exploitation.

To address this legal vacuum, new regulations in Indonesia must immediately adopt the principle of Safety by Design. This concept requires lawmakers to obligate all digital platforms to incorporate child protection security features at the earliest stages of software development rather than as additional features after product launch. Legally, Safety by Design must be legitimized as a mandatory standard operating obligation for ESOs. Any failure by a platform to comply with such security design certification should be qualified as the commencement of unlawful conduct capable of triggering corporate criminal investigations.

This criminal policy formulation must also include imperative clauses regarding the proactive implementation of automatic detection technologies. Regulations should require platforms to utilize data-matching technologies such as PhotoDNA or artificial intelligence algorithms to scan, identify, and automatically block images or videos matching global CSAM databases before such materials are successfully uploaded and viewed by other users. Simultaneously, platforms must be subject to mandatory reporting obligations. Every discovery of exploitative content should be reported in real time to Indonesian law enforcement agencies and international networks such as the National Center for Missing and Exploited Children (NCMEC), without the ability to hide behind user privacy principles.

In formulating criminal sanctions against digital platform corporations, policymakers must shift from a paradigm of static nominal fines to proportional sanctions capable of creating an extraordinary deterrent effect. If fines are capped merely at several billion rupiah, such amounts will not intimidate technology giants with market capitalizations measured in trillions of dollars. Therefore, legislation should establish revenue-based criminal fines, such as deducting a certain percentage of a corporation's total global gross revenue from the previous fiscal year. This scheme has proven effective in enforcing corporate compliance, as demonstrated by the European Union's data protection regime (GDPR).

In addition to substantial financial penalties, additional criminal sanctions should be designed to directly disable a platform's capacity to facilitate further criminal conduct. Such sanctions may include temporary suspension of specific service features, confiscation of corporate assets used to facilitate criminal offenses, and permanent revocation of Electronic System Operator

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licenses within the Republic of Indonesia. In extreme cases where corporations refuse to comply with national court decisions, regulations should allow for compulsory trusteeship or temporary operational takeover by state cybersecurity authorities to cleanse infrastructure from pedophile networks.

A crucial challenge to the rule of law that must be addressed by this criminal policy concerns the issue of extraterritorial jurisdiction. Since most major digital platforms (such as Meta, Google, and Telegram) are not headquartered in Indonesia, law enforcement cannot rely on conventional methods. Future policy formulations must strengthen the integration of Mutual Legal Assistance (MLA) mechanisms in criminal cases while developing principles of universal or protective jurisdiction within the ITE Law and Criminal Code. Law enforcement authorities must be granted legal authority to take action against foreign corporations whenever their services are accessible in Indonesia and directly impact Indonesian child citizens.

From a prescriptive standpoint, the evaluation and formulation of this policy lead to one urgent conclusion: Indonesia requires a new legislative framework that is comprehensive, integrated, and specific. Lawmakers should consider enacting a dedicated law equivalent to an Online Safety Act that removes safe harbor protections for crimes against children, establishes mandatory moderation standards, and elaborates detailed mechanisms of corporate criminal liability for digital platform providers. Without such radical and progressive criminal law reform, the state will remain subordinate to the power of technology corporations, resulting in endless suffering for future generations of children in virtual spaces.

4. Conclusion

The increasing prevalence of Online Child Sexual Exploitation (OCSE) crimes underscores the reality that cyberspace has transformed into an area of vulnerability where regulatory weaknesses and algorithmic efficiencies are exploited for commercial gain. Digital platforms that have long sheltered comfortably behind the safe harbor doctrine can no longer be regarded as innocent passive intermediaries. Corporate systemic failures to implement safety standards from the design stage, combined with reactive and inadequate content moderation, have demonstrably fulfilled the elements of gross negligence that may be legally construed as omission within the framework of corporate criminal liability. The architectural involvement of their technologies, which inadvertently amplify predator networks, constitutes unlawful conduct that threatens the best interests of child protection a human rights principle that admits no compromise. Therefore, a radical shift in Indonesia's criminal law policy is necessary to address this legal vacuum. Legislators and law enforcement authorities must abandon the outdated notice-and-takedown mechanism and replace it with regulations mandating proactive

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moderation technologies and real-time mandatory reporting. Administrative sanctions alone are no longer sufficient to deter global technology giants; criminal law instruments must be strengthened through fines based on a percentage of a platform's global revenue and, where necessary, the revocation of electronic system operator licenses. Only by positioning digital platform corporations as legal subjects bearing full responsibility for the virtual ecosystems they create can the state guarantee legal justice and maximum protection for children's futures in the digital age.

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