

Disrupting Harm

Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.

Detailed Analysis of Access to Justice and Legal Remedies in Indonesia
Interviews with Justice Actors

Last updated 20/9/2021

This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Global Partnership to End Violence against Children does not constitute endorsement.

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Introduction

Disrupting Harm: evidence to understand online child sexual exploitation and abuse (OCSEA), is a unique and collaborative research partnership between ECPAT International, INTERPOL, and UNICEF Office of Research – Innocenti. Leveraging their specific expertise, each partner sheds light on separate but interconnected areas: context, threats and children’s perspectives on online child sexual exploitation.

- Context by ECPAT International through portraying laws & policies in action;
- Threat by INTERPOL through the collection of crime and other data;
- Children’s voices by UNICEF Office of Research - Innocenti through surveys with children and their caregivers.

The countries of focus in Southern and Eastern Africa region are: Ethiopia, Kenya, Mozambique, Namibia, South Africa, Tanzania, and Uganda. The countries of focus in the Southeast Asian region are: Cambodia, Indonesia, Malaysia, Philippines, Thailand, and Vietnam.

Research took place between 2019 and 2021. Up to nine separate research activities were undertaken in each country by the three project partners. Preliminary analysis for each activity was first conducted before the results across all the nine activities were consolidated into each national country report.

This report is the preliminary analysis conducted by ECPAT International. It is based on a convenience sample of ten interviews was conducted with a variety of criminal justice professionals in Indonesia. The sample included state and non-state criminal justice professionals who have personal recent experience working with online child sexual exploitation and abuse (OCSEA) criminal cases, or at least child sexual exploitation and abuse, such as judges, police, child advocates, and lawyers. The data was collected through a set of qualitative semi-structured interviews. While the intent was to do face-to-face interviews, all ten interviewees had to be interviewed via the online platform Zoom due to COVID19-related restrictions. Written consent forms were completed and signed by all interviewees prior to the interviews.

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RA4-J-IN-02-A	Surabaya Children Crisis Centre	Director
RA4-J-IN-03-A	Witness and Victim Protection Agency	Expert
RA4-J-IN-04-A	Bahtera Foundation	Trafficking Client’s Companion

RA4-J-IN-05-A	Embun Pelangi Foundation	Administrator
RA4-J-IN-06-A	Centre for Study and Child Protection	Legal Advocacy Senior Officer
RA4-J-IN-07-A	Anti-Human Trafficking National Network	Advocacy and Law (Lawyer)
RA4-J-IN-08-A	Social Service	
RA4-J-IN-09-A	Don't Be Naked in front of The Camera Movement	Resources Coordinator
RA4-J-IN-10-A	Supreme Court	Judge

Access to the Justice System

Indonesia has two overarching laws that are relevant to OCSEA: the Child Protection Law (Law No. 35 of 2014 amending the Law on Child Protection)¹, and Law No. 44 of 2008 on Pornography.² ‘Child sexual exploitation material’³ is defined under the national law as “*all kind of pornography that involves the child or includes an adult who acts like a child*”.⁴ Therefore, the definition of ‘child sexual exploitation material’ covers visual, audio, and written material, and it possibly criminalises virtual child sexual exploitation material, i.e. computer or digitally generated child sexual exploitation material, including realistic images of non-existent children. In addition, Indonesia has enacted Law No. 11 of 2008 on Information and Electronic Transactions⁵ which can be used to prosecute OCSEA perpetrators.

Indonesia does not have any exclusive legislation on OCSEA. “*Our country doesn’t have a specific set of laws regarding online child exploitation and abuse yet. But there are laws regarding child protection, trafficking and IT which we can use for online child exploitation and abuse cases*” (RA4-J-IN-02-A, Director, Surabaya Children Crisis Centre).

The existing laws do not comprehensively and adequately cover all OCSEA crimes. This was pointed out by one of the interviewees who said, “*Specifically speaking, online based child sexual abuse cases cannot be punished by existing laws. For example, the ETI Law is not specific for OCSEA issues, same for the pornography law, human trafficking law, and the child protection law; so there are four laws but they cannot specifically cover the specific nature of OCSEA issues*” (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

One interviewee shed light on the application of the existing laws to OCSEA, explaining that laws are applied based on the facts and circumstances of each case, as each case is different. “*The cases are varied in nature and have their own reasons why certain laws are applied*” (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).

The interviewee narrated a child commercial exploitation case wherein they decided to charge the perpetrator under the Child Protection Law instead of the Human Trafficking Law as the evidence of child abuse was apparent and confirmed on medical examination but the evidence of exploitation was doubtful: “*If we use the human trafficking law, we need initial evidence proving the existence of recruitment, gathering, placement and exploitation activities, only two elements are needed if applied*”

¹ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated).

² Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#).

³ ECPAT prefers the term ‘child sexual exploitation material’ or ‘child sexual abuse material’ over the often in legal context still used ‘child pornography’ in line with the recently widely adopted Terminology Guidelines. “[Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016](#)”. P. 39. Bangkok: ECPAT.

⁴ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Elucidation of Article 4 (1) (f).

⁵ Government of Indonesia (2008). [Law No. 11 of 2008 concerning Electronic Information and Transactions](#).

to a child victim case. When the evidence supporting the elements is weak, we use the child protection law... For child victims we can just apply the child protection law” (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).

Regarding the applicability of the human trafficking law to OCSEA cases, one interviewee stated *“It must be taken into account that [the law on] Human Trafficking has been enacted before the IT Law and it is stated in the Trafficking Law that the act of recruitment is done physically and not [via] online recruitment”* (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network).

Another interviewee added, *“However it is important to be able to use the human trafficking law because that law provides legal facility for restitution”* (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).

The lawyers sometimes convince the judges to also take the Electronic Information and Transaction law⁶ into consideration while handling OCSEA cases. Furthermore, it was noted that *“when we got to the child, the child hadn’t been touched yet and the only evidence we found were condoms and a boy. We cannot use article 81⁷ for this case because the child has not been through any sexual interactions. So, we can use the articles of Trafficking Law because a transaction was already done”* (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network).

However, in certain cases the Electronic Information and Transaction law cannot be invoked due to the difficulties that law enforcement authorities might face in gathering digital evidence. In this context, one interviewee explained that in order to convict a perpetrator under this law, the existence of the digital footprints of their crime must be proved. Consequently, in practice, this law is not as frequently invoked as other laws. (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta). The interviews show that the existence of multiple, overlapping laws that only indirectly address OCSEA causes an ambiguity in application and hence a lack of legal certainty for child victims of OCSEA.

It must be noted that the current Indonesian laws do not explicitly cover acts such as grooming and sexual extortion. Nevertheless, according to one participant, the scope of several articles of the Child Protection Law extends to such acts. *“Even though the terms of sextortion and grooming are not included in the Criminal Code, articles 1 and 2 of the Child Protection law have a very large scope and can cover general matters such as the terms mentioned”* (RA4-J-IN-10-A-Judge, Supreme Court).

The government has formed an inter-institutions task force for anti-pornography in 2012 but this task force is only responsible for coordination (RA4-J-IN-09-A, Resources Coordinator, Don’t Be Naked in

⁶ Ibid.

⁷ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated). Article 81.

front of The Camera Movement). Its main tasks and functions are regulated by Law No. 44 of 2008,⁸ the presidential decrees No. 25 of 2012,⁹ and two government regulations. *“Our task force is underlined by laws such as law No. 44 of 2008 regarding pornography, various presidential decrees and two government regulations which are laws regarding the assistance, recovery and fostering child victims or perpetrators of pornography and the other law is pornography licensing procedures for health, education and special pornography materials”* (RA4-J-IN-09-A, Resources Coordinator, Don’t Be Naked in front of The Camera Movement).

A concerning point was raised by one of the interviewees regarding the implementation of OCSEA laws. In theory, *“child victims are protected by the law in the form of assistance, recovery and fostering provided by the government. Unfortunately, government institutions for providing [such] assistance, recovery, and fostering to child victims are non-existent and Ministerial Regulations are also missing or not yet ratified by the related ministries”* (RA4-J-IN-09-A, Resources Coordinator, Don’t Be Naked in front of The Camera Movement). This shows that due to the lacking implementation of laws, child victims might not be able to avail themselves of assistance, recovery and rehabilitation services.

Services provided to victims of OCSEA during the criminal justice process

Article 64 of the Child Protection Law, as amended in 2014, also includes the government’s responsibility of providing effective legal assistance,¹⁰ but it does not clarify whether such assistance should be free of charge. Regarding the participation and support provided by non-governmental organisations, Article 72 of the amended Child Protection law recognises the role of the community in the protection of children and defines “community” as individuals, child protection institutions, social welfare institutions, social organisations, institutions education, mass media, and the business world.¹¹ Interviews conducted with justice actors showed that child victims of OCSEA could avail themselves of the services of non- governmental organisations such as Bahtera Foundation and Embun Pelangi. These provide assistance in the form of reporting to the authorities as well as helping child victims during the criminal justice process.

“When the case comes from the police, the process is very smooth because we are in an accompanying position of the child since a child needs to be accompanied during the investigation process. As a companion, we will position the victim as a client to receive further services, from psychological services, and so on. This will make it easier for us to monitor the case since we have a connection from the beginning with the investigators. There is a mutual symbiosis in the handling of the case. If the case starts with a report from us, there are a few things that we or the victim need to provide as the party filing the complaint; we need to at least provide enough evidence to prove/justify the existence of a crime” (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child,

⁸ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#).

⁹ Government of Indonesia (2012). [Presidential Decrees: No. 25 of 20 on Pornography Prevention and Handling Task Force](#).

¹⁰ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 64 (c).

¹¹ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 72.

Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).

This shows that Non-governmental organisations have a crucial role to play in the justice system in Indonesia with regards to the rights and welfare of child victims. This sentiment was echoed by another interviewee: *“Bahtera Foundation bridges reports from the families to the police/law enforcement. We have to be open, when we file a report as an institution to the police, the police will handle the process much faster because they have A-1 (valid) information”* (RA4-J-IN-04-A, Trafficking Client’s Companion, Bahtera Foundation).

Apart from the abovementioned services, there are some Non-governmental organisations that provide legal assistance to child victims. These include the Centre for the Study of Child Protection and Surabaya Children Crisis Centre. The Centre for the Study of Child Protection¹² has a unit named PUSPA which provides legal assistance to both child victims and children who are perpetrators. Surabaya Children Crisis Centre is an organisation that focuses on providing legal assistance, advocacy, reintegration, resocialisation, during the pre or post-criminal justice process.¹³

In Indonesia, the national legislation requires that a child victim be provided with legal assistance.¹⁴ It further requires that a child victim be accompanied by a parent and/or a person trusted by the child victim, or social worker.¹⁵ However, in practice, invoking these provisions may be difficult due to the facts and circumstances of the case. These provisions might not apply in cases where parents are defendants. In this regard, one interviewee noted that *“normally, a child needs to be accompanied, whether by a parent or Witness and Victim Protection Unit. But, there is another issue, if the perpetrator is an uncle or grandparent or a parent accompanying the child, that child will be uncomfortable”* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

To tackle this challenge, the investigators follow approaches like separating the victims and their parents to check for inconsistencies in their statements (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency). Despite these efforts, it is not uncommon that the challenges faced by these children have an impact on the withdrawal of the report. *“We grow sad when the victims dropped their case due to internal pressure from family members and that’s why I always emphasise to the family members of the victim never to drop a case to guarantee the child’s rights are protected”* (RA4-J-IN-08-A, Social Service).

In addition, non-governmental organisations assist the police by providing counselling services to child victims, including victims of OCSEA and their families. *“We provide counselling to the family and the child, continuous counselling. We explain and provide slow counselling, we cannot rush this. When the child is calm and relaxed, we will introduce the person who will help the child, this will be the attorney*

¹² [Pusat Kajian dan Perlindungan Anak](#)

¹³ [Surabaya Children Crisis Centre](#)

¹⁴ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 18.

¹⁵ Sofyan, Andi & Haeranah, & Bakhtiar, Handar. (2019). [Criminal Justice System of Children in Indonesia](#). 24. 01-07. 10.9790/0837-2409020107.

and so on” (RA4-J-IN-04-A, Trafficking Client’s Companion, Bahtera Foundation). This process is carried out to convince victims that the acts they have experienced can be legally accounted for.

According to one participant, *“There is no allocation in the budget specifically for women and children victims of abuse for non-medical examination services. [Integrated Service Centre for the Empowerment of Women and Children] P2TP2A tries to go around this budget constraint by coordinating with PPT Hospitals (integrated service hospitals concerned with women and children victims of abuse). We will refer the victims there, the hospitals will accept them according to their internal mechanism, we will then issue a letter declaring them as victims. After that, the victims of violence can receive priority medical services. The claims process to the local health authorities will be based on the letter issued by P2TP2A. That is the general picture for health services”* (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).

How OCSEA cases come to the attention of criminal justice actors

Generally, reporting of OCSEA cases in Indonesia can be done through a hotline provided by institutions like the Integrated Service Centre for the Empowerment of Women and Children (P2TP2A). As discussed previously, reports can be made with the assistance of non-governmental organisations. They can also be made to the police directly. The interviews showed that several cases were reported by non-governmental organisations, or came through reports from the community. *“There are plenty of reports, there are plenty of victims that we handle. Usually, the community or the parents of the victim come to Bahtera Foundation”* (RA4-J-IN-04-A, Trafficking Client’s Companion, Bahtera Foundation).

Additionally, certain institutions such as the Integrated Service Centre for the Empowerment of Women and Children (P2TP2A) have hotlines and WhatsApp numbers that can be contacted to report OCSEA incidents. Furthermore, the Child Protection Law established a Child Protection Commission in charge of receiving public complaints about possible violations of the Child Protection Act and reporting them to the authorities.¹⁶ Indonesian law does not generally require a victim’s complaint or report as a condition for launching an investigation or prosecution; however, a few articles in the Penal Code are excluded from this general rule.¹⁷ Article 72 of the Criminal Code specifies that when the victim of a crime is a minor and a complaint is required for prosecution of the crime, a legal representative can file such a complaint on the child victim’s behalf.¹⁸

An anonymous complaint is not sufficient to open an investigation since, according to Article 103 of the Criminal Procedure Code, a report or complaint can be made in writing or verbally, but in both cases, it must be signed by the reporting party or the complainant.¹⁹ For those who report a crime to

¹⁶ Government of Indonesia (2002). [Law No. 23/2002 on Child Protection](#), Article 67B (last amended in 2016).

¹⁷ One of those exceptions is Article 293 of the Criminal Code, which criminalises the intentional abuse of power over a minor or the promise of any form of compensation to induce a minor to commit or tolerate obscenity.

¹⁸ Government of Indonesia (1999). [Penal Code of the Republic of Indonesia](#), Article 72.

¹⁹ Government of Indonesia (1999) [Penal Code of the Republic of Indonesia](#), Article 103.

the authorities, Article 22 of the Law on Pornography declares their right to have legal protection under the laws.²⁰ One interviewee elaborated on the role of the Witness and Victim Protection Institution in this context: *“...the authority of the Witness and Victim Protection Institution in fulfilling rights. There are 3 main categories. First, there’s protection, physical protection involving close protection, escort during the trial, for high threat categories there are safe houses, and below that there is close protection. At the Witness and Victim Protection Institution, there are 30 officers from police headquarters who are assigned to us. Those are related to physical protection. Under that there are fulfilments of procedural rights where we ensure procedural rights are fulfilled by law enforcement, for example, there is a 3-day summons, acquiring a waiting room, ensuring the trial summons is according to procedural rules”* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

When asked how cases reach the Witness and Victim Protection Institution, one interviewee explained that *“based on the law, the Witness and Victim Protection Institution is passive. There must be an application made to the Witness and Victim Protection Institution requesting protection. That application can come from law enforcement, the police, and prosecutor or from those accompanying the victim, such as integrated service centre for the empowerment of women and children, legal aid non-governmental organisations, or from parents of the victims because the victims are not of legal age to act”* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

Public Prosecutors can accept and examine the dossier of a case under investigation, as stated by Article 14(a) of the Criminal Procedure Code, and shall prosecute a criminal case occurring in their jurisdiction under the provisions of the law.²¹ Public Prosecutors can also request investigators to complete investigations²² but there is no specific duty to initiate investigations of OCSEA crimes *ex-officio*. Moreover, Indonesian legislation does not have provisions that require professionals working with children and institutions or private citizens to report suspected cases of OCSEA to the authorities. Nevertheless, Article 20 of the Law on Pornography states that *“society can participate in the prevention of production, distribution, and usage of pornography”*²³ and, according to Article 21 of the same law, this participation can be done by reporting the breach of the law or by filing a representative lawsuit to the court.²⁴ Additionally, Article 67A of the Law on Child Protection imposes on all individuals residing in Indonesia the duty to protect children from being influenced by or from gaining access to pornography.²⁵ However, this is more aspirational than a mandatory requirement. An interviewee added that the current situation (during the COVID19 pandemic and related restrictions) makes it harder to detect OCSEA cases. *“With the current situation, these children are always on the phone because on their off days, their tasks are easily uploaded to be sent to their teachers, they have constant access to their phones. The parents also trust their children, who are at home, to be given access to their phones and gadgets”* (RA4-J-IN-05-A, Administrator, Embun Pelangi Foundation).

²⁰ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 22.

²¹ Government of Indonesia (1981). [Law No. 8 of 1981 concerning the Criminal Procedure](#), Article 15.

²² Government of Indonesia (1981). [Law No. 8 of 1981 concerning the Criminal Procedure](#), Article 137.

²³ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 20.

²⁴ Government of Indonesia (2008). [Law No. 44 of 2008 on Pornography](#), Article 21 (1) (a) and (b).

²⁵ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 67A.

Participation in the justice process

Description of how children participate in the criminal justice process

Under the Indonesian legislation, general protection to witnesses and victims is granted in Law No. 13 of 2006,²⁶ 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*”,²⁷ “*children who are victims of pornography*”,²⁸ “*child victims of abduction, sale and/or trafficking*”,²⁹ and “*child victims of sexual crimes*”,³⁰ 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.³¹ Nevertheless, 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 in Article 64 of the amended Child Protection law when granting children an objective and impartial justice in a trial closed to the public.³² Furthermore, trials that refer to juvenile justice systems can be found in major cities. “*As for the courts, the structure is divided into chairman, vice-chairman, and the judge. The court has its juvenile trial room and also juvenile judges [...] 80% of all judges in Indonesia are also certified juvenile judges*” (RA4-J-IN-02-A, Director, Surabaya Children Crisis Centre).

From the interviews, it was found that in some areas there are rehabilitation centres but these facilities are not running optimally and are low on resources. “*Even though there are rehabilitation and restitution centres in Surabaya, I still don’t believe they are run and managed well enough.*” (RA4-J-IN-02-A, Director, Surabaya Children Crisis Centre).

Besides, the implementation of this rehabilitation program is unclear. Rehabilitation may be mentioned in the law concerned, but it is not uniformly implemented throughout the country, especially in rural areas. “*The State, up to this point, the State’s services have not gone in that direction. Let’s say government services such as the Ministry of Social Affairs or P2TP2A, whether at the national, provincial, or city/regency levels, do not have rehabilitation services for child victims of sexual exploitation. It is non-existent up to this point*” (RA4-J-IN-05-A, Administrator, Embun Pelangi

²⁶ Government of Indonesia (2006). [Law No. 13 of 2006 concerning Protection of Witness and Victim](#), Article 5.

²⁷ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 59 (d).

²⁸ *Ibid.*, Article 59 (f).

²⁹ *Ibid.*, Article 59 (h).

³⁰ *Ibid.*, Article 59 (j)

³¹ *Ibid.*, Article 59A.

³² *Ibid.*, Article 64 (h).

Foundation). Therefore, it can be said that the strategy for victim rehabilitation is not clearly stated and executed.

Description of what criminal justice professionals see as the hardest part for children taking part in criminal cases against their abusers

Child victims face several challenges, mainly due to the complex criminal justice system. Prolonged delays in investigation and trial of cases remains one of the major obstacles that children face. *“The main obstacle they face is time, they get easily overwhelmed and bored when they have to go through the investigative process done by the police and other law enforcers. The process of collecting evidence, reporting the case to the police then eventually to the Attorney’s office can take a long time which is an exhausting process for the children”* (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network). This is worrying as children might be dissuaded from pursuing cases in the courts due to lengthy processes.

Another interviewee also added that *“One of the biggest obstacles is to also assure the family of the victim that their child’s case is being processed”* (RA4-J-IN-08-A, Social Service). Due to prolonged duration of cases, families need constant assurance that their cases are being processed. The interviewee further noted that in Indonesia, there is limited manpower to handle the rising number of sexual abuse cases, which causes unnecessary delays in these cases, resulting in victims and tired families questioning the fate of their reports. *“Due to the lack of manpower as opposed to the ever-increasing number of sexual abuse or exploitation cases, the process might take a little longer to complete and this is the main reason why the victims and their families grow tired and depressed”* (RA4-J-IN-08-A, Social Service).

One interviewee stated that the challenges faced by children begin when they report the incident they have experienced to the police. Undergoing this process causes trauma to the child, because the process of investigations and interviews conducted by police officers indirectly forces the child to relive the incident they had experienced. *“Some victims feel exploited and the psychological impact will show during the investigation process as the victim will need to answer questions and relive the moment the victim does not want to repeat”* (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).

An issue that is no less strenuous is the public nature of the reporting process. As the victim reports a case to the police it also means that the case will be publicly known, which also affects how the community sees the child who is undergoing this case. *“They’re traumatised, seeing their activities being published and seen by their parents and the public even their schools, this will make them more depressed, because the public will see an inappropriate child when in fact the child was victimised.”* (RA4-J-IN-06-A, Legal Advocacy Senior Officer, Centre for Study and Child Protection).

Child victims have to face the stigma that comes with these cases becoming known to the public, sometimes making it difficult for victims to return to their social life such as school. *“On [an] average these children are victims of stigma, for example, when [another] child knows that the child has been victimised and the legal process has run its course and the perpetrator is convicted, this child [victim] will find it difficult to return to school because the stigmatisation process will start in school, from the teacher and so on”* (RA4-J-IN-05-A, Administrator, Embun Pelangi Foundation).

Another challenge is when the case involves close relatives of the victim. In the words of one of the interviewees, *“... and this is more difficult to face for the children, is where the parents are involved because blood relations are involved”* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

From data concerning OCSEA cases in Indonesia, it appears that not all OCSEA cases are successfully prosecuted before courts. Not all such cases reach the verdict stage owing to a variety of factors including victims’ fear of retaliation from the perpetrator. In this context, one interviewee mentioned that *“the obstacle is the victim, whether the victims cannot be reached, the victims feel intimidated by the perpetrator in certain cases or the victims withdraw their complaint due to situations we cannot venture to guess. From what we handle, for cases involving children, usually, the process goes to law enforcement”* (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta). In some cases, either the victim withdraws the complaint or cases are dismissed due to lack of evidence. On a more positive note, the interviews showed that most cases filed with the assistance of non-governmental organisations or other institutions reach the verdict stage.

Description of what is done by different criminal justice professionals (police, judges, prosecutors, lawyers, or other relevant staff) to make the process easier for children

Under Law No. 13 of 2006, all victims and witnesses are entitled to *“obtain the protection of personal safety, family, and property, and free of threat concerning the testimony to be, being, or has been given”*.³³ This applies also to child victims of OCSEA. More specifically, Indonesia has the Juvenile Crime Law No. 11 of 2012,³⁴ which regulates the judicial process and prioritises the interests of the child. The law explicitly deals with the criminal justice system involving children. Trials carried out under this law are conducted by judges who have undergone Juvenile Justice System training (RA4-J-IN-10-A, Judge, Supreme Court). The guarantee of the protection of children's rights is contained in Article 18 of the same law, which states that in handling cases involving child victims and/or child witnesses, professionals such as social advisors, professional social workers, and social welfare workers, investigators, the prosecutor general, judge, and advocates or legal aid providers should pay attention to the best interests of the child and keep the family atmosphere maintained.³⁵

³³ Government of Indonesia (2006). [Law No. 13 of 2006 concerning Protection of Witness and Victim](#), Article 5(1).

³⁴ Government of Indonesia (2012), [Law No.11 of 2012 Juvenile Justice System](#) (Untranslated).

³⁵ *Ibid.* Article 18.

Furthermore, Article 19 states that everything related to the identity of the child and other matters that may reveal the identity of the child shall be kept confidential in the printed or electronic media.³⁶ Regarding this issue, one interviewee added that *“there are two contradictory answers. First, our criminal procedural law seeks to find material truth supported by formal evidence and that includes names, locations, domiciles and so the victim’s identities will be revealed. In trials involving children and sexual cases, the hearing itself will not be open to the public. This is one effort to protect the identity of the victim. Second, from our experience in providing protection, in cases attracting attention, we try to communicate with reporters, to try not to take advantage of the news momentum, but so that photos and names are blurred”* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency). From this interview, it appears that the provisions of the Juvenile Crime Law relating to privacy and confidentiality of child victims are indeed being implemented in practice and the interviewees ensure that reporters publish news involving child victims sensibly and do not sensationalise it.

The Juvenile Justice System law ensures that the criminal justice process fulfils children’s rights.³⁷ According to the law, the juvenile justice system includes the interview room, the officer conducting the interrogation, up to the court level such as the courtroom³⁸ and the judge.

The length of the juvenile justice process is shorter than cases involving adults, lasting about two months. However, the duration may change if the police feel the need to deepen the investigation. *“The period for an adult and juvenile case is different and the period for a juvenile case is much shorter than an adult case and should only take two months more or less to determine a judicial verdict. It is also important to note that the process might take longer if the police investigation process is more complicated to process the perpetrator and he or she must be detained in the station”* (RA4-J-IN-10-A, Judge, Supreme Court).

When a report is made, the police will take evidence and information from the victim. In this process, in the case of OCSEA, the police will involve other relevant authorities such as the Women and Child Protection Unit, in which the unit plans the process of taking information. Information taking is carried out in a special room which does not look like an investigation room in cases involving adults, though these facilities are not the same everywhere. *“With regards to their perspective of the child victim, we push them to conduct Child Safe-Guarding or with regards to their policy of child protection. At the provincial-level police, at sub-Directorate IV, the PPA Unit (Women and Child Services), there is a special room for child investigation. The look of the room is not the usual look of investigation rooms, but more friendly, more towards the perspective of the child”* (RA4-J-IN-05-A, Administrator, Embun Pelangi Foundation).

Also, staff from the non-governmental organisations will participate in the investigation process because children sometimes find it easier to open up to them. In the process of collecting information and evidence, sometimes, the police also seeks the assistance of non-governmental organisations/foundations with conducting interviews. This way, the interview can sometimes be done

³⁶ *Ibid.* Article 19.

³⁷ *Ibid.* Article 2

³⁸ *Ibid.* Article 53

in a place recommended by the foundation, such as the room where the foundation is located, to avoid the possibility of the child victim meeting the perpetrator and to protect the identity of the child. In this context, one interviewee noted, *“The investigator came. If the interview was conducted at the police station, sometimes the victim and the perpetrator are put together. Often, we had to raise this issue, why is the victim and perpetrator put in the same room?”* There are psychological and other pressures, we don’t know for sure, right?” (RA4-J-IN-04-A, Trafficking Client’s Companion, Bahtera Foundation). It seems that non-governmental organisations play an important role in ensuring that child victims’ needs are taken into consideration during the whole process.

In several cases, it was found that the trial was open to the public, and the victim had to meet with the perpetrator in the courtroom (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network). Facing the perpetrator again is not easy for children. Regarding this, one interviewee said, *“The most difficult thing a child will face has got to be going to trial. Because at trial, there is a possibility the child will be confronted with the perpetrator. So, the situation will be different, psychologically”* (RA4-J-IN-05-A, Administrator, Embun Pelangi Foundation).

No special provisions were made for child victims so that they didn’t have to attend the court proceedings physically during the pandemic. Child victims still had to come to the courtroom to give statements about the cases they experienced. *“There are several victims who face difficulties in attending trials and face difficulties in giving their testimony, how the child victim needs to be forced to go to court. I think the judges need to change their perspective, I think the judges should say “Okay, the child victim does not need to be present in court, I think testimony by teleconference is sufficient.” Simple things like this should happen, but in practice, during this COVID19 pandemic, the victim still needs to come to court, [while] the defendant is permitted not to come to court and can give testimony by teleconference”* (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).

The trial process still uses the existing model in Law No. 3 of 1997 about Juvenile Court (Law and Regulations, 1997), in the form of prohibition of using toga or official attribute for the officer.^{39 40} This was also added by one interviewee who is a judge: *“Furthermore, if we handle a case of sexual abuse or exploitation where the perpetrator is an adult and the victim is still a minor, we would conduct the proceedings in the juvenile courtroom. We would also take off our togas during the investigation and hearing process of the juvenile victim”* (RA4-J-IN-10-A, Judge, Supreme Court). This treatment is intended to put children at ease and prevent them from being afraid of facing judges, prosecutors, investigators, legal counsellors, social counsellors, and other officials, and to narrate their ordeals to the judge. One of the interviewees also explained that police officers do not wear their uniforms in order to create a friendlier environment for children while conducting investigations. *“There is special*

³⁹ According to Article 22 of the Law no. 3 of 1997, "Investigator, Public Prosecutor, Judge, Community Guidance, Advocate or other legal aid providers, and other officers in checking the child's case, the victim's child, and/or the child's witness does not wear a gown or official attribute".

⁴⁰ Sofyan, Andi & Haeranah, & Bakhtiar, Handar. (2019). [Criminal Justice System of Children in Indonesia](#). 24. 01-07. 10.9790/0837-2409020107.

treatment [for children]. For example, the investigators do not use official uniforms during the investigation process and they are more flexible in getting answers from children” (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

However, sometimes, police officers are under pressure to process the reports as quickly as possible which may mean they do not take the necessary measures to ensure children are at ease during the investigations. *“It is correct that the police do not wear uniforms, but sometimes there are cases, for example, there was a child that did not want to file a report to the police. I said, okay let’s wait until the right moment until the child is calm, relaxed, open-minded, well-rested, the police can start then. That is often violated, the police will say, ‘I’m under pressure to finish this report” (RA4-J-IN-04-A, Trafficking Client’s Companion, Bahtera Foundation).*

The interviews showed that although Indonesia has proper laws which set forth standards for a child-friendly justice system, the measures taken are not evenly distributed, and in several areas that are more rural the system is not applied well. *“When we accompanied a child victim to a court located in a smaller region outside of Jakarta, we can see the judges were still wearing their togas and crazily enough the courtroom was open for the public” (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network).* This is concerning as the main purpose of child-friendly procedures is to make the criminal justice system a little less intimidating for children and without such measures in place, children might be prevented from accessing their right to legal remedies.

Description of what is done by different criminal justice professionals (police, judges, prosecutors, lawyers, or other relevant staff) to make the process harder for children

In all crimes, securing evidence represents a crucial part of the criminal investigation process, as it can determine if a perpetrator is convicted and influence the punishment he/she receives. However, in the case of OCSEA, the process of collecting evidence can be a challenge in itself, because the crimes are not only carried out physically, but there is a (part of the) process that is carried out online. One of the interview participants stated that, in OCSEA cases, recruitment was carried out online. *“So, it was decided to use the sex against a minor article in the Child Protection Law. Because the initial evidence of exploitation is not apparent, the missing screen capture as I have mentioned before. But during the medical examination it was physically proven that the child had engaged in a sexual act, and a witness was confirming the sexual act, [although] the commercial exploitation aspect was not apparent” (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).*

The difficulty relating to online evidence was also supported by other statements. One interviewee mentioned how, due to lack of digital evidence, many OCSEA cases do not even reach the trial stage. *“There are a lot of cases that do not go to trial. 40... below 50 percent. The problem is with the existence of evidence. That is always the problem. Our law enforcement, when they analyse child sexual abuse cases, they need proof/evidence. This evidence is always the problem”* The interviewee went on to explain that often due to weak evidence, investigation of a case gets halted, causing undue stress to

children and their families. *“There are plenty of cases where the victims are tired of waiting, apathetic and sometimes the parents are stressed. We had a case where one of the victims’ mother was traumatised because the investigation was halted (...) due to weak evidence. The statement of the child, the child psychologist in this case says that child trauma exists. So, it is not only the child, the mother is also under pressure because the mother has seen what has happened to her child, the mother has built up the courage to report the matter to the police, but when the mother filed a police report, the investigation was halted”* (RA4-J-IN-06-A, Legal Advocacy Senior Officer, Centre for Study and Child Protection).

In addition, the interviews showed that child-friendly procedures are not uniformly and consistently followed throughout the criminal justice process. *“We still see that during the investigation process, the Polki (male police officers) still participate in the investigation process and show a gender bias, for example, they ask “Why did you want to?”* (RA4-J-IN-06-A, Legal Advocacy Senior Officer, Centre for Study and Child Protection).

Another interviewee added that this was also found at the court level. *“The judges will comment on their [the victims’] appearance and ask them if they are wearing lipstick, fake eyelashes, etc. when they’re inside the courtroom and that’s crazy!!!”* (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network).

Furthermore, the lack of a child-friendly approach was observed at the level of Puskesmas (Community Health Centre). *“I once talked with the head of a community health centre, he asked ‘It’s the fault of the child victim, why would someone do such a thing?’”* (RA4-J-IN-04-A, Trafficking Client’s Companion, Bahtera Foundation). Subjecting children to victim-blaming reveals the lack of understanding on the part of the authorities with regard to OCSEA. This is a cause of concern as such biases combined with lack of other child-friendly procedures make the criminal justice system inhospitable and inaccessible to children.⁴¹

Compensation

According to Article 71D of the Child Protection Law, as amended in 2014, every child victim of crimes relating to child sexual abuse materials, 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 damages and the responsibility of the perpetrators.⁴² Children can pursue an independent civil case to seek compensation or jointly in a criminal proceeding, according to Articles 98 to 101 of the Criminal Procedure Law.⁴³ However, the technicalities of the process make it quite complicated to obtain restitution for victims. Therefore, in practice, there are various barriers that hinder child victims’ access to restitution. This includes the refusal of the perpetrator to pay the fine ordered by the court. In such cases, the amount of the fine is converted into an extension of the detention period, which is relatively

⁴¹ ECPAT International. (2017). [Through the eyes of the child](#), 17.

⁴² Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 71D.

⁴³ Government of Indonesia (1981). [Law No. 8 of 1981 concerning the Criminal Procedure](#), Articles 98-101.

short. *“The restitution was granted on paper but there was no implementation because the perpetrator was unable [to pay]. The plea was for 75 million, but the perpetrator was not willing to pay, so the perpetrator chose extended jail time instead because it was an option”* (RA4-J-IN-06-A, Legal Advocacy Senior Officer, Centre for Study and Child Protection).

The Child Protection Law states that every person who violates the provisions referred to in Article 76A⁴⁴ will be sentenced to imprisonment for 5 years and/or a maximum fine of Rp. 100,000,000 (approximately 7205 USD as of September 2021). The law allows the perpetrator to choose between the fine or an additional period of detention. According to one interviewee, OCSEA perpetrators usually choose to extend the period of detention rather than paying a fine following article 76A. *“...usually, the perpetrator would choose an imprisonment term of 3 months rather than paying compensation to the victim out of spite.....and in my opinion this regulation is absurd”* (RA4-J-IN-02-A, Director, Surabaya Children Crisis Centre).

To obtain restitution, victims are required to file an application. One interviewee explained that: *“For restitution, an application must be made. There must be a lawyer to advocate, the victim needs to know restitution is available. The lawyer must understand how to get that restitution. For fines handed down by the state to the perpetrator”* (RA4-J-IN-04-A, Trafficking Client’s Companion, Bahtera Foundation).

After that, the Witness and Victim Protection Institution carries out the calculation related to restitution, which would then be followed up by the prosecutor. However, it was found that restitution is not automatically applied for in the initial case report prepared by the law enforcement agencies because of the difficulty in determining a figure (amount) of the losses that were detrimental to victims. As one interviewee notes: *“For example, in the police report, the restitution clause is mentioned. This made me curious, why do law enforcement, the police, and prosecutors, never apply the restitution clause. The answer that they gave me is that they have difficulty calculating immaterial costs”* (RA4-J-IN-05-A, Administrator, Embun Pelangi Foundation).

This issue was also raised by another participant: *“I once handled a restitution case. I was a team member that submitted a plea to the court before the prosecutor read his charges. In this matter, it is a problem because the restitution is not entered since the start of the police investigation”* (RA4-J-IN-06-A, Legal Advocacy Senior Officer, Centre for Study and Child Protection).

Social workers play an important role in explaining the right to seek compensation to victims and their families. *“The investigators will not inform the victim regarding restitution and after the process of reporting from social workers, there is a restitution process. During this process, we as social workers will always emphasise to the victim that he or she is entitled to some form of restitution for damages the victim and the family has experienced from their perpetrators”* (RA4-J-IN-06-A, Legal Advocacy Senior Officer, Centre for Study and Child Protection).

⁴⁴ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated)), Article 76.

Apart from restitution, child victims can receive reimbursement for costs such as medical bills, hospital expenses, or money to help cover the costs of attending court. There is no special allocation of funds to cover these things. Institutions such as P2TP2U have access to hospital facilities but not cash. *“There is no allocation in the budget specifically for women and children victims of abuse for non-medical examination services”* (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta). In another institution, transportation costs can be reimbursed by the Finance Ministry *“Second, there are transportation costs where the Victim Protection Institution may reimburse transportation costs, in line with Finance Ministry standards and regulations. In practice, in the field, the WVPI provides transportation costs”* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

The main obstacle found in implementing restitution is the issue of enforceability. This is because there are many cases of restitution that win only on paper without any action. Also, the perpetrators tend to choose to extend their detention period rather than paying the requested restitution. *“Let’s say the judge orders the perpetrator to pay 10 million rupiahs (approximately seven hundred USD) to the victim. When the perpetrator does not pay, the 10 million payment will be replaced by a three-month detention extension. So, this payment enforceability is an issue. Psychologically the perpetrator will choose to extend the detention by another three months”* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

The issue of enforceability is also made more difficult due to the options provided by the law. *“The law is also unclear, there is the word “or” in it. If the perpetrator is unable to provide restitution, the word “or” in the law gives an option, the perpetrator will choose to extend jail time rather than pay restitution. The way I see it is that the state has acted but half-heartedly”* (RA4-J-IN-06-A, Legal Advocacy Senior Officer, Centre for Study and Child Protection).

In addition, child victims do not seem to be aware of their right to seek compensation. In the words of one of the interviewees, *“The first issue is sometimes the victim isn’t even aware that they have a right to restitution. One of our main tasks as social workers is to assure and convince the victim that he or she is entitled to a restitution or a form of compensation”* (RA4-J-IN-08-A, Social Service).

From the interview results, it was also found that from the total cases reported by the non-governmental organisations that participated, around 70% of the cases were provided with restitution. *“I cannot give a definite answer but around 70 percent of cases are provided with restitution. There is still a challenge in providing restitution, there is no rule forcing the perpetrator to pay”* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency). However, in the cases experienced by other participants, out of the cases they addressed, none ended with restitution from the perpetrator *“From 1, 2, 3 cases that we handled, one went forward to trial, but there was no restitution, compensation”* (RA4-J-IN-04-A, Trafficking Client’s Companion, Bahtera Foundation).

From the analysis of the above interviews, it appears evident that the justice delivery system in Indonesia does not respect child victims’ right to compensation as enshrined in various laws. Further,

interviewees provide little or no information about the existence of state/national funds for paying compensation to the child victims. Notwithstanding, one interviewee talked about the availability of funds from non-governmental organisations like Bahtera Foundation. (RA4-J-IN-04-A, Trafficking Client’s Companion, Bahtera Foundation). Besides, the cases reported by non-governmental organisations seem to have a higher chance for the victims to receive compensation when compared to cases mentioned by the justice actors. This signifies the importance of these organisations in providing support to the child victims in accessing justice in Indonesia.

Successes

Possibility to highlight one or more cases where (some) things were done well and where the child got proper access to justice

Positively, the juvenile justice system in Indonesia lays emphasis on the training of judges. Before being appointed as a judge, they are required to undergo the Juvenile Justice System training. *“Even before an individual is inaugurated to become a judge, they’re required to attend a juvenile judge certification and training provided by the supreme court”* (RA4-J-IN-10-A, Judge, Supreme Court). As explained by the same interviewee initially in the interview, juvenile judges are trained to handle both cases concerning child victims as well as juvenile perpetrators.

For OCSEA cases in Indonesia, out of the total number of reports submitted to the police, apart from cases in which the reports were later withdrawn, it can be said that almost all ended up with a verdict. *“On average all of these cases are legally processed, about 3 or 4 have resulted in a verdict according to our expectation, resulting in verdicts of over 3 years and a fine of 100 million”* (RA4-J-IN-06-A, Legal Advocacy Senior Officer, Centre for Study and Child Protection). However, the interviews also showed that there were no records of cases that ended with the payment of restitution by the perpetrator. Or in other words, it is only ended with restitution on paper, nothing else.

Challenges/Changes Needed

Main challenges described by the criminal justice professionals

From the results of interviews conducted with justice professionals, several challenges relating to the implementation of criminal justice in OCSEA cases came to light. One of the challenges is to convince the victims that what they have experienced is not right, that there are consequences for what the perpetrator does through legal channels. *“We must also inform and convince these children to why they have to go through a legal process and to make them realise that they’re the victims of a criminal act. But some of the child victims are aware that they’re being employed in a prostitution ring by the perpetrators”* (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network).

It is even more challenging when the perpetrator is a close relative. Besides, in several cases, the victim is reluctant to report the case and does not feel exploited because there was "retribution" for the sexual acts. *"There is also the example of a child, the criminal element of child sexual exploitation is existent but in the context of the event, the child does not feel being exploited. When the victim is asked to "work" and there is consensus/agreement in the beginning from the child that the child will be paid for the "work," legally it is child exploitation but from the personal perspective of the child, it is not exploitation"* (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).

Another issue is that victims may be reluctant to report the case because they do not want to report the pimp. *"But once we reached the Police station to report the child's case, the child was reluctant to report the Pimp and sympathised towards their Pimp because the Pimp has been feeding and providing the child's daily needs"* (RA4-J-IN-02-A, Director, Surabaya Children Crisis Centre). This issue sometimes could lead to a delayed report. *"These cases, in particular, are extremely difficult.....due to the child's reluctance to report their pimps we are forced to delay the case report"* (RA4-J-IN-02-A, Director, Surabaya Children Crisis Centre). This is particularly worrying and indirectly relates to the lack of understanding on the part of child victims regarding crimes committed against them. Further, the interviews also showed that it is more difficult for victims to open up when there is intervention or reluctance from the family.

However, on a positive side, the interviews also showed that children can be more open to the assistance of psychologists. *"In most cases, the parents of the victims are harder to work with compared to child victims. When a child victim is brought to a psychologist, they are more willing to cooperate and it is easier to convince them to report the perpetrator to the police, but it is difficult when the parents intervene. Some parents would even be willing to 'sell' their child's case"* (RA4-J-IN-02-A, Director, Surabaya Children Crisis Centre).

In some cases, children had difficulty giving testimony at the trial due to fear. *"For example, there are several victims who face difficulties in attending trials and face difficulties in giving their testimony, how the child victim needs to be forced to go to court"* (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).

The safety of victims remains a major challenge in handling OCSEA cases (RA4-J-IN-04-A, Trafficking Client's Companion, Bahtera Foundation).

In addition, there were many problems associated with the judicial process in OCSEA cases, one of which was the criminal justice facility for children who are part of the process. As mentioned above, in Law 11 No. 2012,⁴⁵ it states that Indonesia has a juvenile criminal justice system in which the interests and rights of children are put forward during this process. This process covers the

⁴⁵ Government of Indonesia (2012), [Law No.11 of 2012 Juvenile Justice System](#) (Untranslated), Article 2.

investigative level to the time in court. In practice, there are many inconsistencies and regional differences with regard to the Juvenile Justice System as required by the law. The inconsistencies exist at various levels, from the police to the court level. *“This is also very varied. At the investigation stage, when we accompany victims, I can see that there is a difference between the different levels of police stations, from the district-level police station, the city-level police station, and the provincial-level police station, even up to the national policy level. We often receive information from the district-level police station”* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

At the court level, participants still found situations where the court proceedings were open to the public, when cases involving children should be carried out in a special room. *“Courts in smaller regions don’t implement a juvenile court proceeding where a child victim is treated the same as an adult. Moreover, the judges in the more remote regions have a bad perspective toward the child victims”* (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network).

The interviewee added that the Juvenile Justice System in big cities such as Jakarta is indeed much better than in smaller areas. *“In court, the judges must also not wear their uniforms or togas juvenile criminal proceedings. I see this procedure has been practiced by courts in Jakarta, but it is not the same in smaller regions outside of Jakarta. When we accompanied a child victim to a court located in a smaller region outside of Jakarta, we can see the judges were still wearing their togas and crazy enough the courtroom was open for the public”* (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network).

Besides, the problem is not only the facilities but also the lack of understanding and using the child victim's perspective in the criminal justice process. This issue was also voiced by judges who were directly involved in the field. The interviewees expressed the need to uniformly apply child-friendly justice system standards throughout the country, including in remote areas. *“...in big cities, they accompany the victims. That is why I would like to emphasise that there must be an equalisation in the standards of our law enforcers throughout the country even in the most remote areas and not only in big cities”* (RA4-J-IN-10-A, Judge, Supreme Court).

Another interviewee added, *“We see that for cases related to sexual abuse crimes, the law is not accommodating to the fulfillment of child victims of sexual abuse. The relevant government institutions, from the Ministry for Women Empowerment and Child Protection, regional branch of the Ministry for Social Affairs, and other regional offices and ministries, must be able to accommodate the fulfillment of child’s rights through regulation. These regulations must be able to see how to fulfill these rights, especially the rights of child victims of sexual abuse.”* (RA4-J-IN-06-A, Legal Advocacy Senior Officer, Centre for Study and Child Protection). The interviewee further went on to explain how law enforcement officials who receive training in child rights and understand child sensitive justice and sexual crimes are transferred to other departments shortly after they receive training. As a result, sexual crimes are handled by people who have not received appropriate training.

Main changes suggested making it easier/better for children to participate

From the interviews, there were several suggestions and recommendations from participants for a better implementation of the criminal justice system in Indonesia. When referring to Juvenile Crime Law, children involved in the criminal justice process have the right to get access to criminal justice, starting from the investigation, through trial, to the stage of rehabilitation. However, from the information provided in the interviews, this model is not evenly followed across regions in Indonesia and can be found only in some key locations. *“The attorneys and judges in Jakarta have a good perspective towards child cases but I don’t think the situation is the same for other regions.....we believe that whether the child is a victim or a perpetrator, we must still treat them as children where the court must practice juvenile criminal proceedings and we must use district attorneys and judges who specialise in child cases”* (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network).

Several participants stated that it is necessary to strengthen the coordination between related institutions that play a role in handling OCSEA cases. Many participants mentioned that the unit which functions to bridge or coordinate already exists but has not yet been implemented properly. *“The coordination is not effective nor productive enough to produce breakthroughs regarding the handling and prevention of child pornography”* (RA4-J-IN-09-A, Resources Coordinator, Don’t Be Naked in front of The Camera Movement). This coordination is also required at the hospital level. Coordination is the role of accelerating the handling of OCSEA cases (RA4-J-IN-05-A, Administrator, Embun Pelangi Foundation).

Besides, it is necessary to clarify the functions or duties of non-governmental organisations or institutions, concerning the fulfilment of victims’ rights in OCSEA and child sexual exploitation/abuse cases in Indonesia. *“This integrated service, even if composed of numerous institutions, each institution’s duties, role, tasks, and authority should be focused on the fulfilment of the rights of the victim. This idea should be talked about in-depth.”* (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta). Also, it is necessary to strengthen partnerships such as Witness and Victim Protection Institution to protect the rights of victims. (RA4-J-IN-08-A, Social Service).

Regarding the changes needed in the justice system, there were several inputs conveyed by the interviewed justice professionals. One of these is how the process of giving a statement requires the victim to attend the trial, but the perpetrator may attend the trial via teleconference. *“I think a lot of work needs to be done in this matter, how the court system can advance the rights and best interests of the child victims. For example, several victims who face difficulties in attending trials and face difficulties in giving their testimony, how the child victim needs to be forced to go to court”* (RA4-J-IN-01-A, Expert on Fulfilment Rights of Victims of Violence against Women and Child, Technical Implementation Unit: The Integrated Service Centre for the Empowerment of Women and Child (P2TP2A) DKI Jakarta).

Other participants also mentioned the need for adjustments in presenting the victim in court or repeatedly summoning the child for information, to minimise the encounter between the victim and the perpetrator. *“For court trials, the legal process, we hope that the victims do not need to come in person to court, maybe a trial in absentia that will make it easier for the victim to tell their story. Maybe the investigation process can be made easier, without having to go back and forth to the police station, without being confronted by the perpetrator”* (RA4-J-IN-04-A, Trafficking Client’s Companion, Bahtera Foundation).

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 crimes relating to child sexual abuse materials, sexual crimes, and sexual exploitation.⁴⁶ Accordingly, Article 67B of the Child Protection Law 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”.⁴⁷ An important recommendation made is to strengthen and fulfil the implementation of the rehabilitation services set forth in the Child Protection Law.⁴⁸ Policies related to social rehabilitation are also needed to ensure that the rights of child victims are fulfilled. *“Social rehabilitation process policies must also be improved for child victims, so their rights are fulfilled”* (RA4-J-IN-08-A-Justice Actor). These recommendations are more oriented towards strengthening the rights of victims such as rehabilitation and long-term recovery of children involved in OCSEA cases. Rehabilitation is an effort to restore not only the trauma of victims but to return victims to their social life. One of the interviewees recommended that there should also be rehabilitation programmes for juvenile perpetrators. *“In many juvenile cases, the perpetrator is also a victim and the government must implement better rehabilitation and consultation for both juvenile victims and perpetrators and I hope the government can be more assertive in practicing the laws. Also, the government must not ignore the long-term recovery and rehabilitation process for children who faced the process of law”* (RA4-J-IN-10-A, Judge, Supreme Court).

Rehabilitation centres already exist in Indonesia. However, they are located mostly in big cities. This is another concern, considering the number of cases that occur in the other regions is also quite high. *“The state, up to this point, the state’s services have not gone in that direction. Let’s say government services such as the Ministry of Social Affairs or P2T2A, whether at the national, provincial, or city/regency levels, do not have rehabilitation services for child victims of sexual exploitation. It is non-existent up to this point”* (RA4-J-IN-05-A, Administrator, Embun Pelangi Foundation).

Another important issue is that of restitution. Strengthening restitution in child criminal cases needs to be put forward in an effort to provide a deterrent effect to the perpetrator. *“First, as a deterrent effect, we should have a rule forcing restitution, because about half of the victims that we find; we*

⁴⁶ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Articles 59A (a), 67B (a) and 69A (b) and (c).

⁴⁷ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 67B.

⁴⁸ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated), Article 59A

don't care about how long the perpetrator is jailed" (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

Indonesian law states that perpetrators of sexual offences against children, including OCSEA, can be charged with Article 76A⁴⁹ being sentenced to imprisonment for 5 years and/or a maximum fine of Rp. 100,000,000 (approximately 7205 USD as of September 2021), but in its implementation, restitution remains a tough challenge. Hence it is necessary to strengthen the law for providing effective restitution to victims. Besides, amounts of transferred penalty to the imprisonment time is also considered unequal *"There is still a challenge in providing restitution, there is no rule forcing the perpetrator to pay. Let's say the judge orders the perpetrator to pay 10 million to the victim, when the perpetrator does not pay, the 10 million payment will be replaced by a three-month detention extension. So, this payment enforceability is an issue"* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency).

In sexual abuse cases involving children, where the verdict was in favour of the victim and restitution was ordered, this victory was often only on paper. *"Most of this restitution is a victory on paper, but in terms of execution, of actually getting payment, we need to push this further in practice"* (RA4-J-IN-03-A, Expert, Witness and Victim Protection Agency). Many perpetrators choose to extend their period of detention rather than paying restitution to the victim. *"The law is also unclear, there is the word "or" in it. If the perpetrator is unable to provide restitution, the word "or" in the law gives an option, the perpetrator will choose to extend jail time rather than pay restitution"* (RA4-J-IN-06-A, Legal Advocacy Senior Officer, Centre for Study and Child Protection). This is unfair to victims, where the addition of the prison term is not even one year. *"In my opinion, it is already unfair for the victims that the restitution can be substituted with a longer prison sentence by the perpetrator. The longer sentence is only a couple of months and not even in years!"* (RA4-J-IN-07-A, Advocacy and Law (Lawyer), Anti-Human Trafficking National Network).

⁴⁹ Government of Indonesia (2002). [Child Protection Law \(as amended in 2014\)](#) (Untranslated)), Article 76.