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## Legal Framework of Vietnam in Protecting Children against Sexual Abuse in Cyberspace

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**ABSTRACT:** As a body of law on children, the legal framework on protecting children agaisnt sexual abuse in cyberspace is a collection of legal norms promulgated by the State to regulate sexual abuse in cyberspace to guarantee that children have a safe and healthy cyberspace as well as control, prevent and handle acts of children sexual abuse. The legal framework is one of the important factors promoting the implementation of solutions to prevent and support children in the increasingly complex issue of sexual abuse in cyberspace. Nevertheless, the legal framework on protecting children in cyberspace in general and the legal framework on protecting children from sexual abuse in cyberspace in Vietnam in particular still exists a lot of gaps in terms of provisions on prevention and support of children as well as handling violations. This research focuses on reviewing the provisions of Vietnamese law in protecting children from sexual abuse in cyberspace, thereby serving as a basis for proposing solutions to improve the legal framework for protection of children in the upcoming time.

KEY WORDS: Children protection, Child sexual abuse, Cyberspace, Legal framework.

#### 1. INTRODUCTION

In the context where the cyberspace is becoming increasingly complex and potentially dangerous, building a safe and healthy cyberspace for children is a top priority which requires the cooperation of the entire society. Currently, building a legal corridor on children protection in cyberspace in Vietnam has initially been formed.

In recent times, Vietnam has made great efforts in the care and protection of children, especially in the protection of children from negative impacts of cyberspace. The evidence shows that Vietnam has joined most international treaties on children protection and issued many legal documents to create solid barriers to protect children in cyberspace. In Vietnam, the Law on Information Technology 2006, the Law on Cyberinformation Security 2015, the Penal Code 2015, the Law on Children 2016, the Law on Access to Information 2016 and most recently the Law on Cyber Security 2018 all have provisons on children protection in cyberspace. In addition, decrees and decisions have also been issued recently to specify guidelines of implementing children protection and preventing child sexual abuse in cyberspace. Although the legal framework on children protection and prevention of child sexual abuse in cyberspace for all children.

#### 2. METHOD OF RESEARCH

The article is conducted by using the document review method, based on analysis, synthesis and generalization of documents, research of international and Vietnamese legal documents on the issue of protecting children from sexual abuse in cyberspace. The list of references for the article includes 20 domestic and international legal documents, reports, archives and documents on the website. At the same time, the article makes use of a number of websites to search for English academic documents on the legal framework related to children protection and prevention of children sexual abuse in cyberspace: https://scholar.google.com.vn/ (Google's search page for academic documents), foreign magazine websites; Documents and reports of international agencies and organizations such as UNICEF, UN, ASEAN, etc.

From reviewing and analyzing the contents of legal documents, this article also emphasizes the urgency of continuing to seek for solutions to strengthen and perfect the legal corridor system to protect children and prevent children sexual abuse in cyberspace.

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## 3. CONTENTS OF RESEARCH

#### 3.1. International legal documents on protecting children from sexual abuse in cyberspace

According to UNICEF, there is a yearly increase in reports of children sexual abuse contents in cyberspace. The development of digital technology has led to an increase in cases of children abuse and exploitation [1]. More dangerously, criminal tactics are increasingly sophisticated due to the application of technology in the process of committing crimes. This type of behavior falls under the group of "violence against children" according to United Nations guidelines [2]. Therefore, protecting children from sexual abuse in cyberspace within the country contributes to limiting violence against children globally.

International law has already had effective and comprehensive legal instruments that are binding on member states to promote and protect children's rights and protect children from being trafficked, exploited and sexually abused such as the Convention on the Rights of the Child 1989, Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography 2000. Vietnam respectively approved these two documents on February 20, 1990 and December 20, 2001. Although approved at a point that information and communication technology were not yet developed and less popular, to date, the Convention on the Rights of the Child 1989 and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography 2000 are still the most comprehensive and popular international legal instruments on children's rights to protect children from being trafficked and sexually abused [3]. Approved in 2021, General Comment No. 25 on the rights of children in relation to the cyberspace is the latest United Nations legal instrument to support member states in improving their domestic legal framework on this issue, affirming the interests of the United Nations and its member states in protecting children's rights against opportunities and challenges in the cyberspace [4]. Through this document, the United Nations sends a call to governments, technology companies and teachers to support the management of unreliable information in the cyberspace.

It is belived that the United Nations' fundamental legal framework on protecting children against sexual abuse in the online environment has placed more emphasis on preventive factors before moving forward with recommendations for handling and deterrence against criminal acts. Faced with the current situation of child sexual abuse in cyberspace taking place in increasing quantity and severity in Vietnam, devising solutions to prevent these violations is an important issue of urgency and necessity. In addition, prevention contents also need to comply with the requirements of international legal documents to which Vietnam is a member.

#### 3.2. Vietnamese law on protecting children from sexual abuse in cyberspace

### 3.2.1. Laws on protecting children from sexual abuse in cyberspace

By 2023, Vietnam has issued many legal documents that directly or indirectly regulate the protection of children in cyberspace, including activities on prevention and support of children to the issue of sexual abuse in cyberspace.

The legal document directly regulating children protection is the Law on Children, effective from June 1, 2017. This law has detailed provisions and implementation instructions on children protection in cyberspace.

Accordingly, the Law on Children 2016 stipulates that "a child is a person under 16 years old". It prohibits the publication and disclosure of information about the private life and personal secrets of children without the consent of the children 7 years of age or older and of the children's father, mother or guardian; It is strictly prohibited to produce, copy, circulate, operate, distribute, own, deliver, store, sell or export toys, games and other products that serve children but contain contents affecting the healthy development of children.

Article 54 of the Law on Children 2016 also stipulates the responsibility to protect children in the cyberspace. Accordingly, relevant agencies and organizations are responsible for propagating, educating and protecting children in the cyberspace in any forms; Parents, teachers and gurdians of children are responsible for educating and guiding children so that they can protect themselves in the cyberspace; Agencies, organizations and individuals that manage and provide information and communication products and services and organize activities in the cyberspace must take measures to ensure the safety and confidentiality of private life for children according to the provisions of law. The Law on Children 2016 also assigned the Government to regulate this in detail [5].

Also mentioning the responsibility to protect children in cyberspace in general and the prevention of children sexual abuse in particular, Article 73 of the Law on Information Technology 2006 also has specific provisons and focuses on the responsibilities of stakeholders in implementing technical solutions to ensure children's safety in cyberspace [6]. Accordingly, the State, society and



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schools are responsible for protecting children from the negative impacts of information in cyberspace and taking measures to prevent harmful contents that incites violence and pornography. In addition, families have the responsibility to prevent children from accessing information not beneficial to children. This clause of the Law also points out the responsibility of competent state agencies in taking measures to prevent children from accessing harmful information in the cyberspace, including developing and disseminating the use of content filtering software and tools to prevent children from accessing harmful information; providing guidelines to set up and manage websites for children with the aim of promoting the establishment of suitable contents for children. In addition, this Law also stipulates the responsibility of Internet service providers to take measures to prevent children from accessing information network environments that are not beneficial to children and technology products and services containing contents not beneficial to children must have warning signs.

The introduction of the Law on Cyberinformation Security 2015 brings notable regulations on cyber information security activities, rights and responsibilities of agencies, organizations and individuals in ensuring cyber information security; standards and technical regulations on cyber information security; development of human resources for cyberinformation security and responsibilities of state management agencies on cyberinformation security. Accordingly, a number of articles in this Law have specific regulations on principles of ensuring cyber information security; Principles for protecting personal information online; Collection and use of personal information; Update, amendment and deletion of personal information; Ensuring the safety of personal information online; Responsibilities of state management agencies in protecting personal information online [7]. Regulations related to the management of cyberinformation security will be a barrier to help users, especially children, protect their personal information from risks when participating in the cyberspace as well as prevent the risks of sexual abuse.

According to the Law on Access to Information 2016, there are provisions of on exercising citizens' rights to access information; principles, orders and procedures for exercising the right to access information; responsibilities and obligations of state agencies in ensuring citizens' right to access information. Specifically, Article 8 of this law stipulates the rights of citizens in general and children in particular to access information such as being provided with complete, accurate and timely information; having complaints and initiating lawsuits; denouncing violations of the law on access to information. In addition, citizens have obligations such as complying with legal regulations on access to information; Do not falsify the information provided; Do not violate the legitimate rights and interests of agencies, organizations or other people when exercising the rights to access information [8]....Access to information regardless of forms in cyberspace is the legitimate right of every child. It is important to both ensure children's rights and help children access information safely with healthy and positive contents appropriate to their age as well as prevent harmful and violent contents, pornography or sexual abuse, etc.

The Law on Cyber Security 2018, effective on January 1, 2019, includes more specific provisions on ensuring safety in cyberspace for children. Article 29 of this law clearly states that *children have the rights to be protected, to access information, participate in social activities, play, entertain, keep personal secrets and other relevant rights in cyberspace* [9]. In particular, the law stipulates that agencies, organizations, parents, teachers, guardians and other relevant individuals must be responsible for ensuring children's rights and protecting children according to the provisions of the Law on Children when they participate in cyberspace, including helping them prevent exposure to pornography and depravity. Although the Law on Cyber Security 2018 is not a law that criminalizes children sexual abuse in cyberspace, these provisions still becomes an important part of the legal framework to protect children from sex abuse in cyberspace.

Directly related to provisions on handling child sexual abuse in cyberspace, especially criminal acts that cause this problem, the Penal Code 2015 also mentioned a number of specific terms. The Penal Code prohibits all pornographic content in general – including criminalization of cultural products containing sexually explicit contents of children. In Article 326, it criminalizes a series of acts, including making, copying, circulating, delivering, trading and storing books, newspapers, pictures, films, music or cultural products with pornographic contents in any forms for dissemination. All of the above cultural products include products depicting children and adults [10].

The Penal Code stipulates a crime for any person 18 years of age or older who commits acts of enticing, seducing or forcing children under 16 years of age to perform pornographic performances or watch pornographic performances in article 147 of the Code. The crime of using people under 16 years of age for pornographic purposes is a new crime stipulated in the Penal Code in 2015. According to the Resolution of the Council of Judges of the Supreme People's Court 2019, this provision includes

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pornographic performances broadcast live online [11]. The criminalization of the act of using people under 16 years old for pornographic purposes is an advancement of Vietnamese criminal law, demonstrating a consistent viewpoint in the right punishment of offenders, do not let criminals go unnoticed and contribute to protecting children from new crimes. With the development of science and technology, the child sexual abuse crimes are no longer limited to real life but extended into the cyberspace.

In addition, if a Vietnamese citizen, commercial legal entity or stateless resident commits a criminal offense outside the territory of Vietnam related to cultural products with child sexual contents and it is regulated in the Penal Code 2015, criminals can be punished in Vietnam in the same way as if the crime was committed in Vietnam. The Penal Code 2015 also stipulates that extraterritorial jurisdiction shall be applied if there are crimes committed against Vietnamese citizens.

**3.2.2. Legal documents guiding the implementation and commitments of Vietnam on protecting children from sexual abuse in cyberspace** 

In addition to the legal documents mentioned above, which are the legal basis for activities and programs to protect children and prevent sexual abuse in cyberspace, the Vietnamese Government also issued a number of guiding documents, including decrees related to management, provision and use of internet services and network information; decrees detailing and guiding the implementation of legal documents and sanctioning administrative violations in areas related to the provision of information in cyberspace as follows:

Decree 56/2017/NĐ-CP guiding a number of articles of the Law on Children 2016 was signed and promulgated by the Prime Minister on May 9, 2017. The Decree dedicates Chapter IV to 05 Articles, from Article 33 to Article 37, to detail the responsibility to protect children in the cyberspace, including protecting confidential information about children's private life; communication, education, capacity building on children protection in the cyberspace; safety measures for children in exchanging and providing information in the cyberspace; measures to protect children's confidential and private life information in the online environment; measures to support and intervene in children being abused in the cyberspace. In particular, in Article 33 of this decree, it is clearly stated that information about children's private life and personal secrets is *information about name, age; personal characteristics; information about health status and private life recorded in the medical record; personal image; information about family members and guardians; personal property; phone number; email, information about services provided to individual children [12]*. Specifying this information content in the decree is the basis for developing preventive measures along with specific instructions and warnings in protecting personal information and children's privacy in cyberspace. At the same time, there are measures to handle each violation related to the abuse of children's rights in this regulation.

Decree 130/2021/NĐ-CP regulates administrative sanctions in the field of social protection and assistance and children, specifically in Article 30 and Article 31 of this decree related to handling violations of regulations on Providing cultural and communication products and services with contents that affect the healthy development of children and handling violations of regulations prohibiting the publication and disclosure of information about Children's privacy and personal secrets. These provisions are directly related to children's rights to protection in cyberspace and ensure the enforcement and handling of violations of abusive acts, especially child sexual abuse in cyberspace. [13].

The Government issued Decree No. 71/2022/NĐ-CP dated October 1, 2022 amending and supplementing a number of articles of Decree 06/2016/NĐ-CP on management, provision and use of radio and television, including the content specified in Point a, Clause 10, Article 1 on the editing of foreign program channels must ensure: "b) Editing and implementing content warnings to ensure compliance with provisions of Vietnamese law on children, cinema and other relevant laws." [14].

On January 27, 2022, Decree No. 14/2022/NĐ-CP was issued to amend and supplement a number of articles of Decree No. 15/2020/NĐ-CP dated February 3, 2020 of the Government regulating Penalties for administrative violations in the fields of postal services, telecommunications, radio frequencies, information technology and electronic transactions and Decree No. 119/2020/NĐ-CP dated October 7, 2020 of the Government regulations on sanctions for administrative violations in journalistic and publishing activities. The Decree has amended, supplemented and raised the level of penalties for a number of acts regulating the responsibility of using social networking services and electronic information sites; providing and transmitting fake information, false information, distortion, slander, insulting the reputation of organizations, honor and dignity of individuals; providing and transmitting fabricated information, bad customs, superstitions, lewdness, debauchery, violence... can easily affect the mental and physical health of children [15]

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On June 1, 2021, the Prime Minister issued Decision No. 830/TTg-CP on the Program "Protecting and supporting children to interact healthily and creatively in the online environment in the period 2021 - 2025". This is the first time that Vietnam has made a program at the national level specifically on the issue of children protection in the cyberspace, demonstrating the interest and determination of Party and State leaders in protecting children privacy as well as prevent and handle acts of taking advantage of the cyberspace to abuse children [16]. The program has a "dual goal" of: (1) Protecting privacy as well as preventing children. Equipping children with age-appropriate knowledge and skills (digital immune system) so that children can self-identify and be able to protect themselves in the online environment; (2) Maintaining a healthy network environment, developing an ecosystem of Vietnamese products and applications for children to learn, connect and entertain creatively. In addition, the government will collaborate with companies providing Internet services and communication technology to protect children from new risks and harms they may encounter, while ensuring a safe Internet environment for children.

Vietnam is a member of the Association of Southeast Asian Nations (ASEAN). In 2019, Vietnam adopted the Declaration on the Protection of Children from All Forms of Online Exploitation and Abuse in ASEAN [17]. Vietnam also commits to implementing the Regional Action Plan on Protecting Children from all forms of online exploitation and abuse in ASEAN (2021-2025) adopted in October 2021, including the commitment of member states on strengthening the protection of children online in the ASEAN region [18]. This plan includes seven focus areas, from raising awareness, enhancing data collection to adjusting laws. By endorsing these regional commitments, Vietnam has shown its determination to address issues of children sexual exploitation and abuse.

Currently, the National Committee for Children under the Ministry of Labor, War Invalids and Social Affairs has established a National Call Center for Child Protection (number 111) with the purpose of directly receiving and processing information, notify and denounce risks and acts of children abuse. In 2021, the Call Center 111 received 507,861 incoming calls and 1,651 notifications via the Call Center's app and zalo applications [19]. Call Center 111 provides free services, operates 24/7 and is part of the International Child Support line. During the National Consultation Conference on December 13, 2021, delegates from the Call Center 111 also stated that from 2020, the Call Center has begun to separate online children sexual abuse data. In addition, in 2021, the Minister of Information and Communications established a multi-agency and interdisciplinary network -Network for rescuing and protecting children in the cyberspace (VN-COP) with "tool" and "abuse report" features. With the "tool" feature, users just need to enter the website link and send a request then they can check whether the website is safe for children. In terms of the "abuse report" feature, if there is a case of children abuse in the cyberspace such as acts of violence, sexual abuse, harassment, seduction, fraud or taking advantage of children online, bad website links, malicious groups, bullying children, disclosing personal information of children without consent, anyone (including children) can submit a report [20]. Although there has been certain progress in building modern tools to receive information and denunciations in cases of children abuse and exploitation, including children sexual abuse in cyberspace but the process of detecting, supporting and intervening for abused children in cyberspace and binding responsibilities to relevant parties have not yet been specifically regulated. As a result, prevention and early intervention against acts of children abuse have not been applied effectively and many cases are missed because there is no mechanism for early prevention.

# 4. DISCUSSION OF THE LEGAL FRAMEWORK IN PROTECTING CHILDREN FROM SEXUAL ABUSE IN CYBERSPACE IN VIETNAM

From the contents summarized above, we can see that the issue of protecting children from sexual abuse in cyberspace has been directly or indirectly mentioned in Vietnamese legal documents. This is also an important legal basis for implementing solutions to protect children and prevent sexual abuse in cyberspace in current practice. Along with each stage of development in the general world context, Vietnam has also gradually improved its legal system to implement international commitments of which it is a member as well as respond to changes of the domestic context.

Although Vietnam currently has a legal corridor and a legal framework to protect children in cyberspace, it is not really complete as many specific regulations and instructions are lacking and are of a general nature.

In the Law on Children and related legal documents mentioned above, there are no specific definitions of child sexual abuse in cyberspace. In addition, the review shows that there are no legal documents that directly address the manifestations and

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forms of child abuse in cyberspace in full and detailed terms. Therefore, identifying and distinguishing the forms of this dangerous behavior are still unclear and inaccurate, leading to regulations on preventing child abuse in cyberspace being general or only focusing on a few forms cannot cover all other behavioral manifestations or newly emerging behavioral manifestations of sexual abuse in cyberspace. In addition, regulations on handling violations related to specific behavioral manifestations of child sexual abuse online also face difficulties when there is no specific separation from general manifestations of sexual abuse.

Vietnamese law also does not have specific regulations prohibiting online seduction for sexual purposes or blackmail in cyberspace. Some related acts can be punished such as "livestreaming" of pornographic contents, sexual abuse of children can fall under the crime of "using people under 16 years old for pornographic purposes" according to Article 147 of the Penal Code 2015, but there is still a lack of specific laws to handle these crimes.

In addition, the age provisions for children are not consistent in legal documents, so the implementation of rights, obligations and responsibilities in protecting children in general and preventing child sexual abuse in cyberspace in particular still have some shortcomings. Article 1 of the Law on Children 2016 stipulates that "Children are people under 16 years old". With the above child age regulations, it is possible to "overlook" the group of children and young people from 16 to under 18 years old according to the International Convention on the Rights of the Child, while in reality this group is at high risk of being abused and exploited, especially in the online environment and is an important stage for comprehensive mental and physical development before entering adulthood. On the other hand, according to the Penal Code 2015, it is a crime for any person 18 years of age or older to entice, seduce, or force children under 16 years of age to perform pornographic performances or watch pornographic performances (including live-streamed erotic performances). However, this prohibition clause has no provisions on the protection of children of 16-17 years old.

Regarding the regulations on handling violations and children sexual abuse crimes in cyberspace, there are still contents that have not been specifically regulated and need appropriate penalties, meeting the deterrent effect for violations. Currently, many acts of sexual abuse of children online have occurred extremely seriously but lack grounds for handling such as online seduction for sexual purposes or sexual blackmail of children, these acts have can be criminally prosecuted under the laws of many countries around the world. From the perspective of handling administrative violations related to the responsibility to protect children in the online environment according to current regulations, the level of punishment is not deterrent enough and not commensurate with the serious consequences of crimes. Regarding criminal proceedings, searching for criminals also poses many challenges for the authorities, due to the anonymous and fake nature of criminals in the online environment, it is necessary to have clear and specific regulations on the responsibilities of managing and processing network information with competent information technology authorities, as well as regulations on criminal investigation of high-tech network.

In addition to legal regulations, policies on social support for children who encounter sexual abuse in general and sexual abuse in cyberspace in particular still have gaps; Policies to promote children's participation in accessing support services in society are still an issue that has not received adequate attention.

Thus, current legal regulations are still facing difficulties in implementation in order to keep up with the complex developments of the current situation of child abuse in cyberspace. Therefore, completing the legal framework, adjusting and supplementing gaps in regulations needs to be paid more attention and promoted.

#### **5. CONCLUSION**

Based on the international legal documents that Vietnam is a signatory to, along with the process of building and perfecting the domestic legal framework on protecting children from sexual acts in cyberspace, it can be seen that prevention policy is still the core element mentioned, in which enhancing the responsibility of family, caregivers, teachers, schools, internet service providers and other relevant entities is extremely important. In addition, the law also has provisions of prohibiting and handling a number of violations related to sexual abuse in cyberspace. However, Vietnam's legal framework still has gaps in detailed regulations on prevention, as well as appropriate handling measures for manifestations of violations related to children sexual abuse in cyberspace. On the other hand, relevant agencies also need to consider, research and review the development of a more comprehensive legal framework and pay more attention to social support policies for children who have been sexually abused in all forms both in real life and in cyberspace and at the same time help children access support services when needed.

Currently, our State has been promoting the implementation of specific programs and activities to realize the proposed

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programs, guidelines, legal policies and initially achieve positive results. In addition, competent agencies continue to work on perfecting the legal framework for more comprehensive children protection, in line with practical requirements. This is a evidence of Vietnam's continuous efforts in protecting children in cyberspace with the goal of bringing safety, friendliness and health to all children in the digital era.

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