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Criminalise AI Harms in ASEAN

Doctrinal and Comparative Analysis on AI Governance

The Problem

xAI's Grok system was exploited to generate 'nudifier' content from clothed images, exposing a regulatory vacuum that neither ASEAN member states nor the EU had adequately anticipated.

Divergent national responses reveal the absence of harmonised ASEAN-level governance standards. Sophisticated actors exploit the gaps created by regulatory disparity: no agreed definitions, no shared liability thresholds, and no mechanism for cross-border accountability.

Research Question & Scope

How can ASEAN and its member states implement effective criminal accountability for malicious AI-enabled harms, without producing a chilling effect on innovation?

Jurisdictions

Singapore & Indonesia as
comparative ASEAN
reference points

Doctrinal Focus

Attribution of criminal
responsibility,
standard of culpability,
and liability allocation

Core Discussion

Economic development
imperatives
vs. fundamental human
rights protection

Methodology

	Doctrinal Analysis	Comparative Analysis
<i>Primary Sources</i>	Examined foundational criminal law principles (actus reus & mens rea) and their application to AI systems	Singapore: Online Safety (Relief & Accountability) Act 2025; Criminal Law (Misc. Amendments) Bill 2025
	Assessed attribution of liability across the AI value chain	Identified structural convergences and divergences between ASEAN and EU governance architectures
<i>Secondary Sources</i>	Analysed the 'culpability gap' arising from AI's probabilistic and opaque decision-making	Indonesia: PP Tunas 2025; Circular Letter No. 9 of 2023
		EU: AI Act 2024

Findings from the Comparative Analysis

The Culpability Gap

AI's 'black box' opacity severs the causal link between human conduct and harm. The probabilistic nature of GenAI allows perpetrators to exploit absence of conscious intent, undermining mens rea requirements under current statutes.

Harmonisation vs. Unification

ASEAN's outcome-based, voluntary framework contrasts fundamentally with the EU's hard-law, risk-classified prescriptive model. Regulatory pluralism within ASEAN serves as a policy laboratory but creates exploitable cross-border gaps.

Anthropocentricity as Foundation

Criminal liability must remain anchored to culpable human actors. AI systems lack moral agency; developers, deployers, and operators bear criminal responsibility.

Uneven Protection of Vulnerable Populations

Women and children constitute the overwhelming majority of NCDP victims. Governance frameworks disproportionately reflect technical and commercial interests to the exclusion of affected populations.

Policy Recommendation

Intent-based Criminalisation

Criminal liability confined to natural/legal persons acting with malicious intent. Adopt Singapore's anthropocentric model as regional template with explicit safe harbours for good-faith developers. ASEAN to adopt a uniform definition of 'inauthentic material'.

Statutory Torts as a Middle Ground for Redress

Establish a dual-track mechanism: a regulatory commission empowered to issue binding content-removal orders, complemented by statutory civil remedies for compensatory damages and injunctions, modelled on Singapore's Online Safety (Relief & Accountability) Act 2025.

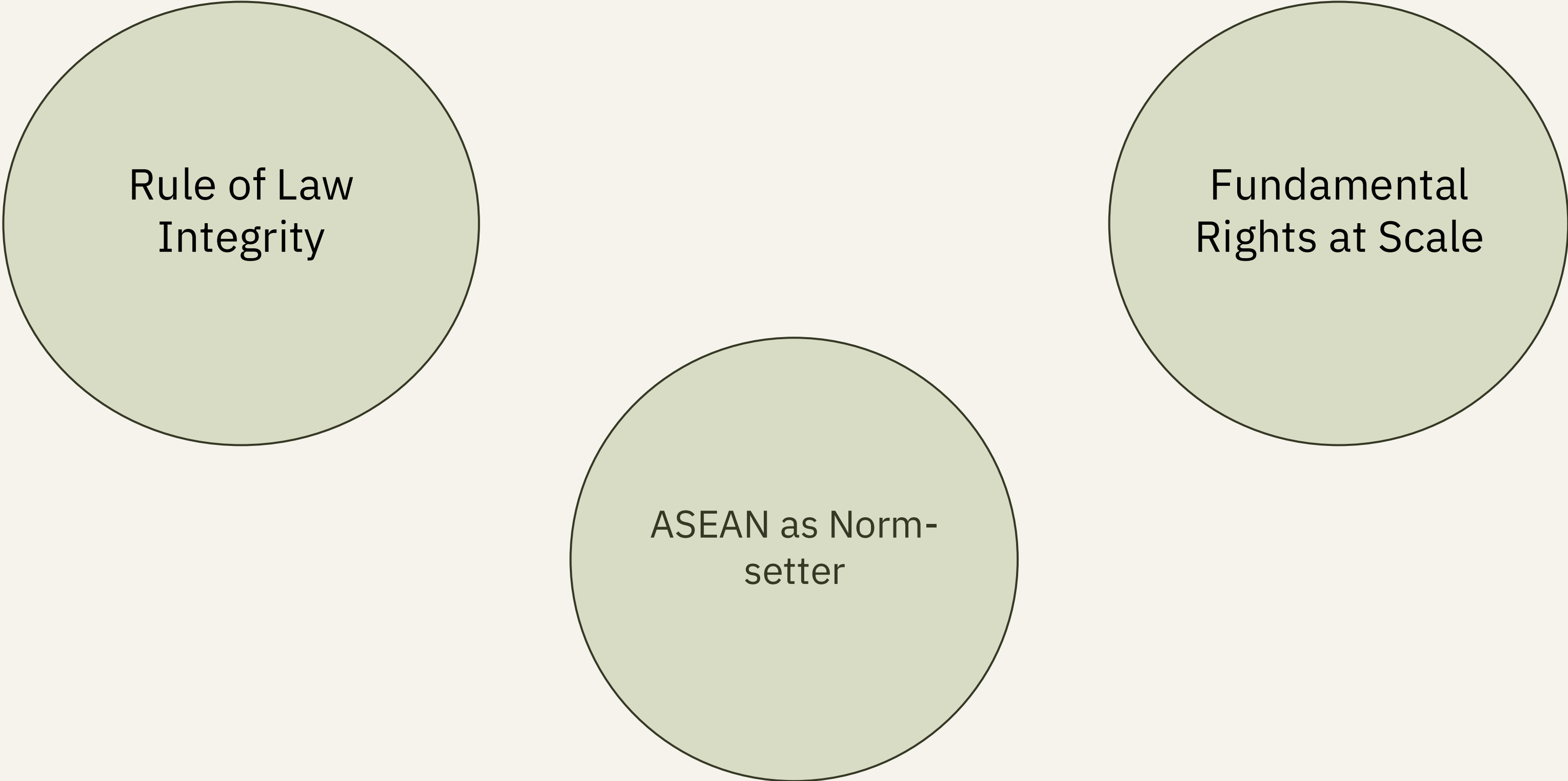
Lead-and-Leverage Governance Model

Member states such as Singapore and Indonesia pilot hard-law instruments; emerging economies focus on foundational data privacy and cybersecurity. The ASEAN AI Safety Network provides shared benchmarks and regulatory templates without imposing uniform rules.

Dedicated ASEAN AI Governance Taskforce

Establish a standing taskforce within the ASEAN AI SAFE Network to monitor agentic and generative AI risks, issue regional risk assessments, and ensure ASEAN participates in global governance forums as a coherent norm-setter rather than a passive policy-recipient.

The Intended Result



Rule of Law
Integrity

Fundamental
Rights at Scale

ASEAN as Norm-
setter

To conclude...

Effective criminalisation of AI-enabled harms and the preservation of conditions favourable to innovation are not contradictory.

By anchoring liability to culpable human conduct, providing safe harbours, and implementing tiered governance, ASEAN can protect fundamental rights and dignity.

The window for proactive, principled governance is narrow. Jurisdictions that defer risk being forced into reactive, punitive measures.

ASEAN's moment to transition from norm-recipient to norm-setter is now.