

Conference Paper

The Application of Chemical Castration as Additional Punishment for the Perpetrators of Child Sexual Violence Crimes Subject to the Death Penalty

Nova Ernny Rumondor*¹

Universitas Borobudur, Jakarta, Indonesia

ORCIDNova Ernny Rumondor: <https://orcid.org/0009-0009-3661-1608>**Abstract.**

Human life is a cyclical pattern, commencing with birth and childhood, progressing through adolescence and young maturity, entering adulthood, and ultimately reaching old age. From these periods, childhood is a crucial time that requires full attention, as children are often incapable of defending and protecting themselves. This lack of self-protection is specifically observed against the heinous crimes of sexual violence, where the perpetrators are sentenced to the death penalty or chemical castration as additional punishment. Therefore, this study aims to analyze the application of chemical castration as additional punishment for the perpetrators of a child sexual violence crimes. In this context, a normative juridical method was used to emphasize the patterns by which the application of the rule governing the imposition of castration process is implemented in Decision Number 86/Pid.Sus/2022/PT Bdg. The implementation patterns of restitution and protection for the child victims of sexual violence are also explored. The results showed the following conclusions, firstly, the application of the rule governing the imposition of chemical castration as additional punishment for the perpetrators of the sexual crimes was fair when the defendant was subject to the death penalty. However, castration process was unnecessary due to causing excessive criminal sanctions, as the death penalty was the highest sanction according to Article 67 of the Criminal Code. Secondly, the implementation of restitution and protection for the child victims became a negative precedent and failed to develop a deterrent effect when imposed on the state. In this case, the perpetrators were often comfortable due to being unburdened with compensating the victims through restitution, increasing the level of sexual violence crimes. This situation hindered the achievement of protecting and preventing crimes. From these results, Decision Number 86/Pid.Sus/2022/PT Bdg was appropriate in meeting the sense of justice for the victims and facilitating their recovery.

Keywords: Child; Sexual Violence Crimes; Death Penalty; Chemical Castration.

1. INTRODUCTION

Human life is a cyclical pattern, commencing with birth and childhood, progressing through adolescence and young maturity, entering adulthood, and ultimately reaching

Corresponding Author: Nova
Ernny Rumondor; email:
novaernnyrumondor@gmail.com**Published** 5 January 2024Publishing services provided by
Knowledge E

© Nova Ernny Rumondor. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under
the responsibility of the 4th
INCLAR Conference Committee.**OPEN ACCESS**

old age. From these periods, childhood is a crucial time that requires full attention. This is because a child is considered vulnerable and incapable of defending and protecting themselves according to the law. In this case, every person has experienced childhood, with the need for guidance, protection, and education provided by their parents.

A child is often entrusted and considered gifts from the Almighty God, possessing dignity and worth as full-fledged human beings [1]. These gifts are integral parts of a family, serving as the next generation and an asset for the continuity of a nation and state. In this case, a child is someone born from the relationship between a man and a woman, while “children” or “juveniles” are considered people below a specific age, which are unmarried and not yet adults [2]. Furthermore, various laws have regulated the category of a child as people under 18 years old, including those still in the womb [3]. From an age perspective, juveniles are buds, potential, and the young generation carrying on the aspirations and struggles of the nation. These buds have strategic roles, distinctive characteristics, and special traits, enabling the need to protect them from any form of inhumane treatment violating their human rights, especially sexual violence crimes within and outside the school environment.

Based on the significant importance of a child in Indonesia, the Constitution has already declared the guarantee of their rights to survival, growth and development, as well as protection from violence and discrimination. In this case, the 1945 Constitution regulates the human rights of a child as fundamental things, where “every child has the privilege to survival, growth and development, as well as protection from violence and discrimination” [4]. Although the protection of a child is already regulated in the Constitution, sexual violence is still increasing yearly, posing a threat to the strategic roles of a child as the future generation of the nation. This emphasizes the necessity to intensify criminal sanctions and conduct actions against the perpetrators [5]. To deter the perpetrators and prevent the sexual violence of a child, the President has reportedly issued Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection on May 25, 2016 [5].

As an implementation of the normative order in Article 28B, paragraph (2) of the 1945 Constitution, Law Number 17 of 2016 was enacted on Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection, becoming “Child Protection Law”. This law complements other existing policies, such as Law Number 11 of 2012 on the Juvenile Criminal Justice System, and is continuously supplemented by the issuance of Law Number 12 of 2022 on Sexual Violence Crimes (“SVC Law”). It is also supported by various related regulations

governing a child, to ensure prevention and protection efforts for victims, especially those suffering from sexual violence crimes.

The considerations of Child Protection Law stipulate that “the State guarantees the rights of a child to survival, growth and development, as well as protection from violence and discrimination, as stated in the 1945 Constitution” [5]. In this context, prevention emphasizes all actions or efforts carried out to eliminate various factors contributing to the occurrence and recurrence of Sexual Violence Crimes [3]. Violence is also an act against a child, which leads to physical, psychological, sexual, and/or neglect-related suffering or distress, including threats, coercion, or illegal deprivation of liberty. Meanwhile, sexual violence crimes encompass all acts meeting the elements of criminal offenses, as regulated in Law Number 12 of 2022 and other policies emphasizing similar violent activities [3].

Based on the importance and strategic position of a child in Indonesia, all perpetrators should obtain proportional consequences for their actions. This is because the importance and strategic position of a child requires the protection of dignity and worth, as well as the vulnerability encountered in their daily lives as potential victims of sexual violence crimes. In this case, the perpetrators need to be deterred from committing crimes and barred from heinous acts against juveniles. Since the school environment is where a child exercise their rights to learn and seek knowledge, protection from sexual violence crimes is highly required. Without this protection, many children are capable of being vulnerable to experiencing sexual violence crimes in the environment. Therefore, to safeguard their dignity and worth, juveniles have the right to legal protection within the judicial system. In this context, Indonesia, as a “state party” to the Convention on the Rights of a child, should provide special protection for those in conflict with the law [6].

According to the Child Protection Law, “Any person is prohibited from committing violence or hazardous threats to force a child to engage in sexual intercourse with them or others.” In this case, criminal sanctions can be imposed on the perpetrators of violence. This is because “any person violating the provisions as emphasized in Article 76D of the Child Protection Law will be punished with a minimum and maximum imprisonment of 5 and 15 years, respectively, as well as a fine of up to IDR 5,000,000,000.00.” These sanctions subsequently apply to any person intentionally engaging in deception, a series of lies, or persuading a child to participate in sexual intercourse with them or others.

When crimes is committed by parents, guardians, family members, caregivers, educators, educational personnel, child protection authorities, or multiple people, penalty is

increased by one-third of the prescribed sentence. Besides the perpetrators prioritized in paragraph (3), the one-third increase in the prescribed penalty is also applied to previously convicted offenders, as stipulated in Article 76D. When sexual violence crimes cause harm to more than 1 victim and lead to severe injuries, mental disorders, infectious diseases, disruption or loss of reproductive functions, and/or death, the perpetrators will be sentenced to the death penalty, life imprisonment, as well as minimum and maximum jail terms of 10 and 20 years, respectively.

The perpetrators are also likely to be subjected to additional punishment, such as the disclosure of identity, chemical castration, and electronic monitoring device installation. In this context, chemical castration and electronic monitoring device installation decisions are often carried out concurrently with the primary punishment, specifying the duration of implementation. In situations where multiple acts need to constitute several crimes and be considered separate offenses, only one punishment is commonly imposed, namely the prescribed maximum sanction added by one-third. The Indonesian Criminal Code is also provided for primary punishment, such as the “death penalty,” which is the most severe sanction capable of being appropriately imposed on the perpetrators. However, the state needs to carry out optimal and comprehensive methods by increasing criminal sanctions and implementing preventive measures, through chemical castration, electronic monitoring device installation, and rehabilitation.

From these descriptions, preventive measures against the perpetrators of sexual violence crimes are crucial to ensure the protection of every child, including those within the educational or school environment. In this case, a child has the rights to obtain protection from all parties, including the court decision to obtain restitution as victims. This is in line with the Child Protection Law, where every juvenile victim has the right to file a restitution claim in court, which is the responsibility of the perpetrators. In this context, “Restitution” emphasizes the payment of compensation imposed on the perpetrators, based on a legally binding court decision for material and/or immaterial losses suffered by the victims or their heirs. This is specifically observed for a child in conflict with the law, with restitution rights applying to the victims. The court decision is also expected to regulate the restitution that should be obtained by the victims. These Child Victims are often under the age of 18, experiencing physical, mental, and/or economic suffering or loss caused by criminal acts.

2. METHODOLOGY/ MATERIALS

This study was conducted through a normative juridical method based on library research, by examining library materials or secondary data.

3. RESULTS AND DISCUSSIONS

3.1. The Application of the Rule on the Imposition of Chemical Castration as Additional Punishment for the Perpetrators of Child Sexual Violence Crimes in Decision Number 86/Pid.Sus/2022/PT Bdg.

3.1.1. Case of Position and Indictment of Child Sexual Violence Crimes

Child sexual violence was categorized under the realm of moral crimes, which were universal provisions according to Oemar Seno Adji. These crimes were considered universal provisions due to the following, 1) the crimes were committed with violence, 2) the victims were minors, 3) the offenses were publicly committed, 4) the victims were in a helpless state, and 5) the observation of a specific relationship between the perpetrators and the objects, such as a teacher and their students [7].

Based on the child sexual violence crimes in Decision Number 86/Pid.Sus/2022/PT.BDG, the perpetrators were the defendant, namely Herry Wirawan aka Heri Bin Dede [8], with a total of 12 child victims raped and sexually abused. During the period between 2016 and 2021, at Foundations in the Central Antapani area and Cibiru Sub-district, an Islamic Boarding School [8], and several other locations in Bandung, the defendant committed several acts as separate crimes. As a teacher, the defendant also employed violence, regarding the forceful involvement of a child in personal sexual intercourse or with others. This indicated that Herry Wirawan (the defendant) engaged in immoral acts against 12 child victims within the Madani Tahfidz Islamic Boarding School in the Cibiru Sub-district of Bandung between 2016 and 2021, go [6].

The rape of a child was also regulated under Article 287 of the Criminal Code, which criminalized sexual intercourse outside of marriage with a woman below the age of 15 or unmarried. According to the original formulation of Article 287, paragraph 1, anyone engaging in an intentional sexual relationship with an underage woman not eligible for marriage (under 15 years old) was subjected to a maximum prison sentence of 9 years [9]. In line with the development of criminal law, the actions of the defendant were

punishable under Article 81, paragraphs (1) and (3), Article 76.D of Law Number 17 of 2016 on Amendments to Law Number 23 of 2002 on Child Protection, and Article 65, paragraph (1) of the Criminal Code. As a subsidiary offense, the actions of the offender were also regulated and punishable under Article 81, paragraphs (2) and (3), Article 76.D of Law Number 17 of 2016 on Amendments to Law Number 23 of 2002 on Child Protection, and Article 65, paragraph (1) of the Criminal Code [9].

3.1.2. Public Prosecutor's Indictment Letter

The Public Prosecutor's indictment against the defendant included the following, (1) Imposing the death penalty on Herry Wirawan, (2) Applying additional punishment of chemical castration, (3) Obligating and burdening the offender to pay restitution to child victims, and (4) Confiscating the seized and unseized wealth/assets of the defendant for auction, with the proceeds provided to the State, especially the West Java Provincial Government. These proceeds were to be used for the school expenses and livelihood of child victims and their babies.

3.1.3. Decision of Bandung District Court Panel of Judges

Based on the Public Prosecutor's indictment, the Bandung District Court enacted Decision Number: 989/Pid.Sus/2021/PN.Bdg on Tuesday, February 15, 2022. This stipulated that the defendant, Herry Wirawan, was convincingly and legally proven guilty of "Intentionally and violently forcing a child to engage in sexual intercourse. These acts were committed under the disguise of a teacher, with more than 1 victim involved on multiple occasions", as stated in the primary indictment. However, only a life imprisonment sentence was imposed on the defendant.

The Judge of the Bandung District Court also imposed restitution on the Ministry of Women Empowerment and Child Protection of Indonesia. This emphasized ordering 9 of the total victims to be placed under the care of the West Java Provincial Government, especially the Women and Child Protection Office of West Java, with regular evaluations conducted. When child victims were mentally and psychologically prepared to obtain and care for their child again in the appropriate situation, adequate legal restoration was conducted. In this case, a child was appropriately returned to the respective victims [9].

From these descriptions, the Bandung District Court Decision was deemed insufficient in meeting the sense of justice for the 12 victims. This led the Public Prosecutor to file an appeal to the Bandung High Court.

3.2. The Application of the Rule on the Imposition of Chemical Castration as Additional Punishment for the Perpetrators of Child Sexual Violence Crimes in Decision Number 86/ Pid.Sus/2022/PT Bdg

3.2.1. Considerations and Opinions of the High Court Panel of Judges on the Death Penalty and Chemical Castration as Additional Punishment

The Public Prosecutor, through their Indictment Letter, was still demanding the imposition of the death penalty and additional punishment on the defendant, Herry Wirawan, including the general announcement of the identity and chemical castration [10]. This indicated that the Bandung High Court panel of judges had carefully examined the following, (1) the case file, (2) the official derivative of the decision from the Bandung District Court Number: 989/Pid.Sus/2021/PN.Bdg, and (3) the Appeal and Counter-Appeal Memorandum. The appellate panel of judges was also equally convinced that the defendant was legally and convincingly proven guilty of the indictment. However, punishment imposed by the first instance panel of judges was not commensurate with the actions of the defendant, according to the appellate judicial executives. From this context, the imposition of the aforementioned punishment on the defendant was fair, by emphasizing various legal considerations, as well as addressing the care of child victims and their babies.

3.3. The Application of the Death Penalty for the Perpetrators of Child Sexual Violence Crimes in the Bandung High Court Decision

From a logical legal perspective, the Bandung District Court Decision Number 989/Pid.Sus/2021/PN.Bdg was considered paradoxical. This was because its reasoning acknowledged that multiple criminal acts were already committed against more than 1 child victim, warranting the death penalty. However, the court only imposed a life imprisonment sentence for the atrocities committed by Herry Wirawan.

The following prioritizes the purpose of punishment provided to the perpetrators of child sexual violence crimes, (1) Enabling the suspect to admit to crimes or series of crimes attributed to them, (2) As a general punishment for the convicted individual proven guilty, (3) As a deterrent effect on the convicted individual, with the expectation of no similar occurrences in the future, (4) As a detrimental impact on community members, to prevent them from committing similar crimes [11].

3.3.1. Sexual Violence Crimes with More than 1 Victim Child and Aggravating Sanctions

Considering the consequences of the defendant actions and the fulfillment of the provisions of Article 81, paragraph (5) of Law Number 23 of 2002 on Child Protection, as last amended by Law Number 17 of 2016, Article 81, paragraph (5) of Law Number 17 of 2016 was applied in this case. This emphasized the stipulations of the Bandung High Court panel of judges. In this case, the Child Protection Law regulated the following provisions,

“The primary punishment of imprisonment is increased to a minimum and maximum of 10 and 20 years, respectively. In this case, the perpetrators will be sentenced to the death penalty or life imprisonment when more than 1 victim is observed. This leads to severe injuries, mental disorders, infectious diseases, impairment or loss of reproductive functions, and/or death.”

Based on the fulfillment of Article 81, paragraph (5) of Child Protection Law, the presence of more than 1 victim, and the occurrence of repetition, the appropriate punishment that should be applied was “aggravation”, with the highest sanction being the death penalty. This proved that the considerations of the Bandung High Court panel of judges were accurate and supported by the provisions of Child Protection Law. In this context, the following statements are provided,

“It is highly unjust when the actions are proven, but the victims do not obtain justice. The panel of judges should provide a balance between the defendant and the victims. Therefore, benefits and justice will be obtained for the victims, the defendant, and the community. The victims have suffered due to the actions of the defendant, and they need protection due to experiencing complex and long-lasting physical, psychological, and social suffering, even for their entire lives” [12].

The considerations of the Bandung High Court panel of judges also examined and explored the legal values in society, as well as met the juridical, philosophical, and sociological aspects. This demonstrated that the justice sought, manifested, and justified

in the decision of the judge was oriented toward legal, moral, and social integrity. These were in line with the mandate of Article 5, paragraph (1) of Law Number 48 of 2009 on Judicial Power, where “Judges should explore the legal values in society.”

3.3.2. The Maximum Criminal Sanction with the Death Penalty for the Perpetrators of Child Sexual Violence Crimes

According to the panel of judges, Article 81 paragraph (5) was applied in the case, considering the proven actions of Herry Wirawan that were not mentioned in the indictment of the Public Prosecutor. This demonstrated that the appropriate and fair punishment for both the defendant and the victims was the death penalty, as stated in the High Court decision.

In imposing the death penalty on the Dependant, the considerations of the High Court Panel of Judges emphasized the Constitutional Court Decision Number 2-3/PUU-V/2007 dated October 30, 2007. This provided legal considerations regarding Articles 28A and 28I paragraph (1) of the 1945 Constitution, which stated the following,

“From the perspective of the original intent of the 1945 Constitution framers, the enforcement of all human rights listed in Chapter XA can be restricted. The original intent of the framers on the limitations of human rights is also reinforced by the placement of Article 28J as the concluding provision of all policies governing human rights in Chapter XA. Therefore, through systematic interpretation, the human rights regulated in Articles 28A to 28I of the 1945 Constitution are subject to restrictions stipulated in Article 28J. The arrangement of human rights in the 1945 Constitution also aligns with the arrangement in the Universal Declaration of Human Rights, which places the provision on restrictions of human rights as a concluding policy, namely Article 29 paragraph (2). This states that ‘In the exercise of his rights and freedoms, everyone will only be subjected to relevant limitations, as determined by law for the sole purposes of securing. These purposes are due to the recognition and respect for the rights and freedoms of others, as well as meeting the just requirements of morality, public order, and the general welfare in a democratic society.’ This indicates that the death penalty as a form of restriction on human rights has been justified constitutionally and based on the Universal Declaration of Human Rights, according to the Court.”

From these descriptions, the beliefs and considerations of the Bandung High Court Panel of Judges, imposing the death penalty on Herry Wirawan aka Heri bin Dede, were accurate and legally justified, meeting a sense of justice for child victims. Since the death penalty was not contrary to the Constitution emphasizing the considerations

and beliefs of the judges, the imposition of punishment on Herry Wirawan was highly justified and lawfully grounded, meeting the sense of justice for the 12 child victims of sexual violence crimes.

Based on the trial, the perpetrators was a teacher managing a religious educational institution, which the community entrusted with the education of their children. In this context, the community expected their children to become intelligent and morally upright, although the morality of the defendant as a teacher and manager was very low. This low reputation tarnished the image of the religious educational institution and extinguished the trust of society. From this description, Herry Wirawan was considered a predator committing various sexual violence against the students, warranting the death penalty according to the High Court Judges. The appellate panel of judges at the Bandung High Court was also convinced that the actions of the defendant were categorized under the most serious crimes. This was because, in international law, crimes was categorized as the most serious due to its heinous and cruel nature, deeply affecting the conscience of humanity.

3.3.3. Additional Punishment of Chemical Castration for the Perpetrators of Child Sexual Violence Crimes Subject to the Death Penalty

The incidence of sexual violence crimes was significantly increasing, posing a greater threat and endangering the lives of children. It also disrupted their personal lives and development, as well as disturbed the comfort, tranquility, security, and order of society. Similarly, the criminal sanctions imposed on the perpetrators we're not adequately effective in providing a deterrent effect and protecting a child. According to the Indictment Letter of the Prosecutor, the defendant, Herry Wirawan, was requested to be subjected to "additional punishment, such as the public announcement of identity and chemical castration, as well as fines and court costs." The death penalty, as the maximum punishment, was also expected to be applied with the requested additional punishment. Regarding the indictment, trial facts, and the Prosecutor Letter, the application of the Penitentiary Law was not necessarily subsidiary once the death penalty had been sought against the defendant.

The public announcement of identity and chemical castration were accurately regulated in Article 81 paragraphs (6) and (7) of the Law on Child Protection. However, their inclusion and non+inclusion in the Indictment of the Public Prosecutor were emphasized with other considerations. In this context, the decision of the West Java High Court, which refrained from imposing the additional punishment of "chemical castration" on

Herry Wirawan in Decision Number 86/Pid.Sus/2022/PT BDG, was accurate and legally justified. The death penalty was also already the highest sanction and the most severe form of punishment imposable on human beings. This indicated the unnecessary of additional corporal punishment regarding chemical castration, leading to the application of excessive criminal sanctions.

Based on the considerations, the Panel of Judges stated that chemical castration was only imposable for a maximum period of 2 years after the convict had served the primary punishment. “When the defendant was sentenced to the death penalty or life imprisonment, chemical castration was unable to be implemented” [13]. The Criminal Procedure Code also stipulated that additional punishment of chemical castration was inapplicable concerning Article 67. This stated that no other punishment should be executed when the convict had already been sentenced to the death penalty or life imprisonment.

3.4. Implementation of Restitution and Protection for Child Victims of Sexual Violence in Decision Number 86/Pid.Sus/2022/PT Bdg

Based on Muladi, the first thing to be considered in regulating the protection of crimes victims was the essence of their losses, which entailed material/physical suffering and psychological factors. This emphasized the “trauma of losing trust in society and public order.” The symptoms of this syndrome also included anxiety, suspicion, cynicism, depression, loneliness, and other avoidance behaviors [14]. According to the considerations of the High Court Judge, 4 main elements of restitution were observed, such as (1) Compensation for the losses provided to the victims or their families, (2) Consolation for material and/or immaterial losses suffered by the victims or their heirs, (3) Punishment imposed on the perpetrators or a third party, and (4) Decision of a legally binding court.

From the considerations of the High Court Panel of Judges, the first-instance decision of the Bandung District Court conflicted with positive law. This indicated that the imposition of the restitution payment on the state was capable of setting a bad precedent and failing to establish a deterrent effect. In this case, the protection and prevention of child sexual crimes were hindered and unachieved. Moreover, the perpetrators were likely to feel comfortable due to being unburdened with paying restitution to the victims, leading to a higher level of sexual violence crimes. From these perspectives, the first-instance decision of the Bandung District Court, stating that the state should bear the losses arising from the actions of Herry Wirawan, directly contradicted the goal of

a child protection. In this case, the imposition of restitution on the state for crimes of an individual was capable of causing a huge misunderstanding in society. This indicated that the perpetrators were exempt from responsibility, potentially eliminating the deterrent effect. Therefore, restitution sanctions to the state should be appropriately applied when the perpetrators of sexual violence crimes did not possess any payment assets to the victims [10].

3.4.1. Imposition of Restitution Sanctions for the Perpetrators of Child Sexual Violence Crimes

The crimes committed by the defendant, Herry Wirawan, from 2016 to 2021 against child victims clearly destroyed their future. This was due to traumatic experiences or psychological disturbances, with their rights to education and childhood activities being cruelly barred [14]. According to the considerations of the High Court Panel of Judges, the legal process in meeting the sense of justice for the victims should be perceived as a form of restoration. In this case, the victims and society were capable of understanding the procedures and outputs of the legal process, with equal justice prioritizing the equity of victim treatment of victims. Therefore, based on the High Court Panel of Judges, restitution payment should be imposed on Herry Wirawan. When unable to pay, the proceeds from the asset auction should be used, compared to burdening the state.

In this criminal case, the corporate assets and personal wealth of Herry Wirawan were confiscated to contribute to the financial needs of the education of victims and livelihood. Although the defendant was ordered to pay restitution, the amount obtained was insufficient to cover the material needs of child victims and was not proportional to their immaterial losses. Regarding the Determination of a Child Care for the Victims to the West Java Provincial Government through the Women and Child Protection Unit, the belief of the Appellate Panel of Judges was similar to that of the Prosecutor. From this context, the best education and upbringing for a child should be based on family. This was because the family emphasized the primary and first place for them to experience and obtain character education, especially from parents and closest relatives. Therefore, the custody of the babies and child victims of crimes committed by Herry Wirawan was entrusted to the West Java Provincial Government. Before the handover and placement were performed, appropriate approval should be obtained from their respective parents or families [15].

According to the error in the first-instance decision at the Bandung District Court, which imposed restitution on the state, the Bandung District Court Decision Number:

989/Pid.Sus/2021/PN.Bdg should be amended regarding punishment placed on the defendant, the imposition of payment, and the confiscation of assets. The remaining parts of the decision should also be upheld “by amending the Bandung District Court Decision Number: 989/Pid.Sus/2021/PN.Bdg, dated February 15, 2022. Considering the imposition of restitution payment, care for the nine victims, and asset confiscation imposed on the defendant, the following rulings were implemented,

1. Sentencing the defendant to the “DEATH” penalty,
2. Imposing restitution on Herry Wirawan aka Heri Bin Dede.

From these descriptions, the Bandung High Court Decision amending the aforementioned policies was accurate and legally justified. This indicated that the assets of wealthy perpetrators should be confiscated to pay restitution to child victims. However, the state was capable of stepping in and helping poor offenders with restitution payments, to achieve the protection of the victims.

4. CONCLUSION AND RECOMMENDATION

Based on the results, the following conclusions were obtained. Firstly, the application of chemical castration as additional punishment to the perpetrators sentenced to the death penalty for child sexual violence crimes in Decision Number 86/Pid.Sus/2022/PT Bdg was fair. This was considered when the defendant obtained the highest sanction of the death penalty due to its provision of protection for child victims. In this case, the benefit and justice of the victims were ensured, with a deterrent effect established in society. However, additional punishment of chemical castration was unnecessary when the highest and most severe sanction, namely the death penalty, had been imposed. This additional sanction was unnecessary due to causing the imposition of excessive criminal sanctions. The implementation of castration was only immediately imposed for a maximum period of 2 years after the convict had served the primary punishment. This was in line with Article 67 of the Criminal Code, where the execution of other punishment was prohibited when the convict had already been sentenced to the death penalty. Secondly, the imposition of restitution and protection for child victims of sexual violence on the state was capable of setting a bad precedent and failing to establish a deterrent effect. In this context, the perpetrators were likely to be comfortable due to being unburdened with paying restitution to the victims, leading to the increased level of child sexual violence crimes. From these results, the protection and prevention of a child from sexual violence were unachieved and hindered. In this case, the High Court

Decision Number 86/Pid.Sus/2022/PT Bdg was considered a form of restoration, which was appropriate to meet the sense of justice for child victims. The restitution costs were also obtained from the auction of the perpetrators asset, which were then confiscated and used to cover the financial needs of the victims education and livelihood, compared to burdening the state.

References

- [1] *Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.* .
- [2] N. Sambas, *Criminal Policy and Reform of Juvenile Criminal Law. The Basic Faces of Criminal Law and Its Development.* Bekasi: Gramata Publishing, 2012.
- [3] *Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence.* .
- [4] *The 1945 Constitution of the Republic of Indonesia.* .
- [5] *Law Number 7 of 2009 concerning Stipulation of Government Regulations in Lieu of Law Number 3 of 2008 concerning Amendments to Law Number 24 of 2004 concerning Deposit Insurance Corporations to become Laws.* .
- [6] Murshal Senjaya, "DEATH CRIME AGAINST SEXUAL VIOLENCE (RAPE OF 12 STUDENTS IN BANDUNG) IN A RESTORATIVE JUSTICE PERSPECTIVE," *Int. J. Soc. Sci.*, vol. 1, no. 4, pp. 523–532, Dec. 2021, doi: 10.53625/ijss.v1i4.1071.
- [7] L. Marpaung, *Crimes against decency and their prevention issues.* Jakarta: Sinar Grafika, 2004.
- [8] *Decision of the Bandung High Court Number 86/Pid.Sus/2022/PT BDG, March 24, 2022.* .
- [9] P. A. . Lamintang and T. Lamintang, *Crime Violating the Norms of Decency and Norms of Decency.* Jakarta: Sinar Grafika, 2011.
- [10] Dr Aftab Ahmad Malik, Mujtaba Asad, and Waqar Azeem, "Importance of Prosecution Witnesses in Terrible Crimes of Sexual Violence, Abduction, Abuse, Torture, Rape And Killing Against Innocent Women and Children," *Int. J. Electron. Crime Investig.*, vol. 4, no. 4, pp. 7–18, Jun. 2021, doi: 10.54692/ijeci.2020.0404135.
- [11] M. Fuady, *Rights of Criminal Suspects.* Jakarta: Prenada Media, 2016.
- [12] P. A. . Lamintang and T. Lamintang, *Hukum Penitensier Indonesia.* Jakarta: Sinar Grafika, 2010.
- [13] R. W. Asih, "Herry Wirawan Will Immediately Serve Death Sentence by Being Shot in the Heart, Really?," *kabar.24.bisnis.com*, 2022. .

- [14] Muladi, *Human Rights, Politics and the Criminal Justice System*. Semarang: Universitas Diponegoro, 2002.
- [15] L. L. Bell Holleran, T. J. Vaughan, and D. M. Vandiver, “Juror Decision-making in Death Penalty Sentencing when Presented with Defendant’s History of Child Abuse or Neglect,” *Behav. Sci. Law*, vol. 34, no. 6, pp. 742–766, Nov. 2016, doi: 10.1002/bsl.2271.