

Death Penalty Imposition for Rape against Minors

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Abstract

The purpose of this research is to find out the basic consideration of Judges in imposing death penalty for perpetrators of rape against minor in Decision Number: 86/Pid.Sus/2022/PT Bdg. This is normative legal research using statutory, conceptual and case approaches. The study indicated that the basis for the judge's considerations in this decision are: a) Basic Sociological Considerations, that based on the facts that have been examined and which have been revealed in court; b) Basic Philosophical Considerations, that the basis for the judge's consideration is that the Judges believes that the actions of the defendant are proven to be included in the category of The Most Serious Crime and c) Basic Juridical Considerations, based on Article 81 paragraph (5) of Law Number 23 of 2002 concerning Child Protection as last amended by Law Number 17 of 2016 concerning Stipulation of Government Regulations Substitute for Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law. With the threat of imprisonment for 20 (twenty) years, or life imprisonment or death penalty. Criminal sanctions imposed on perpetrators of child rape are based on Article 81 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and for the actions committed, the defendant was sentenced to death according to the verdict.

Keywords: Death Penalty, Children, Rape

Introduction

Indonesia shall be a state based on the rule of law (Taylor, 2019). It is clearly stated in the Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (hereinafter "UUD 1945"). Indonesia incorporates its legal system in the constitution. (Wardhani, Noho, & Natalis, 2022) The provision of Article 1 paragraph 3 means that Indonesia is a constitutional state whose institutional implementation is carried out based on the prevailing law and regulations. The rule of law in Indonesia is also often referred to as "rechtstaats". (Gunawan, Mohamed, Dhofir, & Hamsa, 2018)

Criminal law itself is a law that determines whether a human act is classified as a crime or not and also determines the guilt of the violation. Crime is an element in criminal law that is classified as a punishable act. Crime is behavior that violates the law and social norms; hence

it is opposed by the society.(Posner, 2009) In a social context, crime is a social phenomenon that occurs in every place and time.(Maloku, Qerimi, & Maloku, 2022)This proves that crime is not only a problem for certain communities, but can become a problem that can be faced nationally. The development nowadays indicated that crimes have occurred, especially among economically poor communities.

A criminal act has a close relationship with sanctions, where criminal sanctions have the meaning of threats, in the form of criminal threats and have a duty so that existing norms will continue to exist and regulations can be obeyed as a legal consequence of rules being violated. In essence, sanctions have the aim of restoring the balance of the order of a society that has been disrupted by violations of the rules in its original state.(Agustin & Arifin, 2020) According to G.P. Hoefnagels that sanctions in criminal law are reactions to legal violations that have been determined by law, starting from the detention of suspects and the prosecution of defendants until the imposition of a verdict by a judge.(Hussin, 2010) Hence, it can be defined that criminal sanctions are a tool used to deal with crimes or violations that occur in society.

One form of crime that occurs is the crime of rape against minors or child. Arrangements for sanctions against perpetrators of the crime of child rape are regulated in Article 287 paragraph (1) of the Penal Code of Indonesia (hereinafter "Penal Code"), which stipulates that:(Kasuma, Azhara, Ilfa, & Farhana, 2022)

"Any person who out of marriage has carnal knowledge of a woman whom he knows of reasonably should presume that he has not yet reached the age of fifteen years or, if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years."

Different arrangements in Article 81 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter "UU PA"), states that: "Anyone who violates the provisions referred to in Article 76D shall be subject to imprisonment for a minimum of 5 (five) and a maximum of (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiahs)". Further, rape can also be interpreted as the act of forcibly inserting a penis into the vagina.(Azam, 2023)

Further, the Article 81 paragraph (1) UU PA, has used a minimum prison sentence of 5 (five) years and a maximum sentence of 15 (fifteen) years for perpetrators of rape crimes against minors.(Wahyuni, Irawan, & Rahmah, 2021) When compared to Article 287 paragraph (1) of the Criminal Code, Article 81 paragraph (1) of the UU PA has been stated to be better and pays more attention to the interests of protecting victims, especially children who are victims of rape. In Article 81 of the UU PA, when viewed from the maximum criminal sanction used, this sentence is higher when compared to the maximum sentence limit in Article 287 paragraph (1) of the Criminal Code which only threatens a maximum prison sentence for perpetrators of rape crimes against minors for 9 (Nine years).

One of these rape cases was carried out by the suspect Herry Wirawan alias Heri Bin Dede. The suspect already has a wife and has been blessed with 3 children from this marriage. The suspect is also a teacher and owner of "Pesantren Madani Boarding School" in Cibiru, Bandung. The suspect started his acts from 2016-2021. The suspect committed an unlawful act in the form of violence or threats of violence by forcing the child to have sexual intercourse with him. The number of victims in this case are 12 underage Santriwati and many of the victims have given birth to children resulting from rape crimes. This case was decided at the

Bandung District Court based on Decision Number: 989/Pid.Sus/2021/PN Bdg Jo Bandung High Court Decision Number: 86/Pid.Sus/2022/PT Bdg which is the study in this research proposal, the legal basis that the judge used as a reference was Article 81 paragraph (1) UUPA and for the actions committed, the defendant was sentenced to death as stated in the verdict. Based on the abovementioned, it is important to examine in-depth concerning the imposition of capital punishment for perpetrators in rape crimes against minor in the study entitled "Death Penalty Imposition for Rape Against Minors (Case Study: Court Decision No: 86/Pid.Sus/2022/PT Bdg)". Based on the background of the problems that have been described above, the authors raise the problem as follows:

1. What is the basic consideration of Judges in imposing death penalty for perpetrators of rape against minor in Decision Number: 86/Pid.Sus/2022/PT Bdg?
2. Is the imposition of capital punishment in Decision Number: 86/Pid.Sus/2022/PT Bdg in accordance with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (UU PA) and Penal Code?

Research Method

This is normative legal research that focuses on secondary data by using statutory, conceptual and case approaches. (Marzuki, 2010) In this type of research, law is conceptualized as what is written in laws and regulations (law in book) or law is conceptualized as rules or norms which are a benchmark for society in behaving. This research requires a type of legal material as the main data and is reviewed from various literature books related to this research.

Result and Discussion

Basic Considerations of Judges in Imposing Death Penalties for Perpetrators of Rape against Minor in Decision Number: 86/Pid.Sus/2022/PT Bdg

Community life is inseparable from conflict, this often cannot be resolved properly by the conflicting parties. In an effort to resolve conflicts in the community, it is necessary to intervene from external parties, which are specifically special institutions that can provide an objective way of solving and based on existing legislation. Institutions that have the authority to resolve conflicts in the community are called judicial institutions, the authority they have is to conduct an examination of a case, objectively evaluate the case, provide a fair decision and have permanent legal force. This authority is known as judicial power which in practice is exercised by judges (Adonara, 2016, p. 218).

Judges in deciding a case in court, must be based on several considerations. These considerations consist of sociological considerations, juridical considerations, and philosophical considerations. In particular, the case discussed as the object of this thesis research is that the judge in imposing Decision Number: 86/Pid.Sus/2022/PT Bdg, on the basis of his considerations contains several things, namely:

Basic Sociological Considerations

Based on the facts that have been examined and revealed in court, the defendant Herry Wirawan alias Heri bin Dede is a teacher and owner of the Madani Boarding School Islamic Boarding School. Where the defendant should protect, educate and teach good things to his students but instead commits the crime of rape. The crime of rape against children can threaten, endanger the child's life, damage personal life, damage the growth and development of children

and disturb the sense of comfort, peace, security and public order. This became the basis for the judge's consideration in Decision Number: 86/Pid.Sus/2022/PT Bdg.

Basic Philosophical Considerations

The basis for the judge's consideration is that the Panel of Judges at the Appellate Level (Judex Facti) also believes that the actions of the defendant are proven to be included in the category of very serious and in international law, a crime is categorized as The Most Serious Crime because the crime is an act that is heinous and cruel and shakes the conscience of humanity. This includes an intentional element that is carried out systematically or causes other very serious consequences. This is in accordance with:

- a. The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, that the actions committed by the defendant included sexual violence. At this level, they are actually not voluntarily in the "System of Violence", but because of manipulation and deception, as well as lures and promises that move them to submit to the wishes of the perpetrators;
- b. Sexual violence committed by a potential accused endanger the health of minor girls. Sexual intercourse and pregnancy experienced by vulnerable children aged less than 17 (seventeen) years has the risk of increasing medical complications, the occurrence of cervical carcinoma or cervical cancer, the risk of sexually transmitted diseases and the transmission of HIV infection, which contributes to increasing morbidity and mortality rates;
- c. The actions committed by the defendant not only attacked the physical honor of the girls, but also affected the psychological and emotional condition of the students. According to the Violence Prevention Initiative (2009), that sexual violence experienced by victims in various types will affect the cognitive, social, emotional and physical development of the victim;
- d. Sexual violence by the accused was carried out continuously and systematically. The sexual intercourse committed by the defendant did not know the time, starting in the morning, afternoon or evening, or at night when the other students were sleeping. Even having intercourse with the child of the NR victim who was menstruating, and also sleeping with the child of the victim SS and SB, as well as IRPC and LS at the same time, where they were trapped in a situation which made them continuously become victims;
- e. The defendant used religious and educational symbols as a manipulative and justification way and effort in realizing his evil intention (Mens Rea) to commit a crime. The defendant manipulated religious teachings to deceive girls and promised a better life, making the victim ensnared and entered into a system that deprived them of their freedom;
- f. The actions taken by the defendant had an extraordinary impact and caused anxiety and fear (Social Fear). Whereas sexual violence is committed against foster children and their students who are under the power relations of the accused, both based on gender, age, and socioeconomic status;
- g. That female students have the potential to become multiple victims, because they become victims of sexual violence and at the same time become victims for the economic gain of the accused which has social impacts in various aspects.

Basic Juridical Considerations

Out of a total of 13 (thirteen) victims, 8 (eight) of them were pregnant and gave birth to children. Apart from this, psychologically, as stated by the psychologist in this case, it disrupted the brain functions of the victims, and even to distinguish right from wrong.

Based on Article 81 paragraph (5) of Law Number 23 of 2002 concerning Child Protection as last amended by Law Number 17 of 2016 concerning Stipulation of Government Regulation in lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Becomes Law. With the threat of imprisonment for 20 (twenty) years, or life imprisonment or death penalty. Apart from a juridical perspective, if it is seen that the actions taken by the defendant were subject to the maximum penalty which had a conflict with the violation of the rights of the defendant who was sentenced to the maximum sentence, but the imposition of the sentence resulted in the defendant also violating the rights of other people, especially in this decision the defendant had violated the rights of girls or santriwati.

Taking into account the legal facts that have been revealed in the trial of the Panel of Judges of First Instance, the Panel of Judges of Appellate Level believes that the defendant must be given a criminal sanction commensurate with the actions he has committed, but the criminal witness must create a deterrent effect against the accused so that the act does not happen again. and can be an example for others not to commit crimes similar to those committed by the defendant. The criminal sanction imposed on the defendant is not an attempt at revenge but in general can be categorized as an effort to protect society at large from such disgraceful acts in the future and from the possibility of repeating similar acts committed by the accused.

From several sociological, juridical and philosophical perspectives, the Panel of Judges of First Instance, in their legal considerations, had the conviction that the defendant was legally and convincingly proven to have committed the crime of rape against female students contained in the primary indictment, but did not impose the maximum sentence so that this caused the Panel to The Appellate Judge disagreed with the decision of the Panel of First Instance Judges. The Panel of Judges at the Appellate Level is convinced that regarding the death penalty and the execution of the death penalty contained in Article 10 of the Criminal Code which has a similar meaning, namely that a defendant who has committed a crime classified as serious or extraordinary crime can be imposed or sentenced. This also includes sexual crimes against children and can also be seen in Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law Invite.

Death penalty is also regulated in Article 6 paragraph (2) of the International Covenant Civil and Political Rights (hereinafter ICCPR) that "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crime in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present covenant and to the convention on the prevention and punishment of the crime of genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court".(Jiang, 2014) Therefore, this causes the Panel of Judges at the Appellate Level to believe that the appropriate punishment and should be sentenced to the defendant is the death penalty. With the hope that the accused, before carrying out his execution, can repent and ask God's forgiveness in accordance with the teachings of the religion he believes in.

From a philosophical perspective, girls who are victims of the crime of rape must be protected based on the things previously described. From a sociological perspective, these girls should get a proper education by a teacher, and not be treated as objects of lust. while juridically the defendant Herry Wirawan alias Heri bin Dede violated the statutory regulations Article 81 paragraph (5) of Law Number 23 of 2002 concerning Child Protection as last amended by Law

Number 17 of 2016 concerning Stipulation of Government Regulation in lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2016 2002 concerning Child Protection Becomes Law, which states that:

“In the event that the crime referred to in Article 76D causes more than 1 (one) victim, results in serious injury, mental disorder, infectious disease, disruption or loss of reproductive function, and/or the victim dies, the perpetrator shall be sentenced to death, life imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.”

Based on these considerations, the Panel of Judges at the Appellate Level decided to reject and incriminate the District Court's decision which sentenced the defendant to life imprisonment, while the Panel of Judges at the Appellate Level sentenced the defendant to death. The consequence received by the defendant was in the form of administrative compensation against the victim. The Panel of First Instance Judges has handed down a verdict to charge restitution or compensation to the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia. This is contrary to the positive law in force in Indonesia, where there are 4 (four) main elements of compensation, namely:

- a. Compensation for victims or their families;
- b. Compensation for material and/or immaterial losses suffered by victims or their heirs;
- c. Burden on the defendant or a third party;
- d. Based on a court decision that has permanent legal force.

Whereas in addition to the abovementioned, imposing compensation payments to the state will set a bad precedent in tackling the criminal act of rape against minors, because it makes the perpetrators feel comfortable with not being burdened with compensation in the form of restitution to the victim. The Panel of Judges at the Appellate Level believes that a crime is not only a form of violation of the applicable criminal law, but also a conflict between individuals that results in losses for the victim, society and the perpetrator himself. The judicial process in fulfilling a sense of justice for the victim must be felt by the victim as a form or effort to restore the situation, where the victim and the community can understand how the process takes place and what is produced by this process or “Equality Justice Means Equal Treatment of Victims”. The judicial process in fulfilling a sense of justice for the victim must be felt by the victim as a form or effort to restore the situation, where the victim and the community can understand how the process takes place and what is produced by this process or. Because of this, the payment of compensation to the defendant where the costs are for the case of the defendant being unable to afford it is taken from the auction of his property instead of being borne by the state.

The Public Prosecutor requested that the Panel of Judges at the Appeal Level take action in the form of freezing, revoking and dissolving the Manarul Huda Orphanage Foundation, Madani Boarding School and Tahfidz Madani Islamic Boarding School on the basis that:

- a. The Manarul Huda Orphanage Foundation, Madani Boarding School and Tahfidz Madani Islamic Boarding School are tools for committing crimes or Instrumentalia Delicta as referred to in the provisions of Article 39 paragraph (1) of the Criminal Procedure Code;
- b. The Manarul Huda Orphanage Foundation, Madani Boarding School and Tahfidz Madani Islamic Boarding School were created, founded and made by the accused to commit a crime or Corporate Criminal, which from the start were established to have been used as a place to commit crimes;

- c. The clear separation made between individual legal subjects and corporate law subjects in handling criminal cases is a conventional view, but at various levels of regulation as positive law in Indonesia it has recognized and embraced corporate criminal responsibility whose prosecution can be carried out concurrently between individual legal subjects and legal subjects. corporation;
- d. The defendant used female students (santriwati), students, foundations, Islamic boarding schools and educational institutions owned and managed to obtain funds originating from donations from School Operational Assistance also known as Bantuan Operasional Sekolah (hereinafter BOS), Smart Indonesia Program or Program Indonesia Pintar (hereinafter PIP) and other donations

The demands regarding the bookkeeping, revocation and dissolution of the Manarul Huda Orphanage Foundation, Madani Boarding School and Tahfidz Madani Islamic Boarding School are intended therefore, the defendants can be categorized as confiscations that have obtained permanent legal force and executed by way of auction to be used for the benefit of the victim's children.

Imposition of Death Penalty in Decision Number: 86/Pid.Sus/2022/PT Bdg in accordance with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (UU PA) and the Penal Code

The imposition of death penalty on perpetrators of rape is considered contrary to human rights, this is explained in the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System Article 1 number (6) which states that: "Restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation."

One of the rights that is inherently owned by every human being is the right to life. This right is also expressly and clearly stated in the International Declaration of Human Rights (hereinafter UDHR). This is in accordance with the wave of reform, the reflection of human rights in the second amendment to the UUD 1945 has been strictly regulated as stated in Chapter X A Article 28A that: "Every person shall have the right to live and to defend his/her life and existence".(Abdillah, 2017) Further, the Article 28J paragraph (1) of the UUD 1945 emphasized that "Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state".(Fajrin, Purnamasari, Rosyida, & Maulidiyah, 2020)

According to the Article 28J paragraph (2) of the UUD 1945(Wiratraman & Lafrance, 2021), it is stated that: "In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society". Thus, the imposition of capital punishment in Indonesia is considered to have violated constitutional rights. At the same time, the implementation of capital punishment is an act that is considered a violation of human rights.

Further, Article 81 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection does not include the imposition of death penalty for perpetrators of rape against minor. And the imposition of death penalty for perpetrators of rape against minor is also not regulated in the Criminal Code. Criminal sanctions imposed on perpetrators of rape against minor are based on Article 81 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which stated that:(Anjari, 2021)

“Everyone who violates the provisions referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiahs).”

Further, criminal sanctions imposed under the Criminal Code which stated that: “Any person who by means of force or threat of force forces a woman to have intercourse with him outside of marriage, shall be punished by committing rape with a maximum imprisonment of twelve years”.(Purwati, Kuswardani, & Budiono, 2022)

The basic considerations used in Decision Number: 86/Pid.Sus/2022/PT Bdg are that the victims will feel very unfair, if the act is proven and the victims do not get a sense of justice for what happened to them. Thus, the Panel of Judges must provide a balance for the accused and the victim so that the theory of legal objectives can be achieved for all parties. Victims need to get legal protection because victims experience very complex impacts. The impact felt by victims is double suffering which includes physical, psychological and social suffering that will be felt for a long time and may be felt for the rest of their lives.

Constitutionally, the Constitutional Court has examined the existence of capital punishment as stated in Decision Number 2-3/PUU-V/2007 and provided legal considerations for Articles 28 A and 28 I paragraph (1) of the UUD 1945, among others:

Whereas seen from the perspective of the original intent of the 1945 Constitution, all human rights listed in Chapter XA of the UUD 1945 its applicability may be limited. The original intent of the UUD 1945 which stated that human rights could be limited was also strengthened by the placement of article 28J as the closing of all provisions governing human rights in Chapter XA of the UUD 1945. Thus, in a systematic interpretation (systematische interpretatie), human rights regulated in articles 28 A to article 28I of the UUD 1945 are subject to the limitations set forth in article 28J of the UUD 1945. The systematic regulation of human rights in the UUD 1945 is in line with the Universal Declaration of Human Rights which also places an article on the limitation of human rights as a concluding article, namely article 29 paragraph (2) which stated “In the exercise of his right and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the right and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.

Based on the explanation above, according to the Constitutional Court, the imposition of death penalty is a form of limitation on human rights and has been justified constitutionally or based on UDHR. Therefore, the Panel of Judges at the Appellate Level is convinced that the imposition of death penalty for perpetrators of child rape is not contrary to the constitution of the Republic of Indonesia, the Universal Declaration of Human Rights and is still prevails as positive law in Indonesia.

Evidence

Based on the evidence submitted by the Public Prosecutor in the trial of first level at the Bandung District Court, the following evidence was obtained:

1. 1 (one) copy of the Birth Certificate in the name of Child Victim VI dated 13 May 2016;
2. 1 (one) copy of Family Card in the name of Head of Family Witness I;
3. 1 (one) copy of Family Card in the name of A; Confiscated from Witness I, May 28, 2021.

4. 2 (two) copies of the Birth Certificate in the name of Child Victim IX dated 6 September 2006;
5. 1 (one) copy of Family Card on behalf of Witness IX; Confiscated from Witness IX, May 28, 2021;
6. 1 (one) copy of Birth Certificate in the name of Child Victim II dated 20 April 2016;
7. 1 (one) copy of Family Card on behalf of Witness II; Confiscated from Witness II, May 28, 2021;
8. 1 (one) copy of the Birth Certificate in the name of Child Victim X dated March 11, 2021;
9. 2 (two) copies of the Family Card in the name of Witness X; Confiscated from Witness X, June 16, 2021;
10. 1 (one) copy of the Birth Certificate in the name of Child Victim XII dated 15 September 2004;
11. 1 (one) copy of Family Card on behalf of KS; Confiscated from Witness XII, June 16, 2021;
12. 1 (one) copy of the Birth Certificate in the name of Child Victim III dated 20 February 2004;
13. 1 (one) copy of Family Card on behalf of AM; Confiscated from I, June 16, 2021;
14. 1 (one) copy of the Birth Certificate in the name of Child Victim IV dated 27 December 2012;
15. 1 (one) copy of Family Card on behalf of Witness IV; Confiscated from Witness IV, June 16, 2021;
16. 1 (one) copy of the Birth Certificate in the name of Child Victim VI dated January 2, 2012;
17. 1 (one) copy of Family Card on behalf of Witness VI; Confiscated from Witness VI, June 16, 2021;
18. 1 (one) copy of the Birth Certificate in the name of Child Victim VII dated 8 December 2011;
19. 1 (one) copy of Family Card in the name of J; Confiscated from Witness VII, June 16, 2021;
20. 1 (one) copy of the Birth Certificate in the name of Child Victim VIII dated 11 September 2013;
21. 1 (one) copy of Family Card on behalf of Witness VIII; Confiscated from Witness VIII, June 16, 2021;
22. 1 (one) copy of Family Card in the name of Witness VIII; Confiscated from Witness VIII, June 16, 2021;
23. 1 (one) copy of the birth certificate in the name of Victim V's Child dated 17 March 2003;
24. 1 (one) copy of family card in the name of Witness XXI; Confiscated from Witness V, June 16, 2021;
25. 1 (one) dark green sarong;
26. 1 (one) KTP or Identification Card Number 3273021908850020 in the name of Herry Wirawan;
27. 1 (one) black Yamaha Mio Z motorbike;

Legal Facts

In the First Level trial at the Bandung District Court, the legal facts were obtained based on the evidence and evidence presented by the Public Prosecutor as follows:

1. That the Defendant is the owner of the Manarul Huda Islamic Boarding School in the Antapani Synergy Complex whose function is as an Orphan and Duafa Social Home plus Islamic Boarding School, and the Tahfidz Madani Islamic Boarding School of the Manarul Huda Foundation on Wildlife Street, Cibiru District, Bandung, whose function is as Islamic boarding school;
2. That the Manarul Huda Foundation has been registered with the Office of the Ministry of Religion in the City of Bandung since 2016 and 2019 based on the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number AHU-0001410.AH.01.04. Year 2016 dated January 12 2016 and Islamic Boarding School Operational Permit Charter Number B.9526/ Kd.10.19/ PP.00.7/ 08/ 2016 dated August 16 2016 from the Ministry of Religion of Bandung City;
3. That the Defendant is the founder of the Islamic Boarding School/Chairman of the Manarul Huda foundation (Madani Islamic Boarding School) at the Synergy Complex of Antapani and the Tahfidz Madani Islamic Boarding School of the Manarul Huda Foundation on Jalan Margasatwa, Cibiru District, Bandung, apart from being the owner, the Defendant is also the manager of the Foundation whose job is to manage, organize and carrying out Foundation activities, even the Defendant also served as an educator (teacher) at the Islamic boarding school from 2016 to 2021;
4. That as a teacher/educator at the Manarul Huda Islamic boarding school, the Defendant has the duty and responsibility of teaching religious knowledge, Arabic language skills, and educating female students at the Islamic boarding school;
5. That since 2019 the Defendant has rebuilt the Tahfidz Madani Islamic Boarding School of the Manarul Huda Foundation on Wildlife Road, Cibiru District, Bandung with assistance from West Java Province in the amount of Rp. 500,000,000.00 (five hundred million rupiah), on the basis of legality referring to legality previously owned by the Defendant when he founded the Manarul Huda Islamic boarding school foundation in 2016;
6. That initially the Defendant invited female students (santriwati) to join the Madani Islamic Boarding School of the Manarul Huda Foundation by promising free education fees to attract children in the Garut area to want to attend the Islamic boarding school, and even the Defendant promised to support his wishes and aspirations - the dream of all child victims;
7. That after the victim's children attended school at the Manarul Huda Foundation Madani Islamic Boarding School from 2016 to 2021, the Defendant had committed violence or threats of violence to force the victim's children totaling 13 (thirteen) child victims, namely: child victim VI, child victim IX, child victim II, child victim X, child victim XII, child victim III, child victim IV, child victim VI, child victim VII, child victim XIII, child victim V, child victim VIII, and child victim XI, had intercourse with the Defendant;
8. That the Defendant also carried out a ruse, a series of lies by persuading Child Victim VI, Child Victim IX, Child Victim II, Child Victim X, Child Victim XII, Child Victim III, Child Victim IV, Child Victim VI, Child Victim VII, Child Victim XIII, Child Victim V, Child Victim VIII, and Child Victim XI, had intercourse with the Defendant by first telling about the Defendant's family problems with his wife (the reason was that it was difficult for husband and wife to have intercourse with his wife), then the Defendant whispered words that the children of the victims could not clearly hear it, then the Defendant put the victims on top of them and forcibly opened the pants of the children of the victims and then had sexual intercourse with the children of the victims;
9. That the Defendant's actions had sex with the Child Victim VI, Child Victim IX, Child Victim II, Child Victim X, Child Victim XII, Child Victim III, Child Victim IV, Child

- Victim VI, Child Victim VII, Child Victim XIII, Child Victim V, Child Victims VIII, and Child Victims XI took place at the Sinergi Complex Foundation, Jalan Comfort Number 34 Parakan Saat, Antapani Tengah Bandung, at the Tahfidz Madani Islamic Boarding School Foundation, Wildlife Foundation Complex, Cibiru District, Bandung, Manarul Huda Islamic Boarding School, Wildlife Complex, Pasir Biru Village, Cibiru District, Bandung City, Basecamp Cibiru Hilir Street Number 31 Cibiru Hilir Village, Cileunyi District, Bandung Regency, TSM Bandung City Apartment, Bandung City Hotel A, Bandung City PP Hotel, Bandung City B & B Hotel, Bandung City N Hotel, Bandung R Hotel, and Tahfidz Al Ikhlas House Jalan Sukanagara Bandung;
10. That the actions of the Defendant were committed to the Child Victim VI, Child Victim IX, Child Victim II, Child Victim X, Child Victim XII, Child Victim III, Child Victim IV, Child Victim VI, Child Victim VII, Child Victim XIII, Child Victim V, Child Victim VIII, and Child Victim XI took turns several times, some were committed up to 20 times, some of the immoral acts were even committed by the Defendant against one of the victim's children in the presence of other child victims;
 11. That as a result of the actions of the Defendant, the child victims of Victim IX, Child of Victim II, Child of Victim III, Child of Victim IV, Child of Victim VI, Child of Victim VII, Child of Victim V, and Child of Victim VIII became pregnant so that they gave birth to a total of 9 (nine)) babies at a young age, and have not yet reached the age to be able to give birth at their age, and are at very high risk to their health;
 12. That the actions of the Defendant also resulted in the Child Victim VI, Child Victim X, Child Victim XII, Child Victim XIII, and Child Victim XI suffering lacerations to their hymen;
 13. That the actions of the Defendant were committed against the victim's children without the knowledge of the parents of the victim's children who had entrusted their future and their children's education to the Defendant, and the Defendant tried to cover up the pregnancy problems of the victim's children from each of the parents of the victim's children;
 14. That the Defendant as an Educator/Teacher of the Tahfidz Madani Islamic Boarding School who is located at the Marga Wildlife Foundation Complex, Pasir Biru Village, Cibiru District, Bandung City between 2016 and 2021 has committed immoral acts against the children of female student victims in the Manarul Huda Islamic Boarding School environment;
 15. That some of the victim's children were ordered by the Defendant to make a proposal to request financial assistance for the continuity of the Miftahul Huda foundation which was led by the Defendant;
 16. Whereas the food and drink needs of the child victims were borne by the Defendant including costs during Child Victim IX, Child Victim II, Child Victim III, Child Victim IV, Child Victim VI, Child Victim VII, Child Victim V, and Child Victim VIII pregnant to childbirth;
 17. That it is true that while at the Tahfiz Islamic boarding school, the Manarul Huda foundation, the children of the victims never studied formal education, the curriculum provided was not in accordance with government programs, but the curriculum was made by the Defendant himself because the children of the victims never received report cards and diplomas, only sent via WhatsApp. and only in the form of a diploma of equality;
 18. That the Defendant's actions did not provide a good role model for the students at the Islamic boarding school, and had destroyed the future of the victim's children;
 19. That Criminal Expert Prof. Dr. Nandang Sambas, S.H., M.H., the Defendant's actions were extraordinary actions and were included in the Extra Ordinary Crime category,

because the Defendant's actions had an extraordinary and comprehensive impact on the community, especially children where the victims in this case totaled 13 children, many parents who in the end now they don't trust their children to go to Islamic boarding schools, and hundreds of social welfare institutions that take care of orphans and the poor have lost their donations due to the public's distrust of social institutions as a result of the Defendant's actions;

20. That acts of violence are not always physical violence, but the position of a child as subordinate between teachers and students results in violence that causes children to undergo violence or remain under threat of being subordinated, where children have no choice, in contrast to Article 297 of the Criminal Code which is carried out based on mutual feeling;
21. That Psychological Violence against children results in children not being able to do anything because in this case it can be said that Indoctrination controls children's rights which constitutes physical violence as referred to in Article 81 paragraph (3) and paragraph (5) and it is very appropriate to be charged with According to the Preamble of Law Number 17 of 2016, the defendant has already had weights that fulfill the elements of Article 81;
22. That the difference between the criminal aggravation of the Criminal Code and the criminal aggrandizement as stated in Government Regulation In Lieu of Law (Perpu) No. 17 of 2016 seen from the qualifications of the offense, the modus operandi has shifted from the Criminal Code based on the subject (Hakiki/Protect), seen from a juridical perspective it contains an element of threatening not only against the victim but includes specific crimes extraordinary and sanctions must be applied by prioritizing the principle of Lex Specialis derogate Legi Generalis;
23. That based on Mens Rea, the subject matter is the inner attitude of Dolus and Culpa by indoctrinating the existence of educators' rights and the rights of students, where each student must obey his teacher and the perpetrator's actions were committed against victims of more than 2 (two) people, In addition, violence within the scope of the Juvenile Criminal Court is not always physical violence, because current developments are not always physical, because the subordinate of a student to a teacher, in this case in the school environment, includes psychological threats, because in this case it includes indoctrination to control child rights.

Conclusion

Based on the abovementioned, it can be concluded that the basis for the judge's considerations in this decision are: a) Basic Sociological Considerations, that based on the facts that have been examined and which have been revealed in court, the defendant Herry Wirawan alias Heri bin Dede is a teacher and owner of the Madani Boarding School Islamic Boarding School. Where the defendant should protect, educate and teach good things to his students but instead commits the crime of rape. The crime of rape against children can threaten, endanger the child's life, damage personal life, damage the growth and development of children and disturb the sense of comfort, peace, security and public order. This became the basis for the judge's consideration in Decision Number: 86/Pid.Sus/2022/PT Bdg; b) Basic Philosophical Considerations, that the basis for the judge's consideration is that the Panel of Judges at the Appellate Level (Judex Facti) also believes that the actions of the defendant are proven to be included in the category of very serious crimes (The Most Serious Crime) and in international law, a crime is categorized as The Most Serious Crime because the crime is an act that is heinous and cruel and shakes the conscience of humanity. This includes an intentional element that is carried out systematically or causes other very serious consequences.; and c) Basic

Juridical Considerations, of the total victims, which amounted to 13 (thirteen) children with 8 (eight), based on Article 81 paragraph (5) of Law Number 23 of 2002 concerning Child Protection as last amended by Law Number 17 of 2016 concerning Stipulation of Government Regulations Substitute for Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law. With the threat of imprisonment for 20 (twenty) years, or life imprisonment or death penalty. Further, according to Article 81 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection does not include the imposition of death penalty for perpetrators of child rape. And the imposition of death penalty for perpetrators of child rape is also not regulated in the Criminal Code. Criminal sanctions imposed on perpetrators of child rape are based on Article 81 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which reads that: "Anyone who violates the provisions referred to in Article 76D shall be subject to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiahs)". And the criminal sanctions imposed are based on the Criminal Code which reads that: "Whoever by force or threat of violence forces a woman to have intercourse with him outside of marriage, is threatened with committing rape with a maximum imprisonment of twelve years".

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Jurisprudence

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