

**HUMAN RIGHTS ENFORCEMENT ANALYSIS IN THE CASE OF HERRY
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HERRY WIRAWAN**

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ABSTRACT; *This article analyzes the enforcement of human rights in the Herry Wirawan case, one of the most severe sexual crime cases in Indonesian history. Through normative juridical methods, this study examines the effectiveness of national and international human rights instruments in protecting children from sexual violence. The research reveals that while judicial procedures have been implemented fairly and sanctions applied firmly, significant weaknesses remain in prevention, early detection, and victim rehabilitation aspects. The findings indicate that although Indonesia possesses comprehensive human rights legal frameworks through various national legislations and ratified international conventions, their implementation still faces serious challenges, particularly in preventive and restorative aspects. This study recommends strengthening educational institution supervision systems, improving child-friendly reporting mechanisms, and providing comprehensive long-term rehabilitation programs for victims.*

Keywords: Child Protection, Human Rights Enforcement, Herry Wirawan Case, Sexual Violence, Victim Rehabilitation.

INTRODUCTION

Sexual violence against children represents one of the most serious human rights violations, contradicting the fundamental principles of human dignity and children's rights to protection and development. The Herry Wirawan case, which shocked Indonesian society in 2021, exemplifies the magnitude of this issue and raises critical questions regarding the effectiveness of human rights enforcement in Indonesia. Herry Wirawan, a pesantren (Islamic boarding school) leader in Bandung, West Java, was proven to have raped 13 female students under his care over five years (2016-2021), resulting in nine children born from these heinous crimes.

This case is particularly significant as it involves abuse of trust and authority by a religious educator, systematic victimization over an extended period, and failure of the supervision system that allowed crimes to continue undetected. The controversy surrounding capital punishment demands and chemical castration also sparked intense public debate about balancing retributive justice with universal human rights principles, particularly the right to life.

Indonesia has ratified various international human rights instruments, including the Convention on the Rights of the Child (CRC) through Presidential Decree No. 36 of 1990 and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Nationally, comprehensive legislation exists including Law No. 35 of 2014 on Child Protection, Law No. 17 of 2016 on enhanced sanctions for child sexual violence perpetrators, and Law No. 12 of 2022 on Sexual Violence Crimes. However, the Herry Wirawan case raises fundamental questions about whether these instruments have been effectively implemented in protecting children from sexual violence.

This article aims to evaluate human rights enforcement in the Herry Wirawan case by examining its alignment with Indonesian human rights policies and assessing the effectiveness of human rights instruments in this case. Through comprehensive analysis from legal, sociological, and human rights perspectives, this research seeks to identify strengths and weaknesses in implementing human rights instruments and provide recommendations for strengthening child protection systems in Indonesia.

Problem

The Herry Wirawan case is a form of serious violation of human rights, especially the right of children to get protection from sexual violence. This case raises serious problems regarding the effectiveness of law enforcement and the implementation of human rights instruments in Indonesia. Although the state has a strong legal framework such as the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, Law Number 35 of 2014 concerning Child Protection, and Law Number 12 of 2022 concerning the Crime of Sexual Violence, in reality there is still a gap between legal norms and practices in the field. The crime committed by Herry Wirawan against dozens of his students shows that the prevention system, supervision of educational institutions, and child-friendly reporting mechanisms are still weak. In addition, this case also raises a human rights dilemma regarding the implementation of the death penalty demanded by the prosecutor, because it is contrary to the basic principle of the right to life as stipulated in Article 28I paragraph 1 of the 1945 Constitution. The main problem that arises is the extent to which human rights enforcement in the case of Herry Wirawan has been in accordance with human rights policies in Indonesia, as well as the effectiveness of these legal instruments and policies in preventing, handling, and recovering victims of sexual violence. The study of this issue is important because it reflects the extent to which the state carries out its constitutional obligations to respect, protect, and fulfill children's rights as part of fundamental human rights.

Research Methods

This research uses a qualitative method with a normative juridical approach and descriptive-analytical analysis. The normative legal approach is used to examine legal norms and human rights instruments that govern the protection of children from sexual violence, both at the national and international levels. The study is focused on laws and regulations such as the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, Law Number 35 of 2014 concerning Child Protection, Law Number 17 of 2016 concerning the enactment of sanctions for sexual violence against children, and Law Number 12 of 2022 concerning Sexual Violence Crimes. In addition, the research also refers to international conventions such as the Universal Declaration of Human Rights (UDHR), Convention on the Rights of the Child (CRC), and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which has been ratified by Indonesia. The data source used is secondary data which includes primary legal materials in the form of laws and regulations and court decisions, secondary legal materials such as books, journals, and reports of human rights institutions, as well as tertiary legal materials such as legal dictionaries and encyclopedias. Data is collected through literature studies by studying relevant legal documents and academic literature. The analysis is carried out in a descriptive-analytical manner, namely by describing and analyzing the application of human rights instruments in the case of Herry Wirawan to assess the appropriateness between

legal norms and law enforcement practices and identify factors that affect the effectiveness of child rights protection in cases of sexual violence.

Discussion

Overview of Human Rights Instruments in Indonesia:

Human rights instruments constitute legal frameworks in the form of conventions, declarations, protocols, and legislation regulating the protection, respect, and fulfillment of human rights. These instruments aim to guarantee human dignity for every individual without discrimination and provide legal protection, especially for vulnerable groups such as children and women.

At the international level, several instruments are relevant to the Herry Wirawan case. The Universal Declaration of Human Rights (UDHR) 1948 serves as the foundation for human rights protection worldwide, with Article 3 guaranteeing everyone's right to life, liberty, and personal security, while Article 5 prohibits torture or cruel, inhuman, or degrading treatment. The Convention on the Rights of the Child (CRC) 1989, ratified by Indonesia through Presidential Decree No. 36 of 1990, specifically protects children's rights and obligates states to protect children from all forms of physical or mental violence, abuse, neglect, maltreatment, or exploitation including sexual abuse. The CRC also mandates states to take measures for physical and psychological recovery and social reintegration of child victims of violence.

At the national level, Indonesia possesses comprehensive human rights instruments. The 1945 Constitution as the state constitution guarantees human rights in Chapter XA, specifically Article 28B paragraph (2) stating that every child has the right to survival, growth, and development, and the right to protection from violence and discrimination. Article 28G paragraph (1) guarantees the right to personal, family, honor, dignity, and property protection. Crucially, Article 28I paragraph (1) affirms that the right to life, the right not to be tortured, and the right to freedom of thought and conscience are human rights that cannot be reduced under any circumstances.

Law No. 39 of 1999 on Human Rights comprehensively regulates human rights in Indonesia, affirming in Article 4 that the right to life and the right not to be tortured cannot be reduced under any circumstances by anyone. Articles 53 and 58 specifically regulate child protection from all forms of physical or mental violence, neglect, maltreatment, and sexual abuse. Law No. 35 of 2014 on Child Protection, as amended, is particularly relevant to this case, obligating the government and state institutions to provide special protection to child victims of sexual violence through education, socialization, social rehabilitation, assistance, and identity protection from reporting.

Law No. 17 of 2016, which formalized Government Regulation in Lieu of Law No. 1 of 2016, regulates enhanced sanctions specifically for child sexual violence perpetrators. This law enables capital punishment, life imprisonment, or imprisonment of at least 10 years and at most 20 years if the act results in severe injury, mental disorders, infectious diseases, reproductive function impairment or loss, and/or victim death. The breakthrough provision concerns chemical castration and electronic monitoring device installation as additional measures applicable to perpetrators.

The newest instrument is Law No. 12 of 2022 on Sexual Violence Crimes, providing comprehensive protection to victims. This law covers nine types of sexual violence crimes, regulates victim rights including handling, protection, and recovery, and establishes criminal sanctions for various forms of sexual violence. The law also details witness and victim protection to ensure they do not experience layered trauma during legal processes.

Analysis of Human Rights Enforcement Alignment with Indonesian Policies:

Based on analysis of the Herry Wirawan case, human rights enforcement in Indonesia can be considered partially aligned with existing human rights policies, though significant weaknesses requiring improvement remain. Positively, human rights enforcement in this case demonstrates alignment with Indonesian human rights policies, particularly in judicial procedural aspects. The legal process proceeded fairly and transparently from arrest, investigation, prosecution to trial, indicating that due process of law principles as regulated in Article 28D paragraph (1) of the 1945 Constitution were properly applied.

The perpetrator was tried regardless of his status as a religious figure or pesantren leader, consistent with equality before the law principles in Article 27 paragraph (1) of the 1945 Constitution. Implementation of firm sanctions including life imprisonment and chemical castration also demonstrates state seriousness in providing deterrent effects, consistent with Law No. 17 of 2016's mandate on enhanced sanctions for child sexual violence perpetrators. Victim identity protection was also well implemented during trial proceedings per Article 69A of the Child Protection Law and Article 12 of the Sexual Violence Crimes Law, reflecting respect for victim privacy rights and protection from social stigma that could cause layered trauma.

However, several aspects indicate human rights enforcement has not fully aligned with Indonesian human rights policies, particularly regarding prevention and victim recovery. The most glaring weakness is delayed detection and weak prevention systems, where crimes continued for five years from 2016 to 2021 without detection by authorities. This demonstrates state failure in fulfilling prevention obligations as regulated in Articles 20 and 21 of the Child Protection Law. The absence of effective supervision systems for pesantren and religious educational institutions, minimal early warning system mechanisms, lack of comprehensive sexual education, and absence of child-friendly reporting systems indicate preventive aspects of human rights policies have not been well implemented.

The capital punishment controversy demanded by prosecutors also raises serious dilemmas from human rights perspectives, contradicting Article 28I paragraph (1) of the 1945 Constitution and Article 4 of the Human Rights Law stating that the right to life cannot be reduced under any circumstances. Capital punishment demands also show inconsistency with Indonesia's international commitments having ratified CRC and UDHR emphasizing life protection, and contradict global trends toward capital punishment abolition. Chemical castration application as additional punishment also generates controversy because the National Human Rights Commission considers this sanction potentially violates Article 5 of UDHR on prohibition of cruel and inhuman treatment, though conversely considered a reversible rehabilitative measure.

Victim rehabilitation and recovery aspects also demonstrate misalignment with existing human rights policies. Although Article 39 of CRC and Article 13 of the Sexual Violence Crimes Law obligate states to provide comprehensive victim rehabilitation, no transparency or adequate public information exists regarding recovery programs for 13 victims and 9 children resulting from rape. Minimal attention to long-term rehabilitation, whether psychological, social, or economic, indicates victim recovery rights have not been fully fulfilled.

Effectiveness Analysis of Human Rights Instruments:

Based on analysis of the Herry Wirawan case, human rights instruments' role can be considered effective in punishment and victim protection aspects during judicial processes, but not yet effective in prevention, early detection, and victim recovery aspects. Several human rights instruments demonstrate fairly good effectiveness in handling this case. Law No. 35 of 2014 on Child Protection proved highly effective as Article 81 became the primary legal basis for perpetrator punishment with severe sanctions of life imprisonment.

Articles 59 and 69A of the same law also successfully provided foundations for victim special protection, particularly regarding identity protection during trial proceedings so victims avoided social stigma and reporting that could cause layered trauma. Provisions on one-third sentence enhancement because the perpetrator was an educator were also successfully applied, showing this instrument can provide heavier sanctions for perpetrators abusing their position of trust. Law No. 17 of 2016 regulating chemical castration also demonstrated effectiveness as chemical castration sanctions were successfully applied as additional punishment in court decisions.

Law No. 39 of 1999 on Human Rights also played an effective role as moral and legal foundation in protecting victim rights during judicial processes. This instrument ensured judicial processes proceeded fairly for all parties, victims received rights to testify safely without intimidation, and judges' decisions considered crime impacts on victim human rights not merely from criminal law perspectives. The Convention on the Rights of the Child ratified by Indonesia also demonstrated effectiveness as best interest of the child principles became primary considerations in every court decision.

However, several human rights instruments have not been optimally effective in this case, particularly in prevention and recovery aspects. Prevention aspects in the Child Protection Law regulated in Articles 20 and 21 regarding state obligations to conduct prevention have not been well implemented. Crimes continuing for five years undetected indicate no effective supervision system exists for pesantren and non-formal educational institutions. Minimal Ministry of Religious Affairs supervision of pesantren, absence of periodic inspection mechanisms that could prevent crimes, and lack of strict accreditation systems show that despite existing legal instruments, their implementation remains very weak.

Reporting mechanisms regulated in Articles 14-16 of the Sexual Violence Crimes Law also have not been fully effective as they are not child-friendly. Child victims still face various obstacles in reporting crimes such as fear of perpetrator authority who is a spiritual figure and educator, ignorance about where to report, stigma and shame hindering them from speaking, and perpetrator threats silencing them. The fact that cases only emerged after five years and only because one victim became pregnant so could no longer be hidden indicates existing reporting systems are not easily accessible and do not provide safety for children to report violence they experience.

Victim rehabilitation and recovery regulated in Article 39 of CRC and Article 13 of the Sexual Violence Crimes Law also demonstrate serious ineffectiveness. Victim rights to medical, psychological, and social rehabilitation have not been comprehensively implemented despite legal instruments clearly regulating state obligations. No transparent information exists about rehabilitation programs provided to 13 victims and 9 children resulting from rape, their fate and future remain unclear, no guarantee exists that victims receive necessary long-term assistance for deep trauma recovery, and social stigma risks they may face in society have not received serious attention through structured social reintegration programs.

Conclusion

The Herry Wirawan case serves as a serious reflection on human rights enforcement conditions in Indonesia, particularly regarding child protection from sexual violence. Analysis of this case indicates Indonesia possesses fairly comprehensive legal frameworks and human rights instruments, both sourced from international instruments and national legislation. However, implementation and effectiveness of these instruments still face various challenges requiring serious attention from all parties.

Regarding human rights enforcement, legal processes in the Herry Wirawan case generally aligned with human rights policies in Indonesia, marked by fair and transparent judicial processes, adequate victim protection, and firm sanction application consistent with applicable legislation. However, significant weaknesses remain in prevention and early detection aspects, indicating the need to strengthen supervision systems and more proactive child protection mechanisms. Debates regarding capital punishment in this case also demonstrate dilemmas between retributive justice for victims and universal human rights principles, particularly the right to life.

Regarding human rights instrument effectiveness, national human rights instruments, particularly the Child Protection Law and Sexual Violence Crimes Law, have effectively served as legal bases for punishment and victim protection in this case. However, human rights instrument effectiveness in preventive aspects, victim recovery, and social reintegration still requires significant improvement. Better implementation requires adequate resource allocation, both budgetary and trained human resources, along with stronger inter-agency coordination.

The Herry Wirawan case reminds us that human rights enforcement is not merely about punishing perpetrators after crimes occur, but more importantly how states protect citizens, especially vulnerable groups like children, from all forms of violence from the outset. Existing human rights instruments must be implemented holistically, from prevention through strict supervision systems and comprehensive education, rapid and victim-sensitive case handling, to long-term recovery ensuring victims can return to normal and dignified lives.

References

- Republic of Indonesia. (1945). *The 1945 Constitution of the Republic of Indonesia*. Jakarta: State Secretariat.
- Republic of Indonesia. (1999). *Law Number 39 of 1999 concerning Human Rights*. Jakarta: State Gazette of the Republic of Indonesia.
- Republic of Indonesia. (2002). *Law Number 23 of 2002 concerning Child Protection*. Jakarta: State Gazette of the Republic of Indonesia.
- Republic of Indonesia. *Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection*. Jakarta: State Gazette of the Republic of Indonesia.
- Republic of Indonesia. *Law Number 17 of 2016 concerning the Determination of Government Regulations to Replace Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection*. Jakarta: State Gazette of the Republic of Indonesia.
- Republic of Indonesia. *Law Number 12 of 2022 concerning Sexual Violence Crimes*. Jakarta: State Gazette of the Republic of Indonesia.

United Nations (1948). *Universal Declaration of Human Rights*. New York: United Nations General Assembly.

United Nations (1979). *Convention on the Elimination of All Forms of Discrimination Against Women*. New York: United Nations.

United Nations (1989). *Convention on the Rights of the Child*. New York: United Nations.

Republic of Indonesia. (1990). *Presidential Decision Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child*. Jakarta: State Secretariat.

Bandung District Court. *Decision Number 1191/Pid.Sus/2021/PN Bdg in the Criminal Case of Sexual Violence against Children (Herry Wirawan Case)*. Bandung: Bandung District Court.