

## Juridical Analysis of Sexual Crimes Against Children (Study of Decision No.989/Pid.S/2021/PN.Bdg)

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### Abstract

*This study aims to find out what is the reason for the Bandung District Court judge in canceling the death sentence and chemical castration to the Defendant in the Case of Sexual Violence against Children, then to find out the reason the Judge only gave life imprisonment and a fine. The research method in this thesis is normative juridical which aims to examine a court decision or decision on Decision No. 989/Pid.S/2021/PN.Bdg. The results obtained are that the Bandung District Court Judge related to the Child Sexual Violence Case decided to cancel the decision on the death penalty and chemical castration in Decision Number 989/Pid.S/2021/PN.Bdg for several reasons. The cancellation occurred because the Defendant still has human rights that cannot be eliminated by the Judge, therefore the Judge imposes Compensation for the Defendant which will be given to the Victim. The cancellation was what changed the criminal sentence against the Defendant who was initially sentenced to Article 81 paragraph (1), paragraph (3), paragraph (5) jo. Article 76 D of the Republic of Indonesia Law Number 17 of 2006 concerning the Stipulation of Government Regulation in Lieu of Law No.1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to become Law Jo Article 65 paragraph (1) of the Criminal Code becomes life imprisonment and a fine of Rp. 331.527,186,- (three hundred and thirty-one million five hundred twenty-seven thousand one hundred and eighty-six rupiah).*

**Keywords:** *Terrible Bandung Court, Sexual Violence, Children*

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## 1. INTRODUCTION

According to Article 1 paragraph (3) of the Indonesian Constitution, the Republic of Indonesia is a legal state. Every country founded on a legal state (*rechtsstaat*) has a state apparatus charged with upholding the rule of law and the state. The state apparatus is bound by applicable laws and regulations in carrying out its responsibilities. The court judge is part of the state apparatus tasked with enforcing the law. The court in Indonesia is a body or institution that performs judicial functions. <sup>1</sup> The 1945 Constitution, also known as the 1945 Constitution in conjunction with Law Number 4 of 2004, which was later amended to become Law Number 48 of 2009 concerning Judicial Power, is referred to as the UUKK.. (sugiarto, 2013)

Every child in Indonesia is a national asset. As a result, children's welfare must continue to improve. Generations are represented by children. Indonesia is no exception to the nation's successor and development successor, namely the generation prepared to implement sustainable development and control a country's future. Protecting Indonesian children entails preserving human resource potential and guiding the Indonesian nation as a whole toward a just and prosperous society based on Pancasila and the 1945 Constitution. (Nashrina, 2011)

Recently, children, among others, have become victims of crime. They have suffered from abuse, bullying, and other forms of abuse. A child is a gift from God Almighty given to someone who can be trusted to play the role of a parent in education, and it is critical to protect children. Children are still regarded as weak and vulnerable creatures who fall victim to crime. Acts of sexual violence that endanger the lives of children who are victims can have a negative impact on children's lives. Children suffer from psychological and mental trauma, which has a negative impact on their lives.

As in the case of rape perpetrated by an Islamic boarding school teacher named Herry Wirawan (37), in Bandung, to be exact, at the Tahfidz Madani Islamic Boarding School Foundation Complex, Cibiru Subdistrict, Bandung. This rape was carried out alternately with 13 female students in various places in accordance with the conditions in which Herry Wirawan wanted to have sex, at least between 2016 and 2021, at the Yayasan Komplek Synergy Jalan Comfortable No. 34 Parakan Saat Antapani. Central Bandung, at the Tahfidz Madani Islamic Boarding School Foundation, the Wildlife Foundation Complex, Cibiru District, Bandung, the Manarul Huda Islamic Boarding School, the Wildlife Complex, Pasir Biru Village, Cibiru District, Bandung City, Basecamp Jalan Cibiru Hilir No.31 Cibiru Hilir Village, Cileunyi District, Bandung Regency, The Suites Metro Bandung Apartment, Jalan Soekarno Hatta No.693 Metro, Jatisari Village, Buah Batu District, Bandung City, Atlantic Hotel, Rajiman Street, Bandung City, Prime Park Hotel, PHH Mustofa Neglasari Street, Cibeunying Kaler

District, Bandung City, Hotel B & B Bandung City, Hotel Nexa Jalan Supratman Bandung City, Hotel Regata Jalan Setiabudi Bandung, Tahfidz Al Ikhlas House Jalan Sukanagara Bandung

Herry Wiawan's actions resulted in 6 female students becoming pregnant and giving birth up to 2 or 3 times, and 13 female students becoming psychologically disturbed. The students who have sex with the pesantren teacher are around 15-20 years old, and since they were 13-16 years old, the santriwati have been sexually assaulted by the pesantren teacher. Not only that, but the pesantren teacher has intimate relations with the female students in exchange for forcibly carrying the pesantren teacher's child; if none of the female students want to have sex with the pesantren teacher, the pesantren teacher looks for other victims to satisfy his lust alone. The 13 female students were only given encouraging words that the pesantren teacher would marry them but in reality, the pesantren teacher did not marry any of the 13 female students.

In the preceding case, the panel of judges issued Bandung District Court Decision Study Decision No. 989/Pid.S/2021/PN.Bdg, which stated that the Defendant Herry WIrawan was proven and convincingly guilty of committing a criminal act by intentionally committing violence and forcing a child to have intercourse with him. The defendant was only sentenced to life in prison. The authors are interested in raising it in a study titled "JURIDIC ANALYSIS OF SEXUAL CRIMES AGAINST CHILDREN (Case Study Decision No.989/Pid.S/2021/PN.Bdg)" based on the background and legal issues.

## 2. METHODS

Normative legal research is legal research that uses the law to construct a normative system. The built norm system is comprised of principles, norms, rules derived from laws and regulations, court decisions, agreements, and doctrines (teachings). Further on normative legal research, that is, research that focuses on the rule or rule of law. Legal rules or regulations are examined as a building system in relation to a legal event in normative legal research. This research was carried out with the intention of providing legal arguments as a basis for determining whether an event was correct or incorrect, and how the event should be handled in accordance with the law.

The author conducts normative legal research or literature in the preparation of this legal writing, which is legal research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. (achmad, 2017)

### 3. RESULTS AND DISCUSSION

#### **Basis for Judges' Consideration in deciding cases of sexual crimes against minors**

- Basis for Judges' Consideration in making a decision on sexual crimes against minors Number. 989/Pid.S/2021/PN.Bdg

The basis of judge's consideration is generally based on the indictment of the Public Prosecutor, valid evidence, as well as subjective and objective requirements of a person who can be convicted; Thus, it is referred to as a judge's decision. In general, the principle of judicial independence in Indonesia is fully guaranteed by Law Number 48 of 2009 concerning Judicial Power, which states that judicial power is the power of an independent state to enforce law and justice. The principle of judicial independence includes the ability of judges to formulate legal considerations known as legal reasoning, which is used by a judge to decide a case being tried. (rifai, 2011)

The basis for the judge's decision Herry Wirawan's actions resulted in six students becoming pregnant and giving birth up to three times, and 13 students developing psychological problems. The santri who have sex with the pesantren teacher are around 15-20 years old, and the santriwati have been sexually harassed by the pesantren teacher since they were 13-16 years old. Furthermore, pesantren teachers have intimate relationships with female students in exchange for forcibly carrying the pesantren teachers' children; if none of the female students want to have sex with the pesantren teacher, the pesantren teacher seeks other victims to satisfy his lust alone. Only words of encouragement were given to the 13 female students. (rahmawati, 2015)

It was discovered that when deciding a case, judges consider two (two) categories: juridical and non-juridical. Sentencing is based on legal considerations, particularly the public prosecutor's indictment, criminal charges, witness statements, accused statements, evidence, and statutory regulations. Concerning the judge's non-juridical assessment of the Defendant's actions, the Defendant's financial situation, and the judge's belief in the Defendant's actions that contain elements of the indicted criminal act.

The judge's decision to declare the defendant legally and convincingly guilty of committing violence to force a child to have sex with him is based on Article 81 paragraphs (1), (3), and (5) jo. Article 76 D of the Law of the Republic of Indonesia No. 17 of 2006 on the Stipulation of Law Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Child Protection.

However, the judge is still considering these articles, and the prosecutor's demands have not been made against the defendant because the judge has different thoughts and considerations. The outcome of the discussion, which served as the basis for the judge's decision to impose a sentence, was only life imprisonment and a fine of Rp. 331.527,186,-. (three hundred and thirty-one million five hundred twenty-seven thousand one hundred and eighty-six rupiah). The judge considers the following factors when making a decision:

A. Compensation

Discussing the facts of the criminal law committed by the Defendant, and whether the death penalty, castration, or other punishments will deter the Defendant. If the sentence does not deter the Defendant, the Judge will give the Defendant some other form of compensation.

B. Human Rights

Human rights are in principle inalienable. According to the definition of human rights, in principle, human rights cannot be revoked, even if the accused commits a crime of sexual violence. "Because basically, those who give life and who have the right to take life are only those who are above," explained the judge, "we as fellow human beings cannot simply take away these human rights."

C. Things that relieve

Examples include whether the defendant really can no longer provide benefits to others. Is there no remorse in the defendant after committing a sexual crime against a minor? If based on this example, the Defendant is truly unrepentant, then the Defendant will be severely punished in order to save the community.

D. Castration

The judge must consider the prosecutor's demands to make the right decision. One of the factors that the judge must consider is, Is there a logical test for the defendant in the examination process? The judge can decide to castrate the defendant or not based on the results of the logic test. Because the results of the logic test will reveal whether the Defendant has a mental disorder or not.

E. Need something or certain legal facts to be considered by the Judge. (wadong, 2000)

In the author's analysis during the interview, there are several other reasons that became the basis for the judge's consideration in making the decision from the perspective of the victim in following the Defendant in having the intimate relationship:

1. The victim had sexual intercourse knowingly even though the Defendant asked for sex repeatedly but the Victim still complied because he heard the religious arguments given by the Defendant and the Victim believed in those religious arguments.
  2. The victim is promised about his future by the Defendant, such as a future that is guaranteed, bright and will be financed by the victim's life with the Defendant.
  3. Compensation conditions given by the Defendant to the victim.
  4. The immature or perfect thought was used by the Defendant to seduce the Victims to have sex.
- Analysis of Judge's Decisions related to sexual crimes against minors

A court decision is a statement made by a judge in an open trial that can be in the form of punishment, free or free from all legal claims according to and in the manner prescribed by law. The decision of the judge is intended to conclude or settle the case before him. Before making a decision in a criminal case, a judge must conduct an investigation. In making decisions and imposing criminal sanctions on the defendant, judges must consider both legal and non-legal factors.

Referring to Decision Number 989/Pid.S/2021/PN.Bdg, which the author examined based on the facts revealed at the trial and valid evidence such as witness statements, defendant's statements, and evidence obtained during the trial, it was decided that the defendant Herry Wirawan was legally qualified and guilty of committing the crime of sexual intercourse with 13 victims of Santriwati.

However, based on the analysis of the authors of the regulations regarding additional criminal sanctions for chemical castration given by the Public Prosecutor, it is contained in Article 81 paragraph 7 of Law Number 17 of 2016 and was not included by the judge due to several factors in the discussion on the basis of his considerations. The judge did not provide additional information.

The judge's decision stated that the Defendant could be chemically castrated if he had a mental disorder, but if not, the Judge could not impose chemical castration on the defendant even though it was dangerous for the surrounding community, one of the reasons was that the Defendant had sexual intercourse. Even if the opposite sex is a minor, the Judge cannot impose a chemical castration sentence if the test results do not reveal that the Defendant has a mental disorder.

Regarding decision no. 989/Pid.S/2021/PN.bdg, the author will analyze the decision through 2 (two) theories, namely:

1. Theory of Justice
2. Benefit Theory

According to the author's analysis, from the point of view of the theory of justice and the theory of expediency, they have different views from the final result of the decision No. 989/Pid.S/2021/PN.Bdg because from the point of view of the community and the judge also have different opinions, namely as follows:

1. Theory of Justice

This theory explains that a person's satisfaction depends on whether he feels there is justice (equity) or injustice (unequity) in a situation he is experiencing. In this theory get different points of view from judges and society. According to the Judge, the reason the Defendant was not sentenced to the death penalty was because of his human rights and the reason the Judge was approved by the defendant's family and the Defendant was also relieved because he was not sentenced to death or castration. However, it is inversely proportional to the point of view of many people because according to the community because it is very unfair to the victim and the victim's children and still makes the community nervous because the life imprisonment law will not deter the defendant and from the family's point of view. the victims also felt disappointed, weak, hysterical and cried because the perpetrators were only given a life sentence in the end. The families of the victims also really hope that the perpetrators get the death penalty or chemical castration because with the perpetrators getting the law the families of the victims feel very commensurate with the free psyche of the victims and are very relieved even though it will not erase the wounds because this will be a record of the family history of the victim even until hereditary.

2. Benefit Toeri

According to the theory of expediency, in the results of the decision No. 989/Pid.S/2021/PN.Bdg from the point of view of the community, many people refuse if it is only life imprisonment because of human rights, according to the community if it is only because of human rights, what about human rights? owned by the victim and whether the rights of the victim in the future will also be fulfilled, that is one of the things that is highly questioned by the surrounding community. Because if the sentence is reduced only for that reason, in my personal opinion as a writer, the punishment is a deterrent effect, but if the law can always be

discounted, in the end, people who have the potential to commit similar crimes will underestimate law enforcement. (alfitra, 2012)

From the discussion above, it can be concluded by the author that the final result of the decision No. 989/Pid.S/2021/PN.Bdg is inappropriate in social theory because many people reject the results of the decision. And in terms of benefits, the community does not benefit from the judge's decision, so in general there are still many people who reject the results of the judge's decision because there are still many people who think that criminal penalties are still very far from the wishes of the community.

Furthermore, according to the Judge, although the Defendant only received life imprisonment and a fine, this was an appropriate punishment because life imprisonment was a major offense. The main punishment is a cumulative punishment, which includes the death penalty, imprisonment, confinement, fines, and closing punishment, and what the Defendant is serving is imprisonment and a fine. So, if the Defendant pays a fine to the Judge, it will not affect his life imprisonment because the life imprisonment is included in the principal sentence, or the Defendant can be said to be serving a confinement sentence.

- Protection of Children as Victims of Sexual Crime

Children are the next generation of the nation, and they need special legal protection that adults do not have, for physical and mental reasons that children do not yet have. Child legal protection is defined as an effort to protect the law against the freedom and human rights of children in terms of their welfare. (gultom, 2014)

Regarding child protection, it is the responsibility and obligation of parents, the general public, and institutions authorized by courts and governments, both central and regional; This provision is regulated in Articles 20 to 26 of Law Number 23 of 2002.

National child protection now has a legal basis, thanks to the 1945 Constitution and Articles 21 to 24 of Law Number 23 of 2002 concerning Child Protection. According to Article 1 point 1 of Law Number 23 of 2002 concerning Child Protection, what is meant by a child is anyone under the age of 18 years, including children who are still in the womb. Article 17 paragraph (2) of the Child Protection Law Number 23 of 2002 also states that "every child who is a victim or perpetrator of sexual violence or who is in conflict with the law has the right to be kept secret". Furthermore, Article 64 paragraph (2) letter g stipulates "protection from reporting through mass media and avoidance of labeling". (siregar, 2005)

The concept of legal protection for child victims of sexual violence according to positive law must be based on Pancasila in providing legal protection for its citizens. Therefore, the legal



protection will give birth to the recognition and protection of human rights in their form as individual beings and social beings, in a unitary state that upholds the spirit of kinship in order to achieve community welfare. Every child needs to have the widest possible opportunity to grow and develop optimally, physically, mentally and socially. Therefore, children have the right to get protection, attention, affection, and education in order to get a prosperous life.

Based on Law Number 17 of 2016 concerning the 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, substantially has provided special protection to children victims of sexual violence, as contained in Article 59 paragraph (1) that: "The Government, Regional Government, and other state institutions are obliged and responsible for providing Special Protection to Children." One of these special protections is given to children who are victims of sexual violence. This protection is carried out through efforts to foster, mentor, and restore social, physical and psychological health. This process is given to victims of sexual violence with the main aim of restoring the victim's condition as before or to restore the victim's condition to social functioning who is ready to return to the community and free from all forms of violence.

Based on the results of interviews conducted by the author at the Surabaya District Court, the author obtained several explanations of legal protection efforts for victims, namely the types of witness and victim protection services that must be provided, including:

1. Physical protection service,
  - a) protection of personal, family and property security as well as free from threats related to the testimony of the victim that will be, is being or has been given;
  - b) their identity is kept confidential;
  - c) obtain a new identity;
  - d) obtaining a temporary residence;
  - e) get a new residence.
2. Financing support services,
  - a) support for transportation costs as needed;
  - b) temporary living expenses support until the end of the protection period.
3. Fulfillment of procedural rights and legal protection services related to criminal justice processes and administration,

- a) Provide information without pressure in every stage of the ongoing legal process;
  - b) Accompanied by a translator, in terms of limitations or language barriers;
  - c) Free from ensnaring questions;
  - d) Obtain information on the progress of the case until the protection deadline ends;
  - e) Information in case the convict is released;
  - f) Obtain legal advice;
  - g) Getting assistance;
  - h) Facilitating testimony without being present in court through electronic means and/or in writing (with the approval of the legal panel);
  - i) Legal protection from being sued in a civil manner, criminally prosecuted because of the report/testimony and the obligation to postpone the lawsuit until the case reported/the testimony given is decided by the court and has permanent legal force.
4. Assistance services for victims of sexual violence
- a) Medical;
  - b) Psychosocial rehabilitation;
  - c) Psychological rehabilitation
5. Facilitating requests for compensation from the perpetrator (restitution) and the state (compensation). (abdul, 2001)

The author's analysis shows that this protection has been confirmed in accordance with the law, and that it has been carried out in accordance with the sound of the applicable law, and that every government or other state institution has provided assistance and protection to victims of sexual crimes. This is also demonstrated by the existence of protection for the children of the Defendant Victim's wife, who was placed in the UPT for the Protection of Women Prov. West Java, and for the wife of the Defendant's victim, who receives assistance for a psychological test because if the wife of the Defendant's victim is still experiencing psychological disorders, the child of the wife must also be protected for at the UPT Women's Protection Prov. West Java, but if at the time of the psychological test the wife does not show that she has a psychological disorder, then the children are allowed to be returned to the mother's arms.

In order to protect victims of sexual violence, a home visit mechanism or companion home visit service will assist victims if the victim is still hesitant to leave the house due to

community opinions. The facilitator observes and investigates the victim's experience with violence with the victim and her family during this home visit. The purpose of this home visit is to assess the victim's health and condition. Following observation or investigation, the assistant assists the victim as needed. There are several mechanisms to protect children who are victims of sexual crimes, including:

a) Acceptance of Victims

The victim acceptance stage is the first stage in dealing with victims of sexual violence. Acceptance of victims is done to get a complete picture of victim data and information.

b) Outreach

Outreach is a series of activities designed to reach or directly assist victims of sexual violence. In this case, reports from various parties are used, including government agencies, social agencies, police agencies, hospitals, and non-governmental organizations.

c) Quotes

Quotation is the process of delegating the handling of cases from various institutions and agencies. The purpose of this referral is to follow up on services based on the needs of the victim. During the referral process, the referring party and the family must come to an agreement.

d) Registration

Registration is the process of recording victims as recipients of protection services and initial documentation based on information received from the complainant and the referral agency. The purpose of registration is to record the victim or the reporter as the recipient of the service in the victim registration book.

e) Confession

Recognition is the process of documenting the identity of victims of sexual violence and the problems they face. The aim of the identification process is to collect as much preliminary information as possible about the victim and her family.

Then in an interview conducted by the author at the Surabaya District Court with a judge, there are also several things that can become obstacles in providing protection to victims, namely:

1. Human Resources

One of the most important aspects in implementing legal protection programs and handling victims is the availability of human resources. However, the availability of human resources is a separate obstacle in the implementation of the program. The focus of assistance is not on the problem of victims due to lack of human resources, because the human resources available for victims who are treated are very different. In addition, the lack of human resources can result in ineffective handling of victims of sexual violence.

## 2. Funding Source

In addition to the lack of human resources, the handling of cases of sexual violence is constrained by a lack of resources. Handling victims of sexual violence requires a large budget because it includes direct services such as advocates, counselors, psychologists, and health workers, as well as operational costs such as court fees, referrals, and medical interventions. This expenditure is not in accordance with the government's maximum budget policy. As a result, more funds are needed to complete the task of protecting victims, which is sufficient to complete a maximum service program for victims of sexual violence.

The community resulted in the emergence of strategic issues for handling victims which became obstacles in the process of protecting child victims of sexual violence, such as:

- a. A victim or victim's family is not open or cooperative in providing information; In this case, the assistance must accompany and communicate from heart to heart, so that the victim is willing to tell the chronology.
- b. If the victim or victim's family tells or discloses the case to many people, the officer must explain the importance of confidentiality so that the case is handled properly.
- c. The victim or the victim's family acts rashly and in accordance with the decisions taken. (Gultom, 2013)

Because of these factors, they are unable to carry out their responsibilities to protect victims of sexual violence. In the interview, the Judge also stated that the community's perception of victims is the most significant barrier to protection that has an impact on victims or children, because more and more people are unaware of efforts to protect the rights of children who are victims of sexual violence. When a child is sexually abused, the community, law enforcement, social services, or stakeholders (relevant interested parties) must understand

the child's or victim's condition and resolve the case in accordance with restorative justice, a concept that prioritizes victim recovery.

These are the things that, according to the findings of the analysis, are impediments to them carrying out their responsibilities to protect victims of sexual violence. During the interview, the Judge also stated that the public's perception of victims is the most significant barrier to protection that affects victims or children, because more and more people are unaware of efforts to protect the rights of children who are victims of sexual violence. When sexual violence against children occurs, the community, law enforcement, social services, or stakeholders (relevant interested parties) should understand the child's or victim's condition and resolve the case in accordance with restorative justice, which is a concept that prioritizes the recovery of victims' losses.

To protect victims of sexual violence, a home visit mechanism or home visit companion service will assist victims if they are still hesitant to leave the house due to public opinion. During this home visit, the facilitator observes and investigates the victim's experience with violence with the victim and her family. This home visit is intended to assess the victim's health and condition. Assisting the victim as needed after observation or investigation. This assistance for handling victims is carried out in at least several stages, namely as follows:

- a) Assistance Preparation,
- b) Type of Assistance,
- c) Mentoring Model,
- d) Provision of Safe Houses,
- e) Evaluation, and
- f) Reintegration and Repatriation

#### **4. CONCLUSION**

Based on the results of the research and discussion above, as well as supported by information regarding the results of Judge's Decision No. 989/Pid.S/2021/PN.Bdg, it can be concluded as follows:

1. On the basis of the judge's judgment in the Theory, the judge's judgment is the essence of this case. The judge's belief that the defendant committed the crime was against the law and has been proven to have committed the offense he was charged with as a result of the Defendant's actions received a life sentence and a fine of 331.527,186,- (three hundred thirty one million five hundred twenty seven thousand one hundred and eighty sixrupiahs).
2. Legal defense efforts are carried out by parties whose obligations to child sexual violence victims are carried out through a process of assisting the victim, which includes legal, medical,

and psychological assistance. The person in charge provides legal or judicial protection. The implementation of assistance begins with the victim's data being entered, and then victims are assisted from the mentoring process to the hospital to the assistance provided through evaluation, and finally, there is reintegration and repatriation

## 5. SUGGESTION .

From the results of research and discussion of Decision Number 989/Pid.S/2021/PN.Bdg, the authors provide some suggestions as follows:

1. In imposing punishment on perpetrators of criminal acts, judges of sexual violence against children are not recommended to consider various factors that contribute to the occurrence of public interest in eradicating crimes of sexual exploitation of children. This is very important. It is carried out so that the defendant's decision truly fulfills a sense of justice, and it is hoped that the judge will further increase the criminal sentence that will be imposed, taking into account that sexual abuse of children is a crime.
2. In an effort to protect victims of crime, the community must play an active role in sexual relations, provide assistance and file complaints about acts related to sexual abuse of children in their environment, but they must also maintain and understand the process of children's rights and not spreading the identity of children as victims of sexual crimes.

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