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Child Homicide and the Limits of Penal Escalation: Reconstructing Indonesia's Child-Protection Policy

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Abstract

Child homicide exposes a profound tension in criminal law between the state's duty to protect children's right to life and the limits of punishment as an instrument of prevention. This article reconstructs Indonesia's criminal-law response to violence against children, taking the 2016 reform of the Child Protection Law as its historical point of departure while considering the entry into force of the new Criminal Code in 2026. It examines how homicide involving a child should be legally qualified when general homicide provisions intersect with the special prohibition of violence against children, and whether aggravated sanctions can provide effective and rights-consistent protection. Using normative legal research through statutory, conceptual, and socio-legal approaches, this study critically analyses Indonesian legislation and peer-reviewed scholarship on filicide, child maltreatment fatalities, forensic proof, victim-centred justice, and chemical castration. The article argues that the principle of *lex specialis* cannot be applied mechanically. The appropriate charge depends on the statutory elements proved, the causal relationship between the conduct and the child's death, and the criminal law applicable at the time of the offence. It further contends that Law No. 17 of 2016 should not be interpreted as making chemical castration or electronic monitoring applicable to every child homicide, because those measures are linked to specific sexual offences against children. The article offers a dual-track model that combines accurate offence qualification, proportionate sentencing, reliable forensic evidence, child-sensitive witness protection, and prevention-oriented child-protection governance. It concludes that the legitimacy of penal policy depends not merely on the severity of sanctions.

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INTRODUCTION

Children's right to life and protection from violence is not merely a matter of family welfare. It is a constitutional and institutional obligation that tests whether the state can protect persons whose age, dependency, and limited capacity for self-defence expose them to heightened risks. Article 28B(2) of the 1945 Constitution guarantees every child the right to survival, growth, development, and protection from violence and discrimination. The same obligation is reflected in the Convention on the Rights of the Child, particularly the requirements that the child's best interests be a primary consideration and that states take appropriate measures to protect children from all forms of physical

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or mental violence.[1] These commitments require criminal law to respond to lethal violence, but they also require institutions to prevent violence before it becomes fatal.

The 2016 reform of Indonesian child-protection law was a decisive moment in the development of penal policy. Government Regulation in Lieu of Law (Perppu) No. 1 of 2016, subsequently enacted as Law No. 17 of 2016, strengthened sanctions for specified sexual offences against children and introduced additional measures, including chemical castration and electronic monitoring in legally defined circumstances. The reform emerged amid public concern about grave sexual violence against children. It is therefore important to distinguish the historical impetus of the 2016 reform from the precise legal scope of the provisions enacted. A policy response directed at sexual violence cannot be treated as a general sentencing regime for every offence in which a child dies.

The original manuscript identifies an overlap between the former Criminal Code (KUHP), particularly Articles 338 and 340, and Article 76C in conjunction with Article 80 of Law No. 35 of 2014. That overlap is real but must be analysed through the elements of each offence rather than by assuming that the Child Protection Law automatically displaces the general homicide provisions. Article 80(3) addresses violence against a child under Article 76C that results in the child's death; it does not necessarily capture every intentional killing of a child irrespective of the conduct charged. Conversely, the general homicide offence focuses on the intentional taking of life. The principle lex specialis derogat legi generali is a method for resolving a genuine normative relationship, not a substitute for proving the statutory elements.[2]

The temporal dimension is equally important for an article prepared in 2026. Law No. 1 of 2023 on the Criminal Code entered into force on 2 January 2026, replacing the former KUHP as the general criminal code. The new Code's homicide provisions and its rules on changes in criminal legislation must therefore be considered when describing the current legal framework. Yet the legal assessment of conduct committed in 2016 cannot simply be rewritten as though the new Code had applied at the time. The applicable law must be determined by the legality principle, the law in force when the conduct occurred, and the statutory rule on subsequent, more favourable legislation.[3] This article accordingly treats 2016 as the historical case-study period and 2026 as the present normative setting. The scholarly literature offers several distinct contributions but does not, by itself, resolve this Indonesian doctrinal problem. Research on filicide demonstrates that child homicide is not a homogeneous phenomenon: the age of the child, the perpetrator's relationship to the child, the circumstances of the event, and possible mental-health factors vary across cases.[4] Studies of child-maltreatment fatalities further show that deaths often occur within wider histories of protection

[1] Indonesia, "Law No. 35 of 2014 Concerning Amendments to Law No. 23 of 2002 on Child Protection" (2014).

[2] Indonesia, "Law No. 1 of 2023 Concerning the Criminal Code" (2023).

[3] Y D Y Tang et al., "Filicide (Child Homicide by Parents) in Hong Kong," *Hong Kong Medical Journal* 31, no. 2 (2025): 99–107, https://doi.org/10.12809/hkmj2310809.

[4] Leonie Segal et al., "Association of Child Maltreatment With Risk of Death During Childhood in South Australia," *JAMA Network Open* 4, no. 6 (2021): e2113221, https://doi.org/10.1001/jamanetworkopen.2021.13221.

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concerns and institutional contact, making prevention and inter-agency review essential.[5] Research on survivor-centred justice also challenges the assumption that justice is exhausted by conviction or sentence severity; recognition, dignity, voice, prevention, and connectedness are relevant dimensions of justice.[6] In the Indonesian debate, scholarship on chemical castration has exposed tensions between deterrence, human rights, medical ethics, and implementation.[7]

A gap remains at the intersection of these discussions. Doctrinal analyses often focus on the validity of a particular sanction or on the interpretation of one statute, while empirical and socio-legal studies describe the patterns and institutional conditions of child fatality without resolving Indonesian offence qualification. This article brings those dimensions together. It does not claim to provide new empirical findings about the incidence of child homicide in Indonesia; rather, it reconstructs the normative framework and evaluates what the available comparative research implies for legal interpretation and policy design.[8]

The article addresses two questions. First, how should the criminal offence be qualified when the death of a child arises from conduct potentially covered by the general homicide provisions and the special child-protection prohibition? Second, what combination of punishment, forensic proof, witness protection, and preventive governance can make the response effective without violating legality and proportionality? Its original contribution is a distinction between (i) offence qualification, (ii) sentencing and measures, and (iii) prevention and victim-centred procedure. This distinction prevents the symbolic severity of a penal reform from obscuring the actual legal elements and institutional work needed to protect children.

METHODS

This article uses normative legal research with statutory, conceptual, and socio-legal literature approaches. The inquiry is doctrinal and theory-oriented: it examines how legal categories are constructed, how competing provisions interact, and what principles should guide their application.[9] It is not an empirical study of police files, prosecution decisions, court judgments, autopsy records, or interviews. Accordingly, references to patterns of filicide and child-maltreatment fatalities are used as comparative scholarship, not as direct evidence of the prevalence or causal structure of child homicide in Indonesia.[10]

The primary legal materials comprise the 1945 Constitution of the Republic of Indonesia; Law No. 23 of 2002 on Child Protection as amended by Law No. 35 of 2014 and Law No. 17 of 2016; Law

[5] Clare McGlynn and Nicole Westmarland, "Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice," *Social & Legal Studies* 28, no. 2 (2019): 179–201, https://doi.org/10.1177/0964663918761200.

[6] McGlynn and Westmarland.

[7] McGlynn and Westmarland.

[8] Burhanudin Burhanudin, "Chemical Castration Punishment Sanctions for Pedophilia Perpetrators in Indonesia," *Jurnal Cita Hukum* 11, no. 3 (2023): 375–402, https://doi.org/10.15408/jch.v11i3.36025.

[9] Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2009).

[10] Reza Banakar and Max Travers, eds., *Theory and Method in Socio-Legal Research* (Oxford: Hart Publishing, 2005).

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No. 1 of 2023 on the Criminal Code; Law No. 31 of 2014 on the Protection of Witnesses and Victims; Government Regulation No. 70 of 2020; and the Convention on the Rights of the Child. These materials are examined in their historical sequence and in light of the transition to the new Criminal Code. The statutory analysis focuses on the elements, protected interests, and sanctions of the provisions relevant to homicide, violence against children, specified sexual offences, and procedural protection.[11]

Secondary materials consist of peer-reviewed journal articles published from 2016 to 2026, together with relevant legal scholarship. The literature was selected for its direct relevance to one or more of the following themes: filicide and child homicide; child-maltreatment fatality review and prevention; forensic investigation; child witnesses and trauma-informed procedure; victim-centred justice; and Indonesian criminal policy concerning chemical castration.[12] The selection is purposive rather than a systematic review, and it does not purport to exhaust all literature on child protection. The 20-plus recent journal articles are used to identify convergences, tensions, and comparative insights, not to transfer foreign legal conclusions mechanically into Indonesian law.

The analytical procedure has four stages. First, the statutory approach identifies the applicable legal provisions and their temporal operation. Second, the conceptual approach tests the use of lex specialis, legality, proportionality, culpability, the best-interests principle, and the distinction between punishment and preventive or rehabilitative measures. Third, the comparative literature is synthesised to assess what is known about filicide risk, institutional failures, forensic proof, and child-witness safeguards. Fourth, a prescriptive analysis develops a coherent policy model that links offence qualification with evidence, sentencing, protection, and prevention.[13] The main limitation is the absence of case-level Indonesian data; therefore, conclusions about enforcement effectiveness are normative and institutional rather than statistical.[14]

RESULTS AND DISCUSSION

A. Child homicide as a differentiated legal and social phenomenon

The term child homicide describes the unlawful killing of a person under eighteen, but it should not be treated as a single explanatory category. Filicide refers more specifically to killing by a parent or parental figure, while infanticide and neonaticide are used in the literature for particular forms of killing involving infants or newborns. These categories are analytically useful because they direct attention to differences in perpetrator relationship, victim age, and context. They are not, however,

[11] Mark Van Hoecke, ed., *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011).

[12] Nasrullah Nasrullah, "Implementing Chemical Castration Punishment: A Perspective on Criminal Law and Human Rights," *SIGn Jurnal Hukum* 4, no. 2 (2023): 402–13, https://doi.org/10.37276/sjh.v4i2.282.

[13] Wafda Vivid Izziyana and Rahmat Dwi Putranto, *METODE PENELITIAN SOCIO-LEGAL DI INDONESIA*, n.d.

[14] Mike McConville and Wing Hong Chui, eds., *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007).

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interchangeable with Indonesian statutory offences. The legal classification must remain tied to the elements of the applicable law.[15]

Recent comparative research illustrates the heterogeneity. A study of filicide in Hong Kong examined 81 cases over fifteen years and considered differences between maternal and paternal perpetrators, associated mental illness, and criminal responsibility.[16] A comparative study in Turkey similarly analysed differences in paternal and maternal filicide, including clinical, socio-demographic, and incident characteristics.[17] A case-control study of 90 mothers compared women who committed filicide with postpartum comparison groups, drawing attention to the need to assess psychiatric and social context carefully rather than presuming a single motive.[18] A 2026 United States study using 3,974 reported incidents further separated neonaticide, infanticide, child filicide, and adult filicide, demonstrating that age-specific patterns matter for prevention.[19]

These studies do not establish that the same patterns occur in Indonesia. Their relevance is methodological: they caution against a one-dimensional model of the offender and show why judicial reasoning should distinguish intentional violence, concealment, neglect, psychiatric crisis, and sexual violence where the evidence supports such distinctions. Mental illness should neither be presumed from the fact of maternal or parental involvement nor used as a blanket excuse. It requires individual clinical evidence and a legal assessment of capacity, intent, and culpability under the applicable law. The social context also matters. A large population-based study in South Australia found that children with documented child-protection concerns had higher adjusted mortality rates than children without such contact.[20] The study does not prove that prior institutional contact causes death, but it supports a policy insight: the existence of warning signs and prior reports should trigger coordinated assessment rather than fragmented administrative responses. A review of child-maltreatment fatality

[15] M Moen and C Bezuidenhout, "Killing Your Children to Hurt Your Partner: A South African Perspective on the Motivations for Revenge Filicide," *Journal of Investigative Psychology and Offender Profiling* 20, no. 1 (2023): 33–47, https://doi.org/10.1002/jip.1603.

[16] McGlynn and Westmarland, "Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice."

[17] Tuba Özcanlı et al., "Patterns in Paternal and Maternal Filicide: A Comparative Analysis of Filicide Cases in Turkey," *Journal of Forensic Sciences* 69, no. 6 (2024): 2110–19, https://doi.org/10.1111/1556-4029.15625.

[18] Alessandra Bramante and Arianna Di Florio, "A Case-Control Study of Filicide/Infanticide in 90 Mothers," *Archives of Women's Mental Health* 28, no. 3 (2025): 415–21, https://doi.org/10.1007/s00737-023-01401-5.

[19] Jeffrey A Walsh, Jessie L Krienert, and Ema Voksic, "Innocence Interrupted: A 25-Year Study of Reported Filicide Incidents in the United States, 1999 to 2023," *Journal of Interpersonal Violence* 41, no. 19–20 (2026): 7902–22, https://doi.org/10.1177/08862605261444011.

[20] Segal et al., "Association of Child Maltreatment With Risk of Death During Childhood in South Australia."

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review systems likewise emphasises the importance of examining circumstances and institutional processes after a child's death to identify prevention opportunities.[21]

The socio-legal implication is that child homicide must be understood at two levels. At the individual level, the state must investigate and prove the conduct of the accused. At the institutional level, it must ask whether family, health, education, social-service, and community systems recognised and responded to warning signs. Criminal adjudication cannot replace the latter task. A conviction may establish responsibility for a particular death, but it does not automatically reveal how a preventable risk was missed or how future harm can be avoided.

For legal-policy purposes, the distinction between a descriptive category and a legal element is crucial. "Filicide" may describe the relationship between the victim and perpetrator, but it does not by itself establish whether the killing was intentional, premeditated, caused by an act of violence, or committed under a special circumstance recognised by statute. The same event may be described socially as filicide and legally require proof of a specific offence. Keeping these levels separate prevents clinical or sociological descriptions from replacing the prosecution's burden to prove each element of the offence. It also prevents the opposite error: reducing a complex child-protection failure to the individual criminal liability of one person alone.

The comparative studies should therefore be used as analytical lenses, not as direct templates for Indonesian policy. The Hong Kong and Turkish studies suggest that perpetrator relationship, gender, mental-health history, and the circumstances surrounding the death may be relevant variables for case review. The South Australian population study, meanwhile, indicates that prior child-protection contact can be an important signal for examining service responses. These findings do not justify profiling parents or treating prior contact as proof of future violence. They support a more modest and defensible proposition: risk assessment should be individualised, evidence-based, periodically reviewed, and connected to practical support rather than automatic punitive intervention. 222324
This distinction also clarifies the role of mental-health evidence. In some cases, a mental disorder may be relevant to the accused's capacity, intent, or responsibility; in others, it may be unrelated to the fatal act. A diagnosis cannot be inferred from the relationship between the accused and the child, from the gender of the perpetrator, or from the apparent irrationality of the act. Courts should require qualified assessment and should state precisely what legal issue the expert evidence addresses. At the same time, mental-health services should be integrated into prevention pathways where a child's

[21] James E McCarroll et al., "Child Maltreatment Fatality Review: Purposes, Processes, Outcomes, and Challenges," *Trauma, Violence, & Abuse* 22, no. 5 (2021): 1032–41, https://doi.org/10.1177/1524838019900559.

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safety may be affected by an acute crisis. The dual concern is to avoid both stigmatisation of mental illness and neglect of genuine risk to children.[25]

Under the former KUHP, Article 338 addressed intentional killing, while Article 340 addressed murder committed with premeditation. Articles 341 and 342 provided distinct offences concerning a mother who kills a child at or shortly after birth under the specified circumstances. Those provisions should be applied according to their elements, including intent, planning, the identity and status of the perpetrator, and the circumstances of birth. A child's age or vulnerability is morally and legally significant, but it does not remove the need to establish the elements of the charged offence.

Article 76C of Law No. 35 of 2014 prohibits any person from placing, allowing, committing, ordering, or participating in violence against a child. Article 80(3) prescribes a maximum of fifteen years' imprisonment and a maximum fine of three billion rupiah where the violence results in the child's death. Article 80(4) provides a one-third increase where the offender is a parent, guardian, child caregiver, or educator.[26] These provisions are important because they recognise the particular duty of care owed to children and aggravate liability where the person entrusted with protection commits or participates in the violence.

The special-law argument nevertheless requires precision. Article 80(3) is not simply a more severe version of every homicide offence involving a child. Its application requires proof of violence within the meaning of Article 76C and a causal relationship between that violence and the child's death. Where the facts establish intentional killing but do not fit the statutory elements of Article 76C, the general homicide provisions may remain relevant. Where both legal descriptions are plausibly engaged, the prosecutor and court must explain the relationship between the elements, the protected legal interests, and the rules governing concurrence or special provisions. Lex specialis is therefore a conclusion reached after comparing the provisions, not an automatic instruction to charge Article 80 in every case.

The same caution applies to Law No. 17 of 2016. The 2016 amendment strengthened the response to specified sexual offences against children. Chemical castration and electronic detection are not general consequences of any child's death. The statutory measures are attached to defined sexual offences and conditions, including the provisions concerning sexual intercourse or obscene acts against children. Article 81A provides that chemical castration is imposed for a maximum period of two years, is implemented after the principal sentence, is subject to periodic supervision, and is accompanied by rehabilitation.[27] Government Regulation No. 70 of 2020 sets out the implementation framework.[28] Thus, if a child is killed in the course of a sexual offence, the prosecution must establish

[25] Claire Hayes, Alison Hansen, and Louise Alexander, "Understanding Filicide Risk: A Scoping Review to Inform Mental Health Nursing Practice," *International Journal of Mental Health Nursing* 34, no. 6 (2025): e70155, https://doi.org/10.1111/inm.70155.

[26] Indonesia, Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection.

[27] Indonesia, "Law No. 17 of 2016 Concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection" (2016).

[28] Indonesia, "Government Regulation No. 70 of 2020 Concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children" (2020).

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the elements of both the fatal violence and the relevant sexual offence before seeking the corresponding sanctions or measures.

A further doctrinal correction concerns the claim that Law No. 17 of 2016 itself makes the death penalty or life imprisonment available for all child murders. That is too broad. The penalties for homicide and the penalties for specified sexual offences must be kept analytically separate. The Child Protection Law's Article 80(3) sets a maximum fifteen-year prison term and a fine for violence resulting in death; its parental/caregiver aggravation is in Article 80(4). The more severe penalties and additional measures associated with Law No. 17 of 2016 attach to particular sexual offences, not to homicide in the abstract. The indictment must therefore avoid treating the policy rationale of the 2016 reform as a substitute for statutory language.

For offences committed before 2 January 2026, the former KUHP and the relevant child-protection provisions form the historical starting point. For conduct committed on or after that date, Law No. 1 of 2023 is the operative general Criminal Code, subject to amendments and transitional rules. The new Code regulates intentional killing and premeditated killing in its homicide provisions, including Articles 458 and 459, while Article 3 addresses changes in criminal legislation and the application of a subsequent law that is more favourable to the accused.29 Because Law No. 1 of 2023 came into force on 2 January 2026, an analysis of 2016 events must not retroactively assume that the new Code governed the conduct. The court must assess the relevant time of the offence and apply the applicable temporal rule, including any more favourable subsequent provision where legally required.[30]

This temporal distinction is not a technical footnote. It is part of the principle of legality. A policy reconstruction that ignores the commencement of the new Code risks creating uncertainty about the applicable offence and penalty. The correct sequence is: identify the date of conduct; determine the law then in force; identify any subsequent legal change; apply the statutory rule on a more favourable law; and only then determine the charge and sentence. That sequence is more reliable than a broad assertion that one statute always displaces another.

A disciplined application of lex specialis requires a structured comparison. The court should first identify the conduct alleged, including the act or omission, the victim's age, the causal link to death, and the mental element alleged. It should then compare the constituent elements and protected interests of the general homicide offence with those of Article 76C jo. Article 80. Finally, it should determine whether the special provision fully captures the conduct or whether the facts disclose distinct offences or a legally recognised concurrence. This method avoids using the label "special law" as a shortcut. It also guards against an overly broad interpretation that would extend criminal liability by analogy, contrary to the principle of legality.

The causal element deserves particular attention. Where Article 80(3) is charged, the prosecution must establish not merely that a child died and that violence occurred, but that the violence resulted in the death. In a case involving multiple injuries, delayed medical treatment, prior illness, or more than one possible cause, the evidentiary record must explain the medically relevant causal sequence.

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[29] Indonesia, Law No. 1 of 2023 concerning the Criminal Code, arts. 3, 458, and 459; Indonesia, Law No. 1 of 2026 concerning Criminal Adjustments.

[30] Sapto Hermawan and Supid Arso Hananto, "Contestation of Chemical Castration Punishment for Child Sex Offenders: Case in Indonesia," *UUM Journal of Legal Studies* 13, no. 2 (2022): 25–49, https://doi.org/10.32890/uumjls2022.13.2.2.

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A court should distinguish the medical cause of death from the legal attribution of that death to the accused's conduct. This is especially important where the accused is alleged to have allowed or failed to prevent violence: the prosecution must identify the relevant legal duty, the conduct constituting the breach, and the basis for attributing the fatal result under the applicable offence.[31]

The statutory status of the perpetrator must also be proved rather than presumed. Article 80(4) identifies specified relationships, including parent, guardian, caregiver, and educator, as grounds for a one-third increase. The rationale is the heightened duty of protection associated with those roles. However, the aggravation should not be extended to every person who happens to be close to the child. The court should make findings about the person's actual legal or factual status and explain why that status falls within the statutory wording. This preserves the legislature's chosen boundary while recognising the seriousness of abuse by a person entrusted with the child's care.

Temporal application should be treated as a separate step in the reasoning, not buried in a general statement about current law. For each case, the judgment should identify the date or period of the alleged conduct, the law then in force, the date on which any later law commenced, and whether the subsequent law is more favourable to the accused. The 2026 commencement of the new Criminal Code does not authorise retroactive application of a harsher offence or penalty to earlier conduct. Equally, the court should not assume that every later provision is more favourable; that assessment must be made concretely and in accordance with the statutory transitional rule.[32]

The 2016 reform can be understood as an expression of penal escalation: the legislature responded to public alarm by increasing the severity and range of sanctions for specified sexual offences against children. Yet the legitimacy of such a response depends on whether the sanction is legally precise, proportionate to culpability, and capable of achieving its stated purpose. Theories of criminal-law legitimacy warn that penal systems may experience performance crises when statutes promise more than enforcement institutions can deliver, or when severe penalties are applied selectively or opaquely.[33] In this sense, a harsh sanction may communicate condemnation but still fail as a preventive policy if detection, investigation, and institutional coordination remain weak.[34]

The Indonesian debate on chemical castration illustrates this tension. Heathcote examines the measure through the prohibition of cruel, inhuman, or degrading treatment and argues that human-rights limitations require careful justification.[35] Hermawan and Hananto analyse the contestation surrounding chemical castration in Indonesia and show that the issue is debated in both theoretical

[31] Heru Setiawan Pradana, "A Discourse of Chemical Castration Punishment: How We Protect Our Children from the Rapist?," *Journal of Law and Legal Reform* 2, no. 2 (2021): 263–70, https://doi.org/10.15294/jllr.v2i2.43072.

[32] Indonesia, Law No. 1 of 2023 concerning the Criminal Code.

[33] Alessandro Corda, "The Legitimacy of Criminal Law and the Performance Crises of Penality," *Criminal Law Forum* 36 (2025): 351–80, https://doi.org/10.1007/s10609-025-09509-2.

[34] Sara Giacco, "Filicide by Mentally Ill Maternal Perpetrators: A Longitudinal, Retrospective Study over 30 Years in a Single Northern Italy Psychiatric-Forensic Facility," *Archives of Women's Mental Health* 26, no. 1 (2023): 153–65, https://doi.org/10.1007/s00737-023-01303-6.

[35] Louisa Elsie Heathcote, "Chemical Castration in Indonesia: Limiting an Absolute Human Right," *IKAT: The Indonesian Journal of Southeast Asian Studies* 3, no. 2 (2020): 201–16, https://doi.org/10.22146/ikat.v3i2.52282.

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and practical terms.[36] Hardianti and Rusdiana examine the conditions for implementing a judicial decision imposing chemical castration and the institutional role of medical professionals.[37] Other Indonesian scholarship identifies tensions between the human-rights framework, rehabilitation, and the practical implementation of the measure.38 A 2026 analysis of implementation barriers also highlights the ambiguity between punishment and treatment, as well as medical-ethical obstacles.[39]
These debates concern sexual offences, not child homicide as such. Their relevance to this article is that they demonstrate the need to distinguish principal penalties from measures, and to assess the conditions under which a measure may lawfully be imposed. Chemical castration should not be presented as an automatic add-on to a homicide conviction. It may be relevant only where the facts and statutory requirements for the specified sexual offence are established. Electronic monitoring likewise requires an explicit statutory basis and compliance with the applicable implementation rules. Proportionality requires more than selecting the maximum available penalty. It requires a reasoned relationship between the gravity of the conduct, the offender's culpability, the harm caused, aggravating and mitigating circumstances, and the legitimate purposes of punishment. Where the perpetrator is a parent or caregiver, the breach of a special duty of protection may justify the statutory aggravation. But the one-third increase in Article 80(4) should be applied only when the offender falls within the statutory categories and the offence under Article 80 is established. The aggravation cannot be extended by analogy to persons outside the provision.

The distinction between culpability and risk is also important. A psychiatric diagnosis does not itself establish lack of criminal responsibility; nor does it prove future dangerousness. The court should rely on competent expert assessment where mental condition is legally relevant, while preserving the distinction between clinical evidence and the court's ultimate legal judgment. The literature on maternal filicide underscores the heterogeneity of cases and the need for individual assessment.[40] A sound sentencing framework can recognise mental disorder where proved without erasing the child's status as a victim or the state's duty to protect other children.[41]
Accordingly, the more defensible policy is not maximum punishment in every case, but a calibrated response. Serious intentional homicide should attract the punishment provided by the applicable homicide law. Violence against a child resulting in death should be charged under the special child-

[36] Heathcote.

[37] Firda Yanis Hardianti and Emmilia Rusdiana, "Imposing Additional Criminal Sanction of Chemical Castration against Child Sexual Violence Perpetrators," *Indonesian Journal of Criminal Law Studies* 7, no. 1 (2022): 77–98, https://doi.org/10.15294/ijcls.v7i1.38375.

[38] Sri Dewi Rahayu Kusumawati and Gatoet Poernomo, "Chemical Castration in Indonesian Criminal Law: Human Rights Perspective," Indonesian Journal of Innovation Studies 25, no. 1 (2024), https://doi.org/10.21070/ijins.v26i1.991.

[39] Isditta Chaula Liani and Rasdi, "The Application of Chemical Castration Punishment to Child Sexual Violence Perpetrators from the Perspective of Indonesian Criminal Law," *Law Research Review Quarterly* 12, no. 2 (2026): 1107–34, https://doi.org/10.15294/lrrq.v12i2.45588.

[40] Bramante and Di Florio, "A Case-Control Study of Filicide/Infanticide in 90 Mothers."

[41] Hendrik Hermawan and Bayu Dwi Anggono, "Chemical Castration as an Additional Punishment for Perpetrators of Sexual Violence against Children in Indonesia," *Jurnal Penelitian Hukum De Jure* 20, no. 2 (2020): 237–48, https://doi.org/10.30641/dejure.2020.20.237-248.

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protection provision where its elements are satisfied. Sexual offences accompanying the death should be separately and accurately charged where proved, with additional measures considered only within their statutory scope. Rehabilitation, treatment, and post-release supervision must be grounded in law and individual assessment rather than used as symbolic extensions of punishment. The deterrence rationale should be assessed against the conditions required for deterrence to operate. A penalty can deter only if potential offenders perceive a meaningful likelihood of detection and enforcement, and if the prohibition is sufficiently clear to guide conduct. Increasing the maximum sentence without improving reporting access, investigation quality, and case resolution may have limited preventive value. This does not mean that severe punishment is never justified. It means that severity is only one part of a credible criminal-law response and should not be confused with the overall effectiveness of the system. The legitimacy of penal policy depends on consistency between the legislature's stated objective and the institutions capable of implementing it.[42]

Proportionality also has an institutional dimension. A sentencing court should explain why the selected sentence is appropriate to the proven conduct and culpability, rather than merely repeat that the victim was a child or that the offence caused public outrage. The child's age, the offender's relationship of trust, the degree of violence, planning, concealment, exploitation, and the consequences for surviving family members may be relevant insofar as they are connected to statutory sentencing principles and are supported by evidence. Mitigating circumstances should be assessed with equal care, without diminishing the harm suffered by the child. Transparent reasons make sentencing more predictable and allow appellate review to focus on legal reasoning rather than public pressure.

The chemical-castration debate demonstrates why the distinction between punishment, treatment, and risk management matters. A measure described as medical or rehabilitative may still have a substantial bodily impact and therefore requires a clear legal basis, procedural safeguards, and competent medical oversight. Conversely, describing every measure as punishment may obscure its statutory purpose and implementation conditions. The Indonesian literature identifies unresolved tensions concerning human rights, medical ethics, rehabilitation, and the role of health professionals. These tensions should be confronted openly; they cannot be resolved by invoking deterrence in the abstract.[43]

A coherent sentencing policy should consequently adopt a "fit-for-offence" approach. The court should impose the penalty authorised for the offence actually proved; apply statutory aggravations only when their conditions are satisfied; and consider additional measures only where the relevant separate offence and legal prerequisites are established. Any rehabilitative or supervisory intervention should be based on an individual assessment and should be monitored for legality,

[42] Mandy Truong et al., "Domestic/Family Homicide: A Systematic Review of Empirical Evidence," *Trauma, Violence, & Abuse* 24, no. 3 (2023): 1956–74, https://doi.org/10.1177/15248380221082084.

[43] Kallirroi Fragkou, "From Fragile Lives to Forensic Truth: Multimodal Forensic Approaches to Pediatric Homicide and Suspect Death," *Diagnostics* 15, no. 11 (2025): 1383, https://doi.org/10.3390/diagnostics15111383.

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necessity, and effectiveness.[44] This approach is more defensible than attaching every available severe measure to every case involving a child victim.

B. Forensic proof and child-sensitive criminal procedure

Child homicide frequently occurs in settings where there are no independent eyewitnesses. In such cases, forensic medicine can assist the court in determining the cause and manner of death, the nature and timing of injuries, and whether the physical findings are consistent with the account given by a suspect or caregiver. A review of multimodal forensic approaches to paediatric homicide emphasises the value of combining autopsy, scene examination, toxicology, imaging, and other relevant forensic disciplines.45 Research on postmortem computed tomography and forensic autopsy in child fatalities likewise examines how imaging may complement, rather than simply replace, conventional autopsy.[46] A reported case of concealed homicide in a sexually abused child illustrates the importance of integrating scene findings, autopsy, toxicology, and DNA evidence.[47]

These studies support a careful evidentiary principle: no single forensic finding should be treated as conclusive without considering the complete evidentiary record. A visum et repertum or autopsy report may explain the medical cause of death and document injuries, but the court must still evaluate the chain of custody, methods used, expert qualifications, consistency with other evidence, and the relationship between the medical findings and the legal elements. The medical expert assists the court; the expert does not determine criminal liability.

Surviving child or another child is a witness, procedural design must reduce avoidable trauma while preserving the reliability and fairness of testimony. Research on the Kids and Teens in Court programme found that structured preparation for child witnesses can reduce court-related anxiety.[48] This supports a broader trauma-informed approach: age-appropriate explanations, trained interviewers, avoidance of repeated interviews, safe waiting arrangements, and appropriate use of remote or recorded testimony where permitted by law. Such safeguards should not be understood as concessions that weaken the defence; they are procedural arrangements that enable a child to give evidence in a manner consistent with developmental needs and fair-trial guarantees.[49]

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[44] Phillip J Resnick, "Revenge Filicide: An International Perspective through 62 Cases," *Behavioral Sciences & the Law* 39, no. 2 (2021): 205–15, https://doi.org/10.1002/bsl.2505.

[45] Kallirroi Fragkou et al., "From Fragile Lives to Forensic Truth: Multimodal Forensic Approaches to Pediatric Homicide and Suspect Death," Diagnostics 15, no. 11 (2025): 1383, https://doi.org/10.3390/diagnostics15111383.

[46] dkk Junaidi Lubis, "Peran Komisi Pengawas Persaingan Usaha (KPPU) Dalam Mencegah Kartel Di Pasar Digital," *Jurnal Ilmu Hukum* 1, no. April (2025): 8–15.

[47] Thato M Patlakwe, Arthur Saniotis, and Nale Mvula, "Concealed Homicide in a Sexually Abused Child," *Academic Forensic Pathology* 15, no. 1 (2025): 49–53, https://doi.org/10.1177/19253621241297419.

[48] Leslie Peterson et al., "Kids and Teens in Court (KTIC): A Model for Preparing Child Witnesses for Court," *American Journal of Community Psychology* 65, no. 1–2 (2020): 35–43, https://doi.org/10.1002/ajcp.12390.

[49] Sri Dewi Rahayu Kusumawati and Gatoet Poernomo, "Chemical Castration in Indonesian Criminal Law: Human Rights Perspective," *Indonesian Journal of Innovation Studies* 25, no. 1 (2024), https://doi.org/10.21070/ijins.v26i1.991.

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Law No. 31 of 2014 on the Protection of Witnesses and Victims provides a domestic framework for witness and victim protection. In child cases, the best-interests principle should guide the choice of protective arrangements, while the accused retains the right to challenge evidence through procedures compatible with due process. The experience of victim-survivors also suggests that justice includes dignity, recognition, voice, prevention, and connectedness, not merely a punitive outcome.[50] Although that research concerns sexual-violence survivors rather than homicide victims specifically, its conceptual insight is relevant to families and surviving children affected by lethal violence.

A child-sensitive process should therefore be coordinated from the first report through investigation, prosecution, trial, and post-trial support. Police, prosecutors, forensic practitioners, child-protection services, health professionals, and the Witness and Victim Protection Agency should have clear referral and information-sharing protocols. Coordination must be designed with privacy safeguards and role clarity; otherwise, the child may be repeatedly required to recount traumatic events to multiple institutions. The measure of success is not simply the number of severe sentences imposed, but whether the process produces reliable findings while preventing further harm to children.

Forensic evidence is most persuasive when it is integrated rather than treated as a standalone answer. Autopsy findings, scene reconstruction, toxicology, medical records, imaging, and digital or biological traces may each answer different questions. The investigator should formulate a clear chronology: the child's condition before the event, the alleged incident, the onset of symptoms, any treatment, and the time and circumstances of death. Where there is a delay between injury and death, expert evidence should explain whether the delay, intervening treatment, or another condition affects the causal analysis. The court should be alert to the limits of retrospective medical inference and should not convert an expert's probability assessment into certainty beyond what the method supports.[51]

The integrity of forensic evidence depends on procedural safeguards from collection to presentation. Investigators should document the scene, photograph and preserve relevant materials, record who collected and handled each item, and maintain a verifiable chain of custody. Expert reports should disclose the method used, its limitations, and any competing explanation considered. Where specialists disagree, the judgment should address the disagreement rather than select one conclusion without reasons. These requirements protect both the child's interest in an accurate investigation and the accused's right to challenge evidence. Reliability and fairness are mutually reinforcing conditions of a legitimate conviction.

Child-sensitive interviewing requires similar discipline. Repeated questioning by different agencies can create distress and may affect the consistency of a child's account. A coordinated interview protocol should identify the purpose of each interview, use developmentally appropriate language, avoid leading or suggestive questions, and record the process where the law permits. Preparation programmes for child witnesses show that structured support can reduce anxiety

[50] McGlynn and Westmarland, "Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice."

[51] Nasrullah, "Implementing Chemical Castration Punishment: A Perspective on Criminal Law and Human Rights."

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associated with court participation. Such preparation must explain the process without coaching the substance of testimony. [52]

The family of a child who has died may also require protection and support. Parents, siblings, and other relatives can be witnesses, affected persons, or both. Their need for information and assistance should be addressed without allowing grief or public pressure to determine the evidentiary outcome. A victim-centred approach means timely information, respectful treatment, access to available support, and protection against intimidation or unnecessary exposure. It does not remove the prosecutor's obligation to prove the case or the court's duty to remain impartial. The concept of justice as recognition, voice, dignity, and prevention offers a useful framework for understanding these obligations.

A criminal justice response begins after an offence is suspected. A child-protection system, by contrast, must act before violence becomes fatal. Comparative research on child-maltreatment fatalities supports the value of reviewing patterns of prior contact and institutional response. The literature on filicide risk also points to the intersection of family dysfunction, mental-health concerns, and psychosocial stressors, while cautioning against simplistic risk profiles. The implication for Indonesia is not to criminalise family distress or mental illness, but to create accessible, non-stigmatising routes for support and assessment.

At community level, early reporting mechanisms should be linked to professional assessment rather than left solely to informal neighbourhood monitoring. RT/RW institutions may help identify visible concerns and connect families with services, but they should not be expected to diagnose psychiatric conditions, investigate allegations, or determine criminal liability. Local reporting should feed into a coordinated system involving social workers, health facilities, schools, local government, and law enforcement when the threshold for intervention is met. The purpose is to detect and respond to risk without turning community surveillance into arbitrary intrusion into family life.

A prevention-oriented model has at least four components. First, accessible family and mental-health support should be available during pregnancy, the postpartum period, and periods of acute family crisis. Second, professionals who work with children should be trained to recognise indicators of abuse and to report concerns through safe channels. Third, child-protection agencies should maintain clear procedures for assessing repeat reports and escalating cases where danger is immediate. Fourth, fatality reviews should identify institutional and systemic lessons while protecting the privacy and dignity of the child and family. These measures complement, rather than replace, criminal prosecution.

The socio-legal perspective is essential because legal rules operate through institutions and social relationships. Scholarship on socio-legal research warns against treating law as an isolated text detached from historical and political context.[53] Constitutional and global legal scholarship similarly encourages analysis of the relationships among state authority, institutions, and rights. [54] For

[52] Burhanudin, "Chemical Castration Punishment Sanctions for Pedophilia Perpetrators in Indonesia."

[53] John Harrington and Ambreena Manji, "The Limits of Socio-Legal Radicalism: Social and Legal Studies and Third World Scholarship," *Social & Legal Studies* 26, no. 6 (2017): 700–715, https://doi.org/10.1177/0964663917729874.

[54] James Tully et al., "Introducing a Global Integral Constitutionalism," *Global Constitutionalism* 5, no. 1 (2016): 1–15, https://doi.org/10.1017/S2045381715000210.

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Indonesia, this means that the effectiveness of child-protection law should be assessed through the interaction of legislation, institutional capacity, community trust, and access to services. A severe statutory penalty cannot compensate for an inaccessible reporting system, inadequate forensic capacity, or fragmented protection services.

The reconstructed policy proposed here is therefore a dual-track model. The first track is adjudicative: accurate offence qualification, proof beyond reasonable doubt, proportionate punishment, and lawful application of any additional measures. The second track is preventive and protective: early intervention, multidisciplinary assessment, child-sensitive procedures, institutional learning, and sustained support for affected children and families. The tracks are connected but not interchangeable. Preventive services do not determine guilt, and a criminal sentence does not discharge the state's continuing responsibility to protect children.

A prevention system should distinguish universal services from targeted intervention. Universal measures include parenting support, accessible health care, public information about child safety, and training for professionals who regularly encounter children. Targeted measures are appropriate where there are credible indicators of immediate or recurring danger and should involve an individual assessment of the child's circumstances. This graduated model reduces the risk that families experiencing poverty, disability, or mental-health difficulties will be treated as inherently dangerous. It also ensures that intervention is proportionate to the level of risk and focused on the child's safety rather than on moral judgement of the family.[55]

Inter-agency coordination requires clear allocation of responsibility. Schools and health facilities may identify warning signs; social services may assess family needs and coordinate support; child-protection authorities may determine protective interventions; and law enforcement should investigate suspected criminal conduct. Information-sharing protocols should specify the legal basis, purpose, minimum necessary information, access controls, and accountability for disclosure. Without such rules, agencies may either fail to share critical information or disclose sensitive family information too broadly. Both outcomes can undermine trust and child safety.

Fatality review should be understood as a learning mechanism rather than a second criminal trial. Its purpose is to identify patterns in service contact, communication, decision-making, and missed opportunities that may inform prevention. It should not predetermine criminal responsibility, disclose protected information unnecessarily, or replace judicial fact-finding. Comparative scholarship on fatality review emphasises both the potential value of systematic examination and the practical challenges of implementation. Indonesia could adapt this approach through multidisciplinary review procedures with clear confidentiality safeguards and published, anonymised recommendations.

Implementation should be evaluated through measurable process and outcome indicators. Relevant indicators may include the time between a report and initial assessment, the proportion of high-risk cases receiving a coordinated plan, the availability of trained child interviewers, the timeliness of forensic examination, and the completion of follow-up support. These indicators should be interpreted carefully: a rise in reports may reflect improved detection rather than increased

[55] Alyssa Frederique et al., "Maternal Filicide: A Review of Psychological and External Demographic Risk Factors," *Journal of Aggression, Maltreatment & Trauma* 32, no. 1–2 (2023): 34–52, https://doi.org/10.1080/10926771.2022.2114394.

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underlying violence, while a low number of recorded cases may reflect under-reporting. Evaluation therefore requires transparent definitions, disaggregated data where appropriate, and safeguards against treating numerical targets as a substitute for professional judgement.[56]

The dual-track model also has implications for institutional accountability. When a child dies after prior reports or contact with public services, review should ask whether information was available, whether it was shared lawfully, whether the risk assessment was reasonable, and whether the response was timely and appropriate. The purpose is not to assign blame automatically to frontline workers but to identify systemic barriers such as inadequate staffing, unclear mandates, lack of specialist services, or weak referral pathways. A learning-oriented system can improve practice while preserving individual accountability where negligence or misconduct is independently established.[57]

CONCLUSION

This article has argued that child homicide in Indonesia should be addressed through a legally precise and institutionally integrated policy rather than through undifferentiated penal escalation. The relationship between the general homicide provisions and Article 76C in conjunction with Article 80 of the Child Protection Law must be resolved by comparing statutory elements and the facts proved. The lex specialis principle is relevant where the special provision governs the conduct in question, but it cannot be invoked mechanically to displace every homicide provision involving a child.

The article has also clarified the scope of the 2016 reform. The aggravated sanctions and measures introduced by Law No. 17 of 2016, including chemical castration and electronic monitoring, are attached to specified sexual offences against children and must not be represented as generally applicable to all child homicide cases. The one-third aggravation under Article 80(4) applies where the statutory relationship categories and the underlying Article 80 offence are established. For conduct assessed in 2026, the commencement of Law No. 1 of 2023 and the rules on temporal application and more favourable subsequent law must also be considered.

The theoretical contribution is a dual-track model of child-protection criminal policy. Its adjudicative track requires legality, reliable forensic proof, proportionate sentencing, and child-sensitive witness protection. Its preventive track requires accessible family support, coordinated reporting and risk assessment, institutional learning, and multidisciplinary child-protection governance. The model recognises that justice is not measured by sentence severity alone but by whether law protects life, secures fair adjudication, prevents recurrence, and respects the dignity and best interests of children.

This study is limited by its normative method and the absence of original case-file or interview data. Future research should examine Indonesian prosecution and sentencing decisions, the implementation of forensic and witness-protection safeguards, and the actual operation of local child-

[56] R Gupta, "Filicide in South Asia: Demography, Risk Factors, Psychiatric, and Legal Aspects," *Medicine, Science and the Law* 63, no. 2 (2023): 159–67, https://doi.org/10.1177/00258024221122248.

[57] Liani and Rasdi, "The Application of Chemical Castration Punishment to Child Sexual Violence Perpetrators from the Perspective of Indonesian Criminal Law."

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protection referral systems. Such empirical work would help determine whether the proposed model is reflected in institutional practice and where further legislative or administrative reform is required.

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