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Criminal Responsibility of Child Perpetrators in Crimes of Violence Against Victims in the Form of Imposing Restitution

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ABSTRACT
The absence of additional punishment in the form of restitution imposition on the defendant of the crime of sexual intercourse committed on a child and resulting in pregnancy in the Serang District Court Decision Number: 621/PID.SUS/2019/PN.Srg, certainly creates injustice and will have a direct impact on the child conceived by the victim, because the criminal liability of the defendant O.M.A.J. is no different from the criminal liability of the perpetrator whose actions do not result in pregnancy in the victim's child. The problems in this study are how the imposition of restitution as the responsibility of the perpetrator of sexual intercourse with a child that results in pregnancy, and how criminal law policy regulates the responsibility of the perpetrator of sexual intercourse with a child that results in pregnancy. The method used is normative juridical, using secondary data sources. Data collection techniques by means of documentation studies, and all data collected are analyzed qualitatively. The results of the research show: 1) The imposition of restitution as the responsibility of the perpetrator of sexual intercourse with a child resulting in pregnancy has not been fulfilled in Serang District Court Decision Number: 621/PID.SUS/2019/PN.Srg, where the defendant was sentenced to 10 years imprisonment and a fine of Rp60,000,000, without any additional punishment in the form of imposition of restitution or compensation to the child victim. This is contrary to Article 7 of the Law on Witness and Victim Protection, as well as Article 4 of Supreme Court Regulation Number 1 Year 2022, which states that victims are entitled to restitution; 2) Criminal law policy in regulating the responsibility of perpetrators of sexual intercourse with children resulting in pregnancy has not fulfilled the principle of justice for victims, because the verdict imposed on the defendant in Decision Number: 621/Pid.Sus/2019/PN.Srg did not consider the consequences caused by the defendant's actions which resulted in pregnancy for the victim's child.

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INTRODUCTION

Indonesia is a country based on law, as stated in Article 1 number 3 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 UUDNRI). Indonesia as a country based on law has a major role in creating conducive conditions for the growth and development of children in the context of protection. The protection provided by the state to

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children covers various aspects of life, especially as regulated in Article 28B paragraph (2) of the 1945 UUDNRI, that every child has the right to survival, growth and development and the right to protection from violence and discrimination. However, the development of society in this era of globalization has an impact on the survival, growth and development of children, especially with the rise in criminal acts against morality which have caused concern for society.

The definition of a child is based on Article 1 number 1 of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which was then amended again to Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, which was amended again to 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 to Become Law, which confirms that a child is a person who is not yet 18 (eighteen) years old, including children who are still in the womb.

One of the most common crimes against morality is sexual intercourse with a child, which violates norms of decency, religion, and morality. This is especially true when committed by a teacher, who is supposed to impart knowledge by educating, teaching, training, and shaping the character of students, who are expected to become a quality generation. However, when a teacher fails to carry out their duties and functions properly, it can ultimately lead to the failure of students' character development.

According to data from the Indonesian Child Protection Commission (KPAI), in 2021, there were 859 cases of child sexual crimes recorded, while in 2022, there were 884 cases of child sexual crimes recorded. The three highest complaints were child victims of sexual abuse (400 cases), followed by child victims of rape/sexual intercourse (395 cases), and child victims of sexual abuse (25 cases).

The Indonesian Child Protection Commission (KPAI) assesses that 2021 was a very concerning period, due to the rampant sexual violence in educational units. KPAI recorded that there were at least 18 (eighteen) cases of sexual violence occurred in educational units. Tragically, teachers, who should have played the role of protectors in educational units, instead turned into sexual predators. Furthermore, according to KPAI Commissioner, Retno Listyarti, when talking about the perpetrators, teachers were the most frequent with 55.5% (fifty-five point five percent) or 10 people out of 18 cases. Next, principals were around 22.22% (twenty-two point twenty-two percent) or around 4 (four) people. But there were also other perpetrators such as caretakers at Islamic boarding schools, religious figures, and dormitory supervisors.

The majority of cases of sexual violence perpetrated by teachers occurred in boarding schools, totaling 12 (twelve) cases. Meanwhile, sexual violence against children in non-boarding schools was only 6 (six) cases, while the number of perpetrators in these 18 (eighteen) cases was 19 (nineteen) people. One case had two (2) perpetrators. All perpetrators were male. Meanwhile, the victims of sexual violence consisted of both boys and girls, with a total of 207 (two hundred and seven) children being victims, with a breakdown of 126 (one hundred and twenty-six) girls and 71 (seventy-one) boys. The methods used by

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the teachers were very diverse, ranging from luring victims with high grades, offering to play online games, asking for massages, making excuses that they must obey the teacher, to the pretext of genital therapy.

The case of the crime of sexual intercourse in the world of education between the perpetrator of the teacher and the victim of his students, can be seen from the case of the Serang District Court Decision Number: 619 / Pid.Sus / 2019 / PN.Srg, Decision Number: 620 / Pid.Sus / 2019 / PN.Srg, and Decision Number: 621 / PID.SUS / 2019 / PN.Srg. The three decisions are decisions with the same incident but different perpetrators and victims, namely consisting of 3 (three) perpetrators and 3 (three) victims. The three perpetrators were accused of committing violence or threats of violence, forcing children to have sexual intercourse with them or other people, carried out by parents, guardians, people who have family relationships, child caretakers, educators, and education personnel. For the actions of the three defendants, the three were sentenced based on Article 81 paragraph (2) of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection in conjunction with. Article 64 paragraph (1) of the Criminal Code, with a prison sentence of 10 (ten) years and a fine of Rp. 60,000,000.00 (sixty million rupiah) with the provision that if the fine is not paid it will be replaced with a prison sentence of 3 (three) months.

Decision Number: 619/Pid.Sus/2019/PN.Srg, with the defendant D.A., where in this decision the defendant was sentenced to 10 (ten) years in prison and a fine of Rp. 60,000,000.00 (sixty million rupiah). Then in Decision Number: 620/Pid.Sus/2019/PN.Srg, with the defendant named A.S., sentenced to 9 (nine) years in prison and a fine of Rp. 60,000,000.00 (sixty million rupiah). Both decisions are decisions against two defendants whose actions did not result in pregnancy in the victim's child. While in Decision Number: 621/PID.SUS/2019/PN.Srg, with the defendant named O.M.A.J. where the defendant's actions resulted in the victim's child becoming pregnant, the judge's considerations and the verdict were not much different from the verdict where the perpetrator's actions did not result in pregnancy, namely a prison sentence of 10 (ten) years and a fine of Rp. 60,000,000.00 (sixty million rupiah).

The actions of the defendant O.M.A.J. which resulted in the pregnancy of the victim's child with the actions of the other two defendants who did not result in the pregnancy of the victim's child should receive different sentences as a form of criminal responsibility for the pregnancy experienced by the victim's child. The consequences of their actions are also different, namely the actions of the defendant O.M.A.J. not only resulted in the pregnancy of the victim's child but also had an impact on the child the victim was carrying, so this creates injustice, because the criminal responsibility of the defendant O.M.A.J. is no different from the criminal responsibility of the perpetrator whose actions did not result in the pregnancy of the victim's child.

The absence of a difference in the criminal responsibility of the defendant O.M.A.J. imposed by the judge in the above case was partly because the judge did not consider the aggravating factors for the perpetrator which resulted in the victim's pregnancy. When viewed in the criminal regulations in Indonesia, there are rules governing criminal acts related to criminal acts which state the circumstances or factors that can influence criminal charges

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due to the victim's pregnancy in the case of Decision Number: 621/PID.SUS/2019/PN.Srg. This is as regulated in Article 4 point (1) Subchapter D of the Guidelines of the Attorney General of the Republic of Indonesia Number 3 of 2019 concerning Criminal Prosecution in General Criminal Cases, which states:

"Circumstances and Factors Influencing Criminal Charges:

(1) Filing criminal charges is carried out by considering:
   a. Aggravating circumstances; and
   b. Mitigating circumstances.
   c. Based on the facts of the trial.

(2) Aggravating circumstances as referred to in point (1) letter a consist of:
   a. Disturbing the stability and security of the state;
   b. Containing sentiment, discriminatory treatment, harassment, or the use of violence against individuals based on identity, ancestry, religion, nationality, ethnicity, or a particular group.
   c. The defendant does not regret their actions;
   d. Causing widespread unrest in the community;
   e. Causing losses to the state and/or community;
   f. Causing deep and prolonged suffering for the victim and their family;
   g. Destroying the younger generation;
   h. Committed in a sadistic manner;
   i. The defendant has enjoyed the proceeds of the crime; and/or
   j. Other aggravating circumstances of a casuistic nature based on trial facts or other considerations stipulated in legislation.

The aggravating circumstances in the criminal charges as referred to in point (1) letter a and point (2) letter d, e, f, g, and j above should be included in the aggravating charges against the defendant so that they can be taken into consideration by the judge in sentencing the defendant who has resulted in pregnancy for the victim, however the sentence imposed on the defendant does not have to be in the form of an increase in imprisonment, considering that the victim is pregnant and needs money, then the imposition of restitution on the defendant can be used as an alternative additional sentence for the defendant. If the defendant's sentence is increased by imprisonment, then the defendant cannot be responsible for the pregnant victim, because the defendant cannot earn an income that can be used to finance the needs of the pregnant victim until giving birth, so it can be said that until now there are no regulations that regulate the realization of justice for the victim's child who experiences pregnancy. Therefore, based on this, it is interesting to research and study in more depth in the form of a scientific work as a thesis entitled: Imposition of Restitution as the Responsibility of the Perpetrator of Sexual Intercourse Against Children That Result in Pregnancy.

Based on the background outlined above, the issues to be discussed are as follows: How is restitution imposed as the responsibility of perpetrators of sexual intercourse with children that results in pregnancy? And how does criminal law policy regulate the responsibility of perpetrators of sexual intercourse with children that results in pregnancy?

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Imposing Restitution as Responsibility for Perpetrators of Sexual Intercourse Against Children that Result in Pregnancy

Criminal liability, as previously described in Chapter II, is the defendant's responsibility for a crime committed, or it can also be said to be the continuation of objective blame that exists in the criminal act and subjectively fulfills the requirements for being punished for that act. The objective blame in question is that the act committed by the suspect/defendant is indeed a prohibited or unlawful act. Meanwhile, the subjective blame in question is referring to the suspect or defendant who committed the prohibited act.

Criminal responsibility in the case of the crime of sexual intercourse committed by a teacher against his/her student is the responsibility of the perpetrator, who is a teacher as a legal subject who has caused a criminal incident, namely sexual intercourse or indecent acts committed against his/her student and resulting in pregnancy for the student, so that the perpetrator is threatened with criminal penalties.

In the case of the crime of sexual intercourse committed by a teacher against his/her student, the sentence imposed on the defendant is increased by 1/3 (one third) of the criminal threat imposed on him/her, this is as stated in Article 81 paragraph (3) of the Child Protection Law, which states that if the crime as referred to in paragraph (1) is committed by a parent, guardian, child caretaker, educator, or education staff, the sentence is increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1). However, there are no further provisions regulated in the case of the crime of sexual intercourse committed by a teacher resulting in pregnancy in the victim's child.

The existence of a situation where the victim's child becomes pregnant as a result of the defendant's actions should not only focus on the defendant's punishment, but also on the welfare of the victim's child and the child the victim is carrying. The Child Protection Law, which only focuses on the threat of punishment for defendants who commit the crime of sexual intercourse with a child victim without regulating any form of protection focused on the welfare and future of the victim's child and the child she is carrying, certainly creates injustice because there is no direct responsibility from the defendant towards the victim's child and the child she is carrying. This ultimately results in the victim's child and the child she is carrying not receiving the legal protection they should.

The Child Protection Law should also regulate the form of legal protection that can be felt directly by the child victim who is pregnant as a result of the defendant's actions, where the punishment imposed on the defendant does not have to be in the form of an increased prison sentence, considering that the victim is pregnant and needs money, then the imposition of restitution on the defendant can be used as an alternative additional punishment for the defendant.

In the case of the criminal act of sexual intercourse between the perpetrator, a teacher, and a child victim, his student, resulting in pregnancy in the victim, it can be seen from the case of the Serang District Court Decision Number: 621/PID.SUS/2019/PN.Srg. The defendant was accused of committing violence or threats of violence, forcing a child to have sexual intercourse with him or another person, carried out by parents, guardians, people who have family relationships, child caretakers, educators, and education personnel, where the

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defendant's actions are based on Article 81 paragraph (2) of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 64 paragraph (1) of the Criminal Code, with a prison sentence of 10 (ten) years and a fine of IDR 60,000,000.00 (sixty million rupiah) with the provision that if the fine is not paid it will be replaced with a prison sentence of 3 (three) months.

However, the punishment given to the defendant named O.M.A.J. was not accompanied by the fulfillment of protection for the victim's child, where the result of the defendant's actions caused the victim's child to become pregnant. The punishment given by the judge was only a prison sentence of 10 (ten) years and a fine of Rp. 60,000,000.00 (sixty million rupiah).

The judge's considerations and the verdict are not much different from the verdict where the perpetrator's actions did not result in pregnancy, namely in the Serang District Court Decision Number: 619/Pid.Sus/2019/PN.Srg and the Serang District Court Decision Number: 620/Pid.Sus/2019/PN.Srg, where the defendants D.A. and A.S. were sentenced to 10 (ten) years in prison each and a fine of Rp. 60,000,000.00 (sixty million rupiah).

The actions of the defendant O.M.A.J. which resulted in the pregnancy of the victim's child with the actions of the other two defendants who did not result in the pregnancy of the victim's child, should receive different sentences as a form of criminal responsibility for the pregnancy experienced by the victim's child, this is because the consequences of his actions are also different, namely the actions of the defendant O.M.A.J. besides resulting in the victim's child being pregnant also have an impact on the child the victim is carrying, so this creates injustice, because the criminal responsibility of the defendant O.M.A.J. is no different from the criminal responsibility of the perpetrator whose actions do not result in the pregnancy of the victim's child, namely only imprisonment and a fine imposed on the defendant.

The judge should be able to consider the circumstances and factors that influence the sentencing of the defendant, one of which is the circumstances and factors that can be aggravating for the defendant O.M.A.J. whose actions resulted in the pregnancy of the victim's child. When viewed in the criminal regulations in Indonesia, as described in Chapter I, there are rules governing criminal acts related to criminal acts that state the circumstances or factors that can influence criminal charges due to the victim's pregnancy in the case of Decision Number: 621/PID.SUS/2019/PN.Srg, this is as regulated in Article 4 point (1) Subchapter D of the Guidelines of the Attorney General of the Republic of Indonesia Number 3 of 2019 concerning Criminal Charges in General Criminal Cases, which states:

"Circumstances and Factors Influencing Criminal Charges:

(1) Filing criminal charges is carried out by considering:
    a. Aggravating circumstances; and
    b. Mitigating circumstances.
    c. Based on the facts of the trial.
(2) Aggravating circumstances as referred to in point (1) letter a consist of:
    a. Disturbing the stability and security of the state;
    b. Containing sentiment, discriminatory treatment, harassment, or the use of violence against individuals based on identity, ancestry, religion, nationality, ethnicity, or a particular group.

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c. The defendant does not regret their actions;
d. Causing widespread unrest in the community;
e. Causing losses to the state and/or community;
f. Causing deep and prolonged suffering for the victim and their family;
g. Destroying the younger generation;
h. Committed in a sadistic manner;
i. The defendant has enjoyed the proceeds of the crime; and/or
j. Other aggravating circumstances of a casuistic nature based on trial facts or other considerations stipulated in legislation.

Based on the provisions above, it can be said that the defendant who due to his criminal act has resulted in the victim's child becoming pregnant, the Prosecutor should first determine the circumstances and aggravating factors of the defendant as stated in paragraph (2) letters f, g, and j. The circumstances and aggravating factors of the defendant in the case of the crime of sexual intercourse resulting in the victim's child becoming pregnant can be seen from letter f where the defendant's actions have caused deep and prolonged suffering for the victim's child and her family, namely the pregnancy of the victim's child which must be borne by the victim's child and her family. Then the circumstances and aggravating factors in letter g where the defendant has damaged the younger generation, namely the future of the victim's child who ultimately cannot continue school because of the pregnancy she experienced. And finally the circumstances and aggravating factors in letter j, namely other aggravating circumstances, in this case the pregnancy of the victim's child based on the facts of the trial

The circumstances and aggravating factors in the criminal charges as referred to in point (2) letters f, g, and j above should be included in the aggravating charges against the defendant so that they can be taken into consideration by the judge in imposing a sentence on the defendant who has resulted in the victim's pregnancy, however the sentence imposed on the defendant does not have to be in the form of an increased prison sentence, considering that the victim is pregnant and needs costs in the future for pregnancy care and other costs during childbirth and caring for the child she gives birth to, then imposing restitution on the defendant can be used as an alternative additional sentence for the defendant.

Restitution, as explained in Chapter III, is a payment of compensation that shows an understanding of the suffering of the victim of a crime, compensation must be paid to the victim or the victim's heirs. Restitution can provide legal protection for the victim's child, because a child who has become a victim of a crime has the right to receive compensation or restitution for his suffering in accordance with the perpetrator's ability based on the level of involvement, participation and role of the perpetrator. Restitution as a payment of compensation for victims of sexual intercourse crimes in general has been regulated in several laws and regulations, namely:

1. Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Child Victims of Crime. This regulation serves as an implementing regulation for Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

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2. Government Regulation of the Republic of Indonesia Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. This regulation serves as an implementing regulation for Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims.
3. Supreme Court Regulation of the Republic of Indonesia Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Crime.

The implementing regulations of the Child Protection Law and the TPKS Law only regulate criminal liability for perpetrators who commit the crime of sexual intercourse against child victims, so that the form of liability of the perpetrator is only up to the imposition of a prison sentence on him. This can be seen from the case of the crime of sexual intercourse in Decision Number: 621 / PID.SUS / 2019 / PN.Srg, where the perpetrator O.M.A.J. was convicted based on Article 81 paragraph (2) of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 64 paragraph (1) of the Criminal Code, namely committing violence or threats of violence, forcing children to have sexual intercourse with him or another person, carried out by parents, guardians, people who have family ties, child caretakers, educators, and education personnel. For this act, the defendant was sentenced to 10 (ten) years imprisonment and a fine of Rp. 60,000,000.00 (sixty million rupiah) with the provision that if the fine is not paid it will be replaced with a prison sentence of 3 (three) months.

The defendant O.M.A.J. due to his actions resulted in the pregnancy of the victim's child, however, it can be seen that the verdict did not include additional penalties in the form of compensation/restitution which could be a form of legal protection for the child conceived by the victim due to the criminal act of sexual intercourse. The restitution imposed on the defendant can be given as a form of responsibility for the pregnancy experienced by the victim's child and legal protection for the child conceived by the victim.

The absence of additional punishment for the defendant in the form of compensation/restitution to the victim's child who became pregnant due to the defendant's actions certainly also has an impact on the child the victim is carrying, so this creates injustice, because there is no form of legal protection given to the victim's child by the panel of judges in deciding the sentence for the defendant. In fact, the defendant should not only have to serve a prison term, but also be sentenced to pay restitution to the victim's child, where the compensation can be submitted before the trial by the Public Prosecutor (JPU) or after the verdict submitted by the Witness and Victim Protection Agency (LPSK). The provision of compensation is in accordance with the principle of Restoration in the Original State (restitution in integrum), namely an effort that the child victim of intercourse who experiences pregnancy must be returned to its original condition before the crime occurred even though it is realized that it will not be possible for the victim to return to its original condition.

The victim's rights in the form of restitution are regulated in Article 4 of Supreme Court Regulation Number 1 of 2022, which states that the victim has the right to receive restitution in the form of:

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a. Compensation for loss of wealth and/or income;
b. Compensation for losses, both material and immaterial, incurred as a result of suffering directly related to the crime;
c. Reimbursement for medical and/or psychological treatment costs; and/or
d. Other losses suffered by the victim as a result of the crime, including basic transportation costs, attorney fees, or other costs related to the legal process.

Based on this, it can be said that the victim's child who becomes pregnant as a result of the criminal act of sexual intercourse committed by the defendant is entitled to compensation or restitution for the damages caused by this act, namely the destruction of the victim's child's future and the victim's child becoming pregnant as a direct result of the defendant's criminal act.

Restitution for child victims who become pregnant as a result of a criminal act must be as comprehensive as possible and encompass all aspects of the consequences of the criminal act of sexual intercourse committed by the defendant against the child victim. Through restitution, the victim can be restored to their freedom, legal rights, social status, family life, and citizenship, return to their home, education, and so on.

If the sentence against the defendant is only imprisonment, then the defendant cannot be responsible for the victim's pregnant child, because the defendant cannot earn an income that can be used to finance the needs of the pregnant victim until she gives birth, so it can be said that until now there are no regulations that regulate the realization of justice for the victim's child who is pregnant.

It should be noted that in this criminal incident there is also a unity with other criminal incidents, where basically there are three defendants and three child victims who committed the crime of sexual intercourse. The other two defendants are based on the Serang District Court Decision Number: 619 / Pid.Sus / 2019 / PN.Srg and the Serang District Court Decision Number: 620 / Pid.Sus / 2019 / PN.Srg. In Decision Number: 619 / Pid.Sus / 2019 / PN.Srg, with the defendant named D.A., the defendant was sentenced to 10 (ten) years in prison and a fine of Rp. 60,000,000.00 (sixty million rupiah). Similarly, in Decision Number: 620/Pid.Sus/2019/PN.Srg, the defendant, A.S., was sentenced to 9 (nine) years in prison and a fine of Rp60,000,000.00 (sixty million rupiah). However, both decisions were for two defendants whose actions did not result in the pregnancy of the victim's child.

When compared with Decision Number: 621/PID.SUS/2019/PN.Srg, with the defendant named O.M.A.J. whose actions resulted in the victim's child becoming pregnant, the judge's considerations and verdict are not much different from the verdict where the perpetrator's actions did not result in pregnancy, namely being sentenced to 10 (ten) years in prison and a fine of Rp. 60,000,000.00 (sixty million rupiah).

The actions of the defendant O.M.A.J. which resulted in the pregnancy of the victim's child and the actions of the other two defendants who did not result in the pregnancy of the victim's child should receive different sentences as a form of criminal responsibility for the pregnancy experienced by the victim's child, because the consequences of his actions were also different, namely the actions of the defendant O.M.A.J. not only resulted in the victim's child becoming pregnant but also had an impact on the child the victim was carrying.

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When linked to the theory of criminal responsibility, according to Van Hamel, criminal responsibility is a normal state with psychological maturity that brings three kinds of abilities, namely to understand the meaning and consequences of one's own actions, realize that one's actions are not justified or prohibited by society, and determine the ability to act. The defendant certainly understands that the defendant's actions against the victim's child have resulted in the victim's child's pregnancy, that the defendant is aware that the criminal act of sexual intercourse committed against the victim's child is an act that is not justified or prohibited, and the defendant also has the ability to be responsible for the actions he has committed. Thus, the Public Prosecutor should be aware that the criminal act committed by the defendant against the victim's child resulted in pregnancy, so that the victim's child's pregnancy also needs to be accounted for by the defendant.

Although by applying a criminal sanction of imprisonment to the defendant, it can be said that indirectly it is a form of legal attention (protection) to children who are victims of the crime of sexual intercourse, however, legal protection for children who are victims of the crime of sexual intercourse is not only limited to the punishment of the defendant, but also to the consequences that befall them, namely the pregnancy of the victim's child as a result of the crime of sexual intercourse committed by the defendant.

Child victims of sexual intercourse who become pregnant as a result of the defendant's actions have rights that must be upheld, because the suffering, fear and various negative impacts that befall the child victim after the child becomes pregnant can have a negative impact on the future of the victim's child and the child she is carrying. Victims should not be left alone to fight for their fate, but must be bridged by law enforcement in fighting for their fate.

Not only can the Public Prosecutor request additional punishment in the form of restitution imposed on the defendant, but the LPSK can also request a court order regarding restitution or compensation for the victim's child. This is as stipulated in Article 7 of the Witness and Victim Protection Law, which states that victims through the LPSK have the right to file a lawsuit in the court for compensation in cases of serious human rights violations, as well as the right to restitution or compensation for losses that are the responsibility of the perpetrator of the crime.

However, in this case, neither the Public Prosecutor nor the LPSK submitted a request to the court regarding compensation/restitution for the victim's child, even though compensation for the victim's child is a right that should be given to the victim's child, considering that the victim's child is pregnant and requires a lot of money to conceive, give birth, and finance the needs of the child she is carrying in the future. The absence of additional penalties in the form of compensation for the victim's child and the imposition of restitution on the defendant whose actions resulted in the pregnancy of the victim's child, is certainly not in accordance with the principles of justice. Likewise, the Judge should be able to see the circumstances and aggravating factors with the victim's child's pregnancy based on the trial facts and considerations seen from other factors resulting from the defendant's actions.

If the punishment for the defendant is only in the form of imprisonment without any additional punishment in the form of compensation/restitution, then it can be said that the law

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enforcement institutions, namely the Public Prosecutor, Judge, and LPSK do not play a role in addressing injustice for the victim's child and the child the victim is carrying, so that the defendant also cannot play a role in being responsible for the victim's child who is pregnant, because the defendant cannot provide compensation/restitution that can be used to finance the needs of the victim who is pregnant until giving birth, so it can be said that until now there are no regulations that regulate the realization of justice for the victim's child who is pregnant.

Thus, in relation to this research, the law enforcement institutions, both the Public Prosecutor and the Judge in deciding Decision Number: 621/PID.SUS/2019/PN.Srg, should be able to realize justice for children resulting from the crime of sexual intercourse, because the child who was still in the womb was still weak and not yet strong socially, economically and politically to gain social justice so that his basic rights as a child were protected. The imposition of imprisonment for the defendant cannot fully be a form of accountability, because the form of accountability that is actually needed is justice for the child conceived by the victim, because the child resulting from the crime of sexual intercourse still requires a lot of living expenses which must be met by the defendant. The form of justice as the defendant's responsibility can be in the form of providing restitution to the victim's child.

Criminal Law Policy Regulates the Responsibility of Perpetrators of Sexual Intercourse Against Children that Result in Pregnancy

The crime of sexual intercourse with children is an act that violates the norms of decency, religion and morality, especially if the crime is committed by a teacher, who should provide knowledge by educating, teaching, training and forming character for the students who are expected to become a quality generation. As previously explained, the definition of a teacher according to Article 1 number 1 of the Teachers and Lecturers Law, is a professional educator with the main task of educating, teaching, guiding, directing, training, assessing, and evaluating students in early childhood education through formal education, basic education, and secondary education.

The definition of sexual intercourse according to Arrest Hoge Raad W.9292 on February 5, 1912, as quoted by Zainal Abidin and Andi Hamzah, is defined as the act of inserting a man's penis into a woman's vagina which generally results in pregnancy, in other words when the penis releases semen into the woman's vagina. Therefore, if in a rape incident, even though the man's penis has been inside the woman's vagina for some time, the man's semen has not been released, it is not rape, but attempted rape.

In the Criminal Code, legal protection efforts for children from the crime of sexual intercourse are regulated in Article 287 of the Criminal Code, which states that anyone who has sexual intercourse with a woman who is not his wife even though he knows or should have suspected that the woman is not yet fifteen years old, or if her age is not clear, that she is not yet ready to be married, is threatened with a maximum prison sentence of 9 (nine) years; Prosecution is carried out only upon complaint, except if the woman is not yet twelve years old or if there is one of the things as mentioned in Article 291 and Article 294.

Furthermore, in Article 82 of Law Number 23 of 2002 concerning Child Protection, it is emphasized that anyone who intentionally commits violence or threats of violence, forces, commits deception, a series of lies, or persuades a child to commit or allow indecent acts to

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be committed, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) and a minimum of Rp. 60,000,000.00 (sixty million rupiah).

In 2014, as described in Chapter I, Law Number 23 of 2002 was revised to become Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Child Protection Law) and amended the provisions of Article 82 of Law Number 23 of 2002.

The amendment actually only divides the prohibition with the criminal provisions, where the prohibition is regulated in Article 76E of the Child Protection Law, which states that: "Everyone is prohibited from committing violence or threats of violence, forcing, committing trickery, carrying out a series of lies, or persuading children to commit or allow indecent acts to be committed." While the criminal provisions of Article 76E are regulated in Article 82 of the Child Protection Law, as follows:

(1) Any person who violates the provisions as referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).
(2) In the event that the criminal act as referred to in paragraph (1) is committed by a parent, guardian, child caregiver, educator, or education personnel, the punishment shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1).

In 2016, Article 82 above was revised again in Article 82 of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, which was then amended again to 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 to Become Law. The changes to Article 82 are as follows:

(1) Any person who violates the provisions as referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).
(2) In the event that the crime as referred to in paragraph (1) is committed by a parent, guardian, child caretaker, educator, education personnel, child protection officer, or committed by more than one person jointly, the penalty shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1).
(3) In addition to the perpetrator as referred to in paragraph (2), an additional 1/3 (one third) of the criminal threat shall also be imposed on perpetrators who have been convicted for committing a crime as referred to in Article 76E.
(4) If the crime referred to in Article 76E results in more than 1 (one) victim, results in serious injury, mental illness, infectious disease, impaired or loss of reproductive function, and/or death, the penalty shall be increased by 1/3 (one-third) of the penalty as referred to in paragraph (1).
(5) In addition to the penalties referred to in paragraphs (1) through (4), the perpetrator may be subject to additional penalties in the form of announcing the perpetrator's identity.

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(6) Perpetrators referred to in paragraphs (2) through (4) may be subject to measures in the form of rehabilitation and the installation of electronic detection devices.
(7) The measures referred to in paragraph (6) shall be decided together with the principal penalty, including the time period for carrying out the action.
(8) Additional penalties are exempt for child perpetrators.

Furthermore, efforts to protect children from criminal acts of sexual violence are also regulated in the TPKS Law, namely regulated in Article 6 letters a, b, and c of the TPKS Law, which states the following:

"Convicted of physical sexual abuse:

a. Every person who commits physical sexual acts aimed at the body, sexual desire and/or reproductive organs with the intention of degrading a person's dignity based on sexuality and/or morality which is not included in other, more severe criminal provisions with a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 50,000,000.00 (fifty million rupiah).
b. Any person who commits physical sexual acts aimed at the body, sexual desires and/or reproductive organs with the intention of placing someone under his or her control unlawfully, either inside or outside marriage, is subject to a maximum imprisonment of 12 (twelve) years and/or a maximum fine of IDR 300,000,000.00 (three hundred million rupiah).
c. Any person who abuses position, authority, trust or influence arising from deception or a relationship of circumstances or exploits a person's vulnerability, inequality or dependency, forces or by misleading that person to commit or allow sexual intercourse or indecent acts to be committed with him or with another person, shall be punished with a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).

Further regulated in Article 15 paragraph (1) letter g of the TPKS Law, which states that the criminal penalty as referred to in Article 6 is increased by 1/3 (one third) if it is committed against a child. Currently, cases of sexual intercourse crimes also often occur in the world of education. Based on research results, sexual intercourse crimes committed against children can be seen from cases between perpetrators who are teachers and victims who are their students, namely the Serang District Court Decision Number: 619/Pid.Sus/2019/PN.Srg, Decision Number: 620/Pid.Sus/2019/PN.Srg, and Decision Number: 621/PID.SUS/2019/PN.Srg.

The three decisions are decisions with the same incident but different perpetrators and victims, namely consisting of 3 (three) teacher perpetrators and 3 (three) student victims. The three perpetrators were charged with Article 81 paragraph (2) of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 64 paragraph (1) of the Criminal Code, namely committing violence or threats of violence, forcing children to have sexual intercourse with them or other people, carried out by parents, guardians, people who have family ties, child caretakers, educators, and education personnel. For these actions, the three defendants were sentenced to 10 (ten) years in prison and a fine of Rp. 60,000,000.00 (sixty million rupiah) with the provision that if

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the fine is not paid it will be replaced with 3 (three) months in prison.

1. Decision Number: 619/Pid.Sus/2019/PN.Srg, with the defendant D.A., in which the defendant was sentenced to 10 (ten) years' imprisonment and a fine of Rp60,000,000.00 (sixty million rupiah).
2. Decision Number: 620/Pid.Sus/2019/PN.Srg, with the defendant A.S., sentenced to 9 (nine) years' imprisonment and a fine of Rp60,000,000.00 (sixty million rupiah).
3. Decision Number: 621/PID.SUS/2019/PN.Srg, with the defendant O.M.A.J., sentenced to 10 (ten) years' imprisonment and a fine of Rp60,000,000.00 (sixty million rupiah).

Decision Number: 619/Pid.Sus/2019/PN.Srg and Decision Number: 620/Pid.Sus/2019/PN.Srg are decisions against defendants D.A. and A.S. whose actions did not result in pregnancy in the victim's child. While Decision Number: 621/PID.SUS/2019/PN.Srg on behalf of defendant O.M.A.J. due to his actions resulted in pregnancy in the victim's child, but it can be seen that the judge's considerations and the verdict are not much different from the decision where the perpetrator's actions did not result in pregnancy.

The actions of the defendant O.M.A.J. which resulted in the pregnancy of the victim's child with the actions of the other two defendants who did not result in the pregnancy of the victim's child should receive different sentences as a form of criminal responsibility for the pregnancy experienced by the victim's child. The consequences of their actions are also different, namely the actions of the defendant O.M.A.J. not only resulted in the pregnancy of the victim's child but also had an impact on the child the victim was carrying, so this creates injustice, because the criminal responsibility of the defendant O.M.A.J. is no different from the criminal responsibility of the perpetrator whose actions did not result in the pregnancy of the victim's child.

The absence of a difference in the criminal responsibility of the defendant O.M.A.J. imposed by the judge in the above case was partly because the judge did not consider the aggravating factors for the perpetrator which resulted in the victim's pregnancy. When viewed in the criminal regulations in Indonesia, there are rules governing criminal acts related to criminal acts which state the circumstances or factors that can influence criminal charges due to the victim's pregnancy in the case of Decision Number: 621/PID.SUS/2019/PN.Srg. This is as regulated in Article 4 point (1) Subchapter D of the Guidelines of the Attorney General of the Republic of Indonesia Number 3 of 2019 concerning Criminal Prosecution in General Criminal Cases, which states:

"Circumstances and Factors Influencing Criminal Charges:

(1) Filing criminal charges is carried out by considering:
    a. Aggravating circumstances; and
    b. Mitigating circumstances.
    c. Based on the facts of the trial.
(2) Aggravating circumstances as referred to in point (1) letter a consist of:
    a. Disturbing the stability and security of the state;

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b. Containing sentiment, discriminatory treatment, harassment, or the use of violence against individuals based on identity, ancestry, religion, nationality, ethnicity, or a particular group.
c. The defendant does not regret their actions;
d. Causing widespread unrest in the community;
e. Causing losses to the state and/or community;
f. Causing deep and prolonged suffering for the victim and their family;
g. Destroying the younger generation;
h. Committed in a sadistic manner;
i. The defendant has enjoyed the proceeds of the crime; and/or
j. Other aggravating circumstances of a casuistic nature based on trial facts or other considerations stipulated in legislation.

The aggravating circumstances in the criminal charges as referred to in point (1) letter a and point (2) letters f, g, and j above should be included in the prosecutor's indictment that is aggravating for the defendant so that it can be taken into consideration by the judge in imposing a sentence on the defendant who has resulted in the victim's pregnancy, however the sentence imposed on the defendant does not have to be in the form of an increase in imprisonment, considering that there are aggravating circumstances and other factors, namely the victim's child who is pregnant and needs money, so the imposition of restitution on the defendant can be used as an alternative additional sentence for the defendant in being held responsible for his criminal actions.

When linked to the theory of justice, according to Kurt Wilk, the forms of justice are: first, distributive justice refers to the existence of equality between humans based on the principle of proportionality. Gustav Radbruch, stated that in distributive justice there is a superordinate relationship, meaning between those who have the authority to divide and those who receive a share. Kurt Wilk further stated that by adhering to this view, Radbruch, further stated that the principle of distributive justice is not related to who is treated equally and who is treated unequally; equality or inequality is actually something that has been formed. The second form, justice according to Kurt Wilk, namely commutative justice exists in a coordinative relationship between the parties, to see the working of this justice requires two parties who have the same position.Justice for the unborn child of a victim of a crime of sexual intercourse can be addressed through an approach from law enforcement institutions, namely the Public Prosecutor in submitting a restitution request before the trial, the Judge who decides the criminal case, or the LPSK who submits a request for a court order regarding restitution for the victim's child. The role of the defendant is also needed as a form of direct criminal responsibility towards the victim's child and the victim's unborn child, namely by fulfilling compensation or restitution. Therefore, justice for the child victim of a crime and the victim's unborn child can be fulfilled if the role of law enforcement institutions and the defendant contributes to reducing injustice towards the victim's child and the victim's unborn child.

Distributive justice according to Kurt Wilk refers to the principle of proportionality, namely that the award (whether in the form of punishment or compensation) must be based

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on the level of loss or consequences caused. Gustav Radbruch added that in distributive justice there is a superordinate relationship, meaning there is an authorized party (the state through the judge or prosecutor) and a party who receives the results of the distribution of justice (the victim or defendant). In this case, distributive justice was not achieved because the criminal sentence against defendant O.M.A.J. who caused the victim's pregnancy was as severe as the sentence against another defendant who did not cause the pregnancy. In fact, the legal, social, and psychological consequences borne by the victim due to pregnancy are far more severe than those of other victims who were not pregnant. According to the principle of distributive justice:

1. The judge distributed the sentence proportionally to the extent of the victim's suffering.
2. The defendant, O.M.A.J., received a heavier sanction, either in the form of an additional prison sentence or an obligation to pay restitution to the victim's child and the child she was carrying.
3. The resulting inequality should result in differential treatment in criminal liability. Radbruch stated that these similarities and inequalities have been established, meaning that the reality of different impacts (such as pregnancy) must be responded to differently by the legal system.

Thus, the principle of proportionality in distributive justice demands that the criminal justice system does not equate between criminal acts with minor impacts and those with severe impacts, including pregnancy, prolonged suffering of the victim, and the rights of the child who will be born. Therefore, it can be said that the existence of additional penalties in the form of compensation/restitution for the child of the victim who is pregnant as a result of the defendant's criminal act, is an effort or encouragement to maintain the continuity of life and fulfill their basic needs, especially the needs during pregnancy, childbirth, and raising the child resulting from the crime of sexual intercourse.

According to Kurt Wilk, commutative justice is based on a coordinative relationship between two parties of equal standing, typically in a reciprocal relationship, such as between a perpetrator and a victim. In this context, commutative justice can be reflected through the mechanism of restitution, namely compensation for losses to the victim or the victim's child by the perpetrator. Restitution is a form of direct and individual accountability from the defendant to the victim and the child she is carrying.

The principle of commutative justice:

1. Viewing the perpetrator as having direct personal responsibility to the victim for the harm caused.
2. Restitution is a tool of reciprocal restitution (corrective justice), reflecting that crime is not only a matter between the state and the perpetrator, but also between the perpetrator and the victim directly.
3. Imposing restitution as a form of moral and legal accountability of the defendant to the victim's children and unborn child can be a concrete manifestation of commutative justice.

However, in this case, the commutative restoration of the victim's rights was not optimal because restitution was neither imposed by the judge nor adequately requested by the

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prosecutor or the LPSK. However, restitution itself can:

1. Restore some of the victims' economic and social losses.
2. Provide a sense of justice to child victims for their physical and psychological suffering.
3. Recognize that children who are victims of sexual crimes also have the right to a decent life, which is the responsibility of the perpetrator.

Based on Kurt Wilk's theory of justice, it can be said that distributive justice was not achieved in this case because the sentence was equal for the perpetrator with significantly different impacts of the act (with or without the victim's pregnancy). Similarly, commutative justice has not been optimized, because there is no restitution or restitution imposed on the perpetrator to compensate for the losses suffered by the victim and the child she is carrying. To achieve holistic justice, adjustments are needed in:

1. Sentencing by the judge is based on the principles of proportionality and real consequences.
2. Prosecutor's demands include aggravating circumstances (e.g., the victim's pregnancy).
3. Utilizing restitution as a form of reciprocal justice between the perpetrator and the victim.

Thus, the criminal justice system not only enforces the law formally, but also provides substantial justice to victims and children who are further victims of criminal acts, this is because the future of the victim's child who is the defendant's student has been destroyed and cannot complete his education at school because of the pregnancy he experienced, so the defendant must be able to account for his criminal actions in another form so that he can also be responsible for the victim and the child she is carrying, namely by fulfilling the basic needs to maintain the survival of the victim's child and the child she is carrying.

Judges as law enforcement institutions should be able to pay attention to the hopes of pregnant child victims so that the decisions they make are in accordance with legal regulations that reflect the ideal sense of justice as expected. Thus, judges in making decisions against perpetrators of criminal acts of sexual intercourse with children resulting in pregnancy must pay attention to the personal relationship between the perpetrator and the pregnant child victim, with equal standing without discrimination. Judges should be able to consider the reasons for aggravating the sentence against the defendant who has damaged the future of the victim's child resulting in pregnancy by giving additional punishment as an alternative punishment in the form of restitution burden on the defendant in being responsible for his criminal actions.

Based on the results of research on three court decisions in cases of sexual intercourse with minors, it was found that the application of the principle of justice by judges did not fully reflect the principle of distributive justice as stated by Kurt Wilk. In Decision Number: 619/Pid.Sus/2019/PN.Srg and Decision Number: 620/Pid.Sus/2019/PN.Srg, the defendant was sentenced with a sentence range that was not much different from Decision Number: 621/Pid.Sus/2019/PN.Srg. Whereas in the latter case, the consequences of the defendant's actions were much more severe because it caused the victim to become pregnant and have to give birth to a child outside of marriage. This verdict that does not show a significant difference creates inequality and reflects a discrepancy with the principle of proportionality in

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distributive justice, where the burden of punishment should be commensurate with the degree of loss or suffering experienced by the victim.

Furthermore, the research also found that the judge in case No. 621/Pid.Sus/2019/PN.Srg did not consider the aggravating circumstances in depth, as stipulated in Article 4 letters f, g, and j of the Attorney General's Guidelines Number 3 of 2019 concerning Criminal Prosecutions. In fact, the victim's pregnancy and childbirth should have been aggravating factors because they resulted in long-term physical and psychological suffering for both the victim and the child born. The lack of attention to this aspect indicates a weak application of the values of justice in the criminal sentencing process and illustrates the judge's lack of sensitivity to the complexity of the suffering of victims of sexual violence.

Other findings indicate that there was no restitution provided to victims or their children, either as an additional sanction imposed by the judge or as a result of an agreement in the legal process. This contradicts the principle of commutative justice as explained by Kurt Wilk, which demands a relationship of responsibility between perpetrators and victims through concrete forms of accountability, such as restitution or compensation. The absence of the element of restitution indicates that justice has not been implemented comprehensively, because the criminal process only focuses on imposing the main sentence, without considering the restoration of the victims' rights.

This study also found that the role of law enforcement, both prosecutors and judges, has not been optimal in exploring and implementing a substantive justice approach. The justice that is upheld remains procedural and does not address the moral, social, or economic aspects of victim recovery. However, within the restorative justice framework now beginning to be recognized within the criminal justice system, an approach that places the victim at the center of attention is crucial, particularly in cases of child sexual violence, which have multidimensional impacts.

Furthermore, it was also found that judges and prosecutors, as the authorities in the legal process, have not carried out their distributive function fairly. From Kurt Wilk's perspective, which refers to the ideas of Gustav Radbruch, distributive justice places judges as the party with the superordinate responsibility to distribute justice proportionally. However, in practice, this responsibility is not carried out optimally, as is evident from the lack of significant differences in sanctions imposed between cases that result in pregnancy and those that do not. This reflects the failure of the judicial institution to implement the principles of justice that are rooted in humanitarian values and social responsibility.

Finally, the study found that the principle of justice was not optimally utilized in imposing additional sanctions. In all three decisions, the judges did not impose additional penalties in the form of restitution or rehabilitation for the victims, even though statutory provisions such as the Child Protection Law and the Law on Sexual Violence Crimes have provided space for such. The absence of additional sanctions aimed at restoring the victims' rights is evidence that the criminal justice approach used remains retributive and has not addressed the restorative dimension. This indicates that the criminal justice system still leaves significant room for improvement, particularly in handling cases involving child victims of sexual violence.

In Decision Number: 621/Pid.Sus/2019/PN.Srg, there was no consideration by the judge

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that specifically addressed the more serious consequences of the defendant's actions, namely the pregnancy experienced by the victim's child. This indicates that the sentences imposed were uniform, even though the level of suffering and loss of the victims varied significantly. One of the main reasons for this was the absence of a request for compensation or restitution filed by either the Public Prosecutor or the victim's family.

In fact, according to Article 67 paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law), compensation and restitution are the victim's rights and can be submitted by prosecutors during the prosecution process. However, in practice, prosecutors and judges tend to be passive, waiting for an initiative from the victim or their family. This is not ideal, considering that in many cases, especially those involving children as victims, the victims and their families do not have the capacity, information, or courage to formally submit a restitution request.

Both the Public Prosecutor and the judge should be able to act as initiators or facilitators in restitution requests for victims. Therefore, it is crucial to have internal guidelines or regulations within the prosecutor's office and the judiciary that explicitly regulate the proactive authority and responsibility of law enforcement officers in encouraging compensation or restitution to victims, without having to wait for a request from the victim. These guidelines should be the standard in all cases of sexual violence against children, particularly when the perpetrator's actions result in pregnancy, which clearly causes profound physical, psychological, social, and economic suffering for the victim.

With these guidelines, the concept of restorative justice and maximum protection for child victims of crime can be more effectively realized. Public prosecutors must be empowered to assess from the outset of the investigation whether the perpetrator's actions have resulted in significant additional harm, and judges must also have a reference point for assessing restitution as part of their sentencing decisions. This is crucial to ensure that victim recovery is not merely a normative discourse but is truly realized through concrete, victim-friendly legal mechanisms.

CONCLUSION

Based on the discussion outlined above, the following conclusions can be drawn: The imposition of restitution as the responsibility of the perpetrator of sexual intercourse with a child resulting in pregnancy has not been fulfilled in the Serang District Court Decision Number: 621 / PID.SUS / 2019 / PN.Srg, where the defendant was only sentenced to 10 (ten) years in prison and a fine of IDR 60,000,000 (sixty million rupiah), without any additional punishment in the form of imposing restitution or compensation for the victim's child. This is contrary to Article 7 of the Witness and Victim Protection Law, and Article 4 of Perma Number 1 of 2022, which states that the victim has the right to receive restitution. The imposition of a sentence on the defendant which is only in the form of imprisonment without any additional punishment in the form of restitution, it can be said that law enforcement institutions, namely the Public Prosecutor, Judge, and LPSK do not play a role in addressing injustice for the victim's child and the child the victim is carrying, so the defendant also cannot play a role in being responsible for the victim's pregnant child, because the defendant cannot

provide restitution that can be used to finance the needs of the victim who is pregnant until giving birth. The imposition of a prison sentence on the defendant cannot be a complete form of accountability, because the form of accountability that is actually needed is justice for the child conceived by the victim, because the child resulting from the crime of sexual intercourse still requires a lot of living expenses which must be met by the defendant. The criminal law policy in regulating the responsibility of perpetrators of sexual intercourse with children resulting in pregnancy has not fulfilled the principle of justice for the victim, because the verdict handed down to the defendant in Decision Number: 621 / Pid.Sus / 2019 / PN.Srg did not consider the consequences caused by the defendant's actions that resulted in pregnancy for the victim's child. Even though the defendant was proven to have committed sexual intercourse with a child that resulted in the victim becoming pregnant and giving birth, the Panel of Judges sentenced him to 10 (ten) years in prison and a fine of Rp. 60,000,000, - without adding consideration of aggravating circumstances resulting from the pregnancy. This decision is not even different from the other two decisions, namely Decision Number: 619 / Pid.Sus / 2019 / PN.Srg and Decision Number: 620 / Pid.Sus / 2019 / PN.Srg, where the defendant's actions did not result in pregnancy, but were still sentenced with the same severity. This shows that law enforcement has not fully reflected the principle of proportionality and justice towards the additional suffering experienced by victims who become pregnant as a result of the crime.

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