



# Punishment Of The Perpetrator Of Participation (Deelneming) In The Crime Of Maltreatment Of A Child

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**Abstract:** Participation (deelneming) is a concept that includes various forms of participation from individuals or groups, both in mental and physical aspects, who are involved in carrying out certain actions that lead to the occurrence of a criminal offense. This study aims to analyze the punishment of perpetrators of participation (deelneming) in the crime of mistreatment of children, with a focus on Decision Number 4/Pid.Sus-Anak/2023/PN Jkt.Sel. The method used is a normative juridical approach, which examines the application of law and the theory of participation in the context of juvenile criminal law. The results showed that AG, as a child involved in the act, had fulfilled the elements of the crime of aggravated maltreatment that was premeditated, although he did not directly commit physical acts. The judge's consideration in handing down the verdict reflected attention to the age of the perpetrator as well as the principle of rehabilitation in the juvenile justice system. The prison sentence of 3 years and 6 months in LPKA reflects efforts to provide a deterrent effect as well as rehabilitation. This research recommends an increased understanding among law enforcers of the theory of inclusion and legal protection for children so that it can be applied fairly and effectively.

**Keywords:** Child, Conviction, Participation, Verdict, Crime of Maltreatment

## Introduction

In daily life, humans as social creatures cannot be separated from the norms that govern their behavior. These norms are determined by individual attitudes and the rules that exist as guidelines for life. Public awareness of these norms is very important, because this awareness reflects the human ability to think, will and feel. With the norms that apply in society, social control becomes a necessity to ensure that individual behavior is in accordance with the stipulated provisions. Therefore, human behavior is regulated by written laws or official statutes.

Compliance with written law can be realized if people have the awareness to act in harmony with the common interests in social life. This is manifested through behavior that is in accordance with the prevailing norms in society. Crime is a social phenomenon that is always faced by every individual, society, and even the state. In the context of criminal law, crimes often involve more than one person, which in legal terms is known as criminal participation. In the Criminal Code (KUHP), criminal participation is often referred to as *deelneming*, which is when two or more people are involved in committing a criminal

offense. According to Satochid Kartanegara, *deelneming* occurs when an offense is committed by more than one person.

In a criminal offense, the participation or involvement of perpetrators can vary, ranging from intellectual actors who plan the crime to individuals who merely assist in its execution. This difference in the level of involvement leads to variations in criminal liability between perpetrators. Therefore, an in-depth understanding of the doctrine of participation (*deelneming*) is required to establish the limits of criminal liability for each participant or perpetrator. Criminal law regulates the issue of participation in criminal offenses through the provisions contained in Article 55 and Article 56 of the Criminal Code (KUHP).

The term "participation" (*deelneming*) refers to any type of mental and physical involvement by people or groups in specific behaviors that lead to criminal offenses. Because this idea of participation always arises, particularly when the target of the criminal act committed is controlled by youngsters, it is necessary to perform a thorough examination of each individual's role in order to evaluate their responsibility. In the context of criminal law, the ability to be held responsible is a separate concept from the criminal offense itself. This is related to the requirements that must be met in order for a person to be convicted after being proven to have committed a criminal offense or violated existing legal norms. In addition, the ability to be held responsible is not part of the definition of a criminal offense itself, but rather the individuals involved in the collaboration that results in a criminal offense have their own roles and actions that are different from one another.

In the practice of applying criminal law, the concept of participation is still not fully understood. Often the punishment imposed on perpetrators of crimes involving more than one person, such as in cases of joint persecution, is not in line with the applicable criminal law provisions. The variety of views among criminal law experts regarding participation shows that this topic is quite complex and requires in-depth understanding.

Criminal offenses or criminal acts are acts that are punishable by criminal sanctions based on statutory provisions, or acts that are generally prohibited and punishable. Regarding perpetrators and victims in human rights violations and crimes, criminal law clearly regulates this, with almost all of the relevant articles contained in the Criminal Code (KUHP) to protect human rights. The terms used, such as "whoever is threatened," indicate that the commission of human rights violations and crimes is a form of legal protection. Criminal offenders are individuals or groups who commit criminal acts, either intentionally or unintentionally, in accordance with the provisions stipulated in the law.

This includes actions that arise from undesirable situations, whether objective or subjective, regardless of whether they are self-initiated or encouraged by others. Enforcement of more substantial regulations focuses on guiding people to avoid breaking the law.

Perpetrators can be adults or children, and they must be prepared to face the risks and threats of legal sanctions, especially criminal sanctions. Deviant behaviour by children, including violations of norms and regulations, occurs quite frequently and requires immediate attention. In fact, there are still many cases of children in conflict with the law. The Indonesian Child Protection Commission (KPAI) has received many complaints related to child cases, with a total of 762 reports up to March 2024 received through various

channels, including in person, online, and by mail. In June 2024, the number of cases related to the Fulfilment of Children's Rights (PHA) reached 893, while the Special Protection of Children (PKA) cases totalled 300. Of all the reports, the three highest categories in the PHA cluster included children who were victims of problematic parenting, children who were prohibited from seeing their parents, and custody battle cases.

In the details of the PHA cluster, there were 486 cases related to the family environment and alternative care, 84 cases in education and utilisation of leisure time and cultural activities, 12 cases regarding basic health and welfare, and 11 cases related to civil rights and freedoms. For the PKA cluster, KPAI recorded 300 cases, with the majority coming from children who were victims of sexual crimes and physical or psychological violence. Within this cluster, the three highest categories include children as victims of sexual abuse (Article 82 of the PA Law), children as victims of maltreatment, and children as victims of psychological violence. This data reminds us that there are still many children who need to be protected and their rights fulfilled. KPAI invites the public to jointly increase their role in protecting children in order to create a better Indonesia.

Children have a strategic role in advancing the nation by fulfilling their moral and ethical obligations. As outlined in Article 1 of the Convention on the Rights of the Child, any individual under the age of 18 is identified as a child. The rights outlined in this international document apply universally to all groups of children. However, the Criminal Code (KUHP) only provides a simple definition of *minderjarig* and some elements related to the definition of a child in some of its articles. Additionally, the state and people share responsibility for the protection of children, as stated in Article 1 Point 1 of Law Number 35 Year 2014 on the Amendment to Law Number 23 Year 2002 on Child Protection (Child Protection Law). Thus, it can be said that children are legal subjects deserving of every nation's utmost regard and care.

The importance of child protection is emphasized by Article 28B, paragraph (2) of the 1945 Constitution, which states that every child has the right to life, growth, and development in addition to protection from discrimination and cruel treatment. Furthermore, according to article 1 point 2 of the Child Protection Law (UUPA), child protection encompasses all measures taken to guarantee children's full participation in society, give them legal certainty, and enable them to live lives that are consistent with human dignity and values.

In this case, children in conflict with the law also have the right to legal protection. Children who commit crimes will go through the same legal process as adults but receive special treatment, approach and protection. Children must be given legal protection during the criminal justice process. Although the juvenile justice system is differentiated and specialised, it is still harmonious with several institutions integrated in the justice system. The purpose of juvenile justice, as explained in the SPPA Law (Law on Juvenile Criminal Justice System), is not only focused on the uniformity of punishment as the main element, but also oriented towards achieving future protection for children. One of the acts that is categorised as a serious criminal offence and can affect children is maltreatment. In this situation, we must consider children as co-perpetrators in the criminal offence of maltreatment.

Therefore, this study aims to analyse the form of punishment of perpetrators of criminal participation in crimes against children in Indonesia. By understanding this issue, it is hoped that better solutions can be found to improve child protection and prevent crime. This research will also discuss the role of the government, and law enforcement agencies in the context of protecting children from criminal offences, as well as applying appropriate legal approaches to effectively handle such cases. This background will assist the author in understanding how the judge's perspective on participation (*deelneming*) in imposing a criminal verdict on the child abuser in the case study of Decision Number 4/Pid.Sus-Child/2023/PN Jkt.Sel and the perpetrator's responsibility in the criminal act of participating in the child abuse will be taken into consideration with regard to the problem formulation that the author will analyze.

## Methodology

Andi stated that research method is an attempt to discover, develop and test the truth of knowledge using scientific methods. The scope of this research is Participation (*deelneming*) which is a concept in criminal law that refers to the involvement of several people in a criminal offence, where each party has a different role in supporting, facilitating, or carrying out the criminal offence. This includes not only the main perpetrator, but also the parties involved in assisting, supporting, or influencing the criminal offence.

The Criminal Code, Decision Number 4/Pid Sus-Anak/2023/PN Jkt.Sel, and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Child Protection Law) are a few examples of significant legal texts examined in this study. Secondary legal materials include publications such as books, research articles, legal periodicals, and others. Tertiary legal publications include the Legal Dictionary and the Big Indonesian Dictionary (KBBI).

This study employs a normative legal approach as its methodology. This style of study relies on literature reviews, in which scholars examine a range of legal sources that are pertinent to the topic under investigation. In this research, several approaches are used, including the statute approach, fact approach, and case approach. The method used in this research is by using legal norms as objects to answer existing legal problems.

The collected legal materials are then processed and analysed normatively qualitatively, namely the analysis of decision Number 4/Pid Sus-Anak/2023/PN Jkt. Sel regarding the punishment of the perpetrator of participation (*deelneming*) in the crime of maltreatment of children, discussion and interpretation are carried out and conclusions are drawn regarding the problems to be studied.

## Result and Discussion

### **The Judge's View In Considering Participation (*Deelneming*) In Imposing A Criminal Verdict On The Perpetrator Of Maltreatment Of A Child In The Case Study of Decision Number 4/Pid.Sus-Anak/2023/PN Jkt.Sel**

Judges need to carefully consider the roles and responsibilities of each perpetrator in the context of participation. This consideration should be in line with the principles of child protection and restorative justice, which emphasise rehabilitation rather than punishment

alone. Thus, the judge's decision will reflect a balance between law enforcement and protection of children's rights. Judges also make decisions by considering various elements, including testimonies from witnesses, statements from defendants, expert opinions, as well as evidence presented during the trial. Looking at the structure of the charges, it appears that they are both *prima facie* and subsidiary. As a result, the judges' panel tended to select the charge that best fit the facts that were disclosed during the trial. This included the primary charge outlined in Article 353 paragraph (2) of the Criminal Code, the subsidiary charge outlined in Article 355 paragraph (1) of the Criminal Code, and Article 56 2nd of the Criminal Code. The legal elements in this decision are:

1. Element of Who;

Considering, that what is meant by 'whoever' is anyone, as a legal subject, supporter of rights and obligations, who is held accountable for criminal acts committed, including Children in Conflict with the Law (Anak) as stipulated in the Law on Juvenile Justice System.

The judge believes that there is no mistake in the child's persona because, according to the facts of the trial, the child is a legal subject with rights and obligations who is held accountable for his actions. The child's identity has been carefully examined and matched with the indictment, which has been found to be appropriate and correct and has also been justified by the child. That during the trial process the Child was in good health both physically and mentally and there was no single reason found in the Child that could negate to eliminate the Child's guilt either excuse or justification. And based on the description of the above considerations, what is meant by 'whoever' here is the Child so that thus the first element has been fulfilled for the Child.

2. The element of committing serious maltreatment with premeditation;

Considering, that what is meant by serious maltreatment is maltreatment that results in serious injury, while what is meant by maltreatment according to jurisprudence is maltreatment which means intentionally causing unpleasant feelings, pain or injury. What constitutes serious injury is set out in Article 90 of the Penal Code, namely:

- 1) Falling ill or receiving an injury from which there is no hope of recovery or from which there is a danger of death;
- 2) Is incapable of continuously performing the duties of office or labour;
- 3) Has lost one of the five senses;
- 4) Has been severely disabled;
- 5) Suffering from paralytic pain;
- 6) Impaired mental capacity for more than four weeks;
- 7) The loss or death of a woman's womb;

3. Elements of Committing, Ordering to Commit and Participating in the Act;

Considering that the trial's facts demonstrate that the child's confession to Witness 11 that he had sex with the child victim on January 17, 2017, because the child had forced him to do so, is what caused Witness 11's emotion and resentment toward the child



victim, the judge believes that the child's confession about being coerced is false because a child who is forced to have sex will suffer trauma, but the child did not, as shown by the child's confession during the trial that he had sex with Witness 11 five times after having sex with the child victim. Since the child's actions have satisfied the requirements of Article 355 paragraph (1) of the Criminal Code as well as Article 55 paragraphs 1 to 1 of the Criminal Code, the judge believes the child has been found guilty of participating in the commission of serious offenses with premeditation.

The identity of the Defendant is that the Defendant is a minor who is of special concern in the juvenile justice system. Where the child is 15 (fifteen) years 4 (four) months old based on birth certificate Number 1205/JP/2008 issued in Jakarta on 16 January 2008. Where the child committed the crime of serious maltreatment, It is governed by the Criminal Code's Article 355, paragraph (1), as well as Article 55, paragraphs (1) to (1). This demonstrates that the act contained components of participation in the crime of maltreatment resulting in serious damage, intent, and premeditation.

In sentencing the judge also considered the best interests of the child, both as a perpetrator and as a victim, to ensure that the decision taken was not detrimental to the psychological and social development of the child and the judge's considerations have been declared complete and fulfil the elements stipulated in Article 355 paragraph (1) of the Criminal Code juncto Article 55 paragraph (1) of the Criminal Code. By considering the age of the perpetrator and the fact that the perpetrator was not the intellectual actor in this case, the judge's decision to sentence AG was appropriate.

### **Perpetrator Liability In The Criminal Offence Of Participating In The Maltreatment Of A Child Decision Number 4/Pid.Sus-Anak/2023/PN Jkt.Sel**

General provisions on the crime of maltreatment are set out in the Criminal Code (KUHP) in Chapter XX, which includes Articles 351 to 358. In this chapter, there are various types of maltreatment which are categorised as follows: ordinary maltreatment (Article 351 of the KUHP), light maltreatment (Article 352 of the KUHP), premeditated maltreatment (Article 353 of the KUHP), and serious maltreatment (Article 354 of the KUHP).

- Ordinary maltreatment: Subject to a maximum prison sentence of two years and eight months or a fine of up to IDR 4,500.
- Slight Maltreatment: Set out in Article 352, with lighter sanctions than ordinary maltreatment.
- Aggravated Maltreatment: Under Article 353, where the perpetrator has planned in advance to commit the offence.
- Serious maltreatment: Set out in Article 354, which provides for harsher penalties if the offence results in serious injury or death.

As such, the Penal Code provides a clear legal framework on the different forms of maltreatment and the sanctions that can be imposed on perpetrators based on the type and impact of the act.

The judge determined that AG had committed the crimes of serious maltreatment with premeditation and as an accomplice to a crime without preventing it, as well as violations of Article 355 paragraph (1) and Article 56 paragraph (1) of the Criminal Code. "Consider that the child defendant AG has been proven guilty of a criminal offense in a legal and convincing manner." AG was found guilty of premeditated mistreatment by the judge. The judge added the AG's actions lacked any rationale or explanation. The judges' panel's decision was marginally less than the public prosecutor's suggestion. AG is considered a kid in conflict with the law within the terms of Law Number 11/2012 on the Juvenile Justice System. In this situation, there are three types of children: those who are victims, those who serve as witnesses, and those who commit crimes.

Children who have not yet turned 18 at the time of the alleged criminal offense are considered to be in conflict with the law; the AG is only 15 years old at the time of the incident. Law Number 11/2012 stipulates two types of sanctions for children in conflict with the law, namely action sanctions and criminal sanctions. According to Article 82, action sanctions include return to parents or guardians, transfer to another party, treatment at a mental hospital, treatment at the Witness and Victim Protection Agency (LPSK), obligation to attend formal education from the state or private institutions, suspension of driving licences, and legal remedies related to the consequences of the criminal act. However, Article 71 of the SPPA Law explains criminal penalties, which include warnings, conditional penalties (such community service, coaching outside of institutions, and supervision), vocational training, coaching within institutions, and incarceration. Deprivation of earnings from criminal offenses or fulfillment of customary duties are examples of additional penalties.

In this decision it was stated that the perpetrator (child) deliberately provided an opportunity, means or information to commit a crime to witness (11) who was declared as the lover of AG (child) and witness (10) was declared as a friend of witness (11) which (prosecution was carried out separately) to commit maltreatment with premeditation which resulted in serious injuries. As a result of the perpetrator's actions, which include being found legally and convincingly guilty of "participating in committing Serious Maltreatment with premeditation," the child (perpetrator) will be sentenced to three years and six months in law enforcement. Ascertaining that the entire amount of the child's detention time has been subtracted from the punishment, Making the decision to keep the child in custody as a way to hold the child (perpetrator) accountable for the victim's abuse.

## Conclusion

This research recommends the need for more consistent law enforcement against juvenile offenders, including the application of the *lex specialis* principle to provide better legal protection. In addition, it is important to increase understanding among law enforcers regarding the theory of participation so that it can be applied fairly and proportionally. AG as a child perpetrator who participated in the maltreatment has been sanctioned in accordance with the applicable legal provisions. In this context, AG acted as an accomplice

in the criminal offence committed by the intellectual actor, namely Mario Dandy (the main perpetrator).

In the theory of participation in Article 55 and Article 56 of the Criminal Code, which regulates the responsibility of perpetrators involved in joint crimes. Although AG did not commit any direct physical acts, his involvement in the linking and planning process indicates the existence of an element of participation. and the panel of judges considered AG's age and his role, which was not as the main actor in the persecution. The judges' decision reflects an understanding of legal protection for children, where the sanctions imposed are lighter compared to adult perpetrators, in accordance with the principle of *lex specialis* in the Child Protection Law. The imposition of a prison sentence of 3 years and 6 months in LPKA demonstrates an effort to provide a deterrent effect as well as rehabilitation for children. This aligns with the juvenile criminal justice system's goals which does not only emphasise the punishment aspect, but also the protection and future of children.

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