

## The Assistance (*Medeplichtige*) by Children Leading to the Occurrence of Criminal Acts

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**Abstract.** *This study is related to a case of assault in which the parents of the victim are prominent figures in GP Ansor. The research examines the form of complicity in the criminal act of assault committed by the underage individual, the minor AG. This research is based on the fact that legal protection relating to children in conflict with the law (ABH) has not been implemented properly. The novelty in this research is the explanation of the legal protection provided to all children who provide assistance in cases of abuse. In order to guarantee all children's rights, including children in conflict with the law, to live, grow, develop and participate optimally in accordance with human dignity, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was created. Normative juridical is used in this research through a statutory approach, using secondary data sources supported by primary and secondary legal materials. The results of the research show that according to the results of Court Decision Number 4/Pid.Sus-Anak/2023/PN.JKT.SEL which has permanent legal force, AG's child's role as a child who assists in criminal acts of abuse is appropriate, however the decision given judged by the judge to be inappropriate. Reviewing various aspects along with existing laws and regulations, it would be more appropriate to impose a second subsidiary sentence, namely Article 353 Paragraph (2) of the Criminal Code (KUHP) juncto Article 56 2nd of the Criminal Code, which reduces the sentence for AG Children, is the best choice.*

**Keywords:** Assault; Assistance; Law; *Medeplichtige*; Minor; Protection.

### 1. Introduction

The law holds significant meaning in every aspect of life, one of which is to serve as a fundamental guide for individual behavior when interacting with others. Indonesia is a legal state where the law functions as a regulation in the lives of its

people. Law is inseparable from individual life, so discussing the law is essentially discussing the life of the individual.<sup>1</sup>

The presence of law in a country is reflected through a collection of applicable regulations and the violations committed. One type of law used to safeguard the interests of the community is criminal law. Criminal offenses encompass rules and norms that are coercive in nature, containing legal sanctions tailored to the actions and consequences they entail.<sup>2</sup>

The legal subject is not restricted by a specific age; anyone, from children to the elderly, can freely engage in unlawful acts. Subjects committing such unlawful acts can disrupt public order, as exemplified by cases such as child abuse, where the subject is still a minor.

According to Mr. M.H. Tirtaamidjaja, the definition of assault is intentionally causing pain or injury to another person. However, an act that causes pain or injury to another person cannot be considered as assault if the action is undertaken to enhance personal safety.<sup>3</sup>

The case of assault involving a minor identified as AG (15 years old), with the main perpetrator being Mario Dandy Satriyo (20 years old) known as MDS and his accomplice Shane Lukas Rotua Pangondian Lumbantoruan (19 years old) known as SL, against the victim child with the initials DO (17 years old), a child whose parents hold prominent positions in GP Ansor has introduced a rather complex debate regarding the sentencing demands imposed on the minor AG and the legal responsibility of the child, considering the juvenile justice system.

Based on the chronology of the child abuse case involving a victim whose parents are prominent figures in GP Ansor, its validity has been established as it has attained legal force in the Court Decision Number 4/Pid.Sus-Anak/2023/PN.JKT.SEL. The trial results indicate that the minor AG has been sentenced under Article 355 Paragraph (1) of the Criminal Code in conjunction with Article 55 Paragraph (1) 1st of the Criminal Code. The panel of judges imposed a 3.6-year prison sentence on the minor AG at the LPKA.<sup>4</sup> Given the proven legal facts during the trial, the judgment issued by the judges is deemed inappropriate. The minor AG should have faced a less severe charge, specifically

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<sup>1</sup> Mertokusumo, S. (2010). *Mengenal Hukum Suatu Pengantar*. Yogyakarta: Cahaya Atma Pustaka, p. 1

<sup>2</sup> Lamintang. (1983). *Dasar-dasar Hukum Pidana Indonesia*. Bandung: Sinar Baru. p. 172-173

<sup>3</sup> Tirtaamidjaja, M.H. (1955). *Pokok-pokok Hukum Pidana*. Fasco, Jakarta, p. 174

<sup>4</sup> Luthfiani, D. 10 April 2023. "Sidang Vonis AG, Begini Kronologi Penganiayaan D Yang Sudah Direncanakan Mario Dandy", <https://metro.tempo.co/read/1713374/sidang-vonis-ag-begini-kronologi-penganiayaan-d-yang-sudah-direncanakan-mario-dandy> accessed on September 24, 2023

under the second Subsidiary charge, which includes Article 353 paragraph (2) of the Criminal Code in conjunction with Article 56 2nd of the Criminal Code.

Undeniably, the trial results prove that the minor AG engaged in complicity as outlined in Chapter V on Participation in Criminal Acts in the Criminal Code. The minor AG has been proven to be an accomplice in the criminal act of abuse specified in Chapter XX on Abuse in the Criminal Code.

However, considering the age of the minor AG, which is specifically regulated by Article 3 of Law Number 11 of 2012 on the Juvenile Justice System, limitations are imposed. This article stipulates that a Child in Conflict with the Law, defined as a child aged 12 (twelve) years but not yet reaching the age of 18 (eighteen) years, is subject to suspicion of committing a criminal act.

This implies that the sanctions imposed on a child are not the same as those for adults due to considerations of their still fragile psychological conditions and lack of social maturity. Additionally, children subject to criminal sanctions are afforded special protection under Article 64 of Law Number 23 of 2002 concerning Child Protection. This is an ideal effort aimed at restoring the essence of children's rights through rehabilitation, protection from media identity exposure, assurance of physical, mental, and social safety, as well as providing accessibility to case developments.

This is closely tied to the formative period of underage individuals, which tends to be easily influenced in terms of behavior, actions, attitudes, and responses to criminal activities. On the other hand, according to the sociologist Richard A. Cloward, intentionally engaging in criminal acts leads to delinquency, actions that violate basic societal norms, often limited to the assumption that a child is merely engaging in delinquency rather than criminal behavior.<sup>5</sup>

Even though the sanctions imposed may only involve rehabilitation or returning the child to their parents, the child is still considered capable of being held accountable for their actions without reevaluating the nature of the committed criminal act. This is compounded by the complicit actions of the minor AG, indicating support for MDS in the assault on the victim child DO, thus demonstrating the concept of complicity in determining criminal liability.

The current penalization of minors continues to give rise to a dualism in efforts to combat criminal activities, particularly when the perpetrator is an underage individual, as is the case with the complicity committed by the minor AG.<sup>6</sup>

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<sup>5</sup> Hendra, P. (2020). *Perilaku Delinkuensi: Pergaulan Anak dan Remaja Ditinjau dari Pola Asuh Orang Tua*. Yogyakarta: Penerbit Andi, p. 3

<sup>6</sup> Soetedjo, W. (2006). *Hukum Pidana Anak*. Bandung: Refika Aditama, p. 35

This research aims to complement previous studies and serve as relevant reference material, a basis for comparison, and a subject of analysis. A prior study conducted by Rauzatul et al. focused on children involved in murder cases. The findings revealed that, according to the considerations of the judges in the Takengon District Court, there were no justifying or forgiving reasons to annul the punishment for the child.<sup>7</sup> Therefore, the child was deemed capable of taking responsibility and was declared guilty. However, as a child, their rights would still be protected as stipulated in Law Number 35 of 2014 concerning Child Protection (UUPA). The distinctive feature in this study is that the perpetrator only provided assistance (*medeplichtige*) without actively participating in the act of assault.

The recent research conducted in 2023 by Fransiskus Friska addresses the imposition of imprisonment on minors who assist in premeditated murder case. The findings reveal discrepancies in the sentencing of the perpetrator, as the circumstances surrounding the case do not qualify as premeditated murder. The study scrutinizes the judge's considerations in imposing prison sentences on minors who assist in planned murder, as evident in the case study of decision number 5/Pid.Sus.Anak/2014/PN.Siak.<sup>8</sup> The research emphasizes that the minor involved either participated in the criminal act unknowingly, merely lured by another perpetrator without awareness of their intentions. The error of the minor lies in not reporting the criminal act to the authorities, yet the judicial panel did not take into account the psychological factors of the underage offender.

The study recommends that the examination and adjudication of minors in conflict with the law should not solely focus on the application of relevant laws but should also consider juridical, non-juridical, and psychological aspects to ensure the fair application of the law to underage individuals. One distinctive aspect of this research is the different case study, while both studies scrutinize the judge's considerations that are deemed less relevant.

The criminal act of complicity, as outlined in Article 56 of the Criminal Code, does not adequately encompass the actions of the perpetrator or, in this case, the minor AG alone. It must also extend to the consequences that ensued, involving a causal relationship between the assault by MDS and the harm experienced by the victim child DO.

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<sup>7</sup> Fitri, R., Zulfan, Z., & Husni, H. (2022). "Pertanggungjawaban Pidana Terhadap Anak yang Turut Serta Melakukan Pembunuhan". *Jurnal Ilmiah Mahasiswa (JIM FH)*. V(3), <https://ojs.unimal.ac.id/jimfh/article/view/5303/pdf>

<sup>8</sup> Buulolo, FF. (2023). "Penjatuhan Pidana Penjara Kepada Anak di Bawah Umur yang Membantu Tindak Pidana Pembunuhan Berencana (Studi Putusan Nomor 5/Pid.Sus.Anak/2014/PN.Siak)". 2(1), <https://jurnal.uniraya.ac.id/index.php/JPHUKUM/article/view/756>

The complicit actions of the minor AG, which have successfully led to these consequences, may warrant penal sanctions. However, careful consideration is still needed regarding the minor AG, who retains the status of a child, ensuring that legal proceedings remain oriented towards determining criminal responsibility.

In the pursuit of a better nation or state, it is crucial to prioritize the rights of every child. Each of these rights encompasses various aspects and must receive fair legal protection. Every effort in providing legal protection is aimed at the best interests of the child. The extensive scope of children's rights should be upheld through fair legal protection for children.<sup>9</sup>

This case study highlights the application of complicity in criminal acts as outlined in the Criminal Code (KUHP) and various legal aspects related to child protection. However, when a child is involved in complicity in a criminal act, questions arise about how in a legal context, their actions should be held accountable.

## **2. Research Methods**

Normative juridical research is employed in current research studies. This normative research addresses issues grounded in literature reviews and relevant legal regulations based on each problem. The scope of normative research involves the examination of every legal principle related to secondary data by comprehending and assessing all legal principles. Each case or provision of both national and international legislation related to the examined issues constitutes positive law.<sup>10</sup>

In a normative context, this research study focuses on examining norms and existing legal principles, whether codified in legislation or outside of it. Additionally, the research encompasses the study of legal history, legal synchronization and comparison, and legal systematics. From the perspective of existing doctrines, this normative legal research aims to analyze internal components of positive law to address existing issues.

The research adopts a statute approach with the purpose of examining the forms of assistance from the minor AG that contribute to criminal acts, as well as their protective measures. The legislative approach is implemented by scrutinizing and

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<sup>9</sup> Harefa, Beniharmoni. (2019). *Kapita Selektta Perlindungan Hukum Bagi Anak* . Yogyakarta: Deepublish, p. 144

<sup>10</sup> Sunggono, Bambang. (2016). *Metodologi Penelitian Hukum*. Jakarta: PT Raja Grafindo Persada, p. 41

studying all regulations that regulate issues or problems under discussion in the research.<sup>11</sup>

Peter Machmud asserts that the legislative and regulatory approach is the most effective method for conducting normative legal research. This method involves the investigation of various laws, including the Constitution of the Republic of Indonesia of 1945, Laws/Government Regulations, Government Regulations, Presidential Regulations, and Regional Regulations.<sup>12</sup>

In connection with this normative legal research study, the data sources utilized consist of secondary data. Secondary data sources themselves are divided into several types of legal materials, but those utilized in this research include both primary legal materials and secondary legal materials.

The primary legal materials related to this research include:

1. Criminal Code (KUHP)
2. Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Justice System
3. Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection
4. Law Number 17 of 2016 concerning the Ratification of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection
5. Decision of the South Jakarta District Court 4/Pid.Sus-Anak/2023/PN.JKT.SEL

Secondary legal materials are utilized in this study to provide descriptions and detailed explanations of the primary legal materials used. Some sources of secondary legal materials employed in this study include:

1. Research findings
2. Scholarly journals
3. Digital textbooks
4. Works produced by legal professionals

### **3. Results and Discussion**

#### **3.1. The Form of Assistance (Medeplichtige) Provided by a Minor Leads to the Occurrence of Criminal Acts**

In accordance with the legal facts duly recorded and in force within the proceedings of the Court Decision Number 4/Pid.Sus-Anak/2023/PN.JKT.SEL, it is

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<sup>11</sup> Fajar, Mukti. & Achmad, Yulianto. (2010). *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar, p. 157

<sup>12</sup> Machmud, Peter. (2010). *Penelitian Hukum. Kencana Prenada Media Group*, p. 97

discerned that the minor AG maintained an intimate relationship with the child victim DO from December 2022 to early January 2023. Exactly a week later, precisely on January 11, 2023, the minor AG initiated a novel romantic affiliation with MDS.

On January 17, 2023, a sexual encounter took place between the minor AG and the child victim DO, a revelation MDS gleaned from witness Anastasia Pretya Amanda (19 years old) known as APA, the former romantic partner of MDS from October 2021 to October 2022.

MDS was upon disagreed with the testimony from the witness APA, took immediate steps to meet with the child victim DO. He directly contacted the child victim DO, but their meeting did not happen because the child victim DO refused to meet with MDS. MDS then sought clarification from the minor AG. The outcome of the inquiry revealed that the minor AG admitted to the occurrence of the sexual act but claimed it happened under duress or coercion.

Until February 20, 2022, the minor AG discovered that the student ID cards were exchanged between the child victim DO and the minor AG. Upon realizing that MDS was still emotional about the child victim DO, the minor AG unilaterally facilitated a meeting between MDS and the child victim DO.

Before implementing this plan, MDS first sought the assistance of SL, his own friend. MDS approached SL to ask for help in carrying out a violent act openly, and this request was made via telephone. In the end, the child victim DO shared their location with the minor AG. The child victim DO was at the home of their friend with the initials RA in the Green Permata Residence area on Swadarma Raya Street, Ulujami Village, Pesanggrahan District.

Upon their arrival, the minor AG instructed the child victim DO to come downstairs and meet them. However, the child victim DO did not come down, so the minor AG deceived the child victim DO by having MDS convey, via chat, that the minor AG had arrived with his aunt using a Camry car, which was untrue. After the child victim DO came down and met them outside the house, approximately 20 meters from RA's house, that's where the physical assault began.

Examining the chronology of the aforementioned case, it is discerned that the the minor AG has engaged in complicity as delineated in Article 56 of the Penal Code. Complicity, or "assistance," in the commission of a criminal act is stipulated in Article 56 of the Penal Code. "Medeplichtige" serves as the term for the one responsible for providing assistance in committing a criminal act.<sup>13</sup>

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<sup>13</sup> Astuti, Puput W. (2021). "Keberadaan Ajaran Penyertaan Sebagai Perluasan Delik dan Perluasan Pertanggungjawaban Pidana". 2(2): 228, <http://sister.untagsmg.ac.id/index.php/JRS/article/viewFile/2626/pdf>

Consequently, one must substantiate the presence of an "intentional" nature in the actions undertaken to aid in the execution of the criminal act. Assisting or aiding in the commission of a criminal act involves providing means to the principal perpetrator to facilitate the criminal action of rape through the provision of tools and understanding that the act of rape will be perpetrated. Thus, the element of intent is inherently embedded in such actions.<sup>14</sup>

As delineated in Article 56 of the Penal Code, complicity comprises two distinct forms:<sup>15</sup>

1. Assistance at the time of the commission of the crime. The manner in which assistance is rendered is not explicitly specified in the Penal Code, resembling participation or complicity (*medeplegen*).
2. Assistance prior to the commission of the crime, accomplished by providing opportunities, means, or information, akin to instigation or solicitation (*uitlokking*).

In the context of this differentiation, the minor AG falls within the second category, prior to the commission of the crime, by facilitating the convergence between the main perpetrator and the child victim DO. This assistance extends to aiding the main perpetrator by complying with their instructions to engage in deception.

On the one hand, in connection with the concept of complicity, there is scarcely any distinction from perpetration and instigation; both necessitate the involvement of two parties, namely the perpetrator or principal actor (*de hoofddader*) and the accomplice (*medeplichtige*). Another shared prerequisite is the requirement of intent (*dolus*) in complicity, as complicity resulting from negligence (*culpa*) is deemed implausible.

The theoretical disparity between participation (*medepleger*) enshrined in Article 55 of the Penal Code and assistance (*medeplichtige*) in Article 56 of the Penal Code can be delineated based on the nature of the acts constituting the criminal offense. If an individual engages in conduct inherently prohibited by the law, the person does so as a form of complicity.

In participation, the actor willingly commits the crime, whereas in complicity, the will is directed towards providing assistance to the person undertaking the criminal act. In this context, the minor AG adhered to the instructions of the main perpetrator to deceive Victim DO for the purpose of meeting. The minor AG lacked any impetus or directive to directly participate in the act of assault.

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<sup>14</sup> Setyowati, Ike I. A. (2018). "Pembantuan dan Penyertaan (Deelneming) dalam Kasus Perkosaan Anak". *Media Iuris*, 1(2): 297, <https://e-journal.unair.ac.id/MI/article/view/8831/5052>

<sup>15</sup> Erhatanti, Ririn. (2016). *Tindak Pidana Turut Serta dalam Melakukan Kekerasan Fisik dalam Lingkup Rumah Tangga Ditinjau dari Fiqh Jinayah Studi Kasus Putusan Pengadilan Negeri Bangkinang No. 91/Pid.B/2014/PN.BKN*. (Skripsi Sarjana, UIN Suska Riau), <https://repository.uin-suska.ac.id/2772/>



In the endeavor to aid in the commission of the act, it is asserted that the element of "intent" is imperative. Consequently, the individual who by happenstance lacks comprehension but inadvertently provides opportunities, efforts, or information to facilitate the commission of the crime is not subject to punishment. The "intent" or "*mens rea*" in the execution of the crime must emanate from the individual who receives assistance, opportunities, efforts, or information itself.<sup>16</sup>

The measure of intent manifests in two forms:

1. The volition of an individual as an actor either to actively engage in the perpetration of a criminal act or merely to provide assistance.
2. The desire of the actor to achieve a specific outcome as an element of the criminal act, or alternatively, to participate or be complicit if the principal perpetrator so desires.

It can be concluded that the presence of the actor enables independent standing, and the responsibility for their behavior can be self-assessed in relation to the actions undertaken. In the subjective context, intent when actively participating is aimed at realizing the offense. On the other hand, intent in the context of assistance is aimed solely at providing support to the actor, whereby the actor assists themselves in the realization of the offense.<sup>17</sup>

Therefore, it can be understood that the actions undertaken by the minor AG are classified as complicity as stipulated in Article 56 of the Penal Code. The minor AG facilitated and agreed to a one-sided meeting between the main perpetrator and the child victim DO without the consent of both parties.

Prior to the assault, the minor AG deceived the child victim DO by providing false information about the brand of the car they were riding in and with whom they arrived, ultimately leading the child victim DO to believe and fall into the deception orchestrated or instructed by the main perpetrator, MDS.

In principle, the Indonesian Criminal Code (KUHP) adopts a system where the punishment for an accomplice is not the same as that for the principal offender. The principal punishment for an accomplice is generally less severe than that for the principal offender. This principle is evident in Article 57, paragraphs 1 and 2, of the Indonesian Criminal Code, which state that the maximum principal punishment for complicity is reduced by one-third. Additionally, if the committed

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<sup>16</sup> Soesilo, R. (1991). *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia

<sup>17</sup> Waluyo, KRH Aryo G.P. 03 November 2022. "Pelaku Pembantu Tindak Kejahatan Di Ancam Pasal 56 KUHP". Askara, [Pelaku Pembantu Tindak Kejahatan Di Ancam Pasal 56 KUHP \(askara.co\)](https://askara.co) accessed on September 24, 2023

crime is punishable by death or life imprisonment, the maximum principal punishment for an accomplice is fifteen years of imprisonment.<sup>18</sup>

### 3.2 Legal Protection Regarding Assistance by a Child Results in the Commission of a Criminal Act

If a child violates the law, the child is obliged to be accountable for their actions. However, even though they must be held accountable, the child must be protected. Child protection is closely related to five pillars: parents, family, community, government, and local government. All five are interconnected as organizers of child protection.<sup>19</sup>

The implementation of legal protection and assurance of children's rights requires an optimal approach without discrimination. This necessity arises because, in reality, a number of cases of child rights violations continue to be found.<sup>20</sup> In connection with this, children in conflict with the law also have rights to legal protection. All elements of law enforcement must review the background of the child's circumstances, including the minor AG, without exception.

The protection of children, as stipulated in Article 3 of Law Number 23 of 2002, aims to ensure the fulfillment of every child's right to live, grow, develop, and participate optimally based on the principles and dignity of humanity. It also seeks to provide protection against violence or discrimination, with the goal of realizing Indonesian children with quality, noble character, and well-being.

Essentially, the psychological development of a child is not the same as that of an adult, which is why education plays a crucial role as a shaper of a child's character.<sup>21</sup> Mishandling and incorrect intervention towards child offenders will

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<sup>18</sup> Ponglabba, Chant S.R. (2017). "Tinjauan Yuridis Penyertaan dalam Tindak Pidana Menurut KUHP". *Lex Crimen*. VI(6): 36, <https://media.neliti.com/media/publications/147158-ID-tinjauan-yuridis-penyertaan-dalam-tindak.pdf>

<sup>19</sup> Fitriani, Rini. (2016). Peranan Penyelenggara Perlindungan Anak dalam Melindungi dan Memenuhi Hak-Hak Anak, *Jurnal Hukum Samudra, Meurandeh Keadilan*. II(2): 2, <https://www.neliti.com/publications/240378/peranan-penyelenggara-perlindungan-anak-dalam-melindungi-dan-memenuhi-hak-hak-anak>

<sup>20</sup> Mozin, Nopiana., & Sunge, Maisara. (2021). "Pemberian Edukasi Dan Bantuan Hukum Terhadap Anak Korban Kekerasan". *Jurnal Ius Constituendum*, 6(2): 169, <https://journals.usm.ac.id/index.php/jic/article/view/2485/0>

<sup>21</sup> Juliana, Ria., & Arifin, Arifin. (2019) "Anak Dan Kejahatan (Faktor Penyebab Dan Perlindungan Hukum)". *Jurnal SELAT*. 6(2): 225-234, <https://ojs.umrah.ac.id/index.php/selat/article/view/1019>

impact the disruption of programs designed to prepare children as the future generation of the nation.<sup>22</sup>

Even though the minor AG has been proven to provide assistance, based on the provisions of Article 59A of the Republic of Indonesia Law Number 35 of 2014 regarding Amendments to Law Number 23 of 2002 Concerning Child Protection, the minor AG still needs to receive legal protection during the criminal justice process.

The Law Number 11 of 2012 regarding the Juvenile Justice System (SPPA) regulates the resolution process for cases involving children in conflict with the law, ensuring that despite committing a criminal act, their rights remain protected. Additionally, children need someone older to provide shelter since they are not yet capable of independently navigating their lives.<sup>23</sup>

Children who commit crimes are obligated to undergo legal proceedings just like adults, but still in accordance with Article 81 of Law Number 11 of 2012 concerning the Juvenile Justice System. This law stipulates that the imprisonment sentence imposed on a child shall not exceed half of the maximum imprisonment penalty for adults. Furthermore, the legal stance obtained differs from the specific treatment, approach, and protection accorded to them.<sup>24</sup>

The Child Criminal Justice Law (UU SPPA) provides protection for children in conflict with the law. This is realized through the investigative process up to the verdict in juvenile correctional institutions, which afford protection for the rights of children. Since the enactment of the Child Justice System Law, legal resolution for children in conflict with the law increasingly prioritizes the values of justice, well-being, and upholds the protection of human rights for children.<sup>25</sup>

This is also reflected in the duties and responsibilities of the Special Child Officer to handle issues involving children during the examination and detention stages. Detaining a child can only be done as a last resort (*ultimum remedium*), and throughout the detention process, all the needs of the child must be met.

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<sup>22</sup> Harefa, Beniharmoni. (2015). "Diversi Sebagai Perlindungan Hukum Terhadap Hak Asasi Anak dalam Sistem Peradilan Pidana Anak di Indonesia". *Jurnal Komunikasi Hukum*. 1(1): 2, <https://ejournal.undiksha.ac.id/index.php/jkh/article/view/5009>

<sup>23</sup> Fatahaya, S. & Agustanti, R. D. (2021). "Legalitas Aborsi yang Dilakukan oleh Anak Akibat Perkosaan Inses" *Jurnal USM Law Review*. 4(2); 505, <https://journals.usm.ac.id/index.php/julr/article/view/4041/2213>

<sup>24</sup> Sibarani, E.P. "Perlindungan Hukum Terhadap Anak Yang Berkonflik Dengan Hukum Menurut Undang-Undang No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak". *Jurnal Mahupiki*. 2(1), <https://journal-stiayappimakassar.ac.id/index.php/Birokrasi/article/download/601/620/1624>

<sup>25</sup> Astuti, Laras. (2017) "Perlindungan Hukum Terhadap Anak yang Berhadapan dengan Hukum dalam Kecelakaan Lalu Lintas". *Justitia Jurnal Hukum*. 1(1); 147, <https://journal.um-surabaya.ac.id/index.php/Justitia/article/view/623>.

Imposing punishment on a child as if they were an adult criminal is highly inappropriate. This is reflected in the psychological and mental conditions of children who are still in the developmental stage. The implementation of criminal punishment on children essentially has significant effects.

On one hand, it can serve as a deterrent to prevent the child from repeating their offense. However, on the other hand, considering that the child is still in the process of development, this can trigger an increase in criminal tendencies within the child.

From a theoretical standpoint, imprisonment is not the optimal punishment for a child. The most suitable punishment for an underage offender is restitution, which is a form of sanction determined by the court and requires the offender to pay a certain amount of money or provide services, either directly by the offender or through a substitute (victim's family).

In essence, every child entering the Criminal Justice System as an offender must adhere to the principles of non-discrimination, prioritizing the best interests of the child, ensuring the child's survival and development, and respecting the child's opinions.<sup>26</sup>

In reality, Law No. 3 of 1997 concerning Juvenile Courts cannot function as legal protection for children in conflict with the law. Therefore, changes and reforms are crucial. To date, issues related to criminal justice and protection for underage offenders remain a central topic of discussion worldwide.

Regardless, referring to one of the principles in criminal law, namely the principle of criminal responsibility expressed in the phrase *geen straf zonder schuld, actus non facit reum nisi mens sist rea*, which means one cannot be punished if there is no fault. Furthermore, if we examine Article 20 of Law Number 1 of 2023 concerning the Criminal Code, it is stated that a person can be punished as a perpetrator of a criminal act only if they directly commit the criminal act.

On the other hand, As stated in the Court Decision Number 4/Pid.Sus-Anak/2023/PN.JKT.SEL, it is emphasized that the judge does not receive anything capable of causing the elimination of criminal responsibility, whether for reasons of truth or forgiveness.

However, according to Article 70 of Law Number 11 of 2012 regarding the Juvenile Justice System, it is stated that leniency or behavior, the child's personal situation, and the conditions at the time of the act or that may occur can be used as a basis for the judge's consideration not to impose a penalty or to enforce an action through considerations of justice and humanity.

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<sup>26</sup> Ernis, Yul. (2016). "Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak di Indonesia". *Jurnal Ilmiah Kebijakan Hukum*. 10(2): 164, <https://ejournal.balitbangham.go.id/index.php/kebijakan/article/view/213/76>

In this case, as a minor, AG is highly likely to experience significant mental pressure due to the unfolding events. Furthermore, child and adolescent psychologist Novita Tandry has been confident from the beginning that the minor AG has psychological disorders.

It can be said that the minor AG does not live with sufficient care from the family due to certain circumstances. His father suffered a stroke and was paralyzed for a considerable period, while on the other hand, his mother is battling cancer, and his sibling is also dealing with liver cancer.

At a time when a child lacks affection and care, guidance, and support, as well as guidance in the development of adaptive behavior or supervision from parents or guardians, the child becomes susceptible to being ensnared in an unhealthy social environment, which can have detrimental effects on individual development.<sup>27</sup>

Every action of a child does not always reflect the true reality of themselves but is more likely a replication of patterns generated from their everyday sensory captures.<sup>28</sup>

Under the influence of the surrounding environment, children often find themselves engaged in criminal behavior. This phenomenon can be triggered by various factors, including persuasion, spontaneous reactions, or simply going with the flow. However, it is important to emphasize that such actions remain criminal activities. Nevertheless, in the context of a child's mental growth and development, it is crucial to consider differentiation in legal proceedings and criminal threats.<sup>29</sup>

As articulated by juvenile criminal expert Beniharmoni Harefa, it is clearly stated that fundamentally, a child who commits a criminal act at an age that is not yet sufficient for legal responsibility should indeed be held accountable. However, it is crucial not to become entangled in the burgeoning public opinion.

Judges must possess the skill to construct the true role of a child who is a perpetrator of a criminal act. This condition arises due to criticism from society regarding children involved in criminal acts, as well as the insistence of individuals that Minor AG should rightfully receive appropriate legal protection.

In conclusion, what the minor AG did in this case still falls within the realm of child protection; however, there must be accountability for the minor AG's actions. Considering the minor AG's status as a minor, immature psychological

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<sup>27</sup> Supramono, Gatot. (2000). *Hukum Acara Pengadilan Anak*. Jakarta: Djambatan

<sup>28</sup> Santoso, Bambang., Soehartono, & Rustamaji, M. (2017) "Unearthing the Philosophical Roots of Pancasila on Distinctive Legal Treatments for Children in Conflict With the Law". *Jurnal Yustisia*, 6(2); 288, <https://jurnal.uns.ac.id/yustisia/article/download/12412/10994>.

<sup>29</sup> Hutahaean, Bilher. (2013). "Penerapan Sanksi Pidana Bagi Pelaku Tindak Pidana Anak Kajian Putusan Nomor 50/Pid.B/2009/PN.Btg". *Jurnal Yudisial*. 6(1): 6, <https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/119>

state, and the background of family conditions, these can be crucial points that may serve as mitigating factors in this case. Therefore, the second additional indictment containing Article 353 paragraph (2) of the Criminal Code in conjunction with Article 56 2nd of the Criminal Code, is a more appropriate choice to lighten the punishment for the minor AG.

#### 4. Conclusion

In the case of child abuse involving the child of a high-ranking GP Anso official, as evidenced by Court Decision Number 4/Pid.Sus-Anak/2023/PN.JKT.SEL, it has been established that the minor AG assisted in a planned assault resulting in severe injuries to the victim. The minor AG's assistance included facilitating the meeting between the main perpetrator and the victim without the victim's knowledge and consent, subsequently deceiving the victim. However, considering the minor AG's status as a minor, immature psychological condition, and family background, as regulated in the Child Protection Law and other relevant aspects, the minor AG should be subject to the second subsidiary charge—Article 353 paragraph (2) of the Criminal Code in conjunction with Article 56 2nd of the Criminal Code,—which gives a more lenient punishment for the minor AG.

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Decision of the South Jakarta District Court 4/Pid.Sus-Anak/2023/PN.JKT.SEL