

Construction of Participation in the Crime of Persecution in Indonesia

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Abstract. *In criminal law, the construction of participation refers to a situation where a person is involved in a criminal offense, not directly as the main perpetrator, but plays a role in the implementation of the criminal offense. This means that a person can be charged with a crime even though he/she did not physically commit the criminal act, as long as he/she fulfills the elements of participation. The problems faced in this study are how the predicate crime of the crime of persecution in the case of South Jakarta District Court Decision Number 4/Pid.Sus-Child/2023/PN.Jkt.Sel and how the participation in the South Jakarta District Court Decision Number 4/Pid.Sus-Child/2023/PN.Jkt.Sel. The research method used is normative juridical legal research. The research specification used in this research is descriptive analytical. This research uses primary, secondary and tertiary sources of legal material. The approaches used from several approaches above are the statute approach and the case approach and the analysis technique used is qualitative analysis. The results showed that predicate crime in a criminal offense, including persecution, are elements that must be proven legally to declare a person has committed the crime. This predicate serves as the basis for law enforcement to impose a sentence. It must be underlined that each case has different characteristics. Therefore, the application of the law in each persecution case will vary depending on the facts revealed in the trial. Victims of persecution are entitled to legal protection. Participation in the crime of maltreatment is a form of understanding a person's criminal responsibility in a criminal event and in this case, however, in this case, Child AG cannot be classified as "assisting in the commission" because he did not knowingly provide assistance to commit the crime of maltreatment, either before, during or after the maltreatment was committed. There was no conspiracy or providing facilities, information and other efforts in realizing the crime of maltreatment.*

Keywords: *Construction; Criminal; Participation; Persecution.*

1. Introduction

The law is divided into several parts. According to its content, law consists of private law and public law. The initiative to implement private law is left to each interested party. The position between individuals is horizontal, while the initiative to implement public law is left to the state or government represented by the prosecutor and his apparatus¹. Criminal law is classified as public law where it regulates the relationship between the state and individuals or regulates the public interest. To achieve public order and security in society, laws and regulations are needed that can protect individuals and their property from disturbances and threats to other individuals or groups of people in society².

Crime that develops in society consists of sharing various forms and types. One of the criminal acts committed by the community is the crime of persecution. Persecution is an inhumane act. From a religious point of view, persecution is an act that should not be done because it causes suffering for others to be declared as the perpetrator of the crime of persecution, then the perpetrator must meet the formula of the *delik* and for that the perpetrator can only be punished. Cases of persecution can occur for various reasons or motives that are very diverse, namely because they have a grudge for the past, feelings of envy, and or because they have a living environment similar to the crime that occurred. Every criminal act regulated in the Criminal Code, conceptually divided into two elements, namely objective and subjective elements. According to Remmelink, the objective element embodied by *actus reus* can be interpreted as an act or action that according to the community is reprehensible and should be punished³.

Persecution is contained in Chapter XX Articles 351 to 355 of the Criminal Code. Ordinary persecution is regulated in Article 51, minor persecution is regulated in Article 352, premeditated persecution is regulated in Article 353, severe persecution is regulated in Article 354, while planned severe persecution is regulated in Article 355. When focused on premeditated severe persecution in Article 355 of the Criminal Code, it is explained that a serious persecution carried out with pre-planning is threatened with imprisonment for a maximum of twelve years⁴.

A crime if accompanied by a prior plan will cause a difference in the criminal snare, as well as with a crime committed together with another person, and/or

¹ Topo Santoso and Eva Achani Zulfa, "Kriminologi, Cetakan Kesepuluh," Jakarta: Raja GrafindoPersada (2011).

² S H Moeljatno, "Asas-Asas Hukum Pidana," Rineka Cipta, Jakarta (2002).

³ Romli Atmasasmita, *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan* (Gramedia Pustaka Utama, 2017).

⁴ Febrianti V F Parengkuan, "Analisis Yuridis Tindak Pidana Penganiayaan Berat Ditinjau Dari Pasal 355 KUHP," *Lex Crimen* 10, no. 4 (2021).

on the basis of coercion. In criminal law, it is known as *deelnemings delicten* or participating in committing a criminal act. The definition of this inclusion offense is not explained in the Criminal Code, but it can be concluded that participation is an understanding of all forms of participation or participation or involvement of a person or several people, both psychologically and physically by committing each act so as to cause a crime (criminal act)⁵. The inclusion of criminal acts is regulated in the Criminal Code (KUHP) in Articles 55 to 56. In the Criminal Code, participation is divided into two, namely:⁶

1. *Dader*, i.e. makers or makers.
2. *Medeplichtige*, i.e. helpers or helpers.

The forms of participation are explained in Article 55 and Article 56 of the Criminal Code, where it is explained about the groups called *mededader* (makers), *medeplichtige* (helpers). Article 55 of the Criminal Code, namely regarding participation, is formulated:

1. Convicted as a delinquent:
 - a. Those who do, who order to do, and who participate in doing deeds.
 - b. Those who, by giving or promising something, by abusing power or dignity, by violence, threats or misdirection, or by giving opportunities, means or information, deliberately encourage others to commit acts.
2. For the advocate, only the intentionally recommended actions are taken into account, along with the consequences.

In Article 56 of the Criminal Code, it is explained about the perpetrators of crimes, namely:

1. Those who deliberately give assistance at the time of the crime.
2. Those who deliberately provide opportunities, means or information to commit crimes.

Participation is divided into two parts, namely the maker (*dader*) and the helper (*medeplichtige*). *Dader*, which is described in Article 55 of the Criminal Code, consists of: the perpetrator of the crime (*pleger*), who orders the crime to be committed (*doenpleger*), who participates in the commission (*medepleger*), and who encourages, or in other words persuades to commit a crime (*uitlokker*)⁷. Meanwhile, from the side of the helper of crime (*medeplichtige*) it consists of

⁵ Wirjono Prodjodikoro, "Asas-Asas Hukum Pidana Di Indonesia, Bandung: PT," *Refika Aditama* (2008).

⁶ Barda Nawawi Arief, "Sari Kuliah Hukum Pidana Lanjut," *Badan Penyedia Bahan Kuliah FH UNDIP, Semarang* (2012).

⁷ Djefriye Thon, "Kajian Hukum Terhadap Ajaran Penyertaan (Deelneming) Dalam Tindak Pidana Korupsi Menurut UU No. 20 Tahun 2001," *Lex Privatum* 4, no. 7 (2016).

people who help when the crime is committed, and who help before the crime is committed. A perpetrator (*pleger*) is a person who commits an act that meets the formulation of a delik and is considered the most responsible for a crime that occurred⁸.

According to the doctrine of criminal law, *pleger*⁹ is distinguished from *dader*. A *pleger* is a person who is a perpetrator in a participation that can be punished the same as a maker who has qualifications as a defendant who is distinguished by qualifications as an assistant. Thus, a *pleger* is a person who fulfills all the elements of delicacies, including when done through other people or their subordinates¹⁰. A person who orders to commit a crime (*doenpleger*) is a person who commits an act with the intermediary of another person, while the intermediary is only used as a tool. Thus there are two parties, namely the direct maker or the person who is told to do (*manus ministra*), and the indirect maker or the person who tells to do (*manus domina*). *Doenpleger* itself has elements, namely with the intermediary of others as tools, others who act, and because they are subject to violence.

A person who participates in committing a crime according to MvT (*Memorie van Toelichting*) is a person who deliberately participates in doing or participating in the occurrence of something.¹¹ This form of participation must have two or more people who are said to be *medeplegers*, all of whom must be actively involved in a cooperation at the time the criminal act is committed, and the condition is conscious cooperation and physical joint implementation. The organizer (*uitlokker*) or the person who advocates to commit a crime is a person who encourages others to commit a criminal act, where the other person is moved to fulfill his or her recommendation because he is influenced or tempted by the efforts launched by the organizer as specified in Article 55 paragraph (1) number 2.¹²

The organizer (*uitlokker*) is almost the same or similar to telling to do (*doenpleger*), because it is both through the actions of others as intermediaries. However, the difference is that *the uitlokker* moves with certain things or means (in a limitative way) regulated in the law (KUHP), while *the doenpleger orders with* unspecified means, and in *the uitlokker* the material maker can be

⁸ Teguh Prasetyo, "Hukum Pidana" (2011).

⁹ Siswantari Pratiwi, "Delik Penyertaan Dalam Kitab Undang-Undang Hukum Pidana (KUHP)," *Binamulia Hukum* 11, no. 1 (2022): 69–80.

¹⁰ Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Sinar Grafika, 2022).

¹¹ Barda Nawawi, *Op.Cit.thing*. 55.

¹² Mahrus Ali, *Op.Cit.*, p. 129.

accounted for, while in *the doenpleger* the material maker cannot be accounted for. The conditions for *uitlokker* to be convicted are:¹³

1. There is an intention to move others to commit prohibited acts.
2. Mobilize it by using such efforts (means) in the law (restrictive).
3. The decision of the will of the material maker is caused by these efforts (Article 55 of the Criminal Code).
4. The material maker commits or attempts to commit a recommended criminal act;
5. Material makers must be held accountable.

Based on the type of participation mentioned above, the author will only focus on participating in committing criminal acts. In the Criminal Code, participating in committing a criminal act is a teaching to expand criminal liability. So the criteria used lies in the maker's fault or the maker is only involved in the act of preparation. Or even though his role is very significant, he is not involved in the implementation of the act.

In some cases, *there* are often mistakes in criminalizing the perpetrators of crimes. Advocates and material makers are often given the same sanctions or prison sentences without any difference between the two. The mistake occurred because of a mistake by law enforcement officials in carrying out the judicial process.

According to data released by the Online Information System for the Protection of Women and Children (SIMFONI-PPA), from January to February 2024 the number of cases of violence against children has reached 1,993. This number can continue to increase, especially when compared to cases of violence that occurred in 2023. According to the National Commission for Child Protection (Komnas PA), throughout 2023 there were 3,547 complaints of cases of violence against children. Meanwhile, according to the Indonesia Child Protection Commission (KPAI), from January to August 2023, there were 2,355 cases of violations against child protection.¹⁴

One example of a criminal case of participating in serious persecution with a prior plan is contained in the South Jakarta District Court Decision Number 4/Pid.Sus-Anak/2023/PN. Jkt.Sel. departed from a case involving the son of a former official of the Directorate General of Taxes which has been a public

¹³ Barda Nawawi, *Op.Cit.*thing. 60.

¹⁴ Achmad Muchaddam Fahham, "Violence Against Children in Education Units", Center for Parliamentary Analysis of the Expert Body of the Secretary General of the House of Representatives of the Republic of Indonesia, February, 2024. https://berkas.dpr.go.id/heirloom/files/isu_sepekan/Isu%20Sepekan---I-PUSLIT-Februari-2024-190.pdf

discussion since the beginning of 2023. This case involves several names, namely Mario Dandy alias Dandy, and two people with child status, namely the "victim's child" Crystalino David Ozora, and another child who in this article will be written with the initials "child" AG.

In this case, the author analyzes the involvement of AG (15 years old) as participating in committing the crime of serious persecution that was planned in advance, namely Article 355 jo Article 55 paragraph (1) 1 of the Criminal Code. This asus began on February 20, 2022, Mario Dandy aka Dandy picked up AG's child from school to be escorted back to his home and after that was escorted to Lotte Mart Bintaro for facial treatment. On this trip, AG's child said that Crystalino David Ozora's student card was still on him, as well as his student card was still on Crystalino David Ozora. Mario Dandy alias Dandy asked AG's child to contact the victim Crystalino David Ozora's child via WhatsApp by pretending to return the student card belonging to the victim Crystalino David Ozora's child brought by AG's child. That the one who actively contacted the victim Crystalino David Ozora from Lotte Mart to the crime scene was Anak AG on the orders of Mario Dandy.

Mario Dandy alias Dandy asked AG's son to contact the victim Crystalino David's son via WhatsApp by pretending to return the student card belonging to the victim Crystalino David Ozora's child. AG's son did not know Mario Dandy's intention and plan to hit the victim Crystalino David Ozora. Then also in the verdict, it was stated that Dandy who told AG's son told the victim's son Crystalino David Ozora that AG's child came with his aunt.

At the location of the persecution, the AG child was not involved in the crime of persecution, the AG's child only witnessed and was unable to prevent it because he was in a state of fear and confusion and fear. There were no words and deeds from AG's son to be involved in this persecution. The entire series of acts of persecution was carried out by Mario Dandy. In the South Jakarta District Court Decision Number 4/Pid.Sus-Anak/2023/PN. Jkt.Sel, AG's son was legally and convincingly proven guilty of committing the crime of "participating in committing severe persecution with a prior plan" as in the first indictment and the judge sentenced AG's child to imprisonment for 3 (three) years and 6 (six) months at the Special Children's Development Institution (LPKA).

2. Research Methods

a. Type of Research

The type of research in this legal research is normative or doctrinal legal research.¹⁵ Normative or doctrinal legal research is research that provides a

¹⁵ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana Prenada Media Group, 2011), p. 35.

systematic explanation of the rules that govern a particular category of law, analyzes the relationship between regulations, describes areas of difficulty, and may predict future development).¹⁶ In essence, the research is carried out by researching library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials.

b. Research Specifications

The research specification used in this study is descriptive analytical, which is research that describes the applicable laws and regulations associated with positive legal theories related to the problem being studied.¹⁷ In the specification of the research that uses analytical descriptive research, it is tried to describe the results of the research according to the problems raised so that it is expected to get a clear, detailed, and systematic picture and then from the picture it is analyzed which aims to get more specific results or solutions that are in accordance with applicable legal products or regulations.

c. Types and Techniques of Data Collection

Types of data or legal materials can be divided into 3, namely primary legal materials, secondary legal materials, and tertiary legal materials. In this study, the author uses legal sources, namely:

1) Primary Legal Materials

The primary legal materials used consist of laws and regulations, official records, minutes in making legislation and judges' decisions.¹⁸ In this study, the primary legal materials used are laws and regulations, which include:

- a) The Constitution of the Republic of Indonesia in 1945.
- b) Criminal Code.
- c) Law Number 8 of 1981 concerning the Criminal Procedure Law.
- d) Law Number 48 of 2009 concerning Judicial Power.
- e) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.
- f) South Jakarta District Court Decision Number 4/Pid.Sus-Anak/2023/PN. Jkt.Sel.
- g) Jakarta High Court Decision Number 2/Pid.Sus.Anak /2023/PT. DKI.
- h) Supreme Court Decision Number 3202 K/Pid.Sus/2023.

2) Secondary Legal Materials

¹⁶ *Ibid.*, p. 32.

¹⁷ Roni Hanitijo Sumitro, *Legal Research Methodology*, (Jakarta: Ghalia, 2010), p. 34.

¹⁸ Peter Mahmud Marzuki, *Op.cit.*, p. 141.

The main secondary legal material is textbooks because textbooks contain the basic principles of legal science and the classical views of highly qualified scholars.¹⁹ In this study, the secondary legal materials used include scientific books in the field of law, papers, scientific journals and scientific articles.

3) Tertiary Legal Materials

Tertiary legal materials are materials that provide instructions and explanations for primary and secondary legal materials. In this study, the tertiary legal materials used include Indonesian Language Dictionary and the Internet.

The technique of collecting legal materials is intended to obtain legal materials in research. The technique of collecting legal materials that supports and is related to the presentation of this research is document study (literature study). Document study is a tool for collecting legal materials that is carried out through written legal materials using *content analysis*.²⁰

d. Research Approach

In relation to normative research, the approach used in legal writing according to Peter Mahmud Marzuki is as follows:²¹

- 1) Case approach
- 2) Statute approach
- 3) Historical approach
- 4) Comparative *approach*
- 5) Conceptual approach

The approaches used from some of the approaches above are the statute *approach* and *the case approach*. The legislation-legislation approach is an approach that is carried out by examining all laws and regulations related to the legal issues being handled.

The case approach is an approach that is carried out by conducting an analysis of cases related to the issues at hand that have become court decisions that have permanent legal force²², namely the South Jakarta District Court Decision Number 4/Pid.Sus-Anak/2023/PN. Jkt.Sel.

e. Data Analysis Techniques

¹⁹ *Ibid.*, p. 142.

²⁰ *Ibid.*, p. 21.

²¹ *Ibid.*, p. 93.

²² *Ibid.*, p. 24.

In this writing, the technique of analyzing legal materials is qualitative analysis. Qualitative data analysis techniques explain the concept of a problem, but are not accompanied by data in the form of numbers. Data collection is carried out by researching legal materials through methods or literature studies. Then a data analysis and grouping is carried out which aims to understand and solve the problem being researched. Qualitative research requires regularity, order and precision in thinking about the relationship between data and others, which context is a problem to be studied.²³

3. Results and Discussion

3.1. Predicate Crime Against the Crime of Persecution in the South Jakarta District Court Decision Case Number 4/Pid.Sus-Anak/2023/PN. Jkt.Sel

The predicate of crime in a criminal act, including persecution, are elements that must be legally proven to state that a person has committed the crime. This predicate serves as a basis for law enforcement to impose a sentence.

In general, the crime of persecution has several elements that must be proven, namely:

1. There is an unlawful act:

The act must be contrary to applicable legal norms. For example, hitting, kicking, or causing injury to another person without any right and justified reason.

2) There is an element of violence:

a) Violence can be physical or psychological.

b) Physical violence is characterized by the presence of cuts, bruises, or injuries to the victim's body.

c) Psychological violence can be in the form of threats, intimidation, or treatment that causes psychological trauma.

3) There is an element of intentionality:

The perpetrator must have the intention to commit the act or at least be aware that his act will cause legal consequences.

Based on its severity, persecution can be divided into several types:

a) Ordinary persecution: Performed without causing serious injury or death.

b) Abuse that results in serious injury: An act that causes the victim to suffer serious injuries and requires medical attention for a long period of time.

c) Persecution resulting in death: An act that causes the death of the victim.

²³ *Ibid.*, p. 247.

Examples of Crime Predicates in Persecution Cases. For example, in one case, a perpetrator hit the victim until he suffered a laceration wound on the face. The predicate of a predicate of a crime that can be presumed is "persecution resulting in serious injury". To prove this predicate, the public prosecutor must prove the existence of the following elements:

- a) Unlawful act: The perpetrator hits the victim without rights.
- b) Element of violence: The victim suffered lacerations on the face.
- c) Element of intentionality: The perpetrator hits intentionally.

Legal consequences for perpetrators of persecution, where punishment for perpetrators of persecution is regulated in the Criminal Code. The level of punishment will be adjusted to the type and severity of the persecution committed. The heavier the consequences caused, the heavier the punishment will be.

It should be emphasized that each case has different characteristics. Therefore, the application of the law in each case of persecution will vary depending on the facts revealed in the trial. Victims of persecution have the right to legal protection. There are various institutions and services that can help victims, such as the Integrated Service Center for Women and Children Empowerment (P2TP2A).

The judge's decision stated that the defendant was legally proven guilty of participating in serious persecution with a prior plan in accordance with the provisions of Article 355 paragraph (1) of the Criminal Code. The judge's decision has several important points that need to be understood:

- 1) Legally and convincingly proven guilty: this means that the judge has conducted a thorough examination of the evidence presented by the public prosecutor and the defense, as well as the testimony of witnesses. After going through a careful consideration process, the judge concluded that there was enough evidence to declare the defendant guilty of the crime charged.
- 2) Participating in serious persecution: the defendant did not directly commit an act of persecution that resulted in serious injury to the victim, but he was involved in the crime in a certain way. This involvement can be in the form of planning, providing assistance, or incitement.
- 3) With advance planning: this shows that the criminal act of persecution was not carried out spontaneously, but had been pre-planned by the defendant along with other perpetrators. This aggravates the level of guilt of the defendant.
- 4) Article 355 paragraph (1) of the Criminal Code: This article regulates severe persecution carried out with prior planning. The criminal threat for this crime is heavier than ordinary persecution.

In order for a defendant to be charged with Article 355 paragraph (1) of the Criminal Code, the public prosecutor must prove several elements, namely:

- 1) There is an act of persecution.
- 2) The persecution resulted in serious injuries.
- 3) The act of persecution was carried out with a plan in advance.
- 4) The defendant participated in committing the crime.

The judge's decision that the defendant was legally and convincingly proven guilty of participating in severe persecution with a prior plan is a complex decision and has serious legal consequences for the defendant. This verdict shows that the criminal justice system works to provide justice for victims and society.

Regarding the element where the defendant is legally proven guilty of participating in serious persecution with a prior plan in the provisions of Article 355 paragraph (1). Where what is meant by severe persecution is persecution that results in serious injuries. While what is meant by persecution. According to Jurisprudence, persecution is deliberately causing unpleasant feelings (suffering), pain or wounds. Meanwhile, what is meant by serious injury has been regulated in Article 90 of the Criminal Code, namely:

- 1) Falling ill or receiving an injury that does not give any hope of healing at all or that poses a mortal danger;
- 2) Inability to continuously carry out the duties of the position or search work;
- 3) Loss of one of the five senses;
- 4) Getting severely handicapped;
- 5) Suffering from paralysis;
- 6) Impaired thinking for more than four weeks;
- 7) Miscarriage or death of a woman's womb;

While what is meant by "with a plan in advance" is that there are acts or steps taken by the perpetrator in a sufficient period of time have thought and considered and then determined the time, place, and method before the occurrence of the severe persecution occurs.

Based on the facts at the trial, it is proven that ANAK had been dating the Victim Child around December 2022 and broke up in early January 2023, then ANAK dated Witness 11 on January 11, 2023. and based on the facts at the trial, it is proven that on Thursday, January 17, 2023, ANAK went with the Victim Child to the Victim's Child rental to have intercourse. That according to Witness 11's statement on January 30, 2023, at approximately 00.45 WIB, Witness 11 was asked to come to "The ALPHA" Bar in the Kemang area, South Jakarta by Witness 12 (Witness 11's ex-girlfriend) to inform information about CHILD, Witness 12

informed that on January 17, 2023 Amanda knew that ANAK had had sexual intercourse with the Victim's Child. That hearing the information from Witness 12, Witness 11 became emotional and because he already knew that ANAK was the ex-girlfriend of the Victim's Child, immediately contacted the Victim's Child to ask for clarification over the phone but the intercourse was not acknowledged by the Victim's Child, Again Witness 11 contacted the Victim's Child *n via WhatsApp chat* by asking: "*THIS is GIMANWARENG (the call of the Victim's Child) I GOT THE INFO FROM YOU. 12 IT WAS PROVEN THAT IT WAS ELO*", BUT THE *WhatsApp chat* was not replied.

And then Witness 11 called ANAK to clarify information about the intercourse but was not answered by ANAK and CHILD sent *a chat* to Witness 11 stating that ANAK felt forced and scared when having intercourse with the Victim Child in his rented house on January 17, 2023, where then at noon on January 30, 2023, Witness 11 picked up ANAK at SMA TARAKANITA I Pulo Raya, Keb. Only then did South Jakarta talk about the sexual intercourse incident. That during the conversation, Witness 11 used ANAK's *mobile phone* to contact the Victim's Child by asking: "*WARENG (call of the Victim's Child) WHERE IS THE COFFEE, TELL ME HOW IT HAPPENED*", "*I JUST WAIT FOR YOUR GOOD FAITH*", and was answered "*MALAZ*" by the Victim's Child, that since then the Victim's Child has disappeared and has never replied to *the chat* sent by Witness 11.

Based on the facts at the trial, it is proven that the child knew that since that time Witness 11 tried to find the whereabouts of the victim's child, but could not find it. That on Monday, February 20, 2023 at approximately 15.00 WIB, Witness 11 went to pick up ANAK at SMA TARAKANITA I Pulo Raya, Keb. Recently, South Jakarta used a black Rubicon car Nopol B 120 DEN to be escorted home to his home in the Ceger Raya area, Bintaro and after that they went for ANAK *facial* treatment at the Ori Skin Beauty Clinic located at Lotte Mart, Bintaro, on the way to the Ori Skin Beauty Clinic at Lotte Mart, Bintaro, ANAK who clearly knew that Witness 11 was still emotional and vengeful towards the Victim's Child, said that the Victim's Child Student Card was still on him and his Student Card was still on the Victim's Child.

As it is known that the Student Card was actually in the school bag at his house, that hearing those words, Witness 11 who had repeatedly failed to find the whereabouts of the Victim Child was again stirred up by his emotions and told ANAK to return his Student Card on that day by saying: "*YES, WHEN DO YOU WANT TO TURN IT OVER, TODAY I WANT TO MEET YOU*", where then ANAK said: "*YES, I HAVE TRIED TO CHAT, YA*" and then ANAK *chatted* the Victim Child to invite a meeting under the pretext of wanting to return the Student Card where the invitation was approved by the Victim Child. Hearing that, Witness 11 then ordered GoSend to pick up the Victim's Child Student Card at ANAK's house to be

delivered to Lotte Mart, Bintaro and Witness 11 also planned to invite some of his friends to participate in doing violence against the victim's child by calling Witness 13 and Mr. Ariel Abhi, but the two people refused for various reasons.

Witness 11 who was very eager to commit violence against the Child Victim, still tried to find people to participate in the acts of violence that he would commit to the Child Victim by inviting Witness 10 with the words: "*WITNESS 10 SEEMS LIKE I WANT TO HIT PEOPLE, LW I PICK UP TEMENIN GW*", WHERE AT THAT INVITATION Witness 10 replied: "*YES, IT'S DEN, WHAT TIME IS IT, I SHARE THE LOCK BECAUSE THE MOTORCYCLE IS BROKEN*". It is true that when he arrived at Lotte Mart, Bintaro, Witness 11 left ANAK at the Ori Skin Beauty Clinic to pick up Witness 10, that at around 17.50 WIB, in front of Alfamart Swadharma, Witness 11 met with Witness 10 and Witness 11 immediately said: "*I AM EMOTIONALLY MOLESTED BY MY GIRL, I DON'T KNOW WHAT I WANT TO DO*".

The victim's child did not know about the deception from the child and then shared his location with the child. After getting the location of the Victim's Child, Witness 11, Witness 10 and ANAK rushed to find the location of the Victim's Child which turned out to be at the house of Witness 4's Child which is located at Green Permata Housing on Jalan Swadarma Raya, Ulujami District, Pesanggrahan District, South Jakarta.

Based on the facts at the trial, it is proven that Witness 11 who was driving the car said: "*DAM, WHO IS LIKE THIS, MUST BE GIVEN A LESSON, BECAUSE HE HAS BEEN CARRYING A PUNCH CAVE FOR 17 YEARS INSTEAD OF HAVING TO REPORT TO THE LAW*".

Because the Victim Child had not yet appeared, Witness 11 finally sent a *Voice Note* using ANAK's *Cellphone* informing him that he was actually in front of the Witness 4 Child's house by saying: "*THIS IS WITNESS 11, THIS IS MY RESPECT FOR OUR TIME FROM AFAR – FAR AWAY HAS BEEN PLAYED, PLEASE*".

Based on the facts at the trial, it is proven that when the Child Victim is in a position of repentance, the Child who already knows that violence against the Child Victim will be committed casually takes a lighter near the head of the Child Victim and then uses it to light the cigarette he is holding.

As time went by, that ANAK, Witness 10, and Witness 11 who were standing on the right side of the Victim Child had calmly thought and confirmed their intention to commit violence against the Victim Child whose body was much smaller, and not commensurate with the body and strength of Witness 11, then Witness 11 immediately took the initiative and mercilessly kicked the right side of the Victim's head violently with his right leg which was witnessed by the CHILD.

Then Witness 11 walked over the Child Victim to the left side of the Child Victim and Witness 11 returned consciously using all his strength to kick the left side of the head where at that time the Child Victim was no longer moving at all and no longer made any sound, while the Child still let go and watched calmly without any effort to stop him, or shouting for help from others.

Witness 11 immediately took a few steps back to take a position as if he was going to take a free kick in a soccer game, then Witness 11 ran and made a very hard kick to the left head of the Victim CRISTALINO DAVID OZORA using his right foot as if the head of the Victim CRISTALINO DAVID OZORA was a ball, then Witness 11 celebrated like a soccer player and continued with said: *"SLAUGHTER THAT'S WHY MA GUA, DON'T WORRY ABOUT COVERING UP THE DOG"*, Witness 11 then hit again with all his might using his right hand towards the back of the head of the victim CRISTALINO DAVID OZORA whose condition was already swollen on the lips, the right side of his face was bleeding, his breathing was sluggish and his legs were tremors and he was lying weak and helpless on the asphalt road.

As a result of the kicks and punches made by Witness 11 on the head of the Victim Child, causing the Victim Child to suffer serious injuries, namely a decrease in consciousness (due to a severe head injury) and after a laboratory examination was carried out, the results showed that there was a bacterial infection in the Victim's child's blood. Based on the results of the CT Scan, it was explained that the victim's brain was swollen and there were bruises due to a hard impact, no bleeding was found in the brain, but it was dangerous for the victim's child because it could result in permanent disability.

Based on the description mentioned above, the author argues that the single judge who examined and decided the AG Case as contained in the South Jakarta District Court Decision Number 4/Pid.Sus-Anak/2023/PN. JKT. SEL who has erred in making a decision stating that the AG's child is legally and convincingly proven guilty of committing a criminal act participated in committing the crime of severe persecution that was planned in advance. The things referred to as these mistakes include:

1. It does not explicitly state the type of participation made by AG's son.
2. Based on the evidence presented at the trial, including the testimony of the AG's child, that the AG's child did not meet the subjective element, namely having a malicious mental attitude in planning the crime of persecution, as charged by the public prosecutor.
3. AG's child also does not meet the objective, namely cooperating with deliberately committing a criminal act of persecution and or allowing the persecution to be planned in advance to cause serious injury to the victim's child.

3.2. Participation in the South Jakarta District Court Decision Number 4/Pid.Sus-Anak/2023/PN. Jkt.Sel

Inclusion in a criminal act, including persecution, refers to a person's involvement in a criminal act without directly committing the core act of the criminal act. However, this involvement is significant enough to make him legally liable. The perpetrator of participation in the crime of persecution will be subject to the same criminal sanctions as the main perpetrator, unless there are mitigating reasons. The punishment imposed will be adjusted to the role and level of involvement of each perpetrator.

In analyzing the South Jakarta District Court Decision Number 4/Pid.Sus-Anak/2023/PN. Jkt.Sel, the author's analysis knife is based on the doctrine of inclusion which has been accepted jurisprudence as part of the expansion of criminal liability, although the expressive verb in the Criminal Code is not explained. In many jurisprudences, judges use doctrine in explaining and applying the doctrine of inclusion.

The fundamental question in the application of the doctrine of participation is whether the doctrine of participation (*medeplegen*) can be equated with the existence of a number of people together as perpetrators of a criminal act and whether to meet the category of *medepleger* (participant perpetrators) each of the two people must meet all the elements of the criminal act concerned and whether the meaning of participation is that everyone is criminally responsible for what he or she does even though the other participants did not meet all the elements of the criminal act charged.²⁴

Provisions regarding participating in and assisting in doing can be seen in Article 55 (participating in doing) and Article 56 of the Criminal Code (assisting in doing): Article 55 of the Criminal Code:

(1) Convicted as a person who committed a criminal event:

1e. The one who does, who commands to do, or participates in the act;

2e. A person who, by giving, covenanting, misusing power or influence, violence, threats or deception or by giving opportunities, efforts or information, deliberately persuades to do an act.

(2) Regarding those who are in sub 2e, the only things that can be held accountable are the acts that are deliberately persuaded by them, and with their consequences.

²⁴ Fahrurrozi and Samsul Bahri M. Gare. "Criminal System in the Participation of Criminal Acts According to the Criminal Code", *Media Keadilan: Journal of Legal Sciences*, Vol. 10, No. 1 (2019), p. 50–63

Article 56 of the Criminal Code:

Convicted of assisting in the commission of a crime:

- (1) Whoever deliberately aids in the commission of the crime;
- (2) Whoever deliberately provides opportunity, effort, or information to commit the crime.

Soesilo explained what is meant by "a person who participates" (*medepleger*) in Article 55 of the Criminal Code. According to R. Soesilo, "to do" in the sense of the word "to do together". At least there must be two people, namely the person who committed the crime (*pleger*) and the person who participated in the criminal event (*medepleger*). Here it is requested that the two people all committed the act of execution, so they committed the elements or elements of the criminal event. It is not allowed, for example, to only do preparatory acts or acts that are only helpful, because if so, then the person who helps is not included in the "*medepleger*" but is punished as "assisting in doing" (*medeplichtige*) in Article 56 of the Criminal Code.

According to Rimmelink, it can only be said to participate as long as there is agreement regarding the plans of all participating actors. Meanwhile, Pompe and van Hattum, van Bemmelen stated that despite differences in the plans of the participants, they were still classified as participants as long as there was a *mens rea* to commit crimes. Van Bemmelen emphasized that in applying the doctrine of participation, the public prosecutor is obliged to include in his allegations a certain form of participation based on facts. The judge in his decision must state a certain form of participation in which he is dropped.

As for Article 56 of the Criminal Code, R. Soesilo explained that a person "helps to commit" if he deliberately provides the assistance, at the time or before (so not after) the crime is committed. If the assistance is given after the crime is committed, then the person commits an act of "conspiracy" or "tadah" in violation of Article 480 of the Criminal Code, or a criminal event mentioned in Article 221 of the Criminal Code.

In the explanation of Article 56 of the Criminal Code, it is said that the element of "intentionality" must exist, so that a person who coincidentally and unknowingly has provided the opportunity, effort, or information to commit the crime is not punished. The "intent" to commit the crime must arise from the person who is given the help, opportunity, effort or information. If the intention arises from the person who gives his own help, then that person is guilty of "persuading to do" (*uitlokking*).

Wirjono Prodjodikoro in, citing the opinion of Hazewinkel-Suringa, the Netherlands Hoge Raad who put forward two conditions for participating in the commission of a criminal act, namely: First, the realized cooperation between

the perpetrators, which is a common will between them; Second, they must work together to carry out that will.

It is further explained about the difference between "to do" and "to help do". According to him, based on the theory of subjectivity, there are 2 (two) measures used: The first measure is about the form of intentionality in the perpetrator, while the second measure is about the interests and goals of the perpetrator. Measures of intentionality can be in the form of; (1) the will of the perpetrator to actually participate in the criminal act, or only to provide assistance, or (2) the will of the perpetrator to really achieve the consequences that are elements of the criminal act, or only to participate in or assist if the main perpetrator wishes to do so. Meanwhile, the measure of the same interests or goals is if the perpetrator has his own interests or goals, or only helps to fulfill the interests or to achieve the goals of the main actor.

Of the four types of participation (*plegen, doen plegen, medeplegen, uitlokken*), the author will focus on participating in committing criminal acts. In the Criminal Code, participating in committing a criminal act is a teaching to expand criminal liability. So the criteria used lies in the maker's fault or the maker is only involved in the act of preparation. Or even though his role is very significant, he is not involved in the implementation of the act. As a simple comparison, in the Netherlands itself since 1934 has set the criteria for participating in the act of crime, namely the existence of conscious cooperation and the implementation of the act together. The doctrine of participation emphasizes certain relationships resulting from the interaction between the physical acts of the maker and the perpetrator of other criminal acts. Often a person only knows and is not directly involved in the implementation of the action, so that person should not be punished.²⁵ It is clear that the inclusion in the crime of persecution in the South Jakarta District Court Decision Number 4/Pid.Sus-Anak/2023/PN. Jkt.Sel is a form of criminal responsibility for a person in a criminal event, especially the crime of persecution. By understanding the aspect of participation, of course, it is hoped that they can better understand the complexity of a criminal act and the role of each party involved.

4. Conclusion

The predicate of crime in a criminal act, including persecution, are elements that must be legally proven to state that a person has committed the crime. This predicate serves as a basis for law enforcement to impose a sentence. In the case of the South Jakarta District Court Decision Number 4/Pid.Sus-Anak/2023/PN. Jkt.Sel, where the defendant was legally proven guilty of participating in

²⁵ Moningka, Franco Marcello, Michael Barama, and Mario A. Gerungan. "Application of the Doctrine of Deelneming in Corruption Crimes." *Lex Crimen* VII, no. 5 (2018), p. 23–33.

committing severe persecution with a prior plan in the provisions of Article 355 paragraph (1) of the Criminal Code, in this case the judge was erred in making a decision stating that the AG Child was legally and convincingly proven guilty of committing a criminal act of participating in the criminal act of serious persecution that was planned in advance. The alleged mistake includes: not expressly stating the type of participation made by the AG's child, based on the evidence presented at the trial, including the testimony of the AG's child, that the AG's child does not meet the subjective element, namely having a malicious inner attitude in planning the crime of persecution, as charged by the public prosecutor and the AG's child also does not meet the objective, namely collaborating to deliberately commit the crime of persecution and/or allowing the persecution to be planned in advance to cause serious injury to the victim's child. Participation in the crime of persecution is a form of understanding of a person's criminal responsibility in a criminal event and in this case, but in this case, the AG's child cannot be classified as "assisting in the doing" because he did not repentantly deliberately provide assistance to commit the crime of persecution, either before, during or after the persecution was committed. There was no collusion or providing means, information and other efforts in prosecuting the crime of persecution.

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