

Diversion for Children as Perpetrators of Theft (A Study of Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr)

Tri Nova Aini

3novaaini@gmail.com

Universitas Bhayangkara Surabaya

ABSTRACT

Children continue to be involved as perpetrators of theft in Indonesia, even though Law Number 11 of 2012 on the Juvenile Justice System obliges the pursuit of diversion as a legal protection mechanism for children. In practice, however, the application of diversion is not always consistent, as illustrated by Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr, in which two children were sentenced to imprisonment despite formally satisfying the requirements for diversion. This study aims to analyze the judges' considerations in that decision from the perspective of diversion as a form of legal protection for children. The study employs a normative legal research method, applying a statutory approach and a case approach, with data collected through library research and analyzed descriptively. The findings show that although the requirements for diversion under Article 7 of Law Number 11 of 2012, namely a statutory threat of imprisonment under seven years and the absence of repeat offending, were satisfied, diversion was not pursued through to the trial stage before the District Court. A comparison with Case Decision Number 37/Pid.Sus.Anak/2024/PN Srg indicates that the divergence in outcome stems primarily from the extent to which each panel of judges actively pursued diversion, rather than from any fundamental difference in the underlying facts. This study recommends more consistent application of diversion at every stage of the juvenile justice process to fulfill the protective purpose that the law already sets out to achieve.

Keywords: *Children, Offender, Diversion, Theft, Restorative Justice*

Diversi terhadap Anak Pelaku Tindak Pidana Pencurian (Studi Putusan Nomor 27/Pid.Sus.Anak/2023/PN Jkt.Utr)

ABSTRAK

Anak yang terlibat sebagai pelaku tindak pidana pencurian masih terus terjadi di Indonesia, sementara Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak mewajibkan diupayakannya diversi sebagai mekanisme perlindungan hukum bagi anak. Namun, penerapan diversi dalam praktik peradilan tidak selalu konsisten, sebagaimana tergambar dalam Putusan Nomor 27/Pid.Sus.Anak/2023/PN Jkt.Utr, di mana dua anak tetap dijatuhi pidana penjara meskipun secara formal telah memenuhi syarat diversi. Penelitian ini bertujuan untuk menganalisis pertimbangan hakim dalam putusan tersebut ditinjau dari diversi sebagai bentuk perlindungan hukum terhadap anak. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan (statute approach) dan pendekatan kasus (case approach), melalui teknik pengumpulan data studi kepustakaan (library research) serta analisis data secara deskriptif. Hasil penelitian menunjukkan bahwa meskipun syarat diversi menurut Pasal 7 Undang-Undang Nomor 11 Tahun 2012 telah terpenuhi, yakni ancaman pidana di bawah 7 tahun dan bukan pengulangan tindak pidana, diversi tidak diupayakan sampai proses pemeriksaan di Pengadilan Negeri. Perbandingan dengan Putusan Nomor 37/Pid.Sus.Anak/2024/PN Srg menunjukkan bahwa perbedaan hasil putusan lebih disebabkan oleh sejauh mana diversi diupayakan secara aktif oleh majelis hakim, bukan oleh perbedaan fakta hukum yang mendasar. Penelitian ini merekomendasikan penerapan diversi yang lebih konsisten di seluruh tahapan peradilan anak guna mewujudkan tujuan perlindungan hukum bagi anak sebagaimana diamanatkan undang-undang.

Kata kunci: *Anak, Pelaku Tindak Pidana, Diversi, Pencurian, Keadilan Restoratif*

INTRODUCTION

Children involved in criminal offenses, including theft, continue to be reported across Indonesia, a trend that stands in tension with the strategic role children are expected to play as the nation's future generation.¹ Theft remains one of the most common property offenses in Indonesian society.² It is frequently associated with everyday economic pressures, such as unstable household income and limited access to education, and its perpetrators vary widely in both gender and age, including offenders who are still minors.

According to data from the Ministry of Women's Empowerment and Child Protection, the number of children in conflict with the law handled by the Indonesian National Police during the 2020 to 2022 period reached 14,160 children. Data compiled from Legal Aid Organizations and recorded by the National Legal Development Agency (Badan Pembinaan Hukum Nasional, BPHN) further show that 2,338 child cases entered the legal process during the same period, of which 838 involved children as perpetrators of theft.³ More recent figures from the Directorate General of Corrections, Ministry of Law and Human Rights, indicate that this upward trend continued through 2023, with nearly 2,000 children recorded as being in conflict with the law as of August of that year, of whom the majority were still undergoing judicial process rather than serving as convicts.⁴ These figures illustrate the continuing urgency of legal protection for children within Indonesia's criminal justice system.

On 12 June 2024, Correctional Center (BAPAS) Class I Surabaya, in cooperation with the Tanjung Perak Port Police, held an activity titled "Efforts to Protect Children in Conflict with the Law". In her remarks, the Head of BAPAS Surabaya, Rika Aprianti, noted that children differ from adults because their physical and mental condition has not yet fully matured, and therefore children who come into contact with the law must receive appropriate special treatment to guarantee their survival and

¹ Rakyan Abhirama Paramadaru and Muhammad Rustamaji, 'Analisis Pertimbangan Hakim Terhadap Tindak Pidana Pencurian Disertai Pemberatan Dengan Pelaku Anak', *Verstek* 12, no. 1 (2024), <https://jurnal.uns.ac.id/verstek/article/view/79533>.

² Dimas Putra Ardianto and Bangun Patrianto, 'Combating Motorcycle Theft: A Criminological Study in Sidoarjo Regional Police', *DE RECHT (Journal of Police and Law Enforcement)* 3, no. 1 (31 January 2025): 89–99, <https://doi.org/10.55499/derecht.v3i1.388>.

³ Nanda Narendra Putra, 'BPHN "Mengasuh": Ini Jenis Tindak Kejahatan Dan Perilaku Kriminal Anak Yang Menjadi Fokus BPHN Untuk Dicegah', Badan Pembinaan Hukum Nasional, Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2023, <https://bphn.go.id/publikasi/berita/2023031708412683/bphn-aeuroemengasuhaur-ini-jenis-tindak-kejahatan-dan-perilaku-kriminal-anak-yang-menjadi-fokus-bphn-untuk-dicegah>

⁴ Yohanes Advent Krisdamarjati, 'Meningkatnya Kasus Anak Berkonflik Hukum, Alarm Bagi Masyarakat Dan Negara', *Kompas.id*, 2023, <https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara>.

development.⁵ The activity also addressed persistent disagreement among law enforcement officers regarding the diversion process, attributed to uneven understanding of Law Number 11 of 2012 on the Juvenile Justice System, as well as policy and socio-cultural obstacles in its implementation. This discussion illustrates that the resolution of children's criminal cases is often complex, requiring an approach that prioritizes the best interests of the child while also offering restorative justice, one avenue for which is diversion.⁶

As shown in Figure 1 below, national data on the implementation of diversion for children in conflict with the law indicate a declining number of diversion cases between 2020 and 2022.

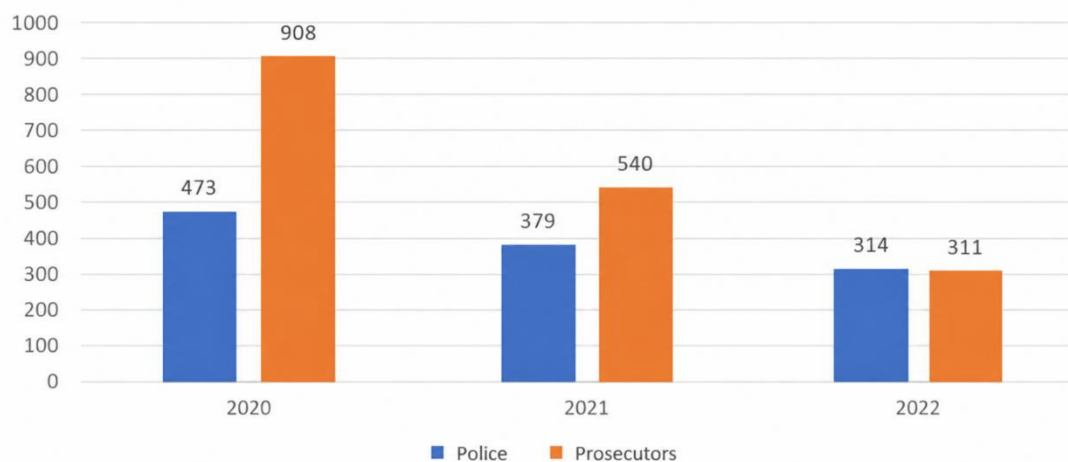


Figure 1. Trend in the implementation of diversion for children in conflict with the law, 2020 to 2022

Source: Ministry of Women's Empowerment and Child Protection, Report on the Implementation of the Juvenile Justice System 2022.⁷

The data above show that, despite this decline, a considerable number of children in conflict with the law still have their cases proceed to trial and ultimately face criminal sanctions. This is illustrated in Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr, which involved two children, referred to in this article by the initials M and S to protect their identities as minors, both of whom were under eighteen years of age at the time of the offense and were charged as perpetrators

⁵ Balai Pemasarakatan Kelas I Surabaya, 'Wilayah Jawa Timur: Bapas Kelas I Surabaya', 2024, <https://www.instagram.com/p/C8J0mgNvYKv/>.

⁶ E. Akbar Alibasah and Dossy Iskandar Prasetyo, 'Restorative Justice Dalam Perkara Pidana Penganiayaan Di Kepolisian Resor Kota Sidoarjo', *DE RECHT (Journal of Police and Law Enforcement)*, 25 September 2025, 50–59, <https://doi.org/10.55499/derecht.v3i3.349>.

⁷ Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, 'Laporan Pelaksanaan Sistem Peradilan Pidana Anak Di Pusat Tahun 2022' (Jakarta, 2023).

of theft. Each was prosecuted with a criminal charge threatening imprisonment of one year and six months, and the panel of judges found both children legally and convincingly guilty of committing "Theft with Aggravating Circumstances". The judges nonetheless imposed a sentence of one year of imprisonment on each child, notwithstanding that, according to the case facts, M and S were assigned only to keep watch near the scene and did not themselves commit any act of violence.

Prior studies have examined diversion within Indonesia's juvenile justice system from various angles, including its historical development,⁸ its implementation through restorative justice by juvenile judges,⁹ and the conformity of diversion requirements with restorative justice principles.¹⁰ However, these studies generally address diversion at the level of general implementation or normative conformity, and few examine in depth a judicial decision in which the formal requirements for diversion appear to have been satisfied, yet diversion was not pursued through to the trial stage.¹¹ This article addresses that gap by analyzing the judges' reasoning in Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr specifically from the standpoint of diversion as a form of legal protection for children.

Based on the background described above, the author is interested in examining further the judges' considerations in imposing criminal sanctions on children as perpetrators of theft in Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr. This research is accordingly titled "Diversion for Children as Perpetrators of Theft (A Study of Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr)".

RESEARCH METHODOLOGY

This study uses a normative legal research method, applying both a statutory approach and a case approach. The statutory approach is applied through a review of relevant laws and regulations governing the juvenile justice system in Indonesia, particularly Law Number 11 of 2012 on the Juvenile Justice System and the Criminal Code (KUHP). The case approach is applied by referring to the case in which a child

⁸ Yory Fernando, 'Sejarah Sistem Peradilan Pidana Anak Di Indonesia', *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 4, no. 4 (7 November 2020), <https://doi.org/10.58258/jisip.v4i4.1398>.

⁹ Rahmanuddin Tomalili and Agus Ariadi, 'Penerapan Diversi Melalui Pendekatan Keadilan Restoratif (Restoratif Justice) Yang Dilakukan Oleh Hakim Anak Di Pengadilan Negeri Unaaha', *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, no. 5 (26 March 2022): 543–54, <https://doi.org/10.54443/sibatik.v1i5.62>.

¹⁰ Neiska Aranafta Nurain and Subekti, 'Kesesuaian Syarat Diversi Dengan Konsep Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak', *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 10, no. 2 (2 May 2021): 81, <https://doi.org/10.20961/recidive.v10i2.58867>.

¹¹ Rizky Permana Putra and Prasetijo Rijadi, 'Penerapan Diversi Proses Penyidikan Anak Yang Melanggar Hukum Di Wilayah Pengadilan Negeri Surabaya', *DE RECHT (Journal of Police and Law Enforcement)* 3, no. 3 (25 September 2025): 36–49, <https://doi.org/10.55499/derecht.v3i3.348>.

was charged as a perpetrator of theft in Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr.

In accordance with the conventions of normative legal research, the legal materials used in this study are classified into three categories. Primary legal materials consist of binding legal instruments, namely Law Number 11 of 2012 on the Juvenile Justice System, the Criminal Code (KUHP), Law Number 35 of 2014 on the Amendment to Law Number 23 of 2002 on Child Protection, and Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr.¹² Secondary legal materials consist of sources that explain the primary legal materials, including books, journal articles, and prior research relevant to diversion and juvenile justice. Tertiary legal materials consist of supporting sources such as legal dictionaries and official government publications used to clarify terms and concepts referred to throughout this article.

The text of Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr was obtained and verified through the Supreme Court's Decision Directory (*Direktori Putusan Mahkamah Agung Republik Indonesia*),¹³ which publishes court decisions to ensure their authenticity and public accessibility. Data collection was conducted through library research, carried out by reading relevant literature, legal documents, and the case decision itself to obtain data related to diversion for children as perpetrators of theft. The data analysis employed is descriptive analysis, conducted by identifying and referring to the collected data in the form of information, opinions, and legal concepts, followed by legal analysis of diversion as a form of legal protection for children who commit the offense of theft.

RESULT AND DISCUSSION

Diversion in the Indonesian Juvenile Justice System

The term "diversion" is derived from the English word *diversion*. The concept originates from the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the Beijing Rules (UN General Assembly Resolution 40/33, 29 November 1985),¹⁴ which set international standards for juvenile justice systems. Under Rules 11.1, 11.2, and 17.4 of the Beijing Rules, children in conflict with the law are recommended to be directed toward informal processes, such

¹² Republic of Indonesia, 'Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak', Pub. L. No. 11 (2012); Republic of Indonesia, 'Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak', Pub. L. No. 35 (2014); Pengadilan Negeri Jakarta Utara, 'Putusan Pengadilan Negeri Jakarta Utara Nomor 27/Pid.Sus-Anak/2023/PN Jkt.Utr' (2023).

¹³ Pengadilan Negeri Jakarta Utara, Putusan Pengadilan Negeri Jakarta Utara Nomor 27/Pid.Sus-Anak/2023/PN Jkt.Utr.

¹⁴ United Nations General Assembly, 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")' (1985).

as referral to government or non-government community social institutions. Following a 1994 UN expert meeting in Vienna on children and juveniles in the context of human rights standards, member states were recommended to adopt such mechanisms beginning in the year 2000, a recommendation that Indonesia's juvenile justice framework subsequently reflects.¹⁵

Diversion has been formally applied in Indonesia since 30 July 2014, two years after the enactment of Law Number 11 of 2012 on the Juvenile Justice System.¹⁶ Its introduction responded to the inadequacy of the earlier Law Number 3 of 1997 on Juvenile Courts, which did not provide comprehensive protection for children in conflict with the law.¹⁷ Law Number 11 of 2012 was accordingly enacted to require that the handling of children's cases proceed through informal means wherever possible, and that the imposition of criminal punishment on children be avoided to the greatest extent practicable.

In legal terms, diversion refers to the effort to divert or remove a child offender from the formal criminal justice process, aimed at protecting and rehabilitating the child while preventing the child from becoming an adult offender. Diversion is essentially a persuasive approach that offers the child an opportunity to change.¹⁸ Article 1(7) of Law Number 11 of 2012 defines diversion as the transfer of the resolution of a child's case away from the criminal justice process toward a process outside of it.¹⁹ Read together, these provisions establish diversion as the transfer of a child offender's case from the formal criminal process to an amicable resolution between the suspect or defendant and the victim, facilitated by the family and/or community, a Community Advisor, the police, the prosecutor, or the judge. This is the underlying principle for applying diversion specifically to child offenders: to secure the child's welfare and enable the child to move forward free of a criminal record and without becoming a repeat offender.

Criminal Sanctions for Children as Perpetrators of Criminal Offenses

The juvenile justice system is generally governed by Law Number 11 of 2012, which regulates the entire process for resolving cases involving children in conflict with the law, from the investigation stage through post-sentencing guidance.²⁰ A child in conflict with the law is defined as a child between the ages of 12 and 18 who is

¹⁵ Fernando, 'Sejarah Sistem Peradilan Pidana Anak Di Indonesia'.

¹⁶ Republic of Indonesia, Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

¹⁷ Fernando, 'Sejarah Sistem Peradilan Pidana Anak Di Indonesia'.

¹⁸ Tomalili and Ariadi, 'Penerapan Diversi Melalui Pendekatan Keadilan Restoratif (Restoratif Justice) Yang Dilakukan Oleh Hakim Anak Di Pengadilan Negeri Unaaha'.

¹⁹ Republic of Indonesia, Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

²⁰ Republic of Indonesia.

suspected of committing a criminal offense. Where an offense is committed before the child turns 18 but the case is brought to trial after the child has passed that age (though not yet 21), the case is still processed through the juvenile court. Where the alleged offender is under 12 years of age, the investigator, Community Advisor, and professional social worker instead decide either to return the child to the parents or guardian, or to enroll the child in an educational, guidance, or mentoring program at a relevant government agency or Social Welfare Institution (LPKS), for a maximum period of six months.

Article 69 of Law Number 11 of 2012 establishes that a child may only be sentenced to punishment or subjected to a measure on the basis of that Law, and that a child who has not yet reached the age of 14 may only be subjected to a measure rather than a criminal sentence. Article 71 further specifies the principal sanctions available for children as offenders, arranged from the least restrictive to the most restrictive,²¹ as summarized in Table 1 below.

Table 1. Principal criminal sanctions for children under Article 71 of Law Number 11 of 2012

Sanction	Legal Basis	Duration / Threshold	Purpose
Warning	Article 72	No restriction of liberty	Lightest sanction, for minor offenses, violations, or offenses without a victim; aims to prevent repetition
Conditional sentence	Article 73	Available where imprisonment would not exceed 2 years; conditional period up to 3 years	Supervision by the Public Prosecutor and guidance by the Community Advisor; child must continue 9 years of compulsory education
Job training	Article 78	Minimum 3 months, maximum 1 year	Rehabilitation and social reintegration through skills training
Institutional guidance	Article 80	Minimum 3 months, maximum 24 months	Applied where the child's conduct does not endanger the public; conditional release after serving at least half the term with good conduct
Imprisonment	Article 81	Maximum one half of the adult statutory maximum; up to 10 years where the adult threat is death or life imprisonment	Treated as a measure of last resort (<i>ultimum remedium</i>), applied only where the child's conduct would endanger the public

²¹ Republic of Indonesia.

In addition to the principal sanctions summarized above, Article 71(2) of Law Number 11 of 2012 also provides for additional sanctions, consisting of the confiscation of profits derived from the offense and the fulfillment of customary (*adat*) obligations. These additional sanctions may be imposed alongside, but do not replace, the principal sanctions, and their scope lies outside the specific case examined in this article, which concerns only the principal sanction of imprisonment.

Theft as a Criminal Offense

Theft is classified as an offense against property. It refers to the act of taking property belonging wholly or partly to another person, with the intent to possess it, carried out unlawfully.²² The word "theft" (*pencurian*) is derived from the root "steal" (*curi*), denoting the process or manner of stealing, that is, an act carried out secretly with the intention of avoiding detection.²³

Under Article 362 of the Criminal Code (KUHP), theft is built on a combination of objective and subjective elements.²⁴ Objectively, the offense requires an act of taking, understood as moving an object from its original location into the offender's control, directed at an object capable of being physically moved (a concept that has expanded over time to include not only tangible movable property but, in some contemporary interpretations, intangible objects of value as well), where that object belongs wholly or partly to another person, it being sufficient that only part of the object belongs to another for it to qualify as the object of theft.²⁵ Subjectively, the offense requires intent or will, referring to the two inseparable elements of fault involved in theft, namely the intention to act and the intention to possess, whereby the offender seeks to take another person's property and treat it as though it were the offender's own, understanding that control over the object has shifted so that the offender becomes its *de facto* owner, even though the offender holds no legitimate right equivalent to that of the object's true owner.

The Criminal Code recognizes several categories of theft, distinguished by the circumstances in which the act is committed and the resulting maximum penalty, as set out in Table 2.

²² Rian Prayudi Saputra, 'Tinjauan Yuridis Tindak Pidana Pencurian Yang Dilakukan Oleh Anak Dalam Putusan Pengadilan Negeri Bangkinang Kelas IB Nomor: 08/Pid.Sus/Anak/2019/PN.BKN', *Jurnal Pahlawan* 5, no. 1 (25 March 2022): 1–18, <https://doi.org/10.31004/jp.v5i1.5831>.

²³ Yasmirah Mandasari Saragih, Rahul Ardian Fikri, and Nabilah Syaharani, *Penegakan Hukum Kejahatan Pencurian Dengan Kekerasan (Begal) Yang Dilakukan Oleh Anak* (Sukoharjo: Tahta Media Group, 2023).

²⁴ Republic of Indonesia, 'Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana', Pub. L. No. 1 (2023).

²⁵ Hasanul Mulkan, *Buku Ajar Hukum Tindak Pidana Khusus* (Palembang: Noer Fikri Offset, 2022).

Table 2. Categories of theft under the Criminal Code (KUHP)

Category	Legal Basis	Defining Circumstances	Maximum Penalty
Ordinary theft	Article 362	The basic form of theft described above	5 years' imprisonment
Aggravated theft	Article 363	Theft of livestock; theft during a fire, flood, earthquake, or similar disturbance; theft at night in an occupied house without the owner's knowledge or consent; theft by two or more persons acting together; or theft involving forced entry Ordinary theft, or aggravated theft involving joint offending or forced entry, committed outside a house or enclosed yard, where the value of the property does not exceed a statutorily defined minor threshold	7 years' imprisonment (9 years where the night time circumstance is combined with joint offending or forced entry)
Petty theft	Article 364	Theft preceded, accompanied, or followed by violence or the threat of violence, intended to prepare or facilitate the theft or to enable escape or retention of the stolen property	3 months' imprisonment or a modest fine
Theft with violence	Article 365		9 years' imprisonment, rising to 12 years, 15 years, or the death penalty / life imprisonment / 20 years depending on aggravating circumstances and resulting injury or death
Theft within the family	Article 367	Theft between spouses or close relatives	Prosecution barred or made contingent on a complaint by the victim, depending on the relationship between the parties

Article 365 does not create a separate offense of theft combined with a separate offense of violence, but constitutes a single, aggravated offense of theft (*gequalificeerde diefstal*).

Judicial Analysis of Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr on Diversion as Legal Protection for Children

Children occupy a strategic position in the continuity of human, national, and state life, and are therefore entitled to special protection, particularly within the justice system. Law Number 11 of 2012 constitutes the primary legal basis for adjudicating cases involving children, and its underlying rationale is that children, being individuals

who have not yet reached full maturity and remain substantially dependent on others, warrant legal protection that ensures both their welfare and the proportionality of any sanction imposed. This means that sanctions should not be oriented solely toward punishment through imprisonment but should also allow for non-penal alternatives grounded in restorative justice.

Article 5(1) of Law Number 11 of 2012 obliges the justice system to pursue restorative justice, understood as the resolution of a criminal case through the involvement of all relevant parties in jointly seeking a fair outcome that emphasizes restoration of the original situation rather than retribution.²⁶ This restorative principle is intended to keep children out of the formal judicial process wherever possible, thereby helping them avoid social stigma and supporting their reintegration into ordinary community life. It is within this framework that diversion functions as the principal mechanism of protection for children in conflict with the law.

Diversion seeks to resolve a criminal case by involving the offender, the victim, both families, and other relevant parties in a joint search for a fair outcome centered on restoration rather than retribution. Article 7 of Law Number 11 of 2012 requires that diversion be pursued at every stage of the process, namely investigation, prosecution, and examination before the District Court, and applies where the offense charged is punishable by imprisonment of less than seven years and does not constitute a repeat offense.²⁷ Supreme Court Regulation Number 4 of 2014 further extends this obligation, requiring judges to pursue diversion even where the indictment is framed in the alternative, cumulative, or combined form, so long as the underlying threshold on the term of imprisonment is met.²⁸ Article 8 further requires that the diversion process be conducted through deliberation involving the child and parents or guardian, the victim and their parents or guardian, the Community Advisor, and a professional social worker, applying a restorative justice approach, and having regard to the interests of the victim, the child's welfare and responsibility, the avoidance of negative stigma and retaliation, social harmony, and propriety and public order. Because Article 7(2) uses the conjunctive "and" in setting out these requirements, both conditions, namely that the maximum threatened imprisonment be under seven years and that the offense not be a repeat offense, must be satisfied together before diversion becomes available (Nurain & Subekti, 2021).

²⁶ Republic of Indonesia, Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

²⁷ Republic of Indonesia.

²⁸ Supreme Court of the Republic of Indonesia, 'Peraturan Mahkamah Agung Republik Indonesia Nomor 4 Tahun 2014 Tentang Pedoman Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak', Pub. L. No. 4 (2014).

In Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr, the panel of judges found that the children's conduct satisfied the elements of the offense charged under Article 363(1)(4) of the Criminal Code, for which the statutory maximum penalty is seven years' imprisonment.²⁹ The one year and six month term referred to earlier in this article reflects the term demanded by the Public Prosecutor in the charge (*tuntutan*), not the statutory maximum threat under Article 363, and the two figures should not be conflated. The judges ultimately sentenced each child to one year of imprisonment. Applying Article 81(2) of Law Number 11 of 2012, which limits a child's maximum sentence to one half of the maximum threat applicable to an adult, the maximum term that could properly have been imposed on the children in this case (*a quo*) is three years and six months, that is, one half of the seven-year statutory maximum under Article 363. Because the offense with which the children were charged carries a maximum threat below seven years and did not involve a repeat offense, the requirements for diversion under Article 7 of Law Number 11 of 2012 appear, in the author's assessment, to have been satisfied.³⁰

Diversion exists precisely to accommodate children's interests and to shield them from negative stigma. Where its formal requirements are met, law enforcement officials are expected to resolve the matter outside the formal judicial process, giving due weight to the child's long-term future. While diversion is not by itself a guarantee that every issue in a child's case will be resolved, it remains an essential mechanism for protecting a child's rights and should be pursued as a matter of legal certainty.

According to the facts established at trial, M and S did not themselves take the victim's mobile phone but were assigned only to keep watch in the vicinity while the offense was committed by others. In the author's assessment, their involvement in the offense is more plausibly explained by negative peer influence, including association with older peers, than by any inherent deficiency in the children themselves; framing their conduct in clinical or diagnostic terms would sit uneasily with this article's own argument for protecting children from stigmatizing labels. This context does not excuse the conduct, but it is relevant to an assessment of the children's culpability and supports the case for pursuing diversion rather than imprisonment.

In the author's view, the one-year prison term imposed in this case is disproportionately severe given the children's circumstances and fails to give adequate weight to the impact of imprisonment on their mental and psychological development and future prospects. A judge's imposition of a sanction should serve the interests of truth, justice, and legal certainty, not function as retribution, administrative routine, or

²⁹ Pengadilan Negeri Jakarta Utara, Putusan Pengadilan Negeri Jakarta Utara Nomor 27/Pid.Sus-Anak/2023/PN Jkt.Utr.

³⁰ Republic of Indonesia, Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

mere formality. Article 70 of Law Number 11 of 2012 allows the minor nature of an act, the child's personal circumstances, or the circumstances at the time of or following the offense to serve as grounds for a judge to withhold a criminal sentence in favor of a measure, having regard to considerations of justice and humanity.³¹ Consistent with the *ultimum remedium* principle set out in Article 81(5), and the seven day deadline for pursuing diversion under Article 52(2) once a case is assigned to a juvenile judge, imprisonment should be applied only where all other avenues, including diversion, have been genuinely exhausted. In the author's assessment, the outcome in Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr does not reflect that sequence, since diversion was not pursued through to the trial stage despite the children's apparent eligibility.³²

A useful point of comparison is Case Decision Number 37/Pid.Sus.Anak/2024/PN Srg, which similarly involved children charged with aggravated theft under Article 363(1)(3), (4), and (5) of the Criminal Code, namely theft committed at night in a house or enclosed yard containing a house, carried out by a person present there without the knowledge or consent of the person entitled to the property, combined with the circumstances of joint offending and forced entry. In that case, the panel of judges imposed a conditional sentence, requiring the children to refrain from further offenses for five months while remaining at home under parental supervision, an outcome that reflects the successful pursuit of diversion in accordance with Law Number 11 of 2012.

The divergence between the two decisions is instructive. In the Srg case, although the charged offense involved a comparable statutory threshold and comparable aggravating elements, the judges appear to have placed greater weight on the children's family support structure and the availability of parental supervision as a viable non-custodial alternative, which supported a conditional rather than custodial sentence. In the Jkt.Utr case now under review, by contrast, the panel's reasoning does not indicate that a similarly structured alternative was considered before imprisonment was imposed, even though the statutory threshold for diversion was equally met and the children's role in the offense was comparatively limited to acting as lookouts. This suggests that the difference in outcome may lie less in the underlying facts of each case than in the extent to which each panel actively pursued the diversion mechanism available under Law Number 11 of 2012, underscoring the importance of consistent judicial practice in applying diversion across similar cases.

Taken together, these findings indicate that although Law Number 11 of 2012 provides clear legal certainty regarding the obligation to pursue diversion, that certainty

³¹ Republic of Indonesia.

³² Pengadilan Negeri Jakarta Utara, Putusan Pengadilan Negeri Jakarta Utara Nomor 27/Pid.Sus-Anak/2023/PN Jkt.Utr.

was not fully realized in the case examined here. Because the children in Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr had, in the author's assessment, met the statutory requirements for diversion, the failure to pursue diversion through to the trial stage represents a departure from the protective purpose of Law Number 11 of 2012, namely to ensure that children can grow, develop, and participate in society consistent with their dignity and human rights, as also affirmed in Article 3 of Law Number 35 of 2014 on Child Protection.

CONCLUSION

This study set out to examine the judges' considerations in imposing criminal sanctions on children as perpetrators of theft in Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr, viewed through the lens of diversion as a form of legal protection for children. The analysis shows that Law Number 11 of 2012 provides a clear and well structured legal framework for diversion, grounded in international standards such as the Beijing Rules and operationalized through specific statutory thresholds, namely that the offense charged carry a maximum threat of imprisonment under seven years and not constitute a repeat offense. Where these conditions are met, the law imposes an obligation, not merely a discretionary option, on investigators, prosecutors, and judges to pursue diversion at every stage of the process.

The case examined in this article illustrates a gap between this legal framework and its practical application. Although the children in Case Decision Number 27/Pid.Sus.Anak/2023/PN Jkt.Utr were charged under a provision carrying a maximum statutory threat below the seven-year threshold and had no record of repeat offending, thereby satisfying the formal requirements for diversion, the mechanism was not pursued through to the trial stage. The panel of judges instead imposed one year of imprisonment on each child, notwithstanding that their role in the offense was limited to keeping watch near the scene, and notwithstanding Article 81(5)'s explicit instruction that imprisonment of a child be used only as a measure of last resort. A comparison with Case Decision Number 37/Pid.Sus.Anak/2024/PN Srg, in which a broadly similar set of facts and statutory thresholds led to a conditional sentence rather than imprisonment, suggests that the divergence in outcome reflects differences in how actively each panel pursued diversion rather than any material difference in the underlying facts. This points to a need for greater consistency among juvenile judges in applying the diversion mechanism that the law already provides.

Beyond its implications for this particular case, the analysis suggests that the effective protection of children in conflict with the law depends not only on the existence of a sound statutory framework, but on its consistent application at every stage of the judicial process, from investigation through to sentencing. Imprisonment, even where formally within a court's authority to impose, carries lasting consequences

for a child's education, psychological development, and social reintegration, consequences that the diversion mechanism under Law Number 11 of 2012 is specifically designed to avoid. Strengthening the practical implementation of diversion, including closer judicial scrutiny of whether its statutory requirements have genuinely been assessed before a custodial sentence is imposed, would bring the handling of cases such as the one examined here into closer alignment with the protective purpose that Indonesia's juvenile justice system already sets out to achieve.

REFERENCES

- Alibasah, E. Akbar, and Dossy Iskandar Prasetyo. 'Restorative Justice Dalam Perkara Pidana Penganiayaan Di Kepolisian Resor Kota Sidoarjo'. *DE RECHT (Journal of Police and Law Enforcement)*, 25 September 2025, 50–59. <https://doi.org/10.55499/derecht.v3i3.349>.
- Ardianto, Dimas Putra, and Bangun Patrianto. 'Combating Motorcycle Theft: A Criminological Study in Sidoarjo Regional Police'. *DE RECHT (Journal of Police and Law Enforcement)* 3, no. 1 (31 January 2025): 89–99. <https://doi.org/10.55499/derecht.v3i1.388>.
- Balai Pemasarakatan Kelas I Surabaya. 'Wilayah Jawa Timur: Bapas Kelas I Surabaya', 2024. <https://www.instagram.com/p/C8J0mgNvYKv/>.
- Fernando, Yory. 'Sejarah Sistem Peradilan Pidana Anak Di Indonesia'. *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 4, no. 4 (7 November 2020). <https://doi.org/10.58258/jisip.v4i4.1398>.
- Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia. 'Laporan Pelaksanaan Sistem Peradilan Pidana Anak Di Pusat Tahun 2022'. Jakarta, 2023.
- Krisdamarjati, Yohanes Advent. 'Meningkatnya Kasus Anak Berkonflik Hukum, Alarm Bagi Masyarakat Dan Negara'. Kompas.id, 2023. <https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara>.
- Mulkan, Hasanah. *Buku Ajar Hukum Tindak Pidana Khusus*. Palembang: Noer Fikri Offset, 2022.
- Nurain, Neiska Aranafta, and Subekti. 'Kesesuaian Syarat Diversi Dengan Konsep Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak'. *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 10, no. 2 (2 May 2021): 81. <https://doi.org/10.20961/recidive.v10i2.58867>.
- Paramadaru, Rakyana Abhirama, and Muhammad Rustamaji. 'Analisis Pertimbangan Hakim Terhadap Tindak Pidana Pencurian Disertai Pemberatan Dengan Pelaku Anak'. *Verstek* 12, no. 1 (2024). <https://jurnal.uns.ac.id/verstek/article/view/79533>.
- Pengadilan Negeri Jakarta Utara. Putusan Pengadilan Negeri Jakarta Utara Nomor 27/Pid.Sus-Anak/2023/PN Jkt.Utr (2023).
- Putra, Nanda Narendra. 'BPHN "Mengasuh": Ini Jenis Tindak Kejahatan Dan Perilaku Kriminal Anak Yang Menjadi Fokus BPHN Untuk Dicegah'. Badan Pembinaan

- Hukum Nasional, Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2023. <https://bphn.go.id/publikasi/berita/2023031708412683/bphn-aeuroemengasuhaur-ini-jenis-tindak-kejahatan-dan-perilaku-kriminal-anak-yang-menjadi-fokus-bphn-untuk-dicegah?>
- Putra, Rizky Permana, and Prasetijo Rijadi. 'Penerapan Diversi Proses Penyidikan Anak Yang Melanggar Hukum Di Wilayah Pengadilan Negeri Surabaya'. *DE RECHT (Journal of Police and Law Enforcement)* 3, no. 3 (25 September 2025): 36–49. <https://doi.org/10.55499/derecht.v3i3.348>.
- Republic of Indonesia. Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pub. L. No. 1 (2023).
- . Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak, Pub. L. No. 11 (2012).
- . Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak, Pub. L. No. 35 (2014).
- Saputra, Rian Prayudi. 'Tinjauan Yuridis Tindak Pidana Pencurian Yang Dilakukan Oleh Anak Dalam Putusan Pengadilan Negeri Bangkinang Kelas IB Nomor: 08/Pid.Sus/Anak/2019/PN.BKN'. *Jurnal Pahlawan* 5, no. 1 (25 March 2022): 1–18. <https://doi.org/10.31004/jp.v5i1.5831>.
- Saragih, Yasmirah Mandasari, Rahul Ardian Fikri, and Nabilah Syaharani. *Penegakan Hukum Kejahatan Pencurian Dengan Kekerasan (Begal) Yang Dilakukan Oleh Anak*. Sukoharjo: Tahta Media Group, 2023.
- Supreme Court of the Republic of Indonesia. Peraturan Mahkamah Agung Republik Indonesia Nomor 4 Tahun 2014 tentang Pedoman Pelaksanaan Diversi dalam Sistem Peradilan Pidana Anak, Pub. L. No. 4 (2014).
- Tomalili, Rahmanuddin, and Agus Ariadi. 'Penerapan Diversi Melalui Pendekatan Keadilan Restoratif (Restoratif Justice) Yang Dilakukan Oleh Hakim Anak Di Pengadilan Negeri Unaaha'. *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, no. 5 (26 March 2022): 543–54. <https://doi.org/10.54443/sibatik.v1i5.62>.
- United Nations General Assembly. United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (1985).