

# **The Nature of Legal Protection for Children Committing the Crime of Theft with Violence in The Jurisdiction of the South Sulawesi Regional Police**

Husniar Darsis, Hambali Thalib, Baharuddin Badaru & Nurul Qamar

*Doctor of Law, Universitas Muslim Indonesia, Indonesia*  
*Faculty of Law, Universitas Muslim Indonesia, Indonesia*

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## **ABSTRACT**

The purpose of this study is to analyze the nature of legal protection against children who commit the crime of theft with violence at the South Sulawesi Regional Police. The results of the study that The nature of legal protection against children who commit the crime of theft with violence in the South Sulawesi Regional Police are: 1). The essence of legal protection for children who commit crimes of theft with violence is to guide children who have especially committed criminal acts through special courts for children so that the future of children as future generations can be saved.

**Keywords: Children; Theft; Violence**

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## **I. Introduction**

Children are entrusted by God Almighty to parents, society, nation and state as the next generation in achieving the ideals and existence of a country. About what is meant by a child by the provisions of Law Number 11 of 2012 article 1 number 3 concerning the Juvenile Criminal Justice System, namely: "Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but under the age of 18 (eighteen) years who are suspected of committing a crime". International conventions, it has been regulated regarding Child Protection and how to implement the resolution of children's problems in the criminal justice process.<sup>[1]</sup>

A child according to Article 1 point 1 of Law Number 35 of 2014. Regarding Amendments to Law Number 23 of 2002 concerning Child Protection someone who is not yet 18 (eighteen) years old and is even still in the womb. Based on Article 21 Paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is firmly stated that children's rights must be protected and the state is obliged to fulfil, protect and respect children's rights.<sup>[2]</sup>

Children have the right to get protection, attention, affection, and education for their welfare of the child. Children must receive special protection for their physical and mental interests. It is hoped that children can grow and develop well and children are protected from the threat of crime that endangers them. The protection of children's rights is essentially directly related to regulations in laws and regulations, policies, businesses and activities that ensure the realization of the protection of children's rights, first of all, based on the consideration that children are vulnerable and independent group, in addition to the existence of a group of children who experience obstacles in their growth and development, both spiritually, physically, and socially.<sup>[3]</sup>

Crime is a behaviour that is prohibited by the state because it is an act that is detrimental to the state and to that act the state reacts with punishment as the ultimate measure (*Ultimate Remedium*). Crime has also spread to children. It is not only children who are victims of violence against children, what is most concerning now is that children themselves are the perpetrators of criminal acts.<sup>[4]</sup>

There are so many phenomena that are reported by the mass media that children become perpetrators of criminal acts of theft with violence. Children as weak and helpless figures certainly do not understand what is good and bad to do. Criminal acts committed by children start from the child's deviant attitude toward societal norms that tend to lead to criminal acts or often referred to as *juvenile delinquency*.

*Juvenile delinquency* is one of the government's urgent problems in tackling criminal acts in Indonesia Children should be an inseparable part of the survival of humans, the nation and the state. In the Indonesian constitution, children have a strategic role which is explicitly stated that the state guarantees the right of every child to survival, growth and development and the right to protection from violence and discrimination, as explained in the 1945 Constitution Article 28 B paragraph 2.<sup>[5]</sup>

Children are an important element of the state that must be guarded and protected, so for the crime of children, the Indonesian Constitution established Law Number 11 of 2012 concerning the Juvenile Criminal Justice System with the consideration: a) That children are a mandate and gift from God Almighty who has the dignity and worth as a whole human being; b) That in order to maintain the dignity and worth, children have the right to special protection, especially legal protection in the judicial system; c) That Indonesia as a State party to the Convention on the Rights of the Child (*Conventional on the Rights of the Child*) which regulates the principle of legal protection of children has the obligation to provide legal protection to children and has the obligation to provide special legal protection for children in conflict with the law; d) Whereas Law Number 3 of 1997 concerning juvenile court is no longer in accordance with the development and legal needs of the community because it has not comprehensively provided protection to children in conflict with the law so that it needs to be replaced with a new law; e) That based on the considerations as referred to in letters a, b, c, and d, it is necessary to enact a law on the juvenile justice system.<sup>[6]</sup>

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasizes the definition of children in Article 1 Number (3) which states that: "Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years of age who is suspected of committing a crime. The Law on Juvenile Court sees the child's side of the actions he has committed, if the child commits a crime before the child is 12 (twelve) years old, it is not categorized as a naughty child so from a legal point of view he cannot be held accountable, on the contrary, if he has reached the age of 12 (twelve) years to 18 (eighteen) years old can be held accountable for their actions, then if the child before the age of 18 (eighteen) is married, then it is not categorized as a child and the judicial process through general court is not juvenile justice."<sup>[7]</sup>

Law Number 11 of 2012 concerning the Criminal Justice System aims to provide the best for children, without sacrificing the interests of society and the establishment of justice. The purpose of the Juvenile Court is no different from other courts, namely to examine, decide and resolve cases of children. In this case, the implementation of the development and protection of children requires support both in terms of institutions and legal instruments that are better and more accommodating.

The phenomenon of child crime in Indonesia has recently shown very worrying symptoms. The number of incidents of student brawls, theft, rape, drugs, free sex, alcohol, skipping school and other deviant behaviours shows evidence that Juvenile Delinquency needs serious attention from all circles.

These facts show that child delinquency is not only a disturbance to public safety and order, but is also a danger that can threaten the future of the people of a nation. Children as one of the human resources, are potential successors of the nation and need to get supervision and guidance so they don't fall into serious juvenile delinquency or commit acts that violate the law.<sup>[8]</sup>

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System provides specificity in the *Due Process Law* for perpetrators of Child Crime known as Diversion. Diversion according to Law No. 11 of 2012 has been given an authentic interpretation in Article 1 Number 7, namely the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. Specificity in efforts to resolve child crimes is not merely to distinguish the settlement of criminal acts, but rather to efforts to save the nation's generation who are trapped in delinquency.

Domestic security is the main requirement to support the realization of a just, prosperous and civilized civil society based on Pancasila and the Constitution of the Republic of Indonesia.

The Law of the Republic of Indonesia Number 2 of 2002 concerning the National Police of the Republic of Indonesia, authorizes the Police of the Republic of Indonesia in maintaining internal security through efforts to carry out police functions which include maintaining security and public order, law enforcement, protection, protection, and service to the public. The community is carried out by the State Police of the Republic of Indonesia as a state instrument assisted by the community by upholding human rights.

The social phenomenon that occurs is that criminal acts committed by children (*Juvenile delinquency*) today also occur in various regions, one of which occurs in the jurisdiction of the South Sulawesi Regional Police. One of the most common crimes is theft with violence.

## **II. Research Methods**

The type of research used is empirical (non-doctrinal) legal research, namely research with the character of legal science, where in the study there is always an element (*norm*) or norm, by starting its effectiveness in measuring. The type of non-doctrinal legal research, which conducts legal observations as empirical legal phenomena or phenomena. The type of empirical legal research (*socio-legal study research*), is legal research that starts from a legal norm as a *dassollen* by connecting empirical legal facts as the object of research as the *dassein*, to draw normative conclusions. This research was conducted at the South Sulawesi Regional Police with the reason that based on observations, the South Sulawesi Regional Police is an area that is prone to theft with violence committed by children so it is representative of the research.

### III. Discussion

#### The Nature Of Legal Protection For Children who commit the crime of theft with violence.

The incidents of violent theft where the perpetrators are children in South Sulawesi have been proven, so how is the legal treatment of law enforcement officers against children as legal subjects who according to norms should be given legal protection if a conflict with the law?

Researchers have conducted research in areas that have been selected as research samples by collecting data from respondents who have been designated as research sources which are further described as follows:

**Table 1.** Theft is still common in South Sulawesi

NO	Category	Frequency	Percentage
1	Common	75	75
2	Less common	20	20
3	Unusual	5	5
	Amount	100	100.00

Source: Questionnaire Results, 2022<sup>[9]</sup>

Table six above, reveals the fact that theft events in general in South Sulawesi are still common. This is by the respondents' answers that 75 (75)% of respondents answered so. Those who stated that it was less common were found as many as 20 (20)% of respondents. Those who said it was unusual were only found as many as 5 (5)% of respondents.

Theft is a crime (*crime*) is behaviour that violates the law and violates social norms, especially theft can also harm people's property so that society opposes it. In a social context, theft is a social phenomenon that occurs in every place and time. This shows that theft that can harm people's property is not only a problem for a particular community on a local or national scale, but also a problem faced by all people in the world, in the past, present and future, so it can be said that theft as a *universal phenomenon*. Based on this, it can be qualified that theft committed by any individual anywhere is a social disease and a crime. However, it should be understood that crime is not an event of *heredity* (congenital from birth, inheritance) nor is it a biological inheritance. Crimes can be committed by anyone, both men and women with different age levels, and education. Crime can be done consciously, that is, it is thought, planned, and directed at a certain purpose consciously.

Crime is an abstract concept, where crime always causes unrest for the state and members of society in general. Therefore, various ways are always sought to overcome them, both through social approaches, religious approaches, and even legal approaches. Indeed, in reality, it is very difficult to eradicate crime because crime follows the development of society. Crime is a disease of society, one of which is a crime against property, namely theft.

The event of theft must be anticipated as early as possible both by the community and by law enforcement officers because this event disturbs the community and is very detrimental to the property of the party who is the victim of the incident. What about violent theft, which sometimes not only harms the property of the victim but also indicates that the victim may be physically injured from the act or behaviour of the maker, researchers have also investigated incidents of violent theft that occurred in South Sulawesi, as stated in the following tables:

**Table 2.** Violent Theft is Commonly Found Occurring in South Sulawesi

NO	Category	Frequency	Percentage
1	Commonly found	76	76
2	Unusual	19	20
3	Unusual	4	4
	Amount	100	100.00

Source: Questionnaire Results, 2022

If theft, in general, is still common in South Sulawesi, then theft, in particular, is theft with violence. Research conducted by researchers found the fact that violent theft was also found, there were 76% of

respondents said that, while 19% of respondents said that it was less common and said it was unusual only 4% of respondents. Thus, the general opinion of respondents about the occurrence of violent theft events in South Sulawesi is quite large compared to those who say less and no. This means that the public perceives this violent theft as occurring a lot, so it must be watched out for, and eradicated in such a way, because this crime against property almost takes victims not only in the form of the property but also physically from the victim, so it is called violent theft.

A question may arise whether theft with violence is only carried out by adults, it is impossible for children who are still qualified to be minors or there is a possibility that children are the perpetrators of violent theft. To answer the intended question, the researcher has researched this matter, and the data obtained are outlined in the following table:

Table 3. Violent Theft in South Sulawesi Perpetrators can be adults or by children

NO	Category	Frequency	Percentage
1	Can be	100	100
2	Less can	0	0
3	Unusual	0	0
Amount		100	100.00

Source: Questionnaire Results, 2022<sup>[10]</sup>

Observing table eight, it is revealed that violent theft can be committed by adults or by minors. Respondents argue that in the theft with violence that occurred in South Sulawesi, the perpetrator can be adults or minors. 100% of respondents think so. This means that in fact, the community knows that the perpetrators of violent theft are found, there are adults, and there are also minors.

The perpetrators of the crime of theft with violence are generally only committed by adults. With the development of the times and technological advances, perpetrators of criminal acts of theft with violence are not only carried out by adults but also by minors. The actions taken by the perpetrators also did not hesitate to injure or even cause the victim to die.

The crime of theft has caused unrest and anxiety in the community. People feel insecure because every time they are always faced with the possibility that they can become victims of crime. Public anxiety about crime in Indonesia has often been heard at this time, moreover, the perpetrators are not only carried out by adults but children who are still underage and should still receive protection and education from their families. Theft with violence committed by minors is very contrary to religious, moral, moral and legal norms and endangers and disturbs the life of the community, nation and state. Violent theft is one of the ills of society that regenerates and harms others.

Based on the description above, it is necessary to investigate further the theft with violence perpetrated by minors that occurred in South Sulawesi, as outlined in the following table:

Table 4. Violent Theft in South Sulawesi Found the perpetrators are Minors

NO	Category	Frequency	Percentage
1	Found	81	81
2	Less found	9	19
3	Not found	0	0
Amount		100	100.00

Source: Questionnaire Results, 2022

Table nine shows that violent theft in South Sulawesi where the perpetrators are minors received a large percentage of responses from respondents, found as many as 81% of respondents stated that they were found. Of the rest, only 19% of respondents stated that they were not found. This means that factually, people think that a lot of theft with violence is carried out by minors, so if this is the reality, a way out should be found so that children do not become sadistic criminals in society.

Researchers further researched criminal responsibility for children who commit theft with violence, and found answers from respondents as follows:

Table 5. Violent theft committed by children must be accounted for through legal processes

NO	Category	Frequency	Percentage
1	Must be	71	71
2	less must	9	9
3	not have to be	20	20
	Amount	100	100.00

Source: Questionnaire Results, 2022<sup>[11]</sup>

Based on the respondents' answers in table 10 above, it shows that the percentage of respondents who answered that theft with violence perpetrated by children, should be accounted for is greater than the others. It can be seen that the respondents who say they must be accounted for are 71% of the 100 population of respondents.

As for those who stated the theft with violence committed by children, it was found that the percentage was less than 9% and those who said they did not have to be accounted for were found to be 20%. This means that dominantly the respondents of this study want children who are disturbing and endanger the community by committing the crime of theft with violence should be legally accounted for even though the child is not yet an adult, because he has committed a crime that can harm the victim against his property and threaten the life of the victim from the behaviour or actions of a person even though he is a minor.

In this regard, positive law has provided normative instruments for children in conflict with the law, including children who have committed theft with violence, so researchers have also explored information about how legal protection is for children who commit crimes of theft with violence and have obtained answers. as in the following table:

Table 6. Legal Protection for Children in Conflict with the Law Including Theft With Violence

NO	Category	Frequency	Percentage
1	Must be given a PH	80	80
2	Less must	2	2
3	Not be	18	18
	Amount	100	100.00

Source: Questionnaire Results, 2022<sup>[12]</sup>

Based on the responses of research respondents as in table 11 above, it shows that 80% of respondents think that children who commit crimes of theft with violence should be given legal protection. Only 2% of respondents said they should not be given legal protection and only 18% of respondents said they should not be given legal protection.

Respondents who think that children who commit the crime of violent theft should be given legal protection are found to be 80%, while those who don't think so are only found to be 20%. This means that in general the community or respondents have a concern as well as concern for children who commit crimes or criminal acts in general and specifically theft with violence so that children who are entangled in such legal cases are given legal protection by applicable legal provisions.

Importance of legal protection is given to children who conflict with the law, considering that children are the next generation of the nation, even minors who commit the crime of theft accompanied by violence against their victims, of course, the legal treatment cannot be the same as adults, based on children Those who commit crimes are still under the age of thought that is still unstable, both emotionally and mentally. So that such a child is still considered unable to distinguish between right and wrong. In this regard, whether and or how legal protection is given to children who have come into contact with the legal problem of theft with violence, or whether it is followed by the procedures that have been regulated in the laws and regulations on child protection. For this matter, research has also been carried out and obtained information and answers from respondents are as follows:

Table 7 Legal Protection Against Children in Conflict with the Law Including Theft With Violence Taken Through the Diversion Process

NO	Category	Frequency	Percentage
1	Agree	69	69
2	Disagree	12	12
3	Not necessarily	19	19
	Amount	100	100.00

Source: Questionnaire Results, 2022<sup>[13]</sup>

Based on the results of research regarding this matter, it is obtained data and information that legal protection for children who have committed theft with violence is pursued through the Diversion process, this is the opinion of 69% of respondents. However, in reality, it was found that 12% of respondents did not agree with the legal protection of children in cases of violent theft and 19% of respondents did not agree so not all respondents agreed to legal protection for children in conflict with the law through the Diversion process.

Diversion based on Article 1 point 7 of Law Number 11 of 2012 concerning Juvenile Justice, is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system.

The handling of juvenile criminal cases is certainly different from the handling of adults, the handling of the child is special because it is also regulated in a separate regulation. Understanding the process of handling children's cases, of course, there may still be some people who do not understand or understand, so sometimes it gives rise to various assessments, even more, fatal if there is a misjudgment that the handling of children, especially children in conflict with the law, get treatment. special and some think that children cannot be punished even though it is not that far, it's just that the handling process is specifically regulated.

That the need for legal protection for children who commit theft with violence is generally motivated by the idea that children under the age of mental development are still in an unstable state, so special attention needs to be given to the law.

It should be understood that the handling of children in conflict with the law, of course, must be based on special statutory provisions, where these provisions have been regulated in such a way in statutory regulation. The regulations that regulate, among others:

1. Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, previously the Law of the Republic of Indonesia Number 3 of 1997 concerning the Juvenile Court.
2. Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.
3. Law of the Republic of Indonesia Number 17 of 2014 concerning Stipulation of Government Regulations instead of Law Number 1 of 2016 concerning the Second Change to Law Number 23 of 2002 concerning Child Protection Becomes Law.
4. Government Regulation Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling of Children Under 12 (Twelve) Years Old.
5. Regulation of the Supreme Court Number 4 of 2014 concerning the Implementation of Diversion in the Juvenile Criminal System.
6. Attorney General Regulation No. 06/A/JA/04/2015 concerning Guidelines for the Implementation of Diversion.

The six regulations mentioned above alternately provide a special discussion on the protection of children in conflict with the law. About the above, it is also investigated how the level of physical and physical development of children about being perpetrators of criminal acts.

For children who conflict with the law, their physical and psychological development must be the main concern, considering that children are still unstable in all things, both emotionally and mentally, so children must receive special treatment in the criminal process.

Referring to the *video* of Article 1 point 2 and Article 2 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, children who conflict with the law to protect the child physical and psychological well-being must therefore be given special attention from the investigation stage to the mentoring stage. after undergoing a criminal process based on protection, justice, non-discrimination, best interests, respect for children, survival and development of children, proportionate, deprivation of liberty and punishment as a last resort and avoidance of retaliation.

Philosophically, the need for legal protection for children who have committed theft with violence or children who have conflicted with the law, because children are the responsibility of the state, so the government forms regulations governing legal protection for children.

The future of the Indonesian nation lies in children, so providing maximum protection for children is an investment in the future progress of the Indonesian nation.

At the world level in 1989, governments around the world agreed to promise equal rights for all children by adopting the United Nations Convention on the Rights of the Child. On January 26, 1990, the Government of Indonesia signed *the Convention on the Rights of the Child* as a result of the UN General Assembly session which was adopted on November 20, 1989

. each member country, so that every child can grow up healthy, go to school, be protected, be heard, and be treated fairly. This is in line with Article 28B of the 1945 Constitution which states that every child has the right to survive, grow, grow and develop and has the right to protection from violence and discrimination. Thus, the Indonesian government not only recognizes the rights of children that need to be protected but also recognizes the responsibility of the state to ensure the fulfilment of these children's rights. Apart from the state, according to the explanation of Law Number 35 of 2014, the protection and fulfilment of children's human rights is the responsibility of the government, local governments, communities, families, and parents.

The need for the protection of children for the Indonesian people is based on three understandings. First, children are understood as part of citizens who must be protected by the state. Second, children are a mandate and gift from God in which the dignity and dignity of the whole human being are inherent. Third, children are the next generation of the nation's ideals and guarantee the existence of the nation and state in the future.

Legal protection for children is one side of the approach to protecting Indonesian children. Not can only be detected juridically, but a more specialized approach is needed, namely economic, social, and cultural. Thus, the purpose of child protection is to ensure the fulfilment of children's rights so that they can live, grow, develop, and participate optimally with human dignity, and protection from violence and discrimination, to achieve quality, noble and prosperous Indonesian children.

#### **IV. Conclusion**

The nature of legal protection for children is a guarantee for children to grow up to be good and right children. The implementation of legal protection for children who commit the crime of theft with violence, at the South Sulawesi Regional Police is less effective because starting from the handling stage to the detention of children in conflict with the law is still equated with the investigation of adults and detained in custody with adults.

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