

**Article Title****Judges' Legal Reasoning in Determining the Success or Failure of Diversion in Juvenile Justice: A Normative Analysis of Indonesian Court Decisions****Author (s)****Anwar Dahlan**

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Anwar, A., Bima, M. R., & Djanggih, H. (2025). Judges' Legal Reasoning in Determining the Success or Failure of Diversion in Juvenile Justice: A Normative Analysis of Indonesian Court Decisions. *Al-Ishlah: Jurnal Ilmiah Hukum*, 28(2), 133-145.

## ABSTRACT

This study examines judges' legal reasoning in determining the success or failure of diversion in juvenile cases within Indonesia's Juvenile Criminal Justice System. Using a normative juridical approach with a doctrinal character, the research analyzes statutory provisions under Law Number 11 of 2012 and selected district court decisions that reflect diverse diversion outcomes. The findings reveal that although diversion is an imperative legal mandate, its implementation varies significantly in judicial practice. Diversion may succeed substantively when judges actively facilitate restorative dialogue and involve probation officers effectively, but it may fail when reduced to procedural formality or financial compensation negotiations. The study also identifies instances where diversion is entirely omitted despite meeting normative requirements, reflecting a persistent retributive bias in juvenile adjudication. These inconsistencies demonstrate that diversion outcomes are strongly influenced by judicial discretion, victim willingness, socio-economic factors, and the availability of non-material restoration mechanisms. The study concludes that diversion must be reinforced as a substantive right of the child rather than a mere administrative obligation. Strengthening judicial guidelines, enhancing probation services, and promoting restorative justice-oriented judicial training are essential to ensure consistent, child-centered, and restorative diversion practices.

**Keywords:** Diversion; Juvenile Justice; Judicial Discretion; Child Protection

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## INTRODUCTION

Diversion is understood as a fundamental instrument within the juvenile criminal justice system, intended to shift the resolution of a child's case from formal judicial proceedings to non-litigation mechanisms oriented toward restorative justice. This idea stems from the awareness that children who come into conflict with the law possess psychological, social, and moral-developmental conditions that differ from those of adults. The procedural framework of juvenile criminal justice is therefore designed to place the best interests of the child as the primary principle at every stage of the legal process (Rahayu, 2015). Diversion goes beyond a mere procedural option because it carries a normative mandate that reflects a paradigm of protection and rehabilitation. The implementation of diversion is expected to prevent stigmatization and the negative impacts of punishment on a child's future.

The obligation to implement diversion is explicitly affirmed in Law Number 11 of 2012 on the Juvenile Criminal Justice System. The regulation stipulates that diversion must be pursued at the stages of investigation, prosecution, and court examination, provided that certain requirements are met. This provision indicates that diversion is not a matter of unfettered discretion for law enforcement authorities, but rather an integral part of the design of the juvenile criminal justice system. The norm also positions judges as central actors in determining whether the diversion process succeeds or fails (Munggardijaya, *et al*, 2025). This role makes judicial legal reasoning a decisive factor in the effectiveness of diversion.

Judicial practice at the court level reveals a complex dynamic in the application of diversion and often departs from the normative design of the Juvenile Criminal Justice System Law. Court decisions demonstrate variations in judges' approaches to diversion, both in assessing normative requirements and in interpreting the principles of restorative justice. Such variations produce differing outcomes in the form of success, failure, and even the omission of diversion in cases with similar characteristics (Riza & Sibarani, 2021). This situation raises fundamental questions about the consistency and parameters of judges' legal reasoning. It simultaneously opens an academic space to examine the juridical rationality underlying judicial decisions.

Decision of the Bulukumba District Court Number 2/Pid.Sus-Anak/2025 provides a concrete illustration of diversion failure caused by the inability to reach a restitution agreement between the child offender and the victim. The diversion process was formally conducted, yet it did not result in an agreement acceptable to all parties. The judge then proceeded with the case through the formal adjudication mechanism. This decision indicates that economic aspects, particularly restitution or compensation, significantly influence the success of diversion. Such circumstances generate concerns of justice when the child's family's economic capacity becomes a determining factor in the child's legal fate.

The diversion failure in that case reflects tension between the aims of restorative justice and the socio-economic realities of the parties. The orientation toward restoring social relations becomes reduced to a dispute over the amount of compensation. The judge's position turns dilemmatic when no agreement is achieved, even though substantive possibilities for diversion remain. The decision to continue formal proceedings demonstrates structural constraints in diversion practice. This condition indicates the need for more comprehensive assessment within judicial legal reasoning.

Determination of the Bulukumba District Court Number 3/Pen.Div/2024 jo. Number 6/2024 presents an example of successful diversion at the court level. All parties reached a diversion agreement considered fair and proportionate, leading to the termination of case examination. The judge affirmed that the primary objectives of diversion had been achieved, namely the restoration of circumstances and the protection of the child's interests. This success demonstrates an active judicial role as a facilitator of restorative justice. The determination represents good practice in implementing the Juvenile Criminal Justice System Law.

The success of diversion in that determination shows that judicial legal reasoning is both normative and contextual. The child's condition, the victim's interests, and the parties' social dynamics become important elements in the evaluative process. Such an approach reflects a substantive understanding of restorative justice philosophy. The diversion process is understood as a meaningful dialogic mechanism rather than a

mere formal procedure. The judge's role then appears as a guardian of balance between legal certainty and substantive justice.

Court practice also indicates cases in which diversion requirements are normatively satisfied but diversion is not pursued. Decision of the Makassar District Court Number 34/Pid.Sus-Anak/2024 serves as an important illustration of this condition. The child in that case met the normative criteria for diversion, yet the effort to pursue diversion was not carried out optimally. Case examination continued until a final decision was rendered. This situation raises serious questions about compliance with the mandate of the Juvenile Criminal Justice System Law.

The absence of diversion efforts in that case indicates a broad space of discretion within judicial practice. Such discretion may be influenced by judicial perceptions of the seriousness of the offense or by the attitudes of the parties. Discretion without strong legal reasoning risks obscuring the protective aims of juvenile justice. The decision to proceed without diversion may also conflict with the best interests of the child principle. A deeper analysis of judicial legal reasoning becomes crucial in this context.

Decision of the Makassar District Court Number 5/Pid.Sus-Anak/2025 again shows diversion failure triggered by divergent views regarding the amount of compensation owed to the victim. The disagreement prevented the diversion process from reaching consensus. The judge then continued the case through the formal adjudication mechanism. This condition indicates that economic factors once more become the primary determinant of diversion success or failure. This recurring pattern reinforces the presence of structural problems in diversion practice at the court level.

Diversion failure due to differences in compensation amounts generates a serious dilemma of justice. A child risks facing severe legal consequences not merely because of wrongdoing, but because of economic limitations. This situation contradicts the spirit of restorative justice, which emphasizes recovery and proportionate accountability. The judge faces a difficult choice between continuing formal proceedings and seeking alternative resolution pathways. Judicial legal reasoning becomes the determinant of the direction of justice in such circumstances.

Variations in diversion outcomes across decisions indicate disparities in juvenile court practice. These disparities encompass not only final outcomes but also processes and the underlying legal reasoning used by judges. Such conditions potentially create legal uncertainty for children who come into conflict with the law. Public trust in the juvenile criminal justice system may also erode due to such inconsistency. A deeper study of judicial legal reasoning therefore becomes an academic and practical necessity (Budiaulia & Ahmad, 2024).

The judicial role in juvenile cases goes beyond law enforcement alone. Judges also function as protectors of children's rights, which requires sensitivity to restorative

justice values and human rights. Judicial legal reasoning ideally reflects a balance among legal certainty, utility, and justice. The complexity of diversion increases because it involves the interests of victims, child offenders, and society. This condition requires a clear and consistent framework of judicial reasoning (Sudewo, 2021).

Legal theory views judicial reasoning as an interaction between normative rules and social reality. The application of law does not operate mechanically, but through interpretation and contextualization. This character is evident in diversion cases that involve negotiation, dialogue, and agreement. Analysis of judicial legal reasoning can reveal how law operates in practice. Such study also shows the extent to which restorative justice values are internalized in court decisions (Asa, *et al*, 2025)..

Sociological aspects show that the success or failure of diversion has broad impacts on children and their social environment. Successful diversion can prevent labeling and marginalization of the child. Diversion failure may instead reinforce stigma and increase the risk of recidivism. Judges hold a strategic role in determining these impacts through their reasoning. The quality of judicial legal reasoning becomes a key factor in the effectiveness of the juvenile criminal justice system (Nahda, *et al*, 2025).

Criminal law policy places diversion as part of a strategy of de-penalization and the humanization of criminal law. This strategy aligns with the *ultimum remedium* principle, which positions punishment as the last resort. Judges are expected to translate this policy into decisions oriented toward child protection. Practices that show diversion failure or omission raise questions about the effectiveness of this policy. This condition reflects a gap between normative policy and judicial implementation.

Differences in paradigms among law enforcement actors also influence diversion practice. Some judges may still regard formal adjudication as the primary instrument of law enforcement. Such views may hinder the internalization of restorative justice. Study of how judicial legal reasoning is constructed becomes highly important. Research is expected to contribute to the renewal of juvenile court practice.

Study on judicial legal reasoning in determining diversion success or failure is relevant in the context of juvenile justice reform. The research is descriptive, analytical, and critical. Analysis of court decisions can reveal patterns of reasoning used by judges. These patterns may serve as a basis for formulating policy and practical recommendations.

A juridical approach to court decisions enables systematic tracing of judicial legal arguments. Those arguments reflect how judges understand and apply the Juvenile Criminal Justice System Law. Study of concrete decisions helps avoid abstract generalizations. The analysis also shows judicial consistency with the best interests of

the child principle. The practical value of the research becomes highly significant in this context.

The theoretical relevance of the research lies in developing scholarship on juvenile criminal procedure. Judicial legal reasoning functions as a bridge between norms and practice. This study allows identification of normative, sociological, and psychological factors influencing judicial decisions. Such identification enriches academic discourse on restorative justice. The contribution to legal scholarship becomes increasingly evident.

Indonesian diversion practice can be compared with other countries that have developed progressive juvenile justice systems. The primary focus of this research remains on the national context and Indonesian court practice. Decisions of the Bulukumba and Makassar District Courts are selected as representations of the dynamics of diversion in district courts. Analysis of these decisions is expected to reflect broader conditions. The national relevance of the research thus becomes stronger.

This introduction affirms that judicial legal reasoning is the key to diversion success or failure in court. The diversity of decision outcomes indicates the need for clearer standards of judicial reasoning oriented toward restorative justice. The research aims to examine in depth the construction of judicial legal reasoning in diversion cases. Contributions to strengthening the juvenile criminal justice system in Indonesia are expected to be realized. The academic, practical, and normative urgency of this research is therefore very strong.

## METHOD

This research employs a normative juridical approach with a doctrinal character, focusing on the analysis of legal norms and judges' legal reasoning in court decisions concerning the application of diversion in juvenile cases. This approach is chosen to examine the conformity between the normative regulation of diversion as stipulated in Law Number 11 of 2012 on the Juvenile Criminal Justice System and judicial practice in the courts. The primary objects of the research include court decisions and determinations related to both the success and failure of diversion, particularly Decision of the Bulukumba District Court Number 2/Pid.Sus-Anak/2025, Determination of the Bulukumba District Court Number 3/Pen.Div/2024 jo. Number 6/2024, Decision of the Makassar District Court Number 34/Pid.Sus-Anak/2024, and Decision of the Makassar District Court Number 5/Pid.Sus-Anak/2025.

The types and sources of legal materials used in this research consist of **primary** legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant legislation, particularly Law Number 11 of 2012 on the Juvenile Criminal Justice System, as well as the court decisions and determinations analyzed. Secondary legal materials comprise textbooks, scholarly journal articles,

research findings, and expert doctrines discussing restorative justice, diversion, and the role of judges in juvenile justice. Tertiary legal materials, such as legal dictionaries, encyclopedias, and other supporting sources, are used to strengthen conceptual and terminological understanding.

The technique for collecting legal materials is conducted through library research by examining legislation, court decisions, and relevant academic literature. The analysis of legal materials is carried out qualitatively using a juridical-analytical method, namely by systematically examining judges' arguments and legal reasoning in each decision to identify patterns, consistency, and factors influencing the success or failure of diversion. The results of the analysis are then presented in a descriptive-analytical manner to explain the relationship between legal norms and judicial practice, while also formulating findings and recommendations oriented toward strengthening the application of restorative justice within the juvenile criminal justice system.

## RESULT AND DISCUSSION

### **Judges' Legal Reasoning in Determining the Success or Failure of Diversion in Court**

Diversion is a fundamental instrument within Indonesia's Juvenile Criminal Justice System (Sistem Peradilan Pidana Anak/JPJS) and normatively occupies a central position in Law Number 11 of 2012 on the Juvenile Criminal Justice System. This regulatory framework reflects a paradigm shift in juvenile criminal law from a retributive approach toward a restorative approach oriented to the protection, recovery, and rehabilitation of children in conflict with the law. The primary objective of diversion is to prevent children from entering formal criminal proceedings that may generate stigmatization and long-term psychosocial harm (Muladi, 2019).

Diversion is not framed merely as a technical procedure in juvenile criminal procedure, but rather as a substantive approach that elevates the best interests of the child as the main guiding principle. This principle requires that every legal decision involving children consider its overall impact on the child's physical, mental, social, and moral development (UNICEF, 2020). Accordingly, the success of diversion cannot be measured solely by procedural compliance, but by the quality of restoration achieved.

Normatively, Article 7(1) of the JPJS Law affirms that diversion must be pursued at the stages of investigation, prosecution, and judicial examination of juvenile cases in the district court, particularly for offences punishable by less than seven years' imprisonment and that do not constitute repeat offending. This norm is imperative and does not provide discretionary space for law enforcement officials to disregard it. The obligation is reinforced by Article 8 of the JPJS Law, which explicitly instructs juvenile judges to facilitate diversion deliberations involving the offender, the victim,

their families, probation officers/community counsellors (Pembimbing Kemasyarakatan), and relevant community elements.

This legal design indicates that diversion is a juridical obligation that must be implemented actively and substantively by judges. Nevertheless, the success of diversion remains highly dependent on the social and psychological dynamics among the parties involved. The victim's willingness to engage in dialogue, the offender's capacity to assume responsibility, and the quality of facilitation by judges and probation officers become decisive factors in reaching a restorative agreement (Zehr, 2015).

The obligation of diversion in the JPJS also aligns with international standards, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990). These instruments emphasize the importance of diversion to avoid the criminalization of children and to minimize the risk of recidivism. UNICEF (2020) further stresses that legal processes involving children must prioritize recovery-oriented approaches rather than punishment.

In judicial practice, the implementation of diversion often encounters contradictions between ideal norms and empirical realities. A number of court decisions reveal varying judicial approaches in assessing the success or failure of diversion. Factors such as victims' compensation demands, the severity of injuries or consequences of the offence, and the sociological readiness of the parties frequently become key determinants of diversion outcomes, even though these factors are not explicitly regulated as normative prerequisites for diversion success under the JPJS Law.

Howard Zehr (2015) emphasizes that the success of restorative justice is largely determined by relationships built on voluntariness rather than formal pressure from judicial institutions. Therefore, diversion outcomes are more strongly shaped by psychosocial dimensions and the quality of dialogue than by administrative compliance alone. Within this context, the judge's role becomes strategic as a facilitator of social restoration.

The theory of judicial discretion articulated by Benjamin Cardozo provides an important analytical framework for understanding the judge's role in diversion cases. Judges do not function merely as mechanical appliers of legal norms, but also as actors who weigh humanitarian values, relational justice, and the social context in which law operates. Discretion in diversion should be used to strengthen restoration, not to evade normative obligations.

In Indonesia, Satjipto Rahardjo underscores the importance of a "humanizing the law" approach within the criminal justice system, including juvenile justice. Law

should not be treated as a rigid normative text, but as an instrument to humanize human beings (Rahardjo, 2009). In the context of diversion, judicial decisions should reflect not only formal legality but also social legitimacy and moral justification.

The Bulukumba District Court Decision Number 2/Pid.Sus-Anak/2025 provides a concrete example of diversion pursued procedurally but failing substantively. In this case, the judge stated that diversion had been attempted but no agreement was reached between the offender and the victim, leading the proceedings to continue to final judgment. The failure was primarily caused by the inability to reach agreement regarding compensation.

The case involved a 17-year-old child offender charged with violence against another child under Article 80 in conjunction with Article 76C of the Child Protection Law. The threatened penalty remained below the seven-year threshold, thereby normatively satisfying the diversion requirement under Article 7(2) of the JPJS Law. Trial facts indicated that the offence occurred in the context of a mutually agreed fight, yet resulted in sufficiently serious physical injuries.

Diversion efforts were undertaken at the trial stage pursuant to Article 8 of the JPJS Law, but failed because no agreement was reached concerning the form of restitution. The judge stated the diversion failure textually without exploring non-material restoration alternatives. This situation invites academic criticism because the diversion deliberation appears to have stalled at negotiations over financial compensation alone.

In international restorative justice practice, failure to reach a financial agreement should not automatically terminate the restoration process. UNODC (2021) stresses that restitution may take non-material forms, such as a formal apology, community service, or educational obligations. The absence of such alternatives demonstrates the limitations of the restorative approach in this decision.

Although diversion failed, the panel of judges imposed a community service sanction for three months rather than imprisonment. This ruling reflects an effort to maintain the child-protection spirit through non-custodial measures consistent with Article 69 of the JPJS Law. The judge also reaffirmed the best interests of the child by considering the child's status as a student facing examinations.

Nevertheless, the decision leaves unresolved the issue of victim restoration because restitution was not embodied in the operative part of the judgment. Restitution constitutes a victim's right as regulated in Article 71D of the Child Protection Law and Supreme Court Regulation (Perma) Number 4 of 2014. The absence of a restitution order indicates that victim recovery has not been fully integrated into juvenile proceedings.

The Bulukumba District Court Determination Number 3/Pen.Div/2024 jo. 6/2024 illustrates an ideal practice of diversion that succeeded both juridically and

substantively. The judge terminated the examination of the case after receiving an official report from the probation officer indicating that the diversion agreement had been fully implemented. The legal basis for termination referred to Article 12(3)–(5) of the JPJS Law.

This determination demonstrates that diversion is positioned as the final resolution of a juvenile criminal case, without further examination and without the imposition of criminal sanctions. The absence of a criminal record reflects the principles of depenalization and non-stigmatization that underpin the JPJS philosophy. The role of the probation officer is prominent as a supervisor of restorative compliance.

Diversion success in this case also indicates the victim's willingness to accept a restorative mechanism. This supports Zehr's (2015) thesis that restorative justice success depends heavily on social relationships that have not been fundamentally damaged. The judge in this determination appears as a facilitator of social restoration rather than merely a formal law enforcer.

In contrast to the previous decisions, the Makassar District Court Decision Number 34/Pid.Sus-Anak/2024 reflects a juvenile case decided without diversion, even though it normatively satisfied diversion eligibility. The child offender was charged under Article 310(4) of the Road Traffic and Transportation Law (UU LLAJ) with a maximum penalty of six years' imprisonment, which remains below the seven-year threshold.

This decision contains no information regarding diversion efforts, diversion deliberation records, or normative justification for omitting diversion. Such omission constitutes a violation of Article 8 of the JPJS Law, which requires diversion to be pursued at every stage of examination. Any reconciliation that occurred was treated only as a mitigating factor in sentencing, not as a basis for case resolution.

This ruling reflects a persistent retributive bias in juvenile adjudication, particularly when an offence results in the victim's death. Muladi (2019) criticizes the tendency of law enforcement to treat fatal outcomes as an automatic justification for retributive approaches, despite the lack of normative support under the JPJS framework.

The Makassar District Court Decision Number 5/Pid.Sus-Anak/2025 presents a diversion failure caused by the lack of agreement on compensation. A 16-year-old offender could offer only IDR 3,000,000, while the victim demanded restitution of approximately IDR 20,000,000. Economic disparity became the central factor behind the failure of diversion.

The judge treated compensation agreement as the primary indicator of diversion success; once agreement failed, the case proceeded to litigation. This approach reduces

restorative justice to an economic transaction. Walgrave (2022) argues that social restoration cannot be reduced to financial exchange alone.

This decision also indicates that Article 9 of the JPJS Law, which opens space for non-material agreements, was not optimally utilized. The judge did not encourage alternatives such as community service or phased payments. As a result, diversion ended in procedural failure that culminated in imprisonment.

A comparative analysis of the four decisions reveals three principal patterns of diversion practice: diversion that succeeds substantively, diversion that fails due to reduced conceptions of restoration, and diversion that is omitted despite normative eligibility. These patterns indicate weak internalization of restorative justice values within juvenile court culture.

An academic synthesis suggests that diversion success depends heavily on the quality of facilitation by judges and probation officers, the victim's openness to restorative dialogue, and the availability of non-financial restoration mechanisms. In the absence of these elements, diversion tends to fail or not be pursued at all.

Reforming diversion practice requires regulatory updates through Supreme Court guidelines, strengthening BAPAS (probation services) capacity, and transforming law enforcement paradigms from retributive to restorative. Diversion must be understood as a child's right to a humane and just resolution, not merely an administrative obligation. In this way, diversion can function as a principal pillar of child protection in Indonesia's juvenile criminal justice system.

## CONCLUSION AND SUGGESTIONS

This study concludes that judges' legal reasoning plays a decisive role in determining the success or failure of diversion in juvenile cases, not only at the procedural level but, more importantly, at the substantive level of restorative justice. Although diversion is normatively mandated by Law Number 11 of 2012, judicial practice demonstrates significant variation, ranging from successful and comprehensive implementation, procedural but substantively failed diversion, to the complete omission of diversion despite the fulfillment of legal requirements. These variations indicate that the effectiveness of diversion is highly influenced by the quality of judicial facilitation, the involvement of probation officers, the willingness of victims to engage in restorative dialogue, and the availability of non-material forms of restoration, rather than by legal norms alone. Therefore, it is recommended that diversion be reaffirmed as a fundamental right of the child within the juvenile justice system through clearer Supreme Court guidelines obligating judges to explicitly assess and document diversion efforts in every juvenile case, strengthened institutional capacity of probation services to support restorative processes, and continuous judicial training that emphasizes restorative justice principles, mediation skills, and child-sensitive approaches, so that diversion can function consistently as a substantive

mechanism for child protection and social restoration rather than as a mere procedural formality

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