



Guidelines for Implementation of Legal Certainty Concerning Diversion in Children Criminal Justice System

(Case Study on the Determination of the Chairperson of the Painan District Court Regarding
Diversity Agreement Number 2 / Pen.Div / 2019 / PNPnn jo Number 3 / Pid.Sus-Anak / 2019 /
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Abstract

Diversion is a diversion of the settlement of criminal cases by children outside the court. Diversion is carried out by holding meetings (face-to-face) between the parties regulated in Act Number 11 of 2012 concerning the Criminal Justice System for Children and in the Supreme Court Regulation (Perma) Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in SPPA. However, there are differences regarding the requirements for Diversity that are regulated in Law Number 11 of 2012 concerning SPPA (SPPA Law) and Article 3 of Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in SPPA. The problems examined in this thesis are 1) How is the legal certainty of the application of Article 3 of Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in the SPPA against Law Number 11 of 2012 Concerning the Juvenile Justice System for the Determination of the Chairman of the Painan District Court Regarding Diversi Agreement on behalf of NANDA DUANDA PUTRA Call NANDA Bin RIN Number 2 / Pen.Div / 2019 / PN Pnn jo Number 3 / Pid.Sus-Anak / 2019 / PN Pnn? 2) What is the effort made to equalize perceptions about Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in SPPA and the SPPA Law in the application of the Integrated Juvenile Justice System ?. The approach method used is normative juridical. This type of research is descriptive.

Keywords: *Legal Certainty; Diversity; Children; The Criminal Justice System for Children*

Introduction

Law Number 11 Year 2012 on Child Criminal Justice System explicitly regulate diversion. Diversion is a transfer of handling cases in children suspected of having committed a criminal offense from a formal process with or without conditions. Diversion as a form of diversion or facilitation of handling child delinquency which is more of a social service and diversion is done to prevent child offenders from the negative impacts of the practice of juvenile justice.

The essence of the diversion policy is the transfer of the settlement of criminal cases carried out by children through out-of-court channels. Diversion is carried out by holding meetings (face-to-face) between the parties regulated in Law Number 11 of 2012 concerning the Juvenile Justice System which is facilitated by law enforcers based on their authority, to settle cases outside the court.

The implementation of diversion avoids the use of an element of coercion to get people to obey the law. This means that the principle of justice is upheld in law enforcement, not least when applying the principles of diversion that is implemented. Justice in the concept of diversion is an attempt to place the value of honesty, equal treatment of all people and demand that officers not discriminate against people with different actions. The diversion is aimed at realizing justice and law enforcement correctly by minimizing criminal coercion.

The purpose of implementing the diversion is regulated in Article 6 of Law Number 11 Year 2012 concerning the Criminal Justice System for Children, which reads:

"Diversi aims:

- a. Achieve peace between victims and children;
- b. Settling cases of children outside the judicial process;
- c. Avoiding children from deprivation of independence;
- d. Encourage people to participate; and
- e. Instill a sense of responsibility to the child. "

The purpose of the diversion is the implementation of restorative justice which seeks to restore remedies to a problem, not a retaliation that has been known in criminal law.

Implementation of diversion at the level of investigation, prosecution, and examination of cases of children in district courts is regulated in Article 7 of Law Number 11 of 2012 concerning the Criminal Justice System for Children, which reads:

- (1) At the level of investigation, prosecution and examination of cases of children in the district court must be pursued Diversi.
- (2) Diversion as referred to in paragraph (1) shall be carried out in the event that a criminal offense is committed:
 - a. Threatened with imprisonment of under 7 (seven) years; and
 - b. Not a repeat of a crime.

The Supreme Court has responded to Law Number 11 of 2012 concerning the Child Criminal Justice System with the issuance of the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Child Criminal Justice System. An important point in the Supreme Court Regulation No. 4 of 2014 on Guidelines for Diversion in the Criminal Justice System Child is that the judge should resolve the issue of children in conflict with the law by way of Diversion. Besides that, the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System also contains procedures for implementing diversion that are the guideline of judges in the settlement of children given that there are no regulations that contain special procedural law for diversion of the juvenile justice system.

Supreme Court Regulation No. 4 of 2014 on Guidelines for Diversion in the Criminal Justice System Children form the guidelines for judges in implementing diversion at court level. Diversion is carried out with the goal of justice for children as criminals can run well. For the sake of creating child

welfare as a criminal offense. This is clearly seen in Article 3 of Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System which reads:

"Child judges must strive for Diversity in the event that a child is charged with an offense threatened with imprisonment for under 7 (seven) years and is also charged with an offense threatened with imprisonment of 7 (seven) years or more in the form of a subsidiarity indictment, an alternative, cumulative or combination (combined)."

The application of Article 3 of the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System can lead to legal uncertainty. Because Article 3 of the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System states that judges are obliged to pursue Diversity in the event that children are threatened with imprisonment for under 7 (seven) years and are also charged with criminal offenses threatened with imprisonment 7 (seven) years or more in the form of indictments subsidiarity, alternative, cumulative or combination (combined). In contrast to what is contained in Article 7 of Law Number 11 Year 2012 Concerning the Child Criminal Justice System which states that the diversion of its implementation in the Child Criminal Justice System can be attempted with the condition that a crime committed by a Child in conflict with the Law is threatened with imprisonment under 7 (seven) years.

Issues regarding the Application of Article 3 of the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System will be even more apparent if at the level of investigation and prosecution a detention of children in conflict with the law is carried out because they are threatened with imprisonment of 7 (seven) years and no diversion can be sought at this stage of investigation and prosecution. This is clearly seen in the case of children in the name of NANDA DUANDA PUTRA or NANDA Bin RIN.

At the stage of investigation and prosecution can not be carried out diversion and detention has been carried out against children of NANDA Bin RIN, this is done based on Law Number 11 Year 2012 concerning the Criminal Justice System for Children due to the child of NANDA Bin RIN, committing a crime Theft Article 363 Paragraph (1) 5th KUHP Jo Article 56 1st KUHP Jo Article 362 KUHP Jo Article 56 1st Jo Article 480 1st KUHP Jo Article 53 Paragraph (1) KUHP and Law Number 11 of 2012 concerning the Criminal Justice System for Children. Then according to the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System, judges carry out diversion of child cases on behalf of NANDA Bin RIN. So finally the Painan District Court issued the Determination of the Chairperson of the Painan District Court Concerning the Diversity Agreement on behalf of NANDA DUANDA SON SON SON NANDA Bin RIN Number 2 / Pen.Div / 2019 / PN Pnn jo Number 3 / Pid.Sus-Anak / 2019 / PN Pnn.

The overlapping regulations between Law Number 11 of 2012 concerning the Criminal Justice System for Children and the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System can lead to lack of legal certainty. Therefore the author tries to examine how the Application of Diversity in the Criminal Justice System of Children by taking the title of research in the form of scientific work with the title **"LEGAL SATISFACTION ON GUIDELINES FOR IMPLEMENTING DIVERSIONS IN CHILDREN CRIMINAL JUDGMENT SYSTEMS: Case Study of Determination of the Chairman of the Painan District Court Regarding Diversion Agreement Number 2 / Pen.Div/2019/PN Pnn jo Number 3 / Pid.Sus-Anak / 2019 / PN Pnn "**.

Methodology

The research method used in this study is a normative juridical, a research approach based on normative literature study and conducted through investigating law secondary data.¹ To conduct this study, the researcher completes any materials required in studying and finishing this study by investigating the primary, secondary, and tertiary data.² The techniques to collect the data are:

1. Literature study is conducted through collecting law materials relating to the study of materials, such as books of law whether in a form of written texts or soft-copy edition, such as e-books, journal articles, papers, government publication, and other sources provided in the internet and accessed via online. Besides, reading, studying, and noting some reviews of literature materials relating to the object of this study are conducted.
2. Study of interview was conducted to some related interviewees, such as the Head of National Land Agency of West Sumatera Province and Conveyance.

The method of data analysis used in this study is qualitative descriptive. Qualitative approach in this study is a procedure to produce descriptive data as revealed by the respondents orally and behaviorally. Then, the objects investigated and studied in this study is the whole research.³

Results

Legal Certainty Application of Article 3 of the Supreme Court Regulation No. 4 of 2014 Concerning Guidelines for the Implementation of Diversity in the Criminal Justice System for Children

Article 3 of the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System only sets limits on the mandatory efforts to implement Diversion by judges. Whereas in the process of the juvenile criminal justice system, the component of law enforcement involved is not only judges. The law enforcement component involved in the juvenile justice system is the Police Investigator, Public Prosecutor and Judge. So Article 3 of the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System cannot bind Police Investigators and Public Prosecutors.

Legal certainty in the application of article 3 of the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System can be achieved when the judge seeks diversion in the case of NANDA Bin RIN. This is because NANDA Bin RIN is alleged to have committed the crime of theft under Article 363 Paragraph (1) All 5 of KUHP, Article 56 KUHP, Article 362 KUHP, Article 480-to-1 1 KUHP Jo Article 53 Paragraph (1) of the Criminal Code and Law Number 11 of 2012 concerning the Juvenile Justice System.

The criminal threat allegedly committed by NANDA Bin RIN consists of 7 years imprisonment, 5 years imprisonment, and 4 years imprisonment. Therefore, the judge is obliged to seek an agreement on the diversion of the case of NANDA Bin RIN. This is as stipulated clearly in Article 3 of the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System, that in the case of children being threatened with imprisonment for less than 7 (seven) years and also charged with criminal acts who are threatened with imprisonment of 7 (seven)

¹ Mamudji Sri, et al., *Legal Research and Writing Methods*, Faculty Publishing Board Law of the University of Indonesia, Jakarta, 2005, Page 4-5.

² Adi Rianto, *Social and Legal Research Methodology*, Granite, Jakarta, 2004, page 31.

³ Soerjono Soekanto, *Introduction to Legal Research*, UI Press, Jakarta, 2006, Page 32.

years or more in the form of indictments on subsidiarity, alternative, cumulative or combination (combined).

Legal certainty by judges in the case of NANDA Bin RIN can be seen in the application of Article 3 of the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System. But legal certainty in the application of Article 3 of the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System has not been clearly seen when the law enforcement process in the juvenile justice system is carried out by Police investigators and Public Prosecutors, because these rules cannot bind the Police Investigator and Public Prosecutor. Police Investigators and Public Prosecutors in implementing law enforcement for the juvenile justice system will be based on Law Number 11 of 2012 concerning the Criminal Justice System for Children, Article 7.

In that case, NANDA Bin RIN committed a crime with a penalty of 7 years imprisonment, therefore the police and public prosecutors based on Law Number 11 of 2012 concerning the Criminal Justice System for Children, Article 7, the police and public prosecutors cannot conduct diversion.

Efforts to Equalize Perception Child Criminal Justice System Regulated by the Supreme Court Regulation No. 4 of 2014 on Guidelines for the Implementation of Diversion in Criminal Justice System Children and Law Number 11 Year 2012 on Child Criminal Justice System

Attempts to equalize Perceptions of the Criminal Justice System Children who are governed by the Supreme Court Regulation No. 4 of 2014 on Guidelines for the Implementation of Diversion In Criminal Justice System and the Children's Act No. 11 of 2012 according to the judge:

a) There should be a meeting between law enforcement agencies.

If there are law enforcers who say there are overlapping regulations between Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Child Criminal Justice System and Law Number 11 of 2012 concerning the Juvenile Justice System in the application of the Juvenile Justice System, then of course it must be equated perception between law enforcement. This meeting can be held by holding an Integrated Training between Police Investigators, Public Prosecutors, Judges, and Penitentiary.

b) There is a need for harmonization between the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System and Law No. 11/2012 concerning the Juvenile Justice System. So that there is an understanding that the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System was formed to fill the legal vacuum contained in Law Number 11 of 2012 concerning the Juvenile Justice System.

c) There needs to be a change in Law Number 11 Year 2012 concerning the Juvenile Criminal System.

This is done so that there is no longer any difference with the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System.

d) There should be an understanding that the Supreme Court Regulation No. 4 of 2014 on Guidelines for the Implementation of Diversion In Criminal Justice System Child is a form of legislation.

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Interview

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Interview with Public Prosecutor Reni Herman, S.H., Public Prosecutor at the South Coast Prosecutor's Office on 9 October 2019.

Interview with judge Feryandi, S.H., judge at the Painan District Court on October 2, 2019.

Legislation

Law Number 11 of 2012 concerning the Criminal Justice System for Children.

Supreme Court Regulation No. 4 of 2014.

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