



Restorative Justice for Juvenile Drugs Use in Indonesian Court: A Criminological Approach

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Abstract. In Indonesia there are still many children who have been sentenced after the enactment of the Law on the Juvenile Criminal Justice System and other regulations. A question arises as to whether there are any obstacles in the application of Supreme Court Regulation (PERMA) Number 4 of 2014. This paper reviews restorative justice for criminal juvenile drug use users. The method used in this research is a normative juridical approach using a case approach and a statute approach where the research is carried out by examining library materials which are secondary data. The results of the study show that PERMA Number 4 of 2014 regulates diversion against children whose charges are in the form of subsidiary, alternative, cumulative, or combination (combined). One of which is punishable by under 7 (seven) years in prison. Furthermore, PERMA No. 4 of 2014 has not fully provided legal protection for children, especially perpetrators of drug use crimes, so that PERMA needs further regulation in accordance with the provisions to avoid contradictions. Therefore, there is a need for consolidation between law enforcers to formulate legal certainty from the juvenile justice system.

Keywords: Restorative Justice, Juvenile Sentencing, Diversion, Juridical Review

Abstrak. Di Indonesia masih banyak anak yang dipidana setelah diundangkannya Undang-Undang Sistem Peradilan Pidana Anak dan peraturan lainnya. Timbul pertanyaan apakah ada kendala dalam penerapan Peraturan Mahkamah Agung Nomor 4 Tahun 2014. Tulisan ini mengulas keadilan restoratif bagi pelaku tindak pidana pengguna narkotika di bawah umur. Metode yang digunakan dalam penelitian ini adalah pendekatan yuridis normatif dengan menggunakan pendekatan kasus dan pendekatan undang-undang dimana penelitian dilakukan dengan meneliti bahan pustaka yang merupakan data sekunder. Hasil kajian menunjukkan bahwa PERMA Nomor 4 Tahun 2014 mengatur diversi terhadap anak yang tuntutananya berupa anak perusahaan, alternatif, kumulatif, atau kombinasi (gabungan). Salah satunya diancam dengan pidana penjara di bawah 7 (tujuh) tahun. Selanjutnya PERMA No. 4 Tahun 2014 belum sepenuhnya memberikan perlindungan hukum bagi

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anak khususnya pelaku tindak pidana narkoba, sehingga PERMA perlu diatur lebih lanjut sesuai ketentuan agar tidak terjadi kontradiksi. Oleh karena itu, perlu adanya konsolidasi antar penegak hukum untuk merumuskan kepastian hukum dari sistem peradilan anak

Kata kunci: Keadilan Restoratif, Pengadilan Anak, Diversi, Tinjauan Yuridis

1. Introduction

Criminal statistics from the Directorate General of Corrections (Ditjenpas) state that over 4,000 Indonesian children go to court every year for minor crimes, such as theft. As these children are not represented by lawyers or social services, nine out of 10 of them are sentenced to criminal sanctions in correctional institutions.¹ This situation is highly concerning as many children must undergo the criminal justice system in correctional institutions with adults, which exposes them to violence.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak* hereinafter abbreviated as SPPA) became effective on 31 July 2014 (Article 108 of the SPPA), which regulates the handling of cases of children suspected of committing crimes by prioritising restorative justice and diversion approach. Under Article 5 of the SPPA, diversion must be applied for children who have committed a crime by prioritising a restorative justice approach at the investigation, prosecution, and trial stages conducted in the general court environment.

Article 1 No. 6 of the SPPA states that restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators or victims, and other related parties to jointly seek a fair solution by emphasising restoration to its original state and not retaliation. Under Article 1 No. 7, diversion is the transfer of child case settlement from the criminal justice process to outside the criminal justice. The Supreme Court Regulation is an internal provision that applies to the Supreme Court on issues regarding its binding legal force among related agencies in implementing diversion based on the SPPA. Furthermore, the relevant law enforcement agencies issued internal diversion guidelines for each institution, such as the Attorney General's Regulation Number 006/A/J.A/2015 on the Guidelines for the Implementation of Diversion at the Prosecution level. The Indonesian National Police previously issued a telegram from the Criminal Investigation Unit of the Police Number: TR/1124/IX/2006 and Number TR/395/VI/2008 regarding the Implementation of Diversion and Restorative

¹ <http://www.Ditjenpas.go.id/index.php>, Criminal Statistics Data Directorate General of Corrections,

Justice in Handling Cases of Child Offenders and Fulfilment of the Best Interests of Children in the case of Children as Perpetrator, Victim, or Witness.

In reality, the number of sentenced children in Indonesia remains high after the enactment of this law. Data on the handling of child cases under the Juvenile Criminal Justice System recorded 120 cases in the last two years (2017 to 2018).² Many criminal cases involving children still undergo the formal process and are subject to prison sentences. The application of formal legal processes and the asynchronous provisions on diversion raise issues in realising children's best interests in the juvenile justice system. Children in conflict with the law need to undergo a legal process as their protection is unachievable due to unclear diversion provisions. The aforementioned conditions highlight the obstacles in the application of Supreme Court Regulation Number 4 of 2014 on diversion to realise the legal protection of child perpetrators in cases involving drug use abuse and whether criminal law regulations or policies are sufficient. Despite the enactment of SPPA and prioritising diversion with a restorative justice approach, many child offenders still undergo a formal legal process and are imprisoned. Therefore, the study examined restorative justice for juvenile drug abusers. The study used a normative juridical, case, and statute approach by examining library materials (secondary data). The primary legal materials include statutory regulations, such as the Criminal Code for Indonesia, secondary legal materials are literature books, and thesis writings are tertiary materials. Subsequently, the collected materials were analysed qualitatively.

2. Research Results and Discussion

2.1. Restorative Justice Arrangements for Criminal Juvenile Drug Users

Principles regarding child protection involve non-discrimination matters, which prioritise the child's best interests and the right to life and survival and development that entails respect for the child's opinion.³ Consequently, children perpetrators should be avoided from the criminal justice process as best as possible.

² Ditjen Pemasyarakatan. Child handling data is in conflict with the law of the Directorate General of Corrections for 2017-2018. (2018).

³ D. S. Dewi, and Fatahillah A. Syukur. *Penal Mediation: Application of Restorative Justice in Indonesian Juvenile Court*. Depok: Indie Pre-Publishing, 2011., 13.

The term diversion emerged based on this concept, which is similar to the Indonesian context.⁴ Diversion has received a positive response from the government, which holds power to establish and apply laws or specifically legislators in the case of the juvenile justice system. As a legislative body, the DPR has issued SPPA as a substitute for Law Number 3 of 1997 regarding Juvenile Courts, which was legally passed on July 3 2012. This legislation is a product of the juvenile justice system, which reflects progress as the rights of children in conflict with the law are more secure. This legal perspective upholds restorative justice and the implementation of diversion in which the settlement includes the victim, perpetrator, and the parties involved.

Article 1 point 7 of SPPA states that diversion is the transfer of settlement of child cases from the criminal justice process to procedures outside of criminal justice. Diversion is a form of restorative justice that aims to restore and repair the relationship that has been harmed by the juvenile. Diversion is the opposite of retaliation. The diversion requirements are mentioned under Article 7 of SPPA. The first is that diversion is mandatory at the investigation, prosecution, and examination stages of child cases in district courts, while the second is that diversion based on paragraph (1) is carried out if a child commits a criminal act and the child is threatened with imprisonment under 7 (seven) years, and not a repeat offender.

These provisions highlight that investigators, prosecutors, and judges must seek diversion provided that paragraph 2 conditions are met. Both requirements in paragraph 2 must be fulfilled as they are cumulative. The SPPA provisions are general and do not regulate how diversion is implemented in detail. Thus, the government issued Government Regulation Number 65 of 2015 on the Guidelines for the Implementation of Diversion and Handling of Children Under 12 Years of Age. The SPPA and Government Regulation Number 65 of 2015 are detailed rules regulating the implementation of diversion.

Issues arise when the children are subject to more than one article but one is threatened with under seven years of imprisonment. The SPPA is lacking in regulating diversion, which emphasises a legal vacuum. Therefore, the Supreme Court of the Republic of Indonesia issued Supreme Court Regulation Number 4 of 2014 on the Guidelines for the Implementation of Diversion in the Juvenile

⁴ Marlina Marlina. *Introduction to the Concepts of Diversion and Restorative Justice in Criminal Law*. Medan: USU Press, 2010., hal. 1.

Criminal Justice System. This Supreme Court Regulation was established based on Article 5 to Article 14, Article 29, Article 42 and Article 52 paragraph (2) to paragraph (6) of SPPA. The investigation, prosecution, and examination of cases of children in court are conducted by prioritising a restorative justice approach. The SPPA does not explicitly regulate the procedures and stages of the diversion process. Based on the considerations in letters a and b, the Supreme Court of the Republic of Indonesia necessitates establishing a Regulation of the court on the Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. The obligation of diversion is regulated in Articles 2 and 3. Article 2 regulated that diversion is applied to children who are 12 (twelve) years old but not yet 18 (eighteen) years old or who are 12 (twelve) years old even though they have been married but are not yet 18 (eighteen) years old, who are suspected of committing a crime. Moreover, Article 3 stated that juvenile judges are required to seek diversion in the event that a child is charged with a crime punishable by imprisonment under 7 (seven) years or more in the form of a subsidiary, alternative, cumulative, or combined.

The articles above outline that diversion is mandatory for minors where judges are obliged to seek diversion for children sentenced to under seven years of imprisonment under Articles 2 and 3. This regulation expressly states that diversion must be performed as a guideline for juvenile justice under the purview of the Supreme Court. Moreover, the provision governs the implementation of diversion in court, which begins from its preparation as described in Article 4 stating that after receiving the Decision of the Chairperson of the Court to handle cases where diversion must be sought, the judge issues a determination of a diversion deliberation day. The determination of the judge based on paragraph (1) contains an order for the public prosecutor who delegates the case to present children and their parents/guardians or companions; victims and/or their parents/guardians; community advisor; professional social worker; community representatives; and other related parties deemed necessary to be involved in the diversion deliberation. The determination of judges as referred to in paragraphs (1) and (2) shall include the day, date, time, and place of the diversion deliberation.

The aforementioned description explains how to prepare for diversion in court by involving interested parties ranging from children and professional social workers to community representatives to produce good decisions in the child's interests.

The diversion deliberation stages are described in Article 5 stating that diversion explains the summary of the charge and the Community Advisor provides information about the child's behaviour and social situation and suggestions for obtaining a settlement. The diversion facilitator commences the diversion deliberation by introducing the parties present, conveying the aims and objectives of the diversion deliberation, and the rules for deliberation to be agreed upon by the parties present. The diversion facilitator explains their duties. The diversion facilitator explains the summary of the charge and the Social Counsellor provides information about the child's behaviour and social situation and provides suggestions for obtaining a settlement. The diversion facilitators must provide opportunities to children to hear information about the charges; parents/guardians to convey matters concerning the child's actions and the expected form of settlement; and, victims/children of victims/parents/guardians to provide feedback and the expected form of resolution.

Furthermore, professional social workers provide information about the social situation of child victims and suggestions for obtaining a settlement. If deemed necessary, the diversion facilitator can summon community representatives or other parties to provide information to support settlement. Also, the diversion facilitator can hold a separate meeting (caucus) with the parties and puts the results of the deliberations into a diversion agreement. In preparing the diversion agreement, the diversion facilitator pays attention to and directs that the agreement does not contradict the law, religion, propriety of the local community, or decency or contain matters that the Child cannot carry out or not in good faith.

The diversion agreements are regulated as explained in Article 6. The diversion deliberation is recorded in the minutes of diversion and signed by the diversion facilitator and registrar/alternate registrar. The diversion agreement is signed by the parties and reported to the chief justice by the diversion facilitator. The Chief Justice issues a Diversion Agreement Stipulation based on the Diversion agreement as in paragraph (2). The Head of Court can return the Diversion Agreement to be corrected by the Diversion Facilitator if it does not meet the requirements in Article 5 paragraph (9) no later than three days. Upon receiving the stipulation from the Chief Justice in paragraph (3), the Judge issues a stipulation to terminate the case examination.

Moreover, Article 7 stated that in case the diversion agreement is not fully implemented by the parties based on the correctional centre, the judge will continue examining the case in accordance with the juvenile criminal justice

procedure code. In decision-making, the judge must consider the implementation of part of the diversion agreement as in paragraph (1). Article 8 stated that the diversion facilitator cannot be held criminally or civilly liable for the contents of the diversion agreement. This law also regulates evidence as mentioned in Article 9 regulating that the determination of the chairperson of the court on the diversion agreement as referred to in Article 6 paragraph (3) also includes determining the status of the confiscated evidence taking into account the diversion agreement.

The Supreme Court Regulation Number 4 of 2014 on the Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System aims to realise children's protection through Diversion in their best interests. Lawrence Friedman's theory explains that the legal system has a broad scope from the law itself. The word "law" often refers to rules and regulations but Friedman mentioned that the legal system distinguishes between the existing rules and regulations, structures, and institutions and processes. The operation of law in a system is determined by three elements: legal structure, legal substance, and legal culture.⁵

The legal structure is a framework that provides definitions and forms for operating the existing system within predetermined boundaries. Hence, the legal structure is an institution that carries out law enforcement with all the related processes. The legal structure in the criminal justice system that executes the process are the police, prosecutors, judiciary, and correctional institutions.⁶ Summarily, the Supreme Court plays the best role in the child's interest through diversion.

Legal substance denotes the rules, norms, and patterns of human behaviour within the legal system.⁷ The term includes products produced by people within the legal system in the form of decisions that have been issued or new regulations that will be drafted. The examples of legal substance are written law and living law. Accordingly, this PERMA has accommodated the child's best interests and can be used by Judges in Courts in Indonesia as a guideline. Legal culture is a human attitude towards law and the legal system., including beliefs, values, ideas, and

⁵ Marlina, Op.Cit, hal. 14

⁶ Lutfil Ansori. "Law Enforcement Reform Progressive Law Perspective." *Jurnal Yuridis* 4, no. 2 (2018): 148-163.

⁷ Ahmad Jalaludin. "Legal Culture of Gender Bias Religious Court Judges in Divorce Divorce Cases." *Muwazab* 7, no. 2 (2015): 97-210.

community expectations of the law and the legal system. Legal culture also denotes a social force that determines how the law is abused. Legal culture has a major role in the legal system where its absence would cause the legal system to lose its power.⁸ Hence, this PERMA educates society on the significance of diversion for children and the best efforts to be applied for them.

2.2. Application of Restorative Justice to Criminal Juvenile Drug use Users

Discussions about children are crucial as they determine the future of a nation and reflect the attitude of a country towards future life.⁹ As mandate holders of the Proclamation of Independence on 17 August 1945, Indonesian children or youth must be able to embrace this national independence with a powerful fighting spirit that serves national interests to explore high science and technology balanced with good attitude and morality, belief in their abilities, be creative, honest, and act in accordance with societal, religious, and legal norms, and are responsible for the survival of a constantly developing and dynamic country.¹⁰

This objective is often obstructed by children's deviant behaviours as illustrated in widespread news in mass media (including print and electronic), which highlight an increasing number of underage children committing criminal acts, such as rape, obscenity, and theft. The issue of criminal acts committed by children occurs in developing countries, such as Indonesia, and developed countries. The development of juvenile offences so far in terms of the quality and the modus operandi committed, the violations committed by children have disturbed all parties, especially parents. The phenomenon of increasing violent behaviour by children seems to be not directly proportional to the perpetrator's age.¹¹ Several legal instruments regulate the law for children and the enforcement processes for perpetrators and victims of a crime in Indonesia, including drug use cases committed by minors under SPPA. Although the perpetrators are minors, their acts are still considered crimes but they undergo special treatment to protect their

⁸ Lawrence M Friedman. *The legal system: A social science perspective*. New York: Russell Sage Foundation, 1975.

⁹ Soetodjo Wagiaty. *Juvenile Criminal Law*. Bandung: PT. Refika Aditama, 2008., hal. 5.

¹⁰ Bunadi Hidayat. *Punishment of Minors*. Bandung: Alumni, 2010., hal. 1.

¹¹ Nandang Sambas. *Renewal of the Juvenile Criminal System in Indonesia*. Yogyakarta: Graha Ilmu, 2010., hal. 103.

psychological aspects¹². Therefore, obtaining special protection based on applicable legal provisions is necessary.

The SPPA is carried out with the principle of protection that given the unique characteristics of children and for the sake of protecting children, cases of children who conflict with the law must be tried in juvenile courts that are within the general court environment. In the court process of cases for children from the moment they are arrested, detained, and tried, their guidance must be carried out by special officials who understand children's issues. Nonetheless, law enforcers, families, and the community are required to seek a settlement process outside the court before entering the judicial process, namely through Diversion based on a Restorative Justice approach.

Essentially, SPPA concerns the emergence of the diversion process to divert the settlement of child cases from the judicial process to other outside procedures. Nevertheless, not all cases of children dealing with the law can be resolved by diversion as certain conditions must be met under Article 7. The increasing number of crimes committed by children also give rise to a child being subjected to more than one article in the form of subsidiarity, alternative, cumulative, and combination (combined). This situation often happens when a child's crime is related to drug use abuse.

Investigators and prosecutors do not carry out diversion for cases of a child involved in drug use abuse and are subject to more than one article with a penalty of under or over seven years of imprisonment as they do not fulfil Article 7 of the SPPA. Thus, the case will proceed to the trial process where judges can carry out diversion efforts based on the Supreme Court Regulation (PERMA) No. 4 of 2014 regarding Guidelines for Diversion in the Juvenile Criminal Justice System. Issues in solving drug use abuse cases among children often occur, which causes many children to serve prison sentences. For example, Court Decision Number 6/PID.Sus.Anak/2015/PT.MDN about drug possession by a 17-year-old child (name suppressed) in Langkat Regency undergoing trial at the Binjai District Court. The child was charged with an alternative charge, namely Article 111 paragraph (1) of Law No. 35 of 2009 concerning Drug use and Article 127 paragraph (1) letter a of Law No. 35 of 2009 concerning Drug use. In this legal process, investigators and prosecutors did not attempt diversion, while the Binjau District Court Judge

¹² Wang Xiang Jun. *Tips and Tricks to Escape the Law for Ordinary People*. Yogyakarta: Pustaka Solomon, 2010. hal. 23

made a diversion attempt using PERMA No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. Article 3 of the PERMA requires that the judge perform diversion. The investigator disagreed with the implementation of diversion by the judge and appealed to the Medan High Court. The Medan High Court granted the appeal and changed the Binjai District Court decision by sentencing the child (name disguised) for 3 weeks as decided on Tuesday, 24 February 2015 by H. Bachtiar, SH High Judge Medan High Court (appointed to examine and adjudicate the case).

Moreover, Court Decision Number 2/Pid.Sus-Anak/2020/PN.Slt about possession of cannabis-type drug by a child aged 17 in Salatiga Regency who is undergoing trial at the Salatiga District Court. The child was charged with a subsidiarity, namely Primary Article 114 paragraph (1) of Law No. 35 of 2009, Subsidiaries of Article 111 paragraph (1), and More Subsidiaries of Article 127 paragraph (1) letter a of Law No. 35 of 2009 concerning Drug use. The prosecutor assessed that the child owned, stored, and controlled the drug use that were purchased from the witness with the possibility that the drugs were used together with their friends. In this legal process, investigators and prosecutors do not attempt diversion as the children were subject to more than one article. During the trial at the Salatiga District Court, the judge also dismissed a diversion attempt and immediately conducted a trial. Upon undergoing several trials, the child was finally sentenced to conditional imprisonment for 4 months with a 6-month probationary period as the judge believed that the child was proven to have violated Article 127 paragraph (1) letter a based on the subsidiary charges of the prosecutor. The judge assessed the amount of evidence, urine test results, assessment results, and recommendations from the integrated assessment team and other court evidence indicating that children are users, not dealers.

These two cases involve drug use crimes committed by children and both legal processes were conducted normally without diversion. The SPPA states that diversion can be carried out in cases with punishments under seven years. Meanwhile, Article of the PERMA No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System mentions that diversion can be pursued against cases of children charged with committing a crime punishable under seven years and seven years or above in an indictment in the form of a subsidiary, alternative, cumulative, and combination (combined). Thus, all cases under Article 3 of the PERMA No. 4 of 2014 regarding indictments in the form of subsidiary, alternative, cumulative, or combination (combined) where one

of the charges carries a punishment of under seven years must be diverted in solving the case.

The resolution process of the two abovementioned cases does not differ. Both charges met the provisions of Article 3 of the 2014 PERMA, namely alternative and subsidiary. In the first case, the child was charged under Article 111 paragraph (1) or Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Drug use. Meanwhile, the two children were under a subsidiary charge under Primary Article 114 paragraph (1) of Law No. 35 of 2009 concerning Drug use, Subsidiaries of Article 111 paragraph (1), and More Subsidiaries of Article 127 paragraph (1) letter a of Law No. 35 of 2009 concerning Drug use.

The differing settlement causes issues in law enforcement against drug use cases involving children perpetrators, which initially aims to protect children in their best interests. The legislation of PERMA No. 4 of 2014 concerning Guidelines for Diversion in the Juvenile Criminal Justice System aims to clarify and complete the gaps in SPPA. Therefore, SPPA has not explicitly regulated the diversion process in detail, while no other regulations contain special procedural laws in the Juvenile Criminal Justice System.¹³ In terms of children's protection, Article 1 point 2 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection (hereinafter referred to as UUPA) governs all activities to guarantee and protect children and their rights for them to live, grow, develop, and participate optimally in accordance with human dignity and receive protection from violence and discrimination. Children's legal protection is the provision that guarantees the security, peace, welfare, and peace of the protector against all dangers that threaten the protected party. Summarily, legal protection is an act of protection based on law.¹⁴ Law functions to create certainty and guarantee protection and balance, which are adaptive, flexible, predictive, and anticipatory.¹⁵ Specifically, the protection of children in conflict with the law under Article 59 paragraphs (1) and (2) and Article 64 of Law Number 35 of 2014

¹³ Riska Vidya Satriani. "Restorative Justice as the Purpose of Implementing Diversion in the Juvenile Criminal Justice System." Available: <https://www.mahkamahagung.go.id/id/artikel/2613/keadilan-restoratif-sebagai-%20tujuan-pelaksanaan-diversi-pada-sistem-peradilan-pidana-anak>

¹⁴ Nurini Aprilianda. "Legal Protection for Child Suspects in the Investigation Process." *Jurnal Ilmu Hukum* (2001).

¹⁵ Lili Rasjidi, and IB Wyasa Putra. *Law as a System*. Bandung: Remaja Rosdakarya, 1993., 123.

concerning Amendments to Law Number 23 of 2002 on Child Protection includes children who are dealing with law for their best interests as the next generation.

Theoretically, legal protection aims to integrate (include) and coordinate (bridge) the various interests within a society where certain interests are protected by limiting various interests.¹⁶ The aim of law is to deal with human rights and interests where the law is the highest authority to determine protection. Legal protection for children dealing with the law is realised by implementing diversion using SPPA and PERMA No. 4 of 2014 based on the legal protection theory. The government has issued various statutory provisions that regulate, compel, and limit numerous social interests. The provisions in PERMA No. 4 of 2014 concern an event and procedure in the system that can accommodate the settlement of cases, such as applying a restorative justice approach through a legal reform that changes the law and existing criminal justice system to achieve all the goals.¹⁷

The restorative justice theory explains that case settlement focuses on the involvement of both parties and the community,¹⁸ which prioritises justice for the improvement and restoration of conditions after the incident and criminal justice process. Restorative justice is reflected in the implementation of diversion in resolving child cases and providing protection for children dealing with the law by preventing them from undergoing formal legal processes.¹⁹ Practically, certain events conflict with the law objectives due to various factors, such as unclear legal rules, the legal apparatus not comprehending the legal rules, or the people's unsupportive legal culture.

Diversion is applied to the extent of providing leniency for children or preventing them from the criminal justice process and its adverse effects.²⁰ The

¹⁶Widya Romasindah Aidy. "Legal Protection for Children in Conflict with the Law." *Jurnal Hukum Sasana* 5, no. 1 (2019).

¹⁷ Riska Vidya Satriani. "Restorative Justice as the Purpose of Implementing Diversion in the Juvenile Criminal Justice System." Available: <https://www.mahkamahagung.go.id/id/artikel/2613/keadilan-restoratif-sebagai-%20tujuan-pelaksanaan-diversi-pada-sistem-peradilan-pidana-anak>

¹⁸ Susana Andi Meyrina. "Restorative Justice in Juvenile Justice Based on Law no. 11 of 2012." *Jurnal Penelitian Hukum De Jure* 17, no. 1 (2017): 92-107.

¹⁹ Haryanto Ginting, and Muazzul Muazzul. "The Role of the Police in the Implementation of Restorative Justice against the Offenders of the Crime of Beatings by Children and Adults." *Jurnal Ilmiah Penegakan Hukum* 5, no. 1 (2018): 32-40.

²⁰ Apong Herlina. *Protection of Children in Conflict with the Law, Training Manual for Police*. Jakarta: POLRI & UNICEF, 2004.

purpose of applying diversion is to protect the rights of children who are perpetrators of criminal acts. This application can be carried out against crimes punishable by up to seven years imprisonment and are not repeat offences. Drug use crime is often associated with high threats of punishment. Article 7 paragraph (2) of SPPA explains that crimes punishable by more than seven years of imprisonment cannot apply for diversion, while Article 3 PERMA No. 4 of 2014 on the Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System states that juvenile judges must seek diversion if a child is charged with a crime punishable by imprisonment for under seven years and seven years or more in the form of subsidiary, alternative, cumulative indictment, or combination (combined). These two diversion requirements are inconsistent, which highlights different interpretations among law enforcement officials. Hence, the situation outlines the obstacle in solving drug use cases committed by minors as illustrated in this study. This discrepancy causes legal uncertainty, which prevents children who commit drug use crimes from receiving legal protection. Therefore, the resolution of drug use cases involving children should be guided by higher regulations based on the hierarchy of applicable laws and regulations.

3. Conclusion

PERMA No. 4 of 2014 on the Guidelines for the Implementation of Diversion in the Juvenile Justice System only regulates diversion for child offenders if the criminal charge is punishable by imprisonment under seven years and seven years imprisonment or more in the form of subsidiary, alternative, cumulative indictment, or a combination (combined). Diversion under PERMA No. 4 of 2014 on the Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System mentions that not every case of children perpetrator of drug use crime is resolved through diversion due to differing legal opinions, thus preventing from fully realising children's protection.

PERMA No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System also emphasises obstacles regarding contradicting views among law enforcers, specifically judges. The diversion provisions differ with Government Regulations and Laws, which leads to legal uncertainty and unfulfillment of protection of child offenders involved in crimes, specifically drug use. Therefore, legal protection and legal certainty can be

provided by diverting drug use cases involving child perpetrators towards higher regulations based on the hierarchy of statutory regulations. In the long term, PERMA No. 4 of 2014 should be revised by considering and adjusting to higher regulations.

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