

LEGAL FORCE OF PERMA NO. 4 OF 2014 RELATING TO THE IMPLEMENTATION OF DIVERSION FOR CHILDREN AGAINST THE LAW (ABH) (CASE STUDY OF CASE NUMBER 14/Pid.Sus-Anak/2021/PN.Cbn)

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ABSTRACT

The purpose of this study is to identify how the application of PERMA No. 4 of 2014 to diversion efforts and how the legal force of the law in the enforcement of diversion at the court level in order to achieve justice for children in conflict with the law (ABH). The research primarily utilized qualitative data derived from both primary and secondary sources. The primary data includes case files and court decisions related to Case Number 14/Pid.Sus-Anak/2021/PN.Cbn, as well as the legal text of OPREMA No. 4, while secondary data is obtained from literature reviews of law journals, books, and prior research. The data analysis is conducted using content analysis and the case study method, allowing for a comprehensive examination of how the COPREMA of 2014 has been applied in this specific legal context. The results of the author's research through an interview with Mr. Sukiran, S.H. as the Deputy Criminal Registrar of the District Court I B Cirebon on Tuesday, June 4, 2024 at 14.30 WIB, regarding different regulations related to the diversion in each law enforcement agency, among other things, it can trigger the smooth running and results of judicial decisions. A comparative analysis of cases where diversion was achieved versus those where it failed could provide deeper insights into how diversion attempts can be improved, especially for cases involving children who face significant legal and social challenges. Additionally, examining the impact of such legal frameworks on recidivism rates among juvenile offenders could offer practical recommendations for enhancing the juvenile justice system in Indonesia.

INTRODUCTION

Children are the next generation of the nation who have a responsibility to achieve the future of the nation and state. Based on the definition in Article 1 Number 1 of Law No. 35 of 2014 concerning Child Protection, it is explained that "A child is a person who is not yet 18 years old and is even still in the womb" (Nuroniayah, 2022). The number of children who violate the law is increasing every year. Careful observation shows that children's criminal acts have developed so far, both in terms of quality and modus operandi, sometimes it is felt that children's unlawful behavior has disturbed all parties, especially parents. The increase in child violence does not seem to be proportional to the age of the perpetrator (de Oliveira et al., 2021; Navas-Martínez & Cano-Lozano, 2022; Yüksel & Koçtürk, 2020). In

addition, efforts to prevent and overcome crimes against children need to be carried out immediately (Nurazizah, 2023).

The law does not appear in what is written, but in what is in accordance with the reality in the field carried out by law enforcers in Indonesia. In each decision, in order to be able to see the reality that has developed and changed (Nurhaqi, 2022). Children in the justice system in Indonesia can be prisoners who can have consequences for child offenders. With the transition in the diversion program, there is a relationship between the transition to the legal process to the community as a form of service assistance. Diversion was born with the aim of protecting children's rights and trying to avoid the negative stigma attached to them.

The diversion process does not always run smoothly. As in the case that occurred in the jurisdiction of Cirebon City. There was one case of rape where the child was the perpetrator in the incident. In accordance with the applicable provisions, the child must be pursued for a diversion process. The diversion process takes place at 3 levels, namely the Investigation, Prosecution, and Court levels. However, the diversion process at the investigation and prosecution level has failed. But in the diversion process at the court level, the diversion succeeded in reaching an agreement agreed by the parties.

The author conducted this study with the aim of identifying the application of PERMA No. 4 of 2014 to diversion efforts and the legal force of PERMA No. 4 of 2014 in the enforcement of diversion at the court level. This study is hoped to identify how the application of PERMA No. 4 of 2014 to diversion efforts and how the legal force of PERMA No. 4 of 2014 in the enforcement of diversion at the court level in order to achieve justice for children in conflict with the law (ABH).

METHODS

In the, the author uses the normative juridical method. The research primarily utilized qualitative data derived from both primary and secondary sources. The primary data includes case files and court decisions related to Case Number 14/Pid.Sus-Anak/2021/PN.Cbn, as well as the legal text of PERMA No. 4 of 2014, while secondary data is obtained from literature reviews of law journals, books, and prior research. Data is collected through document analysis of legal texts and court documents, possibly supplemented by interviews or discussions with legal experts or those involved in the case. The data analysis is conducted using content analysis and the case study method, allowing for a comprehensive examination of how PERMA No. 4 of 2014 has been applied in this specific legal context.

RESULTS

Application of PERMA No. 4 of 2014 to Diversion Efforts

The settlement of children's cases can be resolved through diversion that is in accordance with the law in Indonesia. This law regulates from general, principled, and practical. If there are no practical provisions, the process of implementing diversion can fail (Waluyadi, 2020). The community feels that the sanctioning of perpetrators still does not achieve optimal results and triggers various problems. The imposition of a prison sentence has not been able to provide a deterrent effect to the perpetrators. In addition, prison sentences can strain the relationship between the perpetrator and his family. Thus, it can give rise to the theory of restorative justice. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System defines restorative justice as the settlement of criminal cases by involving the perpetrator, the victim, the perpetrator/victim's family, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation (Rahmah et al., 2021).

In accordance with Article 7 Paragraph (1) of the SPPA Law before diverging at the Court level, there are two stages that must be passed, namely:

- 1) Investigation Level: This stage is the initial stage of the criminal justice process which can help investigators not to continue the criminal act into the criminal justice process by finding a solution that benefits all parties to the perpetrator and the victim of the crime (Rahmah et al., 2021). Based on the Minutes of Diversion Number 01/KD/IV/2021/Reskrim on behalf of the Suspect M. Rifaldi bin (Alm) Sudani et al, they have committed criminal acts under Article 170 of the Criminal Code and Article 80 of Law No. 35 of 2014. The diversion was carried out on Tuesday, April 13, 2021 with the results obtained based on the results of our interview with Mr. Wahyu Hidayat, SH as the PPA Investigator of the Cirebon City Police in this case, namely that the two parties (the suspect and the victim) did not reach an agreement, among other things, due to the problem of financial inability to fulfill the obligation of compensation from the perpetrator to the victim and then to provide a deterrent effect to the perpetrator so that

the act of The perpetrator did not repeat himself. With this, the result of the agreement on diversion of the investigation level fails to be passed, the investigator will complete the investigation file to be submitted to the prosecutor's office.

- 2) General Prosecution Level: This stage is a continuation of the consequences of failed diversion attempts at the investigative level. In this effort, the prosecutor cooperates with the Community Supervisor in terms of completing valid information to continue the diversion process (Saputra & Windiyastuti, 2023). However, after being re-examined related to Case Number 14/Pid.Sus-Anak/2021/PN.Cbn, the perpetrators had committed the crime of encroaching on the victim so that he was injured based on the results of *the visum et repertum* of Gunung Jati Hospital Number 081/VER. RSUD-GJ/IV/2021 so that in the case of rape carried out by child perpetrators and charged with one of them, Article 170 paragraph 2 to 2 of the Criminal Code with a criminal threat of 9 (nine) years in prison. Therefore, the diversion process cannot be carried out at the level of public prosecution as regulated in Article 7 Paragraph (2) of the SPPA Law.

Based on the Minutes of Determination Number 2/Pen.Div/2021/PN.Cbn jo. Number 14/Pid.Sus-Anak/2021/PN.Cbn as of April 30, 2021, a Diversi agreement has been reached with the provisions and agreement, namely that both parties agree to settle the case, the perpetrator admits guilt and regrets his actions and promises not to repeat it again, each of the perpetrators will provide compensation to the victim in the amount of Rp. 3,000,000,- (three million rupiah) which is immediately paid at the time of signing the diversion agreement carried out by the parties, then the respective perpetrators will be handed back to the parents / guardians with special conditions imposed a curfew from 21.00 WIB to 05.00 WIB with the perpetrators obliged to be at their respective homes for 1 (one) month. If this agreement is not fulfilled by the parties, then the examination process continues in the trial process and this agreement is made by the parties without any element of coercion, mistake and fraud from any party.

The position of PERMA is applied to this diversion process because at the Court level it uses the provisions of PERMA No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System which is mentioned in Article 3 that "The Child Judge is obliged to seek Diversion in the event that the child is charged with committing a criminal act that is punishable by imprisonment for less than 7 (seven) years and is also charged with a criminal act that is threatened with a prison sentence of 7 (seven) years or more in the form of a letter subsidiary charges, alternative, cumulative or combination (combined)." In accordance with the indictment that has been charged, the child perpetrators are charged with Article 80 Paragraph (1) and Paragraph (2) of Law Number 35 of 2014 concerning Child Protection where the threat is still under 7 (seven) years, Article 170 Paragraph (2) 1 of the Criminal Code is threatened with a maximum penalty of 7 (seven) years, and there is a criminal threat that exceeds 7 (seven) years, namely Article 170 Paragraph (2) 2 of the Criminal Code with a maximum penalty of 9 (nine) years. This indictment is in the form of a subsidiary indictment.

Regarding the provisions of PERMA which only exist in the Court and are not applied at the investigator and prosecution levels in the reference to the provisions of the diversion implementation process because they are under the auspices of different institutions, the rules used in the diversion implementation process are also different. Every law enforcement agency in Indonesia has its own rules and guidelines such as the National Police of the Republic of Indonesia (Polri), since the enactment of the Police Law in 2002 made the National Police able to have a position and be responsible for its duties directly to the President (Tamrin, 2023).

The results of the author's research were through an interview with Mr. Bripka Yudho Asmoro as a PPA (Women & Children) Investigator at the Cirebon City Police. On Tuesday, June 4, 2024 at 13.00 WIB, the Indonesian National Police (Polri), especially its investigators, in carrying out this diversion process is based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Perpol No. 8 of 2021 concerning Restorative Justice. In the context of investigators in the Police, this does not refer to PERMA because the investigators in the Police are not under the authority of the Supreme Court, but this Police agency is under the authority of the National Police Headquarters where the National Police has a position and responsibility for the implementation of its duties directly to the President.

Then the Law Enforcement Apparatus of the Prosecutor's Office has a basis to carry out duties and authorities in the field of prosecution, apart from the Prosecutor's Office, there are no other law enforcement officials who have the authority to carry out prosecutions (Anmuni et al., 2023). The Prosecutor's Office is a non-departmental institution, which means that the Prosecutor's Office is not

under any ministry. The Attorney General's Office is headed by the Attorney General, which is equivalent to the ministry in Indonesia which is responsible to the president (Romullah, 2023).

The results of the author's research were through interviews with Mrs. Mustika Darayuanty, S.H as the Public Prosecutor and Mr. Ahmad Dahlan, S.H as the General Criminal Staff at the Cirebon City District Attorney's Office. On Tuesday, May 17, 2024 at 13.00 WIB, the Prosecutor's Office in carrying out this diversion process is based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and the Attorney General's Regulation (PERJA) Number PER-006/A/JA/04/2015 concerning Guidelines for the Implementation of Diversion at the Prosecution Level. The Prosecutor's Office is also not guided by the provisions of PERMA because the Prosecutor's Office is not under the authority of the Supreme Court but under the authority of the Attorney General's Office where this Prosecutor's Office has one basis in carrying out its duties and authorities in the field of prosecution, no other institution has the right to conduct prosecution except for those under the control of the Attorney General who is responsible to the President. The position of the Attorney General is at the same level as the Minister but the Prosecutor's Office is a non-departmental institution, which means it is not under any ministry.

Furthermore, the District Court Law Enforcement Apparatus under the Supreme Court is tasked with examining, deciding and resolving criminal cases and civil cases at the first level. The results of the author's research through an interview with Mr. Sukiran, S.H. as the Deputy Criminal Registrar of the District Court I B Cirebon on Tuesday, June 4, 2024 at 14.30 WIB, regarding different regulations related to diversion in each law enforcement agency because the District Court Law Enforcement Apparatus under the Supreme Court is tasked with examining, deciding and resolving criminal cases and civil cases at the first level. Courts in Indonesia were established on the basis of Judicial Power which is stated in Article 24 Paragraph (1) of the 1945 Constitution (1945 Constitution) which reads "judicial power is an independent power to administer justice in order to uphold law and justice" As an institution under the auspices of the Supreme Court, the District Court in running its institution is highly determined by the existing regulations of the Supreme Court.

The rules used during the diversion process at the investigation level refer to Article 7 of the SPPA Law. Then the implementation of the diversion process at the prosecution level also refers to Article 7 of the SPPA Law and the Attorney General's Regulation Number PER-006/A/JA/04/2015 concerning Guidelines for the Implementation of Diversion at the Prosecution Level. The rules listed at the investigation and prosecution level have the conditions to carry out the same diversion process, namely with a criminal threat under 7 years and not a repeat criminal offense. However, at the court level, it uses PERMA RI No. 4 of 2014 which has different rules from investigators (police) and public prosecutors (prosecutors).

Legal Force of PERMA No. 4 of 2014 in the Enforcement of Diversion at the Court Level

The legal system in Indonesia is arranged in a hierarchical and tiered manner. This higher or superior norm becomes the validity in a legal unit in Indonesia (Syuhada, 2020). This hierarchy has been regulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. Article 7 paragraph (1) of Law No. 12 of 2011 mentions the types and hierarchy of laws and regulations in Indonesia, namely the 1945 Constitution of the Republic of Indonesia, the Decree of the People's Consultative Assembly, Government Laws/Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regional Regulations, and Regency/City Regional Regulations.

With this, PERMA has a position outside the hierarchy of existing laws and regulations, but in Article 8 paragraphs (1) and (2) of Law No. 12 of 2011 PERMA is included in having binding legal force and its existence is recognized. In this case, its position will affect the running of the judicial system in Indonesia, among other things, it can trigger the smooth running and results of judicial decisions. This guarantee of legal certainty must have clarity related to the position of the legislation and avoid *overlapping* between PERMA and recognized laws and regulations. Through clarity in this position, it can trigger, among other things, the product of provisions from institutions that have the authority to make laws so that they can be realized covering various types of regulations and their regulations.

As explained above, PERMA has a position outside the hierarchy of existing laws and regulations, but is under the law and equivalent to Government Regulations. However, PERMA No. 4 of 2014, in this case Article 3 which mandates judges, seeks to fill the "Legal Void" because Law No. 11 of 2012 has not accommodated the procedures and stages of diversion related to children who commit criminal acts with the threat of imprisonment for more than 7 (seven) years (Saputra & Windiyastuti, 2023). In filling the legal void, to further improve a legal text, the judge uses his rational view. Referring to this study, it

means that the law is no longer a reference for judges and still does not convey legal principles as a system in Indonesia.

According to the doctrine, there are 2 (two) sources of legislative authority, namely the original legislative authority and the derivative legislative authority (delegation authority) (Asshiddiqie, 2014). There are 2 (two) institutions that have the delegation of legislative authority to fill the "legal vacuum" in accordance with the Indonesian constitutional system, namely the President and the Supreme Court (Satory & Sibuea, 2020). The function of the Supreme Court is to regulate, the Supreme Court can make its own procedural regulations, so PERMA is considered necessary to suffice the procedural law that has been regulated by law. This refers to Article 79 of Law No. 14 of 1985 concerning the Supreme Court. The Supreme Court is given the authority to make laws and regulations from these provisions to fill the legal void and recognize its existence and have binding legal force as long as it is ordered by higher laws and regulations, as stated in Article 8 paragraph (2) of Law No. 12 of 2011. So that PERMA No. 4 of 2014 is used in the Court because the Court is under the institution of the Supreme Court and PERMA is a legal product issued by the Supreme Court. Although there are already rules that regulate diversion, namely Law No. 11 of 2012 concerning SPPA.

Although the SPPA Law is not used as the main reference in the implementation of diversion at the Court level, Article 3 of PERMA No. 4 of 2014 has realized the purpose of diversion as stated in Article 6 of the SPPA Law, among others, achieving peace between victims and children, resolving children's cases outside the judicial process, preventing children from depriving themselves of independence, encouraging the community to participate and instilling a sense of responsibility for children.

CONCLUSION

The process of diversion for juvenile offenders, as illustrated by the case of M. Rifaldi in Cirebon (Case Number 14/Pid.Sus-Anak/2021/PN.Cbn), often faces challenges, particularly when financial obligations or other factors prevent successful agreements during different stages of the legal process. While diversion was attempted at the investigation level, it failed due to financial constraints and the need for a deterrent effect, leading to prosecution under charges carrying significant prison terms. However, at the court level, diversion was eventually achieved using Article 3 of PERMA No. 4 of 2014, highlighting its role in filling legal gaps even when higher charges are involved. Future research could explore the effectiveness of diversion in serious criminal cases, comparing successful and unsuccessful instances, and examining the impact of legal frameworks like PERMA No. 4 of 2014 on recidivism rates, to provide insights for improving Indonesia's juvenile justice system.

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