

IMPLEMENTATION OF SUPREME COURT REGULATION NO.4 OF 2014 CONCERNING GUIDELINES FOR IMPLEMENTING DIVERSION IN THE CHILD CRIMINAL JUSTICE SYSTEM

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Abstract: *The purpose of this study, to find out and analyze the implementation of Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Justice System. Research, and to identify and analyze obstacles / obstacles to the implementation of Diversion in the Juvenile Justice System. The research method, the type of research is socio-legal research, data collection techniques by reviewing and reviewing legislation and various policies relating to diversification of child crime, research locations in Sukoharjo, Wonogiri, and Karang Anyar Courts in Central Java Province. Conclusion, implementation of the Supreme Court Regulation (Perma) No.4 of 2014, cannot be separated from Law No. 11 of 2012, and the existence of Government Regulation No. 65 of 2015. Diversion in Sukoharjo, Wonogiri, and Karanganyar Districts at the investigation level in 2014 - in 2017 there were 55 cases, at the Prosecution of 18 cases, and in court only 2 cases. This shows that the implementation of Diversion at every level has been carried out by using a restorative justice approach. Obstacles to the implementation of Supreme Court Regulation No.4 Year 2014, relating to legal factors, which are not clearly regulated regarding supervision of Diversion agreements, law enforcement factors where Judge Children in Sukoharjo District Court, and Karanganyar Court 2 people, are in Court Wonogiri, 1 person, supporting facilities or facilities where the Diversion deliberation room is inadequate, there is no Children's Social Protection House (RPSA), and the collaboration with other related institutions is not maximal, community factors where the reporting party and / or the victim's family do not Diversion process, cultural factors, where the culture of forgiveness among the people tends to be less.*

Keywords: *supreme court regulation no.4 of 2014, diversion, juvenile justice system*

I. INTRODUCTION

Every child has the right to survival, growth and development and has the right to protection from violence and discrimination (Article 28 B of the 1945 Constitution of the Republic of Indonesia), therefore the best interest for children should be considered as the best interest for the survival of humanity, so that the government must make policies that aim

to protect children. In order to protect children facing the law, Law No. 11 of 2012 concerning the Child Criminal System which regulates the entire process of resolving child cases dealing with the law starting from the investigation phase up to the guiding stage after undergoing criminal proceedings. The most fundamental substance in Law No.11 of 2012, is restorative justice in which Diversion carried out is intended to avoid and alienate children from the judicial process so as to avoid stigmatization of children facing the law and it is expected that children can return to the social environment fairly, then issued Government Regulation No. 65 of 2015 concerning Guidelines for Diversion and Handling of Children who are not yet 12 (twelve) years old, where every investigator, public prosecutor, and judge in examining children is obliged to seek Diversity, in the case of a criminal offense threatened with imprisonment under 7 (seven) years, and not repetition (Article 3 PP No. 65 of 2015). Diversion at the court level is regulated in the Supreme Court Regulation No.4 of 2014 concerning Guidelines for Implementing Diversion in the Child Criminal Justice System.

The problem above can be formulated as follows: how is the implementation of Regulation No. 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Justice System, and constraints / obstacles to the implementation of Regulation No. 4 of 2014 on the Implementation of Diversion in the Juvenile Justice System.

II. RESEARCH METHODS

This type of research is socio-legal research, namely legal research that represents the interrelationship between the contexts in which the law is located (an interface within a law exist).¹ Problematically analyzed by extrapolative dialogue with field findings data. The technique of collecting data is by reviewing and reviewing the laws and regulations and various policies related to diversification of child crime. The location of the study was conducted in the Sukoharjo, Wonogiri, and Karang Anyar Courts in Central Java Province.

III. RESULT AND DISCUSSION

3.1 Implementation of Supreme Court Regulation No.4 of 2014 concerning Guidelines for the Implementation of Child Justice Diversion

Diversion at the Court level in Sukoharjo, Wonogiri, and Karanganyar Courts in the period of 2014 - 2017 can be seen in table 1, the following:

Table 1. Data on Determination of Diversity in the Sukoharjo District Court Area, Karanganyar District Court, and Wonogiri District Court 2014-2017

No.	District Court	Years				Total
		2014	2015	2016	2017	
1.	Sukoharjo	-	-	-	-	-
2.	Wonogiri	-	1	-	-	1
3.	Karanganyar	1	-	-	-	1
4.	Jumlah	1	1	-	-	2

¹Reza Banakar, *Normativity in Legal Sociology Methodological Reflections on Law and Regulation in Late Modernity*, Springer International Publishing, 2015, p. 48.

Sources: Sukoharjo District Court, Wonogiri District Court, and 2017 Karanganyar District Court

Table 1 shows that Diversion data at the court level in the Sukoharjo, Wonogiri, and Karanganyar District Courts, the period of 2014 - 2017, is relatively small because there are only 2 (two) cases.

In the Sukoharjo District Court area, from 2014 to 2017, there was no successful Diversion report, because child cases with under seven years of criminal sanction had successfully carried out Diversion efforts at the level of investigators and public prosecutors, while in Wonogiri Court, Diversion successfully carried out only in 2015, and in the Karanganyar District Diversion District Court successfully carried out in 2014. Examples of cases of child crime that were successfully carried out Diversion at the court level are presented in the following table 2 (two):

Table 2. Examples of Cases of Diversion at the Court Level in the District of Karanganyar District in 2014

Position Case	Legal Considerations	Reasons for Diversion
<p>Child Case Number: 3/Pid.Sus/2014/PN.Krg A boy, aged 15, was reported to have stolen a motorcycle.</p>	<ol style="list-style-type: none"> 1. On Monday, September 1, 2014 at the Mediation Room of the Karanganyar District Court in the Facilitator's Diversity and related parties in the process of Child Case Diversion Number: 3/Pid.Sus/2014/PN.Krg-a diversion agreement has been reached; 2. Article 1, Party I has admitted to taking the motorbike owned by Party II, and Party I feels sorry and apologizes to Party II, and then promises not to repeat the action again; 3. Article 2, Party II declares an apology to Party I, and does not object to the case investigation process being terminated on the condition that the Motorbike owned by Party II is repaired and returned to Party II in good condition as before; 4. Article 3, Party I promises to repair Motorbike belonging to Party II, and return it to its 	<ol style="list-style-type: none"> 1. Report from Judge Number 03 / Pid.Sus-Anak / 2014 / PN.Krg. dated September 1, 2014 concerning Report on Results of Diversion in Child cases 2. News of the Diversion Number: 03 / Pid.Sus-Anak / 2014 / PN.Krg dated September 1, 2014; 3. Diversity Agreement dated September 1, 2014; 4. Agreement reached; 5. Article 1, Party I has admitted to taking the motorbike owned by Party II, and Party I feels sorry and apologizes to Party II, and then promises not to repeat the action again; 6. Article 2, Party II declares an apology to Party I, and does not object to the case investigation process being terminated on the condition that the Motorbike owned by Party II is repaired and returned

	<p>good condition as before;</p> <p>5. Article 4, If this agreement is not fulfilled by the Parties for a maximum period of 1 (one) month from the signing of this agreement, the inspection process will continue in the trial process;</p> <p>6. Article 5, this Agreement is made by the Parties without any element of coercion, error and fraud from any party.</p>	<p>to Party II in good condition as before;</p> <p>7. Article 3, Party I promises to repair Motorbike belonging to Party II, returning it to its original good condition;</p> <p>8. Article 4, If this agreement is not fulfilled by the Parties for a maximum period of 1 (one) month from the signing of this agreement, the inspection process will continue in the trial process;</p> <p>9. Article 5, this Agreement is made by the Parties without any element of coercion, error and fraud from any party;</p> <p>Considering, that the diversion agreement has fulfilled and does not conflict with the laws and regulations, so that it is reasonable to be granted;</p> <p>Noting the provisions of Article 12, Article 52 paragraph 5 of Law Number 11 of 2012 concerning the Criminal Justice System for Children and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations;</p> <p>Set:</p> <ol style="list-style-type: none"> 1. Granting the Petitioner's Petition 2. Order the parties to implement the diversion agreement; 3. Order the Judge to issue a Termination of
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		<p>Examination after the Diversion agreement has been fully implemented;</p> <p>4. Order the Court to be responsible for the evidence until the diversion agreement is fully / fully implemented;</p> <p>5. Order that evidence be in the form of:</p> <p>a. 1 (one) motorcycle unit of the Honda Grand No. Black Pol. AD 5366 in 1997 STNK in the name of Ngatimin;</p> <p>b. 3 (three) motorcycle contacts and 1 (one) motorcycle ignition key broken; returned to Sarman's victim;</p> <p>In the event that the Diversion agreement is fully implemented; order the Registrar to submit a copy of this stipulation to the Child Investigator/Public Prosecutor/Judge, Community Advisor, Child/Parent, Victim and Witnesses;</p>
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Source: Determination of Karang Anyar District Court Number: 03/ Pid.Sus Anak/2014/PN.Krg, 2014

In table 2, it is known, after successfully conducting Diversion at the court level, the Determination of the Chairperson of the Karang Anyar Court was made and then the Diversion Agreement Number: 03/Pid.Sus-Anak/2014/PN was implemented. To be clearer, the procedure for implementing Diversion at the court level is presented in the following chart 1 (one):

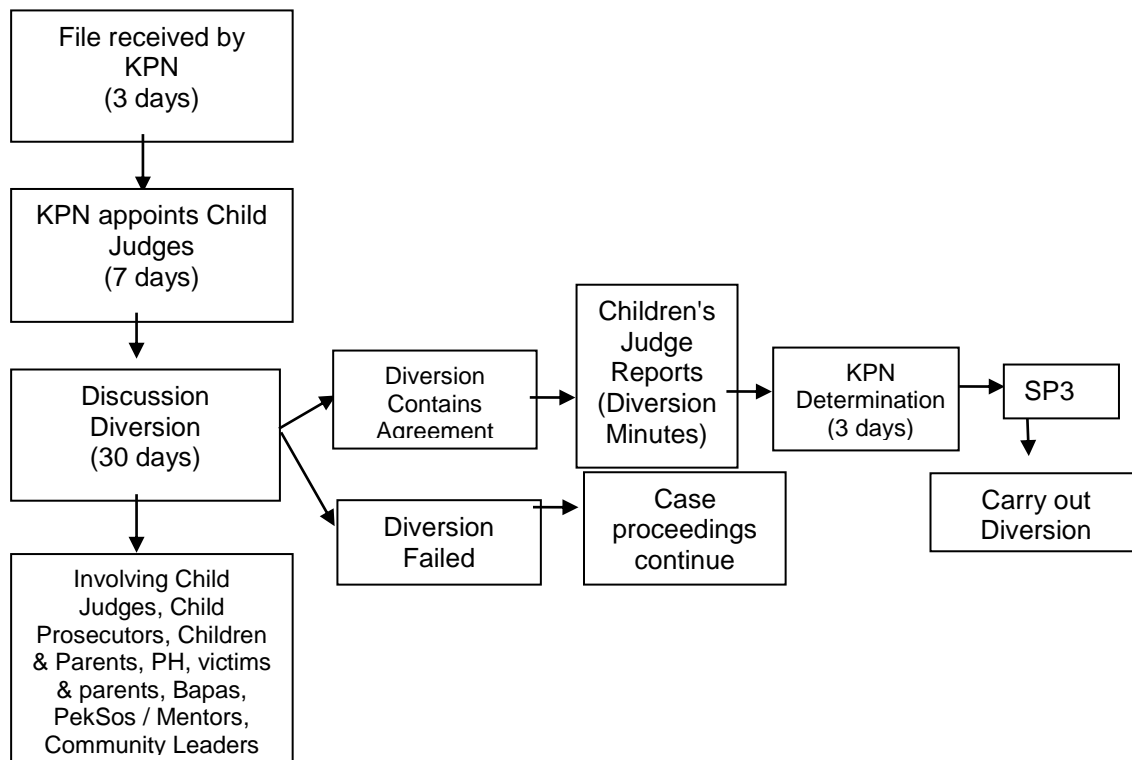


Figure 1. Diversion in the Court

In chart 1 it is known, the Diversion file is received by the Head of the District Court within 3 (three) days to be studied, and shows the Children's Judge within 7 (seven) days to study the file, after which the Diversion Deliberation is given 30 (thirty) days by involving; Child Judges, Child Prosecutors, children and parents, legal counsel, victims and parents, Bapas, social workers / assistants, and community leaders. If in the Diversion deliberation an agreement is made, the Child Judge makes a report. The Diversion Event will then ask for the determination of the Chair of the Court within 3 (three) days, then the case in the SP3 (Termination Case), and the Diversion agreement can be carried out. If the Diversion meeting does not find an agreement (Diversion fails), then the case continues to the trial.

Thus the implementation of Supreme Court Regulation (Perma) No.4 of 2014 concerning the Implementation of Diversion in the Juvenile Justice System conducted in the Sukoharjo, Wonogiri, and Karanganyar District Courts was carried out according to the mandate of the Supreme Court (Perma) No.4 of 2014, in which the Children's Judges must strive for Diversion in the event that a child is charged with a criminal offense that is threatened with imprisonment under 7 (seven) years or more in the form of an indictment, subsidiarity, alternative, cumulative or combination. (Article 3 of Regulation No. 4 of 2014). The existence of Regulation No. 4 of 2014 is inseparable from Law No. 11 of 2012 concerning the Child Criminal Justice System, where every stage of the investigation, prosecution, and trial is attempted Diversion, and the existence of Government Regulation No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children who are not 12 (twelve) years old each stage of Diversion.

Regarding Diversion data in Sukoharjo, Wonogiri, and Karanganyar Regencies, Diversion at the level of investigation in 2014 - in 2017 there were 55 cases, Diversion at the Prosecution level of 18 cases, and Diversion in the court only 2 cases. This shows that the implementation of Diversion at every level has been carried out according to the mandate of Law No. 11 of 2012 which requires that the settlement of child crimes use a restorative justice approach, by involving perpetrators, victims, families of perpetrators, and other parties concerned to jointly seek solutions fair by emphasizing the restoration of the original state.

3.2 *Constraints/barriers to the implementation of Supreme Court Regulation (Perma) No.4 of 2014 concerning Guidelines for Implementing Diversion in the Child Criminal Justice System*

According to Soerjono Soekanto “law enforcement is not merely a means of implementing legislation, although in reality in Indonesia the tendency is this, so the notion of law enforcement is so popular. In addition, there is a strong tendency to interpret law enforcement as the implementation of judges’ decisions. The main problem in law enforcement actually lies in the factors that might influence it.

Constraints / barriers to the implementation of Supreme Court Regulation (Perma) No.4 of 2014, relate to the following factors:

3.2.1 *Legal Factors*

Diversion regulation is regulated in Law No. 11 of 2012 concerning the Child Criminal Justice System, Government Regulation No. 65 of 2015 concerning Guidelines for Implementing Diversion and Handling of Children Not Aged 12 (twelve) years old, and Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Child Justice Diversion. Supervision of agreed Diversion decisions at the court level is supervised by the Chairperson of the local Court. Regarding the supervision of the Diversion agreement that has been carried out, there are no further regulations regarding this matter.

3.2.2 *Law Enforcement Factors*

The lack of a Children’s Judge, in the Karanganyar District Court only has 2 Child Judges, in Sukoharjo having 2 Child Judges and Wonogiri having 1 Child Judge who has been certified.

3.2.3 *Factor Facilities or Facilities that support Law Enforcement*

The Diversion Deliberation Room in Sukoharjo, Wonogiri, and Karanganyar Courts is still inadequate because it is not so extensive that it is not convenient for Diversion, the absence of the Children’s Social Protection House (RPSA), which is an institution that provides protection for children (including children who conflict with law). During the Diversion process, the child will be entrusted to the Surakarta Prison / Detention Center so that when a meeting will be held, the child must be picked up, while the distance from the detention center to Karanganyar, Sukoharjo and Wonogiri Regencies is quite far. it hasn’t gone well, for example, entering a child into the vocational training center does not yet exist in this area.”²

² Interview with Nyoman Ary Mudjana-Hakim Anak in the Karanganyar District Court, October 2018.

3.2.4 Community Factors

Factors that become an obstacle are the reporting party and / or the victim's family does not want to attend the Diversion process both at the level of Investigation, Prosecution and the Court because of the intention of the victim to continue the trial process. The role of the community is still minimal, especially from people who are victims who want to punish children / revenge.³

3.2.5 Cultural Factor

The culture of forgiveness among the people tends to be lacking. The community believes that someone who has committed a crime must be rewarded, even though he is a child, sometimes the request from the victim cannot be met by the child in conflict with the law because the conditions proposed by the victim are considered too excessive, but the victim does not want changing requirements relating to the agreement so that Diversion failed.

IV. CONCLUSION

Implementation of Supreme Court Regulation (Perma) No.4 of 2014, not apart from Law No. 11 of 2012, and the existence of Government Regulation No. 65 of 2015. Diversion in the Sukoharjo, Wonogiri, and Karanganyar Courts for the period of 2014 - 2017, only 2 cases. This shows that the implementation of Diversion at every level has been carried out by using a restorative justice approach.

Obstacles to the implementation of Supreme Court Regulation No.4 Year 2014, relating to legal factors, which are not clearly regulated regarding supervision of Diversion agreements, law enforcement factors where Judge Children in Sukoharjo District Court, and Karanganyar Court 2 people, are in Court Wonogiri, 1 person, supporting facilities or facilities where the Diversion deliberation room is inadequate, there is no Children's Social Protection House (RPSA), and the collaboration with other related institutions is not maximal, community factors where the reporting party and / or the victim's family do not Diversion process, cultural factors, where the culture of forgiveness among the people tends to be less.

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³ Interview with Nyoman Ary Mudjana-Hakim Anak in the Karanganyar District Court, October 2018.

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