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# The Authority of Judges in Applying Diversion to Children Facing Criminal Charges Carrying a Sentence of More Than Seven Years

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**The aim of this study** is to analyze the implementation of diversion in juvenile crimes based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law).

**The study method** uses a normative legal method through a case study of legal behavior products.

**The novelty** of this research lies in its in-depth analysis of the authority of judges in determining diversion for criminal acts with a maximum penalty of more than 7 years. Although normatively excluded by the UU SPPA, this is interpreted progressively using a restorative justice approach and the principle of the best interests of the child.

**The results** of the research examine the discretion of judges in applying the principle of restorative justice in serious criminal cases that, according to the standard rules, are not eligible for diversion. Through a normative approach and empirical case studies, this research provides new insights and recommendations for reformulating more humane legal policies. The aim is to make the justice system more responsive to the protection of children's rights in accordance with national legal standards.

**Conclusion** This study found that diversion under the SPPA is limited to criminal offenses carrying a sentence of less than seven years. However, Supreme Court Regulation (Perma) No. 4 of 2014 expands this scope, particularly in the case of mixed charges. This regulatory discrepancy creates a dilemma for judges in determining the appropriate legal reference. This inconsistency has an impact on legal uncertainty, where similar cases can receive different diversion treatments. Therefore, harmonization between the Supreme Court regulation and the SPPA Law is urgently needed to ensure equal justice for children.

**Keywords:** Children; Diversion; Judges; Authority

**Abstrak**

**Tujuan Penelitian** untuk menganalisis pelaksanaan diversifikasi pada tindak pidana anak berdasarkan Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak (UU SPPA).

**Metode Penelitian** ini menggunakan metode hukum normatif melalui studi kasus terhadap produk perilaku hukum.

***Kebaruan*** penelitian terletak pada analisis mendalam mengenai kewenangan hakim dalam menetapkan diversi untuk tindak pidana dengan ancaman di atas 7 tahun. Meski secara normatif dikecualikan oleh UU SPPA, hal ini ditafsirkan secara progresif menggunakan pendekatan keadilan restoratif dan prinsip kepentingan terbaik bagi anak.

***Hasil Penelitian*** untuk mengkaji diskresi hakim dalam menerapkan prinsip restorative justice pada perkara pidana berat yang secara aturan baku tidak mendapatkan diversi. Melalui pendekatan normatif dan studi kasus empirik, penelitian ini memberikan pemahaman baru serta rekomendasi reformulasi kebijakan hukum yang lebih manusiawi. Tujuannya agar sistem peradilan lebih responsif terhadap perlindungan hak anak sesuai standar hukum nasional.

***Kesimpulan*** dalam penelitian ini terdapat batasan diversi dalam UU SPPA yang hanya berlaku untuk ancaman pidana di bawah tujuh tahun. Namun, Peraturan Mahkamah Agung (Perma) Nomor 4 Tahun 2014 memperluas cakupan ini, terutama pada dakwaan campuran. Perbedaan regulasi ini menimbulkan dilema bagi hakim dalam menentukan acuan hukum yang tepat. Ketidakkonsistenan ini berdampak pada ketidakpastian hukum, di mana kasus yang serupa bisa mendapatkan perlakuan diversi yang berbeda. Oleh karena itu, harmonisasi antara regulasi Mahkamah Agung dan UU SPPA sangat mendesak untuk dilakukan guna menjamin keadilan yang setara bagi anak.

***Kata Kunci:*** Anak; Diversi; Hakim; Wewenang

## 1. INTRODUCTION

Efforts to protect children have shown significant progress, although there are still various issues related to children that vary over time. Legal issues involving children are not limited to general criminal offenses regulated in the Criminal Code, but also specific forms of criminal offenses related to children that have begun to emerge, one of which is regulated in the Law on Child Protection, namely Law Number 23 of 2002, which has been amended to Law Number 35 of 2014.<sup>1</sup> In addition to the Child Protection Law, the State also provides protection to children through Law No. 11 of 2012 on the Juvenile Justice System.

Article 1 paragraph (2) of the SPPA Law defines children in conflict with the law (ABH) as children who are involved in legal proceedings, either as perpetrators of criminal acts or as victims. ABH are highly vulnerable to psychological stress, which affects their development. Therefore, special treatment is required for all children who are involved in legal proceedings, without exception.<sup>2</sup> The existence of ABH, especially children as perpetrators of criminal acts, requires special protection, not in the sense of being protected from the crimes they have committed, but rather in terms of physical and mental care in dealing with the law. This is because the purpose of punishment is no longer revenge, but rather guidance and guidance to become good and useful people.<sup>3</sup>

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<sup>1</sup> Andrie Irawan; Muhammad Afied Hambali; Yulio Iqbal Cahyo Arsetyo, "Kedudukan Dan Peran Pembimbing Kemasyarakatan Dalam Pendampingan Bagi Anak Berhadapan Hukum Sebagai Pelaku," *Journal Equitable* 7, no. 2 (2023), <https://doi.org/10.37859/jeq.v7i2.4119>.

<sup>2</sup> Samuel Panjaitan; Gomgom T.P. Siregar; Syawal Amry Siregar, "Peran Bapas Sebagai Pembimbing Kemasyarakatan Dalam Penanganan Anak Yang Berkonflik Dengan Hukum (Studi Pada Bapas Kelas I Medan)," *Jurnal Retentum* 2, no. 1 (2021), <https://doi.org/10.46930/retentum.v3i1.905>.

<sup>3</sup> G . A Setyawan and A F Wijaya, "URGENCY OF INSTITUTIONALIZING COLLABORATIVE GOVERNANCE IN THE

Child protection is a mandate of the State, which is also regulated in Article 20 of the Child Protection Law, which states that "the State, Government, Community, Family, and Parents are obliged and responsible for the implementation of child protection." This emphasizes that the legal aspects of child protection need to be considered by all parties because this effort is one way to protect children in their future growth. Therefore, criminal acts committed by children, ranging from juvenile delinquency, require serious legal handling.<sup>4</sup>

There are four interrelated law enforcement agencies, namely the Police, the Attorney General's Office, the Courts, and Correctional Institutions, which are integrated into the Integrated Criminal Justice System.<sup>5</sup> The role of law enforcement officers is very important in the law enforcement process that leads to fair decisions. In the juvenile criminal justice system, which focuses on restorative justice, criminal cases are resolved by involving the perpetrator, the victim, the families of the perpetrator and victim, and other relevant parties to jointly seek a fair solution that emphasizes restoring the status quo for all parties, rather than retribution.<sup>6</sup>

The Child Protection System Law also does not provide optimal access to restorative practices. The implementation process tends to be rigid in its application of diversification, which focuses on threats of imprisonment of no more than seven (7) years and does not apply to repeat offenders as stipulated in Article 7 paragraph (2) of the Juvenile Criminal Justice System Law. Therefore, the role of Community Supervisors in providing recommendations and assistance in the implementation of diversion is limited only to categories of crimes with a sentence of less than 7 years. Diversification efforts for juvenile crimes punishable by more than 7 years in prison can only be submitted at the trial stage in court through a judge's decision based on Article 3 of Supreme Court Regulation Number 4 of 2014.

One example of the implementation of diversion for juvenile crimes punishable by imprisonment of more than 7 years through a judge's decision is the case of violence against children or attempted robbery with violence committed by M. Fahri Putra Irawan bin Deirri Irawan (14 years old). These crimes are punishable under Article 365 paragraphs (1) and (2) letter (b) of the Criminal Code (KUHP) in conjunction with Article 53 of the Criminal Code, which stipulates a maximum sentence of 9 to 12 years. However, through the authority of the Juvenile Judge who tried this case, the case was transferred through the Palembang District Court Chief Agreement Number 4/Pein.Div/2022/PN/Plg Jo Number 5/Pid/Sus-Anak/2022/PN Plg. Based on the judge's decision in this case, there was an inconsistency in law enforcement. According to the law, the Community Supervisor cannot recommend diversion in this case because the sentence imposed is more than 7 years. However, the Juvenile Judge is required to attempt diversion even though the crime committed is punishable by 7 years'

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LEGAL SYSTEM FOR THE PROTECTION OF CHILDREN IN CONFLICT WITH THE LAW," *Jurnal Hukum Unissula* 41, no. 2 (2025): 346–65, <https://doi.org/10.26532/jh.v41i2.46413>.

<sup>4</sup> Soedarto, *Hukum Pidana Dan Perkembangan Masyarakat* (Bandung: PT. Sinar Baru, 2016).

<sup>5</sup> Anggi Nofitasari, "Peran Balai Pemasyarakatan Dalam Melakukan Pengawasan Terhadap Klien Pemasyarakatan (Studi Pada Balai Pemasyarakatan Semarang)" (Universitas Islam Sultan Agung, 2019).

<sup>6</sup> D E Ismail et al., "The Comparative Study: Protecting Children's Rights Through Law Reform of Restorative Justice in Juvenile Cases," *Journal of Law and Legal Reform* 6, no. 2 (2025): 411–52, <https://doi.org/10.15294/jllr.v6i2.13724>.

imprisonment, as stipulated in Article 3 of Supreme Court Regulation Number 4 of 2014. Based on the above phenomenon, there appears to be a discrepancy between the Juvenile Criminal Justice System Law and PERMA.

## **2. METHOD**

This study uses the normative legal research method, which focuses on the study of positive legal norms, legal principles, legal doctrines, and court decisions related to the application of diversion in the juvenile criminal justice system. This research is a normative case study, with the object of study being legal behavior in the form of judges' decisions applying diversion to children in conflict with the law in cases with criminal penalties of more than seven years. This method was chosen because the research aims to legally analyze the authority of judges in the context of regulatory disharmony between Law -Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) and Supreme Court Regulation Number 4 of 2014, as well as to assess the application of the principles of restorative justice and the best interests of the child in judicial practice.

The approaches used in this study include a statutory approach, a conceptual approach, and a philosophical approach. The statutory approach was carried out by reviewing various regulations governing diversion and juvenile criminal justice, while the conceptual approach was used to examine the concepts of restorative justice, judicial discretion, and the protection of children's rights. The philosophical approach was used to explore the values of justice, humanity, and child protection as the basis for the formation of juvenile criminal law. The legal materials used consist of primary, secondary, and tertiary legal materials collected through literature studies, then analyzed qualitatively using prescriptive-analytical methods to provide legal arguments and normative recommendations regarding the need to harmonize diversion regulations in order to realize a more just and humane juvenile criminal justice system.<sup>7</sup>

## **3. DISCUSSION**

### **3.1. Provisions for the Implementation of Diversion in Juvenile Crimes in accordance with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System**

According to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), diversion is a form of authority granted to law enforcement officials in handling cases involving children through non-formal channels. This authority may take the form of discontinuing legal proceedings, not referring the case to court, returning the child to his or her community, or involving the child in other social service programs as an alternative to resolving criminal cases.<sup>8</sup> Diversion is implemented to avoid the negative impact of criminal proceedings on the psychological condition and development of children involved in legal problems. The application of diversion by law enforcement officials is based on their authority, known as discretion.<sup>9</sup>

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<sup>7</sup> H Firmansyah, E Wahid, and A Sudiro, "Pretrial on Sp3 Corruption Case in the Perspective of Victim Justice," *Journal of Environmental Treatment Techniques* 8, no. 4 (2020): 1439–46, [https://doi.org/10.47277/JETT/8\(4\)1446](https://doi.org/10.47277/JETT/8(4)1446).

<sup>8</sup> Teiguh Praseityo, "Peineirapan Diveirsi Teirhadap Tindak Pidana Anak Dalam Sisteim Peiradilan Pidana Anak," *Refleksi Hukum* 9, no. 1 (2015): 1–14, <https://doi.org/10.24246/jrh.2015.v9.i1.p1-14>.

<sup>9</sup> Louisa Yeisami Krisnalita, "Diveirsi Pada Tindak Pidana Yang Dilakukan Oleh Anak," *Binamulia Hukum* 8, no. 1

The enforcement of law against crimes committed by children is not only regulated in Law No. 8 of 1981 on Criminal Procedure, but also has specific provisions in Law No. 11 of 2012 on the Juvenile Criminal Justice System. One of these provisions is the placement of children undergoing legal proceedings in Special Child Development Institutions (LPKA). The most fundamental aspect of this law is its emphasis on the application of restorative justice and diversification mechanisms, which aim to avoid formal legal proceedings in order to prevent stigmatization and provide opportunities for children to reintegrate healthily into their social lives.<sup>10</sup>

Achieving this goal requires the active involvement of all stakeholders. The case resolution process must be directed towards creating restorative justice, both for the interests of the child and the victim. Restorative justice is the application of diversification, a mechanism in which all parties involved in a crime work together to resolve the problem and create responsibility for improving the situation. This process involves children, victims, and the community in seeking solutions that focus on recovery, reconciliation, and peace of mind, rather than retribution.<sup>11</sup>

The regulation governing children in conflict with the law is Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA Law), which replaces Law No. 3 of 1997 on Juvenile Courts. This law was drafted with the aim of establishing a judicial system that fully guarantees the best interests of children.<sup>12</sup> Article 1 paragraph 7 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Criminal Justice System for Children explains the definition of diversion, namely "Diversion is the transfer of the resolution of a child's case from the criminal justice process to a process outside the criminal justice system."<sup>13</sup> The objectives of diversification are listed in Article 6, namely:<sup>14</sup> Achieving peace between victims and children; resolving child cases outside of court proceedings; preventing children from being detained; encouraging community participation; and instilling a sense of responsibility in children.

Article 7 paragraph (1) explains that "at the level of investigation, prosecution, and examination of child cases in district courts, diversion must be applied," and paragraph (2) also explains that the diversion referred to in paragraph (1) is applied if the criminal act committed:<sup>15</sup> punishable by imprisonment of less than 7 (seven) years; and is not a repeat offense." This means that not every case involving children in conflict with the law can be immediately transferred to the diversion process. Investigators, prosecutors, and judges must first assess whether the formal requirements are met.

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(2019): 93–106, <https://doi.org/10.37893/jbh.v8i1.41>.

<sup>10</sup> Akhmad Munawar and Muhammad Deiny Sugiyanto, "Peinyeileisaian Tindak Pidana Yang Dilakukan Anak Meilalui Diveirsi Dalam Undang-Undang Nomor 11 Tahun 2012 Teintang Sisteim Peiradilan Pidana Anak," *Al Adl: Jurnal Hukum* 15, no. 2 (2023): 447–58, <https://doi.org/10.31602/al-adl.v15i2.10700>.

<sup>11</sup> Munawar and Sugiyanto.

<sup>12</sup> Neiveiy Varida Ariani, "Peilaksanaan Undang-Undang Nomor 11 Tahun 2012 Teintang Sisteim Peiradilan Pidana Anak," *Jurnal Meidia Hukum* 2, no. 1 (2014): 39, <https://doi.org/10.18196/jmh.2014.0029.23-42>

<sup>13</sup> Preisidein Reipublik Indoneisia, "Undang-Undang Reipublik Indoneisia Nomor 11 Tahun 2012 Teintang Sisteim Peiradilan Pidana Anak," 2012.

<sup>14</sup> Preisidein Reipublik Indoneisia.

<sup>15</sup> Preisidein Reipublik Indoneisia.

Article 8 paragraph (1) emphasizes the diversification process involving several parties, namely "The diversification process is carried out through discussions involving the child and parents/guardians of the child, victims and/or parents/guardians of victims, Community Counselors, and Professional Social Workers based on a Restorative Justice approach." Paragraph (2) also states, "If necessary, the deliberations referred to in paragraph (1) may involve Social Welfare Workers and/or the community." Paragraph (3) also stipulates that the Diversion Process must take into account:<sup>16</sup> Child welfare and responsibility; prevention of negative stigma; prevention of retaliation; social harmony; and decency, morality, and public order.

The regulation indicates that the implementation of diversification is not only oriented towards children as perpetrators of crime, but also takes into account the impact felt by victims and its influence on the social environment.<sup>17</sup> Therefore, the diversification mechanism is implemented comprehensively, taking into account aspects of child protection, restoration of victims' rights, and maintenance of public order. The various values underlying this process show that the restorative justice approach to diversification prioritizes the principles of humanity, ethics, and social norms that exist in society.

Article 9 paragraph (1) of this Law also regulates several considerations for Investigators, Public Prosecutors, and Judges in implementing diversion, namely:<sup>18</sup> Categories of criminal offenses; Age of the child; Results of community research from correctional institutions; and Support from family and community environments. This article serves as a reference or basis for law enforcement officials in assessing whether a child's case should be resolved through diversion mechanisms. The criminal offense category provision is an indicator that the lower the criminal threat, the higher the priority for diversion, and diversion is not intended to be applied to serious crimes, such as murder, terrorism, rape, and drug trafficking, which carry criminal penalties of more than 7 (seven) years. In addition, the age of the child in this provision is intended to determine the priority for granting diversion, i.e., the younger the age, the higher the priority for diversion.<sup>19</sup> Paragraph (2) stipulates that the Diversion Agreement must obtain the consent of the victim and/or the victim's family, as well as the willingness of the child and his/her family, except for: criminal acts in the form of violations; minor criminal offenses; criminal acts without victims; or where the value of the victim's losses does not exceed the local provincial minimum wage.

Article 10 paragraph (1) also states, "Alternative settlement agreements to resolve criminal offenses in the form of violations, minor offenses, offenses without victims, or where the value of the victim's losses does not exceed the local provincial minimum wage as referred

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<sup>16</sup> Preseiden Reipublik Indoneisia.

<sup>17</sup> M A Lubis, C Nurita, and T Sanni, "THE SETTLEMENT OF CHILDREN'S CASES THROUGH DIVERSION: ROLE OF LEADER COMMUNITY FOR JUSTICE," *Jurnal Hukum Unissula* 41, no. 4 (2025): 960–84, <https://doi.org/10.30659/jh.v41i4.46436>.

<sup>18</sup> Preseiden Reipublik Indoneisia.

<sup>19</sup> Reipublik Indoneisia, "Peinjeilasan Atas Undang-Undang Reipublik Indoneisia Nomor 11 Tahun 2012 Teintang Sisteim Peiradilan Pidana Anak," Keimeinteirian Keiuangan, n.d., <https://jdih-old.keimeinkeiu.go.id/FullText/2012/11TAHUN2012UUPeinj.htm>.

to in Article 9 paragraph (2) may be made by investigators together with the perpetrator and/or their family, Community Advisors, and may involve community leaders." Paragraph (2) further explains, "Diversion agreements as referred to in paragraph (1) shall be implemented by Investigators on the recommendation of Community Advisors and may take the form of":<sup>20</sup> Compensation for losses incurred in incidents involving victims; medical and psychosocial rehabilitation; return to parents/guardians; participation in education or training at educational institutions or LPKS for a maximum of three (3) months; or community service for a maximum of three (3) months.

The forms of transfer agreements are listed in Article 11, namely:<sup>21</sup> Return to parents/guardians with or without compensation, participation in education or training at an educational institution or LPKS for a maximum of 3 (three) months; or community service, community service. Various forms of agreement in the diversification process regulated in this article reflect flexibility in resolving cases involving children without going through the criminal justice system.<sup>22</sup> Their goal is to create educational and rehabilitative settlements, as well as to avoid the negative impact of criminalization on children's growth and development. For example, peaceful resolution can restore the relationship between perpetrators and victims, while returning to parents or participating in training aims to foster a sense of responsibility and better behavior.<sup>23</sup> The results of the diversification program not only resolve cases from a legal perspective, but also serve as social development and rehabilitation efforts for children.

**Table 1. Analysis of Law No. 11 of 2012 on the Juvenile Justice System**

<b>Article in Law No.11 of 2012</b>	<b>Substance contained</b>
Article 5: (1) The criminal justice system for children shall prioritize a restorative justice approach.	The SPPA Law, through its philosophical dimension, implements a restorative juvenile criminal justice system that does not focus on detention, but rather on the recovery of victims after a crime has been committed.
Article 1 Paragraph 2 Children in conflict with the law are children who are in conflict with the law, children who are victims of crime, and children who are witnesses to crime.	Based on its scope, the SPPA Law not only regulates children who commit criminal acts, but also regulates children involved in conflicts with the law (ABH), namely children as perpetrators,

<sup>20</sup> Preseiden Reipublik Indoneisia, "Undang-Undang Reipublik Indoneisia Nomor 11 Tahun 2012 Teintang Sisteim Peiradilan Pidana Anak."

<sup>21</sup> Preseiden Reipublik Indoneisia.

<sup>22</sup> R Harvej S Kalo, and A Syahrin, "Synchronization of Laws and Application of Diveirson in Childrein Criminal Laws in Conflict," *Inteirnational Journal of Criminal Justicei Scieinceis* 16, no. 2 (2021): 358–68, <https://doi.org/10.5281/zeinodo.4756081>.

<sup>23</sup> L W Badu and J A Kaluku, "Reistorativei Justicei in Thei Peirspectivei of Customary Law: A Solution to Thei Seittleimeint of Narcotics Crimeis Committeid by Childrein," *Jambura Law Reiview* 4, no. 2 (2022): 313–27, <https://doi.org/10.33756/jlr.v4i2.11664>.

	children as victims, and children as witnesses in criminal acts.
Article 1 Paragraph 3 Children involved in conflict with the law, referred to as "children" in this context, are children aged 12 (twelve) years but not yet 18 (eighteen) years old, who are suspected of having committed a criminal offense.	The age of criminal responsibility for children is 12-18 years old and is not limited by a person's marital status, whereas previously the age of criminal responsibility was 8-18 years old and was limited by a person's marital status.
Article 5: (3) In the Juvenile Criminal Justice System, as referred to in paragraph (2) letters a and b, diversification efforts must be made.	The obligation to transfer cases at every stage of the investigation of child offenders.
Article 90 Child victims and child witnesses are entitled to: a. medical and social rehabilitation efforts, both inside and outside institutions; b. guarantees of physical, mental, and social security; and c. assistance in obtaining information about the progress of their cases.	Recognition of the rights of perpetrators, victims, and child witnesses in the judicial process.
Article 69 (2) Children under the age of 14 (fourteen) may only be subject to measures.	Restrictions on freedom as a last resort, as a final measure, with a shorter time period.
Article 25 (1) A list of child cases and child victims must be specifically established by the institution handling the child's case.	Their obligation to create a special registry for child offenders, victims, and witnesses.
Articles 63 to 68 emphasize the functions and roles of community officers and social workers.	Strengthening the role of community workers and social workers.
Article 23 (1) At every stage of the proceedings, children have the right to legal assistance and to be accompanied by a Public Legal Advisor or other	Obligation to provide legal assistance



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representative in accordance with applicable laws and regulations.

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Article 104 Juvenile correctional institutions shall be required to convert their systems to LPKA in accordance with this Law within a maximum period of 3 (three) years.	The abolition of juvenile detention centers and prisons will be replaced by LPAS (Temporary Child Placement Institutions) or LPKS (Social Welfare Institutions).
Education and Training Article 92 (1) The government shall provide integrated education and training for law enforcement officers and related parties.	The obligation to attend integrated training for SPPA administrators coordinated by the ministry responsible for government affairs in the field of law. <sup>24</sup>

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*Source: Ariani, "Implementation of Law Number 11 of 2012 on the Criminal Justice System for Children,"*

In practice, not every office has the authority to act as a diversifying party. In this case, the judge has the authority to diversify. The judge is the next party to become the facilitator in the final stage, namely the negotiation stage.<sup>25</sup> Based on Law Number 11 of 2012 on the Juvenile Justice System, Article 1 Paragraph 10, "The judge is a juvenile judge," so the judge who handles juvenile cases is a juvenile judge.

The requirements for appointment as a juvenile judge, as referred to in paragraph (1) of Article 43 of the SPPA Law, include:<sup>26</sup> Has experience as a judge in the general court system. Possesses integrity, attentiveness, dedication, and understanding of children's issues. Has undergone technical training in juvenile justice. Juvenile judges at the first level, namely in district courts, essentially conduct hearings and issue rulings as sole judges. However, in certain circumstances, particularly if the crime committed by the child is punishable by imprisonment of more than seven years and is highly difficult to prove, the case may be tried by a panel of judges.<sup>27</sup>

In general, the implementation of diversification at the district court stage is carried out by a judge or panel of judges within a maximum period of seven days after being appointed by the Chief Judge. The diversification process can take place within a maximum period of 30 days. If the diversification process is successful and the parties involved reach an agreement, the agreement and the minutes of the hearing will be submitted to the Chief District Judge

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<sup>24</sup> Ariani, "Pelaksanaan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak."

<sup>25</sup> Dwi Dasa Suryantoro, "Tinjauan Yuridis Diversi Dalam Sistem Peradilan Pidana Anak Perspektif Undang-Undang Nomor 11 Tahun 2012," *Legal Studies Journal* 2, no. 2 (2022): 14–28, <https://doi.org/10.33650/ljs.v2i2.4209>.

<sup>26</sup> Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak."

<sup>27</sup> Feibdy Seityana, "Pelaksanaan Diversi Dalam Perkara Tindak Pidana Anak Pada Pengadilan Negeri Di Wilayah Hukum Pengadilan Tinggi Palangkaraya Berdasarkan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak," *Al-Adl: Jurnal Hukum* 15, no. 2 (2023): 423, <https://doi.org/10.31602/al-adl.v15i2.11398>.

for the issuance of an official decision.<sup>28</sup> In the Law on the Juvenile Justice System, provisions regarding diversion are only regulated at the district court examination stage. On the other hand, in the appeal and cassation processes, there are no provisions requiring the application of diversion; however, there are also no prohibitions against doing so. If no agreement is reached between the parties involved, namely the victim and the defendant, the judge will continue the examination of the case through the normal criminal justice process.<sup>29</sup>

### **3.2. The Authority of Judges in Determining the Transfer of Criminal Cases Involving Children Sentenced to More Than 7 Years in Prison Based on Supreme Court Regulation Number 4 of 2014**

The position of Supreme Court Regulations (Perma) is regulated in Article 79 of Law Number 14 of 1985 concerning the Supreme Court. In this provision, Perma functions as a tool to fill legal gaps relating to various matters that are not explicitly regulated in the Law.<sup>30</sup> In consideration of Article 4 paragraph (b) of Supreme Court Regulation Number 4 of 2014, it is stated that "Law Number 11 of 2012 concerning the Criminal Justice System for Children does not regulate the procedures and stages of the diversion process", so this Regulation is presented as a complementary guideline in government practice and the legislative system in the implementation of diversion. This Regulation consists of five chapters, namely General Provisions, Diversion Obligations, Implementation of Diversion in Court, Transitional Provisions, and Closing Provisions.<sup>31</sup>

One of the main points emphasized in Supreme Court Regulation No. 4 of 2014 is the obligation for judges to resolve cases involving children in conflict with the law (ABH) through diversion mechanisms. This regulation also provides guidance on the implementation of diversion procedures as a reference for judges in handling juvenile criminal cases, given that previously there were no procedural regulations that specifically regulated the diversion process in the Juvenile Criminal Justice System.<sup>32</sup> The implementation of this regulation also ensures that the juvenile justice system in Indonesia can be run more efficiently, while still paying attention to the welfare of children.<sup>33</sup>

<sup>28</sup> Nindy Dwiyan Putri and Mitro Subroto, "Konsep Diveirsi Sebagai Realisasi Dari Restoratif Justice Dalam Undang-Undang Sistem Peradilan Pidana Anak: Pendekatan Alternatif Dalam Pemulihan Anak Pelaku Tindak Pidana" 7, no. Noveimbeir (2023): 898–905.

<sup>29</sup> Bahteira Peirangin-angin, Bunyamin Alamsyah, and M Zein Abdullah, "Peiranan Hakim Dalam Peineigakan Hukum Terhadap Tindak Pidana Yang Dilakukan Oleh Anak Menurut Undang Undang Nomor 12 Tahun 2012 Di Wilayah Pengadilan Neigeiri Jambi," *Legalitas: Jurnal Hukum* 6, no. 2 (2017): 206–50, <http://legalitas.unbari.ac.id/index.php/Legalitas/article/view/122>.

<sup>30</sup> Nur Sholikin, "Meinceirmati Peimbeintukan Peiraturan Mahkamah Agung (Perma)," *Jurnal Rechts Vinding: Meidia Peimbinaan Hukum Nasional* 6, no. 2 (2017): 181–98, <https://doi.org/10.33331/rechtsvinding.v6i2.150..>

<sup>31</sup> Hidayat, Wahab Aznul. "Penerapan Diversi Dalam Sistem Peradilan Pidana Anak." *Justisi* 5.2 (2019): 84–96. <https://doi.org/10.33506/js.v5i2.543>

<sup>32</sup> Ridwan Mansyur, "Keadilan Restoratif Sebagai Tujuan Pelaksanaan Diveirsi Pada Sistem Peradilan Pidana Anak," *Artikel Mahkamah Agung Republik Indonesia*, 2017, <https://www.mahkamahagung.go.id/id/artikel/2613/keadilan-restoratif-sebagai-tujuan-pelaksanaan-diveirsi-pada-sistem-peiradilan-pidana-anak>.

<sup>33</sup> Rr. Putri A. Priamsari, "Meincari Hukum Yang Beirkeadilan Bagi Anak Melalui Diveirsi," *Peirspektif Hukum* 18, no. 2 (2018): 175, <https://doi.org/10.30649/phj.v18i2.158>.

Article 1 Paragraph (1) of Supreme Court Regulation Number 4 of 2014 explains that "Diversion discussions are discussions between parties involving children and their parents/guardians, victims and/or victims' parents/guardians, Community Counselors, Professional Social Workers, community representatives, and other relevant parties to reach a Diversion agreement through a Restorative Justice approach."<sup>34</sup> Paragraph (2) also explains that judges act as facilitators in the diversification program. "Diversification facilitators are judges appointed by the Chief Justice to handle child cases."<sup>35</sup> Thus, the facilitator acts as a judge in child cases.

Article 3 of Supreme Court Regulation Number 4 of 2014, "Juvenile judges are required to apply diversion in cases where a child is charged with a criminal offense punishable by imprisonment of less than 7 years and is also charged with a criminal offense punishable by imprisonment of 7 (seven) years or more in the form of additional, alternative, cumulative, or combined charges."<sup>36</sup> Through this provision, the Supreme Court seeks to expand the provisions of Article 7 paragraph (2) of the Juvenile Criminal Justice System Law regarding the conditions for diversion for children in conflict with the law.<sup>37</sup>

This regulation also governs the stages of the decision-making process, as stipulated in Article 5 of this regulation. Paragraph 1 explains, "The decision transfer process is opened by the Transfer Facilitator by introducing the parties present, conveying the objectives and goals of the decision transfer process, as well as the decision-making rules that must be agreed upon by the parties present." Furthermore, the explanation of the facilitator's duties is explained in Paragraph 2: "The Diversion Facilitator explains the duties of the Diversion Facilitator." Furthermore, Paragraph 3 explains, "The Diversion Facilitator explains the summary of the indictment and the Community Supervisor provides information about the child's behavior and social circumstances and provides advice to reach a settlement." Paragraph 4 stipulates that the facilitator or judge appointed by the Chief Justice must provide an opportunity to:<sup>38</sup> The child who will be informed about the charges against them, parents/guardians to convey matters related to their child's actions and the expected form of resolution, victims/child victims/parents/guardians to provide responses and the expected form of resolution.

Paragraphs 1 to 4 of Supreme Court Regulation No. 4 of 2014 provide technical guidelines for the implementation of diversion, which is an important part of the juvenile criminal justice system based on restorative justice. Paragraph 1 states that diversion hearings must be officially opened by the Diversion Facilitator.

At this stage, the facilitator introduces all parties present, explains the objectives and goals of the diversion discussion, and prepares and agrees on the rules of discussion with all

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<sup>34</sup> Ketua Mahkamah Agung Republik Indonesia, "Perma No 4 Tahun 2014 Tentang Pedoman Pelaksanaan Diveirsi Dalam Sistem Peradilan Pidana Anak," 2014.

<sup>35</sup> Ketua Mahkamah Agung Republik Indonesia.

<sup>36</sup> Ketua Mahkamah Agung Republik Indonesia.

<sup>37</sup> Nazif Firdaus et al., "Peineirapan Peraturan Mahkamah Agung Nomor 4 Tahun 2014 Tentang Pedoman Pelaksanaan Diveirsi Dalam Tindak Pidana Narkotika," *Wawasan Yuridika* 3, no. 2 (2019).

<sup>38</sup> Ketua Mahkamah Agung Republik Indonesia, "Perma No 4 Tahun 2014 Tentang Pedoman Pelaksanaan Diveirsi Dalam Sistem Peradilan Pidana Anak."

participants present. This aims to create a conducive, open, and participatory atmosphere. Paragraph 2 emphasizes that the facilitator is also responsible for explaining their duties and roles in the mediation process so that all parties can understand the facilitator's function.

In addition, Paragraph 3 explains that the facilitator must submit a summary of their tasks to all parties involved, so that it can be used as a basis for discussion. Furthermore, the Community Supervisor must provide information about the child's background, including their daily behavior, social conditions, and family environment. This information is very important to help each party understand the child's situation and consider the best solution based on a restorative approach.

Paragraph 4 regulates the active participation of all parties in the discussion process. The facilitator or appointed judge must provide space for the child to convey their explanation or views regarding the allegations made. Parents or guardians provide their views on their child's actions and their expectations for a fair resolution. Victims, child victims, or parents/guardians of victims provide their responses and convey how they hope to resolve the issue.

Paragraph 6 states that "If deemed necessary, the Diversion Facilitator may invite community representatives or other parties to provide information that supports the resolution," and paragraph 7 also states that "If deemed necessary, the Diversion Facilitator may hold separate meetings (caucuses) with the parties." Paragraphs 8 and 9 emphasize the role of the Diversion Facilitator in the diversion agreement: "The Diversion Facilitator records the results of the discussion in the Diversion Agreement." And paragraph 9 states, "In drafting the Diversion Agreement, the Diversion Facilitator shall take into account and ensure that the agreement does not conflict with the law, religion, local community decisions, or contain matters that cannot be implemented by the child or contain malicious intent."<sup>39</sup>

This article is listed in paragraphs 6 to 9 of Supreme Court Regulation Number 4 of 2014 and emphasizes the strategic role of Diversion Facilitators (judges) in the process of resolving child cases through the principle of restorative justice. In paragraph 6, the Diversion Facilitator has the authority to summon other parties or community representatives, if necessary, to obtain information that supports the case resolution process. Paragraph 7 adds that the facilitator also has the authority to hold separate meetings or gatherings with each party to support a smooth deliberation process. In addition, paragraph 8 stipulates that the results of the deliberations shall be recorded by the facilitator in a Diversion Agreement document as the final form of the process. Paragraph 9 emphasizes that in drafting the agreement, the facilitator must ensure that the substance of the agreement does not conflict with legal, religious, or moral norms, or the morals of society, and does not contain elements that cannot be implemented by children or carried out with malicious intent. Thus, the role of the facilitator is not only administrative, but also includes protecting the diversion process so that it remains within the bounds of justice and humanity.<sup>40</sup>

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<sup>39</sup> Ketua Mahkamah Agung Republik Indonesia.

<sup>40</sup> D Rismana et al., "The Legal Effectiveness of Juvenile Diversion: A Study of the Indonesian Juvenile Justice System," *Khazanah Hukum* 7, no. 2 (2025): 190–205, <https://doi.org/10.15575/kh.v7i2.44162>.

#### 4. CONCLUSION

This article is listed in paragraphs 6 to 9 of Supreme Court Regulation Number 4 of 2014 and emphasizes the strategic role of Diversion Facilitators (judges) in the process of resolving child cases through the principle of restorative justice. In paragraph 6, the Diversion Facilitator has the authority to summon other parties or community representatives, if necessary, to obtain information that supports the case resolution process. Article 7 adds that the facilitator also has the authority to hold separate meetings or gatherings with each party to support a smooth deliberation process. In addition, Article 8 stipulates that the results of the deliberations must be recorded by the facilitator in a Diversion Agreement document as the final form of the process. Paragraph 9 emphasizes that in drafting the agreement, the facilitator must ensure that the substance of the agreement does not conflict with legal, religious, or moral norms, or the morality of the community, and does not contain elements that cannot be implemented by children or carried out with malicious intent. Thus, the role of the facilitator is not only administrative, but also includes protecting the diversion process so that it remains within the bounds of justice and humanity.

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