

ASSESSING JUDGE'S ROLE IN DIVERTING SERIOUS OFFENDERS: PROGRESSIVITY IN JUVENILE CASES WITH 7+ YEAR IMPRISONMENT POTENTIAL

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ABSTRACT

Purpose: The primary objective of this research is to investigate and analyze discrepancies in the application of diversion requirements, with a specific focus on juvenile offenders facing potential imprisonment sentences exceeding 7 years.

Theoretical Framework: The theoretical conception of this research centers on the idea of restorative justice and rehabilitation. It assumes that young offenders, due to their age and potential for change, should be diverted away from traditional punitive measures like imprisonment. Instead, diversion programs aim to address the root causes of delinquency, provide support and guidance, and involve the juvenile in repairing harm caused to victims and the community. This approach is grounded in the belief that intervention and redirection can prevent further criminal behavior, foster personal growth, and ultimately benefit both the young offender and society by promoting reintegration and minimizing recidivism.

Design/Methodology/Approach: This research adopts a dual-method approach, combining normative and empirical methodologies. The research employs descriptive research methods to examine how the judiciary handles cases involving minors eligible for diversion under the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 and Article 5 paragraph (1) of the Judicial Power Act.

Findings: The study's findings emphasize the need for the judiciary to embrace a broader concept of justice within the societal context. While legal certainty remains important, the research reveals the significance of societal fairness in the implementation of diversion programs. It highlights the gap between strict legal requirements and the principles of social justice, which should be addressed to facilitate more effective diversion processes.


Research, Practical & Social Implications: This research holds several implications. Firstly, it underscores the importance of aligning judicial practices with the evolving dynamics of society. Practical implications include the recommendation for legal reforms, particularly within the framework of the Juvenile Criminal Justice System, to adapt to changing community needs. This may involve revising the criteria for criminal acts eligible for diversion, allowing the justice system to better serve the interests of both minors and society at large.

Originality/Value: This study contributes original insights by shedding light on the divergence between legal norms and the concept of social justice, especially in the context of diversion for juvenile offenders. It emphasizes the necessity for legal reforms to ensure that the justice system remains responsive to the evolving needs and expectations of the community. Ultimately, the research highlights the importance of harmonizing legal requirements with broader societal values for the benefit of juvenile offenders and society as a whole.

Keywords: Diversion, juvenile crime, imprisonment, judicial progression, legal reform.

1 INTRODUCTION

Since the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in July 30, 2014, significant changes have been witnessed in the treatment of children entangled in legal conflicts. Among these changes, diversion regulations have been introduced to offer an alternative to resolving cases outside of the formal criminal justice system. The primary objective of diversion is to prevent children from being stigmatized as criminals or convicts (Goffman, 2009) by



keeping them out of the traditional justice process. Instead, the aim is to facilitate the reintegration of these children into a normal social environment in the future. The diversion approach follows the principles of restorative justice, involving not only the offender but also the victim, their families, and other relevant parties in collaboratively seeking a fair resolution. This approach prioritizes restoring the situation to its original state over seeking revenge (Supaat, 2022; Hossain, 2020). The method involves listening to the harmed party and working toward equitable solutions through dialogue, emphasizing expressions of remorse and forgiveness (Mulyadi, 2014). However, Article 7, paragraph (2), letter a of the Juvenile Criminal Justice System sets a condition for diversion, stating that it is applicable only when the individual faces a threat of imprisonment for less than seven years. These legal provisions are clear and comprehensive, and they should not be subject to different interpretations, in line with the legal maxim "*interpretatio cessat in claris, interpretatio est perversio*". Therefore, interpreting restrictive norms in a manner that expands their scope beyond what is explicitly stated is prohibited, as it may lead to unintended meanings that go against the legislator's intent.

In practice, it has been noted that the restrictions on the severity of criminal threats that permit diversion can be disregarded (Barua & Hossain, 2022). An illustrative instance of this departure occurred in the handling of a case involving a 16-year-old juvenile, denoted as AY, in 2015 in East Jakarta. AY was one of three members of the Gerbatus motorbike gang involved in a violent assault and theft against a victim identified as CP, alongside an adult named R and another individual named S (who was a fugitive). The victim sustained significant injuries and lost a Xiaomi cellphone, resulting in a total loss of IDR 7,000,000. The perpetrators faced charges, including violating Article 170, paragraph (2) 2 of the Criminal Code, carrying a maximum penalty of 9 years. Subsequently, the diversion process was employed, leading to a peace agreement detailed in Determination Number: 18/Pen.Pid.Sus.Anak/2015/PN JKT TIM on November 2, 2015, which resulted in the case's termination. Besides the deviations from Article 7, paragraph (2), letter a of the Juvenile Criminal Justice System, it's noteworthy that the diversion process was successfully initiated by the district court judge despite the initial lack of attempts at the investigation and prosecution levels, considering the potential sentence of over 7 years. Essentially, the court, through the judge, interpreted the law differently from investigators and prosecutors. According to Friedman (1994), there are three ideal objectives of law: justice (a fundamental value), legal certainty (an instrumental value), and benefits (a practical value).

In the everyday practice of law enforcement, striking a balance between legal certainty and justice can be a formidable task, as these principles often clash. Particularly in cases involving diversion for offenses with the potential for sentences exceeding seven years, judges frequently prioritize justice over strict adherence to legal certainty. This approach resonates with the concept of "*rapport du droit, inbreng van recht*" articulated by van Apeldorn, emphasizing that the essence of law lies in establishing equitable societal rules (Ali, 2006). Rahardjo (2010) echoes this perspective, asserting that the law should undergo continuous analysis and progressive efforts to unveil the truth and achieve justice. Hence, the progress made by judges in the diversion process for offenses carrying imprisonment terms beyond seven years holds considerable significance and warrants in-depth investigation. This research seeks to provide a logical and juridical foundation for legal reasoning (*ratio d'etre*). The ultimate goal is to promote greater consistency among law enforcers in the application of these regulations, ultimately fostering a sense of proportionality and equilibrium in the pursuit of overarching legal objectives.

2 THEORETICAL FRAMEWORKS

The theoretical conception of diversion in juvenile crime centers on the idea of restorative justice and rehabilitation. It assumes that young offenders, due to their age and potential for change, should be diverted away from traditional punitive measures like imprisonment. Instead, diversion programs aim to address the root causes of delinquency, provide support and guidance, and involve the juvenile in repairing harm caused to victims and the community (Supaat, 2022). This approach is grounded in the belief that intervention and redirection can prevent further criminal behavior, foster personal



growth, and ultimately benefit both the young offender and society by promoting reintegration and minimizing recidivism (Zulkarnain et al., 2023).

Moreover, theoretical conception used in this study is progressive law which is often perceived as a form of legal innovation, yet it remains grounded in caution, quantifiability, logic, and objectivity to ensure that it is not arbitrary but founded on valid principles. The application of progressiveness in implementing diversion for criminal offenses carrying potential imprisonment terms exceeding seven years is underpinned by several key factors, as articulated by the juvenile judge overseeing the case (Rahardjo, 2010). Firstly, Article 3 of Supreme Court Regulation Number 4 of 2014, which provides guidelines for implementing diversion in the Juvenile Criminal Justice System, forms the legal basis for considering diversion in cases involving children facing potential imprisonment terms of seven years or more. This includes subsidiary, alternative, cumulative, or combined (hybrid) charges. In the case involving children, the juvenile judge dealt with an alternative charge, specifically a violation of either Article 170, paragraph (2) of the Criminal Code or Article 362 of the Criminal Code. Consequently, in accordance with Supreme Court Regulation Number 4 of 2014, the juvenile judge pursued diversion as a means of resolving the case, despite the possibility of a sentence exceeding seven years. Secondly, the willingness of all involved parties to engage in the diversion process played a crucial role. This encompassed both the victims and the juveniles in conflict with the law, accompanied by their parents, the public prosecutor, community counselors, and other relevant stakeholders. Collectively, they consented to participate in diversion deliberations and reached a peace agreement between the victim and the juvenile offender, considering conditional factors such as recoverable losses and the absence of severe injuries to the victim (Wati et al., 2023).

From these foundational principles, critical questions emerge concerning the existence and status of Supreme Court Regulation (hereinafter referred to as "Supreme Court Regulation"), which does not fall within the established categories and hierarchy of statutory regulations outlined in Article 7, paragraph (1) of Law Number 12 of 2011 regarding the Formation of Statutory Regulations. Although Article 8, paragraph (1) of Law Number 12 of 2011 does permit certain types of statutory regulations to be promulgated by the Supreme Court, these regulations are deemed subordinate to laws, meaning they occupy a lower position within the legal hierarchy. In principle, judges are expected to adhere to the law and think systematically. However, judges must also possess the courage to render just decisions, even when such decisions may run counter to principles of legal certainty or established statutes (Syarifuddin, 2021). This aligns with the adage "*summum ius summa injuria*" (Sellner, 2007), which underscores that the more comprehensive, intricate, or rigid legal regulations are, the greater the risk of justice being suppressed or forsaken. Consequently, the pursuit of justice must take precedence over legal certainty, as affirmed in the opening statement of court decisions (as per Article 199, paragraph (1) of the Criminal Procedure Code), which commences with "For the sake of Justice based on Belief in One Almighty God." An ideal judicial decision ideally incorporates elements of "*Gerechtigkeit*" (justice), "*Zweckmassigkeit*" (benefit), and "*Rechtssicherheit*" (legal certainty) in a harmonious blend (Radbruch, 1947). Thus, a judge's decision should be equitable and advantageous for the parties involved in the legal dispute and society at large, while concurrently upholding legal certainty. In practice, reconciling all three facets of the "*Idee des Rechts*" (Idea of Law), as articulated by Gustav Radbruch (1947), within a single decision can be challenging. If legal certainty is prioritized, justice may be compromised, and conversely, if justice takes precedence, legal certainty may be sacrificed (Saptomo, 2019).

According to van Apeldoorn, legal practice involves the application of legal art or "*rechtskunst*," which constitutes a distinctive approach driven by choices between what is morally right and wrong in the interpretation, discovery, or application of the law. This approach leads to the creation of high-quality and authoritative legal works capable of resolving various legal issues in society, including judicial decisions aimed at upholding social order (Mertokusumo, 2019). In light of this perspective, the author concurs with the actions taken by the juvenile judge, who has employed legal art, taking into account the following considerations. Firstly, Article 24, paragraph (1) of the 1945 Constitution of the Republic of Indonesia asserts that Judicial Power is an independent authority responsible for dispensing justice to uphold the law and ensure fairness. Furthermore, Article 5, paragraph (1) of



Law Number 48 of 2009 regarding Judicial Power stipulates that judges are duty-bound to explore, follow, and understand the legal values and prevailing sense of justice in society. This implies that the pursuit of justice in society is not merely about prioritizing legal certainty but also involves the willingness of disputing parties to amicably and peacefully resolve their cases. Secondly, the judge's actions align with the principles upheld in the Juvenile Criminal Justice System, including the best interests of the child, the child's well-being, growth, guidance, counseling, and the avoidance of punitive measures. This perspective recognizes that children in conflict with the law are still in their formative years with promising futures ahead of them.

Therefore, when faced with a dilemma between justice and legal certainty, particularly in the context of the Juvenile Criminal Justice System, which sets limits on diversion for criminal acts carrying the threat of a prison sentence of less than seven years, the judge, based on their freedom of action (Marbun, 2011), has the latitude to prioritize justice over legal certainty as long as it does not contravene the interests of the disputing parties, the public, or the state. This approach is grounded in problem-oriented thinking, where the judge's focus is primarily on the parties' interests and the root of the problem rather than just rigid adherence to the law (Mertokusumo, 2019).

3 RESEARCH METHODS

This research adopts a dual approach, combining empirical and normative legal research methods. Initially, the study gathered secondary data through library research, focusing on primary legal materials of paramount significance. These materials encompass all relevant Indonesian laws and regulations concerning diversion for criminal offenses carrying sentences exceeding seven years, as well as those governing judicial authority. This collection of legal resources includes, among others, the 1945 Constitution of the Republic of Indonesia, Law Number 11 of 2012 on the Juvenile Criminal Justice System, Law Number 48 of 2009 on Judicial Authority, and Republic of Indonesia Supreme Court Regulation Number 4 of 2004 outlining the Guidelines for the Implementation of Diversion in the Child Criminal Justice System.

In tandem with the examination of secondary data, empirical research was conducted to acquire primary data from respondents who acted as research subjects. The study was conducted within the legal jurisdiction of East Jakarta, specifically at the East Jakarta District Court. The research employed purposive sampling, a non-probability sampling method, where the selection of the sample is based on the researcher's knowledge and understanding of the target population (Asikin, 2004). This approach is also known as judgmental sampling. Primary data collection involved conducting interviews with respondents, specifically the juvenile judges presiding at the East Jakarta District Court. Simultaneously, secondary data was gathered through document analysis, particularly focusing on records related to the implementation of diversion and the determination of diversion for criminal acts carrying prison sentences exceeding seven years.

4 RESULTS AND DISCUSSION

4.1. Challenges in Implementing Diversion Beyond Judges

In addition to judges, the implementation of diversion involves the participation of other law enforcement officers, namely Investigators from the National Police of the Republic of Indonesia and Public Prosecutors from the Prosecutor's Office of the Republic of Indonesia. This participation is mandated by Article 6, paragraph (1) of the Juvenile Criminal Justice System, which stipulates that diversion must be pursued at every stage of the process, spanning from investigators to public prosecutors and even during the examination of children in district courts. When dealing with cases involving children facing potential prison sentences exceeding seven years, both investigators and public prosecutors often find themselves with limited options, as pursuing diversion normatively contradicts the provisions of Article 7, paragraph (2), letter a of the Juvenile Criminal Justice System. Furthermore, it is not uncommon to encounter cases involving children that do not fall within the category of serious criminal acts such as murder, rape, drug trafficking, or terrorism, as originally intended by the Juvenile Criminal Justice System Law.



In addition to the more serious criminal offenses, there are several instances involving juvenile cases carrying the potential for prison sentences exceeding seven years that could be suitable for diversion. These cases encompass victimless crimes, such as participation in small-scale gambling activities, regulated under Article 303, paragraph (1), 3rd in conjunction with Article 303 bis, paragraph (1), 2, which carries a maximum penalty of ten years' imprisonment. Furthermore, there are situations where the victim and their parents have forgiven the perpetrator, or the perpetrator and their parents have undertaken compensation and restitution efforts to restore the original conditions. An illustrative example of such a case is the frequently encountered AY case, which investigators and public prosecutors often encounter.


Despite the stringent provisions of Article 7, paragraph (2), letter a of the Juvenile Criminal Justice System, which obligates diversion for criminal acts carrying a potential prison term of less than seven years, investigators and public prosecutors face two significant obstacles when seeking diversion for offenses with sentences exceeding seven years. Firstly, there is a lack of internal regulations within the National Police of the Republic of Indonesia and the Prosecutor's Office of the Republic of Indonesia that specifically address whether diversion can be applied to criminal acts punishable by imprisonment for more than seven years. In contrast, the Supreme Court has issued Supreme Court Regulation Number 4 of 2014, providing clear guidelines for the implementation of diversion in the Juvenile Criminal Justice System. This disparity means that the Police and Prosecutor's Office have the potential to create internal provisions akin to those of the Supreme Court, which would have binding legal force. Secondly, investigators and public prosecutors are fundamentally tasked with implementing the law. Their roles are characterized by the enforcement of legal norms and the establishment of legal certainty, as stated in relevant organic laws. However, these laws do not explicitly emphasize the pursuit of justice. Even in the general explanation of the Attorney General's Law, the term "justice" is placed after "legal certainty."

The positivistic approach adopted by investigators and public prosecutors aligns with the legal positivist perspective, where law is primarily concerned with legal certainty, often at the expense of justice considerations. Legal positivists tend to adopt a rational and formalistic stance, prioritizing efficient law implementation over justice pursuit. In legal positivism, the concept of justice should be integrated into legal science, as the belief that justice inherently exists may lead to ambiguity and contradictions (Nurdin & Turdiev, 2021). Legal dogmatics assert that law exists independently, with a self-sustaining nature irrespective of societal dynamics. Their approach emphasizes systematization based on logical rules. In practice, investigators and public prosecutors utilize positivistic optics to achieve legal certainty, aligning with pure legal theory rooted in legal positivism. This approach can pose challenges in applying diversion to criminal acts carrying potential prison sentences exceeding seven years, as it prioritizes legal certainty over justice considerations.

4.2. Enhancing Legal Frameworks for Diversion in Juvenile Criminal Justice

Mahfud (2012) emphasizes the importance of ongoing legal development to ensure that the legal system consistently serves as a guide for behavior and delivers justice to society. This process is essential because laws are not static; they need to evolve in response to societal changes. Furthermore, there are instances where legal functions may not work effectively and can be manipulated for power accumulation. To establish a stable and harmonious legal and social environment, particularly concerning cases involving children in conflict with the law, there is a need to continually refine the existing legal framework. This refinement aims to enhance legal certainty, justice, and societal benefits. One approach to achieving this is through revising the Juvenile Criminal Justice System, with the expectation that such revisions will lead to more consistent and equitable law enforcement in the future.

Given that the Juvenile Criminal Justice System has been in operation for more than five years, this is an opportune time to conduct a comprehensive evaluation and review of its provisions. These revisions should address the scope of criminal acts for diversion. The system should consider modifying the types of criminal acts eligible for diversion. It may still be possible to consider diversion for crimes with potential imprisonment terms exceeding seven years, provided that stringent, quantifiable, and objective conditions are met. Severe offenses such as homicide, rape, drug



trafficking, and terrorism should remain ineligible for diversion. Diversion should primarily apply to crimes without victims or cases where the victim or their parents have forgiven the young offender, or when compensation and restitution to the original state have been made.

Moreover, the age limits for children eligible for diversion should be redefined. Currently, the age range is set at 12 to 18 years, even for married children. Harmonizing this age limit with internal law enforcement provisions, especially for public prosecutors and judges, is essential to ensure consistency and fairness in law enforcement. The Juvenile Criminal Justice System in Indonesia currently defines children in conflict with the law as those aged 12 to 18 who are suspected of committing criminal acts. However, there is a discrepancy between this definition and the internal regulations of law enforcers, such as public prosecutors and judges. The Attorney General's Regulation No. PER-006/A/J.A/04/2015, which provides guidelines for implementing diversion at the prosecution level, allows children who are 12 years old but not yet 18 years old, even if they are married, to seek diversion. Similarly, Supreme Court Regulation No. 4 of 2014 permits diversion for children who are 12 years old but not yet 18 years old, even if they are married and suspected of committing criminal acts.

This incongruity arises from different interpretations of what constitutes adulthood and maturity in the legal context. The Juvenile Criminal Justice System refers to positive legal provisions in the Civil Code, Human Rights Law, Child Welfare Law, and customary law to determine whether someone is a child or an adult. This determination often hinges on marital status as one criterion. In contrast, the internal provisions of law enforcers are based on the belief that marital status alone does not necessarily equate to adulthood (Soepomo, 1983). Despite the lack of problems in implementing diversion for children aged 12 to 18 who are suspected of committing criminal acts, including those who are married, it is crucial to ensure uniform and fair law enforcement. The author argues that there is a need to adjust the age criteria for diversion within the Juvenile Criminal Justice System to maintain consistency. This adjustment should stipulate that children aged 12 to 18, regardless of marital status, can be considered for diversion in cases where they are suspected of committing a crime. Furthermore, there is a need for synchronization between the Diversion Guidelines and the Civil Code regarding the reasons for issuing a Decree on Termination of Prosecution by the Public Prosecutor when a diversion agreement is reached. The Diversion Guidelines specify reasons for discontinuing prosecution, such as implementing a diversion agreement for peace without compensation or returning the child to their parent/guardian, as well as fully implementing a diversion agreement involving compensation, restoration to the original condition, or community service. Clarifying and aligning these reasons with existing legal provisions will contribute to more consistent and transparent law enforcement practices (Yanto, 2020).

Article 140, paragraph (2), letter a of the Criminal Procedure Code outlines conditions under which the public prosecutor can terminate a prosecution. These conditions include insufficient evidence, the incident not constituting a criminal act, or the case being closed by law. This termination decision must be documented in writing. However, the author highlights a crucial issue regarding the Diversion Guidelines. According to the author, these guidelines lack legally binding force because they solely rely on Article 12, paragraph (5) of the Juvenile Criminal Justice System. This article stipulates that the public prosecutor can issue a decision to terminate prosecution after receiving a diversion agreement determination from the court. Additionally, Article 42, paragraph (1) of the Diversion Guidelines specifies a technical period for issuing Decrees on Termination of Prosecution, but it does not provide clear legal reasons for stopping prosecution.

Despite the Juvenile Criminal Justice System being a *lex specialis derogat legi generali* (a special law that overrides general law), it still refers to the Criminal Procedure Code and the Criminal Code as general provisions when specific conditions are not stipulated. Before the public prosecutor engages in diversion at the prosecution level, the case involving a child in conflict with the law must be declared complete and prepared for transfer to court if the diversion process fails to achieve a peace agreement. Termination of prosecution in such cases is justified by the lack of evidence or the non-criminal nature of the incident. Due to the absence of detailed explanations in the Criminal Procedure Code regarding the legal reasons for terminating prosecution, the author suggests a systematic



interpretation method. This approach aims to connect legal regulations across the entire legal system, including the Criminal Code and legal expert opinions (doctrine). The termination of prosecution by law, as described by Harahap (2012), occurs when a defendant has been legally acquitted of charges, and the case must be closed at all examination levels. This includes scenarios where the suspect or defendant has passed away, the principle of *nebis in idem* applies (preventing double prosecution for the same criminal act), or the case has expired. In conclusion, the author underscores the need for clear and consistent legal reasons for terminating prosecution, especially in the context of diversion for children in conflict with the law. These reasons should align with legal objectives, ensuring that justice and the rule of law are upheld in such cases (Ferdiles, 2019). According to Hiariej (2014), criminal prosecution can be avoided through out-of-court settlements. In the Netherlands, these settlements, known as "*afdoening buiten proces*," typically involve the payment of a specified amount of money, with penalties not exceeding 6 years of imprisonment. In Indonesia, Article 82 of the Criminal Code explicitly addresses settlements outside the court process. It states that in cases involving violations punishable by criminal penalties, the fine will be forfeited if the fine and incurred costs are voluntarily paid. These provisions also apply to minors or individuals under 16 years old at the time of the offense, excluding cases of minor criminal traffic violations. Manan (2006) emphasizes that the pursuit of law aligns with legal objectives, such as ensuring legal certainty, justice, and public order (*expediency*). When cases proceed through the trial process, there is a risk that these legal objectives may not be adequately met. Given these considerations, it is suggested an extensive interpretation approach. This approach involves looking beyond grammatical interpretations and relies on legal doctrine or expert opinion. According to the author, the implementation of diversion in handling cases of children in conflict with the law can be equated with the legal reasons for stopping prosecution. This equivalence is based on specific conditions, including compliance with the provisions of the Juvenile Criminal Justice System, the existence of peace between the parties involved, and the payment of compensation, restoration to the original state, or other lawful actions. Furthermore, the author argues that stopping prosecution in this manner aligns with the 2010 Draft Criminal Procedure Code as a future legal concept (*ius constituedum*). According to this draft, the public prosecutor has the authority to halt prosecution for general interests or specific reasons. These reasons may include criminal acts with a maximum potential penalty of 4 to 5 years of imprisonment and cases where losses have been compensated. Thus, it is advisable the synchronization of reasons for terminating prosecution as outlined in the Diversion Guidelines with the provisions in the Criminal Procedure Code and Criminal Code. This alignment would establish that prosecution termination is based on legal considerations, including the existence of peace between the perpetrator and victim, with or without compensation, restoration to the original state, or other lawful actions.

5 CONCLUSIONS

In conclusion, there is a need to develop a concept for regulating diversion to ensure uniform, certain, and fair law enforcement across all levels, from investigators to judges. These adjustments and synchronizations are essential to meet the evolving demands of society and law enforcement practices while upholding justice and the best interests of children involved in the justice system. In the Juvenile Criminal Justice System, diversion is a crucial process that must be implemented at every level of examination, including by investigators, public prosecutors, and district court judges. However, an interesting condition has arisen, notably the provision in Article 7 paragraph (2) letter a of the Juvenile Criminal Justice System, which stipulates that diversion can only be applied to criminal acts punishable by imprisonment for less than 7 years. Judges have taken steps to break this norm by applying diversion to criminal acts carrying potential prison terms exceeding 7 years, as demonstrated in the East Jakarta District Court in 2015.

In contrast, investigators and public prosecutors face different constraints, as they are bound by the normative limits set by the Juvenile Criminal Justice System. They are unable to seek diversion for criminal acts with potential imprisonment exceeding 7 years. This discrepancy is grounded in Supreme Court Regulation Number 4 of 2014, which authorizes diversion for children facing charges with

potential imprisonment terms of 7 years or more, regardless of the form of charges. Nevertheless, it's important to note that Supreme Court Regulations are considered secondary to legal norms and may conflict with higher legal principles. However, the Constitution of the Republic of Indonesia and Law Number 48 of 2009 regarding Judicial Power emphasize the independence of the judiciary in administering justice to uphold the law and ensure justice. Judges are duty-bound to understand the legal values and the sense of justice in society. This reflects a commitment to not only legal certainty but also the pursuit of justice, aligning with the principles of the Juvenile Criminal Justice System, such as prioritizing the best interests of the child and avoiding retribution.

As the Juvenile Criminal Justice System has been in place for more than 5 years, there is a need to evaluate, revise, and thoroughly review its provisions to align them with societal dynamics and law enforcement practices. One proposed development is the adjustment of diversion criteria to include criminal acts punishable by imprisonment for more than 7 years, subject to strict and objective conditions, excluding severe crimes like murder, rape, drug dealing, and terrorism. Conditional diversion would only apply to crimes without victims or those where victims and parents have forgiven the offender, or when compensation and restitution to the victim and/or the community have been made. Furthermore, harmonization between the Juvenile Criminal Justice System, the Civil Code, the Criminal Code, internal law enforcement regulations, and the Civil Code Bill is necessary. This includes resetting the categories of criminal offenses and the ages of children eligible for diversion, as well as synchronizing the Juvenile Criminal Justice System with internal law enforcement regulations regarding the reasons for the public prosecutor to terminate prosecution.

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