




# The Success of Diversion For Children Who In Conflict With The Law On Investigation Level

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## Abstract

**Introduction:** The SPPA Law is a regulation that applies restorative justice and diversion as an effort to divert cases from litigation to non-litigation. Children as perpetrators of criminal acts in the process of resolving criminal cases must be diversified at the police (investigation), prosecutor's office, and court levels.

**Purposes of the Research:** The purpose of this research is to find new ideas and discuss the success of diversion at the investigation stage for juvenile offenders.

**Methods of the Research:** This research is normative research, the type of research is descriptive analytical. The sources of legal materials used in this study are primary legal materials and secondary legal materials. The technique of collecting legal materials used in this writing was carried out by means of library research on legal materials, both primary legal materials, secondary legal materials, and analysis of legal materials used by the author is descriptive qualitative which identifies the primary and secondary legal materials used. will be carried out in analyzing problems in a series of processing stages by carrying out an inventory, systematization, to make it easier to analyze these problems.

**Results of the Research:** Based on the problems studied, the authors found several new ideas about the success of diversion at the level of investigation which were influenced by several factors including 1) the victim factor where the victim was willing to forgive the perpetrator's actions; 2) the actor's factor where the perpetrator is willing to agree to compensation that has been agreed upon with the victim; 3) the Investigative factor, namely the role of the pro-active investigator as a facilitator in seeking maximum diversion and opening a space for peace between the perpetrator and the victim; 4) the factor of freedom in which the Children's Community Guidance Resources who understand their role as diversion facilitators maximally want to provide assistance to children in an effort to make peace between perpetrators and victims; 5) the family factor, namely the victim's family who wants peace and influences the victim to make peace with the perpetrator and 6) the community factor where the role of the community in this case is represented by community leaders, traditional leaders, or religious leaders as facilitators in efforts to settle peace between the perpetrators and victims of crime

## 1. INTRODUCTION

Every child who has not reached maturity needs protection and care from the family. "The family is the initial environment in the growth and welfare of all its members and especially children, therefore for the development of a good personality, children must grow and develop in a family environment in a happy, loving and understanding

atmosphere". "Family teaches children about religious values, love and mutual respect. Families must also prepare children to be able to live in society. Then the second environment in the growth and development of children after the family is the school environment. If in a family environment the growth and development of children begins with a happy atmosphere, full of love and understanding. In the school environment, children are taught about assertiveness, leadership, tolerance, character, tolerance and respect for differences, responsibility, cooperation, and knowledge. Apart from families and schools, the government is also responsible for protecting the growth and development of children. Therefore the government has an obligation to provide protection for the growth and development of children. "Child protection is also interpreted as all activities that guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and dignity and receive protection from violence and discrimination" <sup>1</sup>.

Child protection is "all efforts made to create conditions so that every child can exercise his rights and obligations for the proper development and growth of children both physically, mentally and socially. What is very important in maintaining and providing protection to children are parents, family and the environment in which the child lives. "Children who are victims of violence suffer losses, not only material in nature, but also immaterial in nature such as emotional and psychological shocks that can affect the child's future life. violence is often experienced by vulnerable children. Called vulnerable is "because the child's position is less profitable. Vulnerable children are children who have a great risk of experiencing disorders or problems in their development both psychologically (mentally), socially and physically." Vulnerable children are influenced by internal conditions and external conditions, including children from home. Acts of violence can occur as part of human actions to vent anger that is unbearable. Sometimes violence is considered as a normal action to be carried out, but the same action in different situations cannot be said to be normal, but is referred to as deviation.<sup>2</sup>

Violence against children is not a new thing that has happened, in fact if we look deeper there are still many cases that have not been reported so that crimes against children in this household can also be said to be hidden crimes. According to Arif Gosita quoted by Bambang Waluyo in the book *Victimology "Protection of Victims and Witnesses*, victims are those who suffer physically and spiritually as a result of other people's actions that conflict with interests and human rights<sup>3</sup> Regarding the rights obtained by children, the duties and obligations of parents or guardians, family and the State have been poured into existing laws and regulations <sup>4</sup>

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) explains in general that an effort to protect children needs to be carried out as early as possible, namely from the fetus in the womb until the child is 18 (eighteen) years old.

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<sup>1</sup> Muhammad Ansori Lubis, "Perlindungan Hak Dasar Anak Pada Masa Pandemi Covid-19 Di Kota Medan," *Jurnal Mercatoria* 13, no. 2 (2020): 188–203, <https://doi.org/http://doi.org/10.31289/mercatoria.v13i2.4201>.

<sup>2</sup> Irma Cesilia Syarifah Sihombing Gomgom TP Siregar, "Tinjauan Yuridis Tindak Kekerasan Orang Tua Terhadap Anak," *Jurnal Rectum* 2, no. 1–14 (2020), <https://doi.org/http://dx.doi.org/10.46930/jurnalrectum.v2i1.758>.

<sup>3</sup> Bambang Waluyo, *Victimologi Perlindungan Korban Dan Seks*, Cetakan 6 (Jakarta: Sinar Grafika, 2018).

<sup>4</sup> Mahmud Kobandah, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Dalam Rumah Tangga Dalam Sistem Hukum Di Indonesia," *Jurnal Hukum Unsrat* 23, no. 84 (2017): 56–67.

Article 27 paragraph (1) of the SPPA Law stipulates that "in conducting investigations into child cases, investigators are required to ask for considerations or suggestions from social counselors after a crime has been reported or complained about. In addressing this matter, if it is possible to hold a diversion process, the provisions in "Article 10 paragraph (2) state that the diversion agreement is carried out by the investigator on the recommendation of a social advisor". In addition, "Article 27 paragraph (1) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which states that in conducting investigations into child cases, investigators are required to ask for consideration or advice from community counselors after a crime has been reported or complained about. In addressing this matter, if it is possible to hold a diversion process, the provisions in "Article 10 paragraph (2) state that the diversion agreement is carried out by the investigator on the recommendation of a social advisor". Then "Article 28 also states that the results of community research must be submitted by the Bapas to investigators within a maximum period of 3 x 24 (three times twenty four) hours after the investigator's request is received."

Based on what has been stated, the problem that is studied in this writing is what factors influence the success of diversion at the stage of investigation of children as perpetrators of crimes. The purpose of this writing is to find and discuss what factors influence the success of diversion at the stage of investigation of children as perpetrators of crimes. This writing is different from previous studies including the first implementation of diversion efforts in solving theft crimes committed by children in Buleleng district<sup>5</sup> which discusses the implementation of diversion efforts in solving theft crimes carried out by children in Buleleng district and the inhibiting and supporting factors for implementing diversion efforts in solving criminal acts of theft committed by children in Buleleng district, then secondly the Application of Diversion by Investigators in Child Crime at the South Jakarta Metro Police<sup>6</sup> where what is discussed is the laws and regulations governing Diversion in investigations by the Indonesian National Police against criminal acts of children, and the third is Legal Protection for Children (A Normative Juridical Study) Against the Implementation of Law No. 11 of 2012 Concerning the Juvenile Criminal Justice System in West Sumatra<sup>7</sup> where this research discusses the implementation of the Child Criminal Justice System Act in West Sumatra and the second discusses the extent to which the government's role is in providing protection for children who are in conflict with the law (ABH) according to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System in West Sumatra?

UU SPPA is a regulation that implements restorative justice *and* diversion as an effort to transfer cases from litigation to non-litigation. Children as perpetrators of criminal acts in the process of resolving criminal cases must carry out diversion efforts at the level of the police (investigation), the prosecutor's office, and the courts. "Diversion can be successful if

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<sup>5</sup> Kadek Devi Selvian, Ni Putu Rai Yuliantini, and Ketut Sudiarmaka, "Implementasi Upaya Diversi Dalam Penyelesaian Tindak Pidana Pencurian Oleh Anak Di Kabupaten Buleleng," *E-Journal Komunitas Yustitia Universitas Pendidikan Ganesha* 1, no. 1 (2018): 11–20.

<sup>6</sup> Mara Sutan Rambe Siti Aniza Rahmah, Kamarusdiana, "Penerapan Diversi Oleh Penyidik Dalam Tindak Pidana Anak Di Polres Metro Jakarta Selatan," *Journal of Legal Research* 3, no. 1 (2021): 1–26, <https://doi.org/10.15408/jlr.v3i1.19705>.

<sup>7</sup> Efren Nova and Riki Afrizal, "Perlindungan Hukum Terhadap Anak (Suatu Kajian Yuridis Normatif) Terhadap Implementasi Undang-Undang No 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Di Sumatera Barat," *UNES Journal of Swara Justisia* 6, no. 4 (2023): 480–93, <https://doi.org/https://doi.org/10.31933/ujsj.v6i4>.

the victim agrees to make peace with the perpetrator. The diversion process is set forth in the minutes of diversion, which then determines the success of the diversion in the form of a diversion determination by the court. Philosophically, the articles contained in UU SPPA. This principle expects to be able to optimally improve children's welfare by always being oriented towards the best interests of the child where the parties involved must carry out their duties and functions in a proportional and professional manner through coordinations aimed at complementing each other so as to create a partnership that is mutually beneficial. harmony between the sub-criminal justice system in order to achieve a useful and effective legal system.

## 2. METHOD

Research according to Peter Mahmud Marzuki is a process to find legal rules, legal principles, and legal doctrines to answer legal issues at hand<sup>8</sup> This type of research is normative research, which is legal research conducted by examining library materials or mere secondary legal materials<sup>9</sup> The approach method in this research is<sup>10</sup> 1. Statue approach to analyze existing problems so that they can answer problems comprehensively, and 2. Conceptual Approach, namely research that moves from the views and doctrines in the science of law, researchers will find ideas that give rise to legal notions, legal concepts and legal principles that are relevant to the issue at hand, the sources of legal materials used in this study are: a. Primary Legal Materials consisting of legislation; and b. Secondary Legal Materials is providing an explanation of primary legal materials consisting of scientific opinions of scholars and literature books, legal dictionaries, encyclopedias and so on. legal materials both primary legal materials, secondary legal materials, and the analysis of legal materials used by the author is descriptive qualitative.

## 3. RESULTS AND DISCUSSION

### 3.1. Case Handling Of Children In Conflict With The Law Through Diversion At The Investigation Stage

Children are a mandate and gift from God Almighty who has dignity and worth as a whole human being, to maintain their dignity and worth, children are entitled to special protection, especially legal protection in the justice system. In the Indonesian constitution, children have a strategic role, which is expressly stated that the state guarantees their rights every child for survival, growth and development as well as for protection from violence and discrimination. Looking at developments in society, the development of ideas and the maintenance of the intensity of advocacy movements for children shows that fulfilling children's basic rights is a serious problem that is not monopolized by certain countries. Countries in the world have the same problems related to the above, so there are various international instruments that provide protection for children in general. One of the protections that is currently the focus of the international community is the protection of children when they are related to a crime in the position of a suspect or defendant.<sup>11</sup>

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<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2006).

<sup>9</sup> Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif Suatu Tinjauan Ringkas* (Jakarta: Raja Grafindo Persada, 2001).

<sup>10</sup> (PM (2017) Marzuki, 2008)

<sup>11</sup> Nova and Afrizal, "Perlindungan Hukum Terhadap Anak (Suatu Kajian Yuridis Normatif) Terhadap Implementasi Undang-Undang No 11 Tahun 2012 Tentang Sistim Peradilan Pidana Anak Di Sumatera Barat."

One form of protection for children in conflict with the law is through diversion. "The diversion model is intended to avoid and distance children from the formal justice process so as to avoid stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment fairly." Therefore, the participation of all parties is needed in order to make this happen. The process must aim at creating restorative justice, both for the child and for the victim. Diversion in restorative justice is a process in which all parties involved in a particular crime jointly overcome problems and create an obligation to make things better by involving victims, children and society in finding solutions to repair, reconciliation and reassuring that is not based on revenge.<sup>12</sup>

The phenomenon of children in conflict with the law in research at the Women and Children Protection Unit (PPA) at the Ambon Island Police and Lease Islands since the implementation of " UU SPPA" there have been a number of police reports coming in in 2021 with criminal acts of physical violence involving children totaling 6 (six) cases and decreasing in 2022 to 5 (five) cases of criminal acts of physical violence involving children.

The handling of cases of children in conflict with the law that prioritizes the best interests of children is still far from what was expected. The government has issued special regulations governing the protection of children's rights in conflict with the law, such as "Law No. 3 of 1997 concerning Juvenile Justice which was later amended to become U U SPPA Children or Law Number 23 of 2002 concerning Child Protection and even the government has ratified the Convention on the Rights of the Child (KHA) by issuing Presidential Decree (Kepres) Number 36 of August 25, 1990, and signed the Beijing Rules agreement," but it turns out that the provisions in the regulation are not be the best solution for resolving cases of children in conflict with the law. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which became effective on July 31 2014 aims to maintain the dignity of children with a *restorative justice approach*, " a child has the right to special protection, especially legal protection in the criminal justice system. Therefore, the Juvenile Criminal Justice System is not only emphasized on imposing criminal sanctions on children who commit crimes, but also focuses on the idea that imposing sanctions is intended as a means of realizing the welfare of children who commit crimes. This is in line with the objectives of implementing the Juvenile Criminal Justice System desired by the international community<sup>13</sup>.

Treatment of child offenders who are not yet 12 years old requires an appropriate form of treatment and is able to provide justice for victims and perpetrators as well as society as a whole. In order for justice to be achieved, APH (Law Enforcement Officials) are related to work in accordance with applicable laws and regulations. "For child perpetrators who are under 12 years old, it is mandatory to carry out diversion and not involve children in the mediation process. Children are only questioned by PPA investigators accompanied by their parents and also Community Advisors from Bapas". This information is set forth in the form of a Criminal Procedure Report (BAP) which will be used as the basis for APHs in their work, including as a basis for making Litmas by community counselors<sup>14</sup>.

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<sup>12</sup> Azwad Rachmat Hambali, "Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana (Diversion For Children In Conflict With The Laws In The Criminal Justice System)," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 1 (2019): 15-30, <https://doi.org/http://dx.doi.org/10.30641/kebijakan.2019.V13.15-30>.

<sup>13</sup> Hambali.

<sup>14</sup> (Makarti, 2022)

The implementation of case settlement is obliged to seek diversion at the level of investigation, prosecution and examination of child cases at the District Court (Article 7 paragraph 1). Based on "Article 5 paragraph (2) and (3) in conjunction with Article 7 of the Juvenile Criminal Justice System Law, it is stated that the investigation and prosecution of juvenile crimes carried out in accordance with statutory provisions must be pursued by diversion". At the investigative level, "investigators are obliged to seek diversion within a maximum period of 7 (seven) days after the investigation begins, if the diversion fails, it is obligatory to continue the investigation and transfer the case to the public prosecutor by attaching the minutes of the diversion and social research reports (Article 29)". At the prosecution level, "the public prosecutor must seek diversion no later than 7 (seven) days after receiving the case file from the investigator (Article 42)" <sup>15</sup>. "The implementation of diversion is motivated by the desire to avoid negative effects, especially on the soul and development of children which have the potential to occur if the completion of the criminal process is carried out through the criminal justice system" <sup>16</sup>. "Implementation of the provisions on diversion is important, because with diversion, children's human rights can be more secure, and prevent children in conflict with the law from being stigmatized as naughty children, because crimes that are suspected of involving a child as an offender can be handled without the need to go through the process of law" <sup>17</sup>. The diversion program can be a form of *restorative justice* <sup>18</sup>;

- 1) Encouraging children to be responsible for their actions;
- 2) Provide opportunities for children to compensate for mistakes made by doing good for the victim;
- 3) Provide an opportunity for the victim to participate in the process;
- 4) Provide opportunities for children to be able to maintain relationships with families;
- And
- 5) Providing opportunities for reconciliation and healing in communities that have been harmed by criminal acts.

The advantages of implementing diversion for children <sup>19</sup>namely:

- 1) The child does not need to be detained (avoiding detention);
- 2) Avoiding the stigma/stamp as a criminal;
- 3) Opportunities for children to improve life skills;
- 4) Opportunities for children to be responsible for their actions;
- 5) Do not repeat criminal acts;
- 6) Promote necessary interventions for victims and perpetrators without having to go through a formal process; And
- 7) Preventing children from participating in the justice system process by keeping children away from the negative influences and implications of the judicial process.

Diversion is an attempt made to divert children in conflict with the law from being processed in a formal criminal justice process. The success of the diversion process itself depends on the elements involved in it, both between the victim and the child, as well as how the apparatus is involved as a neutral component in the settlement, where the key lies

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<sup>15</sup> (Zumrotul Mukaaffah, Joni Alizon, 2022)

<sup>16</sup> (Priamsari, 2018)

<sup>17</sup> (Hambali, 2019)

<sup>18</sup> (Tarigan, 2015)

<sup>19</sup> (Hambali, 2019)

in how to communicate so that an agreement as a settlement can be reached. "Efforts to resolve cases of children with diversion are carried out by way of deliberation, involving children of criminal acts and their parents, victims and in the case of victims who are still in the category of children, the parents of the victim's child are also involved, community counselors (PK), social workers, and if necessary, religious leaders and/or community leaders are involved in settling cases with this diversion." "The purpose of holding this deliberation is so that the relationship and situation between victims, children and society can be harmonious again."<sup>20</sup>

### 3.2 Factors Affecting The Success Of Diversion At The Investigation Level

Criminal law has several sets of provisions on how to investigate, investigate, prosecute and try someone who is deemed guilty and has committed a violation of criminal law. "Criminal law has a perspective in the authority of criminal law enforcement carried out by the Police which is one of the law enforcement agencies in Indonesia", as stipulated in "Article 1 number 1 of Law Number 2 of 2002" concerning the Indonesian National Police stipulates that "The police are all matters relating to the functions and institutions of the police in accordance with statutory regulations which have the task of maintaining public order and security, enforcing the law, and providing protection, protection and service to the community. One of the duties of the Police is "to investigate criminal acts committed by the community, including a child who is in conflict with the law and is protected by his family".<sup>21</sup>

Children are a mandate from God Almighty that has inherent dignity as a whole human being. "The rights of every child must be upheld without the child asking." Philosophically, children are part of the younger generation, as one of the human resources which is the nation's potential. One of the advantages of "Law Number 11 of 2012 concerning the Criminal Justice System is the introduction of the concept of restorative justice through diversion. For this matter, it is necessary to implement *an Integrated Criminal System* for all parties involved in law enforcement against children in fulfilling legal guarantees for children, namely: Investigators (Police), Public Prosecutors (Attorney), Judges (Judgment), and executors of judge's decisions must unite in upholding law and justice for the interests and protection of children in conflict with the law"<sup>22</sup>. "Children are a vulnerable group who need to get protection from all acts of crime and violence in accordance with statutory provisions so that their rights are fulfilled, especially during a pandemic." The high cases of violence against children in the form of sexual violence can be caused by many things including the lack of parental supervision of children, sexual disorientation in adults, uncontrolled sources of information and socio-cultural factors that are still taboo with early sex education.<sup>23</sup>

Children are also victims of a bad environment so they can be influenced by adult perpetrators to commit crimes, which they should not know that committing crimes can

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<sup>20</sup> Dianing Pakarti and Umar Anwar, "Peran Komunikasi Dalam Penyelesaian Perkara Diversi Pada Anak Yang Berhadapan Dengan Hukum (ABH)," *Jurnal Pendidikan Dan Konseling* 4, no. 3 (2022): 56-61.

<sup>21</sup> Siti Aniza Rahmah, Kamarusdiana, "Penerapan Diversi Oleh Penyidik Dalam Tindak Pidana Anak Di Polres Metro Jakarta Selatan."

<sup>22</sup> (Nova & Afrizal, 2023)

<sup>23</sup> Ipah Saripah Asep Deni Gustiana Agustina Mubiar, "Analisis Tipikal Kekerasan Pada Anak Dan Faktor Yang Melatarbelakanginya," *Jurnal Imial Pendidikan Dan Tenaga Kependidikan Non Formal* 13, no. 1 (2018): 1-10, <https://doi.org/https://doi.org/10.21009/JIV.1301.1>.

influence children to commit crimes.<sup>24</sup> A negative environment encourages children to participate in negative actions, so they often find children involved in legal problems, whether the child is a victim of a crime or a perpetrator of a crime. "Children who are in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts." Children in conflict with the law, hereinafter referred to as children, are "children who are 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a crime, this is stated in Article 1 Paragraph (2) and 3 of the Law -Law Number 11 of 2012." "Children as perpetrators of criminal acts must still be protected and their rights paid attention to so as not to damage the child's growth period. Basically, children have various human rights that must be implemented in their lives and livelihoods".<sup>25</sup>

A child as a perpetrator of a crime or a child who is in conflict or has problems with the law is a child who is considered, or has been found guilty of violating the law. Settlement of children who are dealing with or in conflict with the law is basically resolved by diversion at the investigation level. This is done on the basis of an agreement between the victim and the perpetrator and there are parties involved in the diversion process. The success of diversion at the investigation stage is influenced by several factors, including;

1) Victim Factor.

This factor is where the victim is willing to make peace with the perpetrator;

2) Actor Factors

Willingness of the offender to agree to the compensation agreed upon with the victim;

3) Investigator Factor

The role of pro-active investigators as facilitators in seeking maximum diversion and opening up space for peace between perpetrators and victims;

4) Penitentiary Factors (Bapas)

Community Guidance Resources for Children who understand their role as diversion facilitators maximally want to provide assistance to children in efforts to make peace between perpetrators and victims;

5) Family Factor

In this case the victim's family wants peace and influences the victim to make peace with the perpetrator;

6) Community Factors

The role of the community in this case is represented by community leaders, traditional leaders, or religious leaders as facilitators in efforts to settle peace between perpetrators and victims of criminal acts.

The purpose of diversion according to the SPPA Law is "to create peace between victims and children, resolve child cases outside the judicial process, prevent children from deprivation of independence, encourage people to participate, and instill a sense of responsibility towards children". For "children, correctional institutions are not a way to solve children's problems, on the contrary, prisons are prone to violations of children's rights". Therefore diversion is a very important consideration in a settlement of criminal cases committed by children.<sup>26</sup>

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<sup>24</sup> (Zumrotul Mukaaffah, Joni Alizon, 2022)

<sup>25</sup> (Selvian et al ., 2018)

<sup>26</sup> (Selvian et al ., 2018)



## 4 CONCLUSION

The author finds several new ideas in the success of diversion at the investigation stage which are influenced by several factors, including 1) the victim factor where the victim is willing to forgive the perpetrator's actions; 2) the actor's factor where the perpetrator is willing to agree to compensation that has been agreed upon with the victim; 3) the Investigative factor, namely the role of the pro-active investigator as a facilitator in seeking maximum diversion and opening a space for peace between the perpetrator and the victim; 4) the factor of freedom in which the Children's Community Guidance Resources who understand their role as diversion facilitators maximally want to provide assistance to children in an effort to make peace between perpetrators and victims; 5) the family factor, namely the victim's family who wants peace and influences the victim to make peace with the perpetrator and 6) the community factor where the role of the community in this case is represented by community leaders, traditional leaders, or religious leaders as facilitators in efforts to settle peace between the perpetrators and victims of crime.

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