Implementation of Diversion in the Settlement of Juvenile Criminal Cases in the Jurisdiction of Sorong Regency

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Abstract

Diversion aims to keep offenders away from the formal judicial system. The implementation of diversion in resolving juvenile criminal cases, particularly in Sorong Regency in 2023, involved at least two cases of juvenile theft. The purpose of this research is to examine the implementation of diversion in resolving juvenile criminal cases in the jurisdiction of Sorong Regency, to determine whether it complies with Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Additionally, this research aims to analyze the factors influencing the implementation of diversion in resolving juvenile criminal cases in the jurisdiction of Sorong Regency. The research methodology used includes two approaches: a qualitative approach (both empirical and normative juridical) supported by a quantitative approach (content analysis and simple statistical data). Based on the research results, the factors influencing the effectiveness of the implementation of diversion in resolving juvenile criminal cases in the jurisdiction of Sorong Regency are: first, legal factors, specifically the brief time frame provided by the law for the diversion process, and the necessity to regulate the age of the child victim who can independently give consent in the Diversion Agreement; second, law enforcement factors, including judges and Bapas probation officers; third, facility factors, such as the availability of waiting rooms for children, juvenile courtrooms, diversion rooms, and juvenile detention facilities; fourth, community factors, wherein the presence of community elements can allow the victim to hear input from various parties, thereby facilitating successful diversion.
agreements; and fifth, cultural and traditional factors of the Sorong Regency community, particularly the Moi tribe as the indigenous group in Sorong Regency.

Keywords: Judiciary, Juvenile Criminal, Diversion

Introduction

The Constitution of the Republic of Indonesia explicitly states that children, as the sole successors of the nation, should receive legal protection in accordance with statutory regulations. The rights of the child referred to are the will possessed by the child, equipped with power (macht), and granted by the legal system/order to the concerned child (Hasan Wadong, 2000). Children must also be provided with protection to ensure and safeguard their rights so they can live, grow, develop, and participate optimally in accordance with human dignity and receive protection from violence and discrimination.

When a child commits a crime, it is actually too extreme to refer to it as a criminal act (Wahyudi, 2011). Juvenile delinquency is considered normal, as no parent desires their child's misbehavior to escalate to criminal acts. However, with the passage of time, juvenile delinquency has reached alarming levels (Hasan Wadong, 2000). Throughout 2023, there were 45 reported cases of verbal and non-verbal violence, with about 25 cases processed at the Sorong District Court. This indicates that violence against children continues, making it imperative for the government to implement and instill a culture of anti-violence among school children as early as possible. Likewise, the implementation of diversion in cases of violence committed by children under the age of 18 against fellow children of the same age group is essential.

In such cases, children are not fully aware of their actions; hence, the handling of juvenile criminal acts differs from that of adults. Paradigmatically, the juvenile justice model under Law Number 3 of 1997 concerning Juvenile Courts was similar to the handling of adult crimes, following the retributive justice model, where punishment is the primary option or retribution for a criminal act.

Law Number 3 of 1997 is considered unsuitable because it does not provide adequate protection for children in conflict with the law (Jami, 2013). The handling of juvenile crimes should indeed differ from that of adults because children are still very vulnerable both physically and psychologically (Kartono, 2005). Generally, law enforcement can be defined as actions to apply certain legal instruments to enforce legal sanctions to ensure compliance with established provisions (Rahardjo, 1980). The juvenile criminal justice process can have negative effects, including physical and emotional suffering such as fear, anxiety, and others. Similarly, the negative effects of judicial sentencing on children can lead to ongoing stigma, guilt, and even anger from the family (Wahyudi, 2011). To ensure the psychological growth of children who have committed a crime proceeds well, the Juvenile Criminal Justice System Law recognizes Restorative Justice and Diversion, which can mitigate the punishment for
juvenile offenders (Mulyadi & SH, 2023).

Several cases involving children in conflict with the law in the jurisdiction of Sorong Regency are predominantly theft cases. According to data from the Diversion handling of juvenile crimes managed by the Women and Children Protection Unit (PPA) of the Sorong Regency Police, from January to December 2023, there were two cases of juvenile theft, namely:

a. The theft of basic necessities at a well-known supermarket near Alun-Alun Aimas, Sorong Regency, which occurred in February 2023 involving twelve children and was resolved through the Implementation of Diversion for juvenile crime cases;

b. The theft of a two-wheeled motor vehicle (motorcycle) by four children in October 2023, which was also resolved successfully through Diversion.

Rini Fathoni, in her research, concluded that the protection of children in conflict with the law is subjectively assessed in resolving criminal cases, which tends to prioritize the rights of the victims over the juvenile offenders. According to Rini Fathoni, addressing these issues requires socialization for judges handling juvenile cases to align their understanding based on the Juvenile Criminal Justice System Law and Supreme Court Regulation Number 4 of 2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. Therefore, the implementation of the diversion process can increase annually, supporting the fulfillment of children's rights as they should be. In handling juvenile cases, judges should first apply alternative resolutions outside of court for actions not classified as serious crimes, including ordinary theft. According to Article 3 of Supreme Court Regulation Number 4 of 2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, diversion is possible if the criminal charge is punishable by imprisonment for more than seven years, as a solution to overcome obstacles to diversion at the Liwa District Court (Fathonah & Kusworo, 2022).

Dwi Rahma Ningtyas, in her research, stated that the implementation of sentencing by judges at the Sidrap District Court for perpetrators of criminal acts of assault causing death was less effective. This is due to unresolved cases and the imposition of lighter sanctions compared to those stipulated by law, which states that if the act causes death, the perpetrator can be sentenced to a maximum of ten years in prison. Additionally, factors such as legal substance, legal structure, legal culture, legal knowledge, legal awareness, and infrastructure have minimal impact on the effectiveness of sentencing by judges at the Sidrap District Court in such cases (Ningtias et al., 2020).

In practice, the implementation of diversion for juvenile criminal acts has not fully applied diversion in resolving juvenile criminal cases. This is due to the suboptimal application of restorative justice at each level, whether in the police, prosecution, or court institutions in the jurisdiction of Sorong Regency, resulting in
many minors still being sentenced to imprisonment. Over the three years from 2020 to 2022, 428 children were designated as juvenile inmates (Class IIB Prison of Sorong City, 2023), raising concerns that this will continue to recur due to the suboptimal implementation of diversion. Therefore, the author intends to conduct an in-depth study on the implementation of diversion in resolving juvenile criminal justice cases in the jurisdiction of Sorong Regency, West Papua Province.

Methods
The type of research used in this study is juridical-empirical with a statutory approach and a conceptual approach. The sources and types of secondary data, which constitute primary legal materials, include documents related to the implementation of diversion, such as legislation, books related to juvenile criminal law, articles, research reports, and legal journals, collected through a literature study. As for primary data, it is obtained through interviews with informants. The collected data is then analyzed descriptively-qualitatively. The legal materials used in this study are Law No. 11 of 2012, Government Regulation No. 65 of 2015, and Supreme Court Regulation No. 4 of 2014.

Discussion and Result
From various studies in criminal law and several references to juvenile criminal justice, focusing on child protection efforts, it is stated that Diversion is a legally recognized process internationally as the best and most effective way to handle cases of children in conflict with the law (Marlina, 2010). The implementation of diversion is driven by the desire of society and all law enforcement officers to avoid the negative effects on the mental and developmental state of children involved in the criminal justice system. The implementation of Diversion by law enforcement officers is based on the authority known as discretion.

The aim of diversion is to provide an alternative resolution for a case involving a child as a perpetrator of a crime, so that the victim, the perpetrator, the victim’s family, the perpetrator’s family, and the community are given the same understanding (Triwati & Kridasaksana, 2021). Law enforcement officers, particularly the Juvenile Prosecutors, should enhance their role in paying attention to the fate and interests of the juvenile offenders, ensuring not only the protection of the victims’ rights but also the protection of the offenders’ rights. Article 7, paragraph (1) of Law Number 11 of 2012 states that diversion must be sought at every level of examination, whether at the investigation, prosecution, or trial stage in the District Court.
Implementation of Diversion at the Investigation Stage in Sorong Police Department

The implementation of diversion in Sorong Police Department involves the offender, the victim, the families of both parties, probation officers, community leaders, and related parties. Before conducting diversion, the investigator interviews the offender to understand the motive behind the crime, facilitating the success of the diversion agreement. The interviews with the juvenile suspects are continuous and involve parents, witnesses, and other relevant individuals (Amardhotillah & Harefa, 2023).

According to the interview with the Child Protection Investigator of Sorong Police Department, Aipda Wahyu Dwi Wibowo, S.H., it was explained that the child under examination during the interview must be accompanied by a parent/guardian, a close person to the child, or someone trusted by the child, such as an adoptive parent, sibling, caretaker, social worker, etc. The presence of an accompanying person during the interview aims to facilitate the process and provide protection to the child (Hambali, 2019). The language used by the police during the interview should be easily understood by both the child and the companion. If they have difficulty using the official language, i.e., Indonesian, a translator must be provided (Hidayat et al., 2021).

Law Number 11 of 2012, specifically Article 5 paragraph (3), Article 7 paragraph (1), and Article 29 points 1 and 2, mandates the attempt of diversion at the investigation, prosecution, and trial stages in juvenile criminal cases. However, not all crimes committed by juveniles can be resolved through diversion. There are specific conditions for diversion as stated in Article 6 point (2) of Law Number 11 of 2012: the offense must be punishable by imprisonment of under 7 years, and it must not be a repeat offense. According to Article 1 point 3 of Law Number 11 of 2012 on the juvenile criminal justice system, “Children in conflict with the law, hereinafter referred to as Children, are those who are 12 (twelve) years old but not yet 18 (eighteen) years old and are suspected of committing a crime.” Therefore, if the crime committed by the child is punishable by more than 7 years of imprisonment or is a repeat offense, diversion cannot be conducted (Hariyanto & Swardhana, 2021). Thus, not all children in conflict with the law can undergo diversion in resolving their crimes.

The decision for diversion must be agreed upon by the victim and their family as well as the child and their family, except in cases involving minor offenses, offenses without victims, or if the victim’s losses are less than the provincial minimum wage. Article 11 of Law Number 11 of 2012 outlines the forms of diversion agreements, including: reconciliation with or without compensation, return to parents/guardians, participation in education or training at educational institutions or LPKS for a maximum of 3 (three) months, or community service.
If the diversion process does not result in an agreement or if the diversion agreement is not implemented, the juvenile criminal justice process continues (Budoyo & Sari, 2019). In handling juvenile cases, probation officers, investigators, prosecutors, judges, and advocates must consider the best interests of the child and strive to maintain a family atmosphere. The identities of the child offender, child witness, and/or child victim, including their names, parents' names, addresses, faces, and other details that could reveal their identities, must be kept confidential in both print and electronic media (Anzward, 2020).

One example of a juvenile case at the investigation stage in Sorong Police Department resolved through diversion is contained in Case File Number: BP/19/VIII/2022/Resnarkoba, involving narcotics abuse with a minor suspect identified as JTR. As the suspect is underage and requires parental guidance, a diversion agreement and report were made (Diversion Agreement and Report Number BAD/02/VIII/2022 Reserse Narkoba, dated August 16, 2022). In this narcotics abuse case, the state is considered the victim, and the police acted as the victim in the diversion process. Once the diversion agreement was approved by the police, a request for a diversion determination (Letter Number B/281/VIII/2022/Reserse Narkoba, dated August 24, 2022) was sent to the Head of Sorong District Court, resulting in a Diversion Determination on August 30, 2022, which included:

1) Granting the investigator's request;
2) Ordering the parties to implement the diversion agreement;
3) Instructing the investigator to be responsible for the evidence until the diversion agreement is implemented;
4) Deciding on the disposal of evidence depending on the implementation of the diversion agreement; Instructing the registrar to send copies of this determination to the investigator and probation officer.

According to Brigpol Jebelina Deda, an auxiliary investigator in the Women and Children Protection Unit of Sorong Police Department, the diversion process follows Law Number 11 of 2012 on the Juvenile Criminal Justice System and Supreme Court Regulation Number 4 of 2014 on Diversion Guidelines in the Juvenile Criminal Justice System (Witasari & Arif, 2019). The investigator receives a report from the complainant, prepares an Investigation Report (BAP), and submits it to the Probation Office (Bapas). The Bapas then conducts a Social Research (Litmas) in the offender's neighborhood.

The results of the Social Research by the LPKS/Bapas Sorong will result in a recommendation letter from the Bapas (signed by the Head of Bapas Class IIB Sorong) for either implementing or not implementing Diversion. If Diversion is recommended, the investigator from the Women and Children Protection Unit will call the parties,
including the suspect or offender (ABH) with their parents or guardians, the complainant or victim with their parents or guardians, community or traditional leaders, probation officers, and professional social workers. Both parties will receive assistance from Bapas officers, community or traditional leaders, and professional social workers. The result of the facilitated deliberation will be a Diversion agreement in the form of compensation or social action, signed by both parties and officers, witnessed and signed by the Head of Sorong Police Department (Sianturi & Lubis, 2020).

There are several advantages to implementing diversion at the investigation stage by the police:

a. The police are the only law enforcement agency in the criminal justice system with a network reaching the sub-district level. Structurally, the police are the most accessible law enforcement agency to the public. With this institutional structure, the police are the most feasible law enforcement agency to have a network down to the village level. One institution formed by the police at the village/kelurahan level is the Police and Community Partnership Board (BKPM).

b. The number of police officers is significantly higher than other law enforcement officers. Although not all police officers are committed to handling juvenile crimes, the availability of adequate personnel greatly assists in resolving juvenile crimes.

c. Since the police are the first law enforcement officers to engage in the criminal justice process, diversion at the police level provides assurance that children are kept away from the criminal justice process as early as possible. Thus, the negative impacts of children interacting with law enforcement can be minimized.

Implementation of Diversion at the Prosecution Stage in Sorong District Attorney’s Office

In addition to Law Number 11 of 2012 on the Juvenile Criminal Justice System (SPPA), the diversion process also has a legal basis in the Attorney General Regulation of the Republic of Indonesia Number PER-006/A/J.A/04/2015 on Guidelines for Implementing Diversion at the Prosecution Level. According to this regulation, the diversion process involves several stages. First, appointing a prosecutor. Within 7 (seven) x 24 (twenty-four) hours from the receipt of responsibility for the child and evidence (Stage 2), the prosecutor must attempt diversion by summoning and/or offering the resolution of the case through diversion to the child and/or their guardians while keeping the child's identity confidential. If diversion is rejected, the prosecutor records this in the Diversion Report with reasons for the rejection, then submits the case to the court with the diversion attempt report and the social research report.

If diversion is agreed upon, the prosecutor sets a date for the diversion meeting and records it in the diversion report (Saputra & Miswarik, 2021). Diversion must be
conducted no later than 30 days from the date of commencement of diversion, which is the date set by the Public Prosecutor for the diversion deliberation. If the deliberation successfully reaches an agreement, the facilitator drafts and formulates the diversion agreement. The Head of the District Prosecutor's Office or the Head of the Sub-District Prosecutor's Office submits the diversion agreement and the minutes of the diversion to the Chairman of the District Court in the jurisdiction where the crime occurred within a maximum period of 3 (three) days from the achievement of the diversion agreement for the issuance of a determination, and the determination is received by the Head of the District Prosecutor's Office no later than 3 (three) days from the date of issuance. Within a period of 3 (three) days after receiving the determination, the public prosecutor summons the parties to implement the diversion agreement. If the diversion agreement is not implemented or is not fully implemented within the specified time and the Community Counselor reports to the Head of the District Prosecutor's Office for further action in the criminal justice process with a copy to the Chairman of the local District Court (HERIFADLI, 2020).

One of the cases handled by the Sorong District Attorney's Office is the case of Brian Sepviansah Rumbino (17 years old) and Frans Baransano (15 years old), with Case Number: 16/Pid.Sus-Anak/2022/PN.Son dated October 11, 2022. In this case, the Prosecutor's Office attempted to conduct diversion; however, the diversion process did not result in an agreement between the parties, as the victim or the victim's parents/guardians did not agree to the diversion, believing it would be unjust if the juvenile offenders were not punished. Consequently, the case was forwarded to the Sorong District Court, and the Sorong District Court Judge issued a determination to conduct diversion involving various parties. The diversion efforts at the court level were successful, resulting in an agreement between the parties as documented in the Diversion Report with Case Number: 16/Pid.Sus-Anak/2022/PN.Son dated October 11, 2022, and the issuance of Diversion Determination Number 28/Pen.Div/2022/PN.Son. The Determination states as follows:

1) Granting the Petitioner's Application for Juvenile Judge;
2) Order the Parties to implement the diversion agreement;
3) Order the return of evidence in the form of one (1) unit of a red-black Honda Genio motorcycle with license plate number PB 4233 SY, Frame Number MH1JM611XLK118398, to its rightful owner, the victim Indah Setyawati;
4) Order the Clerk to deliver copies of this determination to the Juvenile Investigator/Prosecutor/Juvenile Judge, community supervisor, juvenile/parents, victim, and witnesses.
The Implementation of Diversification in Resolving Juvenile Delinquency in the Sorong District Court

The legal basis for the implementation of diversion in the Sorong District Court is governed by Law Number 11 of 2012 concerning the Juvenile Justice System, Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under the Age of 12 (Twelve) Years, and Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Justice System. There are key points in Supreme Court Regulation Number 4 of 2014, including the affirmation of the age of a child, where diversion is applied to children aged 12 years or older but under 18 years, or aged 12 years who have been married but are not yet 18 years old and are suspected of committing a criminal act. In addition, the Sorong District Court, as one of the courts under the Supreme Court, also refers to the Standard Operating Procedures (SOP) established by the Supreme Court in implementing the Juvenile Justice System, namely:

a. SOP Number 1193/DJU/OT.01.3/12/2018 regarding the Successful Settlement Process of Juvenile Criminal Cases through Diversion;
b. SOP Number 1194/DJU/OT.01.3/12/2018 regarding the Unsuccessful Settlement Process of Juvenile Criminal Cases through Diversion;
c. SOP Number 1210/DJU/OT.01.3/12/2018 regarding the Process of Handling Diversi Requests.

Regarding the application of diversion in the resolution of juvenile criminal cases in the Sorong District Court, the author conducted observations on cases with Decisions Number 1/Pid.Sus-Anak/2024/PN Sorong and Decisions Number 2/Pid.Sus-Anak/2024/PN Sorong, which were undergoing the process of diversion. Both cases were theft cases. Cases with Decisions Number 1/Pid.Sus-Anak/2024/PN Sorong and Decisions Number 2/Pid.Sus-Anak/2024/PN Sorong are cases where diversion efforts failed at the level of the Police and Prosecutor's Office, thus being transferred to the District Court. In this regard, in accordance with Article 7 paragraph (1) of Law Number 11 of 2012 jo Article 3 paragraph (1) of Government Regulation Number 65 of 2015, the Sorong District Court also has an obligation to attempt diversion in Cases Number 1/Pid.Sus-Anak/2024/PN Sorong and Cases Number 2/Pid.Sus-Anak/2024/PN Sorong. The mechanism for the implementation of diversion in the two cases observed by the author can be described as follows:
Upon observing the author's remarks regarding the implementation of diversion in Case Number 1/Pid.Sus-Anak/2024/PN Son and Case Number 2/Pid.Sus-Anak/2024/PN Son, the Diversion Conference was convened and declared closed to the public by the Diversion Facilitator. Subsequently, the Diversion Facilitator elucidated the purpose, objectives, and obligations for conducting the Diversion Conference in accordance with Articles 7 and 8 of Law Number 11 of 2012 concerning the Juvenile Justice System. Therefore, the implementation of diversion in resolving juvenile criminal cases at the Sorong District Court, in the author's view, has complied with Law Number 11 of 2012 concerning the Juvenile Justice System, Government Regulation Number 65 of 2015, and Supreme Court Regulation Number 4 of 2014.

Factors influencing the implementation of diversion as a solution for juvenile criminal cases in the legal jurisdiction of Sorong District:

a. Legal Substance
Diversification has indeed been incorporated into several parts of the legal system in Indonesia, but it is hindered by weak implementation and enforcement. Some regulations related to the handling of juvenile delinquency have attempted to incorporate diversification, although not comprehensively. Despite the existence of various legal instruments, they have not brought about significant improvements for children in conflict with the law. However, in practice, the elements of diversification do not function effectively due to
several interrelated obstacles, thus complicating efforts to protect children's rights. The weaknesses inherent in the regulations related to juvenile delinquency, such as the Child Court Law, also fail to provide clear alternative mechanisms for the implementation of diversification to serve as guidelines for law enforcement agencies. According to Lutfi Tomu, S.H. (Juvenile Court Judge in Sorong District Court, interview on April 18, 2024), "The Child Court Law is good, but its weakness lies in its composition, which prioritizes punishment over actions. Action should take precedence over punishment. Imprisonment should be the last resort." Regarding the unclear regulations, according to Aulia Rahman, S.H. (Public Prosecutor's Office for Sorong District, interview on April 19), "We are hindered by regulations if we want to halt prosecution. So there must be clear rules." A similar sentiment was expressed by Lutfi Tomu, S.H. (Juvenile Court Judge in Sorong District Court, interview on April 18, 2024), that "If there is a minor offense committed by a child and they do not want to be legally prosecuted, the law needs to be amended." It cannot be denied that there is no perfect or complete law. There are inevitably shortcomings or weaknesses. In general, it can be argued that there are two potential main weaknesses in legislation. First, in terms of formulation, it is sometimes incomplete, unclear, and concrete. Second, in terms of material content, it is sometimes no longer relevant to social realities.

b. Legal Structure

Discretion pertains to decision-making that is not strictly bound by law, where personal judgment also plays a role. In law enforcement, discretion is crucial because (1) Legislation is never exhaustive enough to regulate all human behavior; (2) There are delays in adapting legislation to developments within society, causing uncertainty; (3) There is a lack of resources to fully enforce legislation as intended by lawmakers; and (4) There are individual cases that require special handling. However, unfortunately, many law enforcement officers adhere to a legalistic paradigm that solely relies on written law, as they are trained to do so. Yet, the law itself allows flexibility in handling Juvenile Delinquents. The shortcomings of existing regulations can be overcome with care and sensitivity from law enforcement officers in handling Juvenile Delinquents. This is because they have the discretion to provide alternatives that are better than imprisonment to protect the future interests of the child.

c. Legal Culture/Societal Participation

Legal culture and community participation play crucial roles in the implementation of diversion in the juvenile justice system. Legal culture
reflects the attitudes, values, and behaviors of the community towards the law, while community participation involves active involvement of citizens in supporting and executing existing legal processes. The level of understanding and respect for the law within the community significantly influences the effectiveness of diversion. If the community has a high legal awareness, they will be more supportive of implementing diversion as a means of resolving juvenile cases outside of the court system.

One of the factors influencing the implementation of diversion in Sorong Regency is the community paradigm that believes every crime committed must have consequences (retributive justice). Therefore, if a juvenile engages in delinquent behavior, they are expected to be reported to the police for further legal proceedings.

Conclusion

Based on the research findings and discussions, the conclusion of this study regarding the implementation of diversion in the resolution of juvenile criminal cases in the jurisdiction of Sorong Regency is as follows: the author observed 11 diversion rulings issued by the Sorong District Court from 2020 to 2024, consisting of 6 theft cases, 2 assault cases, 2 cases of severe assault, and 1 narcotics case. The criteria for sorting juvenile cases eligible for diversion in the Sorong District Court refer to the legislation, namely, imprisonment threats below 7 years and non-repetition of criminal offenses. The legal basis for the application of diversion in the Sorong District Court is based on Law Number 11 of 2012 concerning the Juvenile Justice System, Government Regulation No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 Years Old, and Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Justice System.

According to the author, the implementation of diversion in resolving juvenile criminal cases in the jurisdiction of Sorong Regency is in accordance with Law Number 11 of 2012 concerning the Juvenile Justice System. Based on the research findings, the ranking of factors influencing the implementation of diversion in the resolution of juvenile criminal cases in the jurisdiction of Sorong Regency from registered cases in the Sorong District Court from 2020 to 2024 is as follows: the first-ranked factor is legal, followed by the second-ranked factor, society.

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