

**THE READINESS OF STAKEHOLDERS IN THE
CRIMINAL JUSTICE SYSTEM ON THE
IMPLEMENTATION OF RESTORATIVE
JUSTICE IN MALAYSIA**

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MALAYSIA**

by

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**KESEDIAAN PEMEGANG TARUH DALAM SISTEM KEADILAN
JENAYAH TERHADAP PERLAKSANAAN PENGADILAN RESTORATIF DI
MALAYSIA**

ABSTRAK

Hasil kajian terdahulu telah membuktikan yang pengadilan restoratif sangat berkesan bagi mengetahui keperluan mangsa dan pelaku jenayah. Namun begitu, keberkesanan pelaksanaan pengadilan restoratif memerlukan pemahaman yang mendalam terhadap pengalaman yang dialami oleh mangsa jenayah, kepentingan kewujudan mangsa jenayah di dalam sistem keadilan jenayah, serta sikap tidak menghukum terhadap pelaku jenayah; khususnya pesalah kanak-kanak. Kajian ini bertujuan untuk memahami pendapat dan pengalaman mangsa jenayah, pesalah kanak-kanak, dan pegawai akhlak di dalam sistem keadilan jenayah. Kajian ini menggunakan gabungan pendekatan kuantitatif dan kualitatif. Dapatan kajian mendapati bahawa terdapat pelbagai tahap kepuashatian dalam kalangan mangsa jenayah tentang bagaimana mereka dilayan oleh sistem itu sendiri berdasarkan kepada jantina, kumpulan gaji, dan umur. Pelaku jenayah kanak-kanak melaporkan tahap kepuashatian yang rendah terhadap tatacara polis melayan mereka tetapi mempunyai tahap kepuashatian yang tinggi terhadap pekerja sistem keadilan jenayah yang lain seperti di mahkamah dan di asrama akhlak. Sementara itu, pegawai akhlak melaporkan secara positif dengan cara pesalah jenayah apabila ditanya secara kuantitatif tetapi terdapat kepelbagaian jawapan apabila diminta untuk menghuraikan jawapan mereka. Kajian ini turut menanyakan kepada mangsa jenayah dan pesalah kanak-kanak tentang kesediaan dan kesanggupan mereka untuk menyertai program *restorative justice* yang menfokus kepada empat komponen: dialog, kemaafan, pembaikan, dan pemilihan komuniti atau sistem – manakala pegawai akhlak ditanya

mengenai pendapat mereka sekiranya pesalah kanak-kanak patut turut menyertai program tersebut. Hasil kajian ini juga mendapati bahawa lebih ramai mangsa jenayah berbanding dengan pesalah kanak-kanak bersedia untuk berjumpa dan menyertai sesi dialog – mangsa jenayah bersedia untuk memaafkan pesalah jenayah dan membiarkan pelaku jenayah mereka melakukan pemulihan tersebut. Sejar dengan itu, lebih daripada separuh pesalah kanak-kanak ingin memohon maaf dan memperbaiki kesilapan mereka. Terdapat kepelbagaian respon daripada pegawai akhlak dengan tema utama mendapati bahawa penglibatan di dalam program ini harus dilaksanakan berdasarkan kepada jenis jenayah yang dilakukan. Kajian ini memformulasi model pelaksanaan *restorative justice* berdasarkan daripada jawapan yang diberikan oleh responden, berserta model bagi penilaian risiko yang berkaitan dengan dendam.

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ABSTRACT

Previous studies have supported that restorative justice is effective in addressing the needs of the victims of crime and the offenders. However, a successful implementation of restorative justice requires a comprehensive understanding on the experiences of the victims of crime, the importance of the presence of the victims of crime in the criminal justice system, as well as a less punitive attitude towards the offenders; especially juvenile offenders. This study aims at understanding the perceptions and experiences of the victims of crime, the juvenile offenders, and the probation officers in the criminal justice system. This study combined quantitative and qualitative approach. The findings have shown mixed satisfaction levels from the victims of crime on the ways they were treated by the criminal justice system based on genders, salary, and age. The juvenile offenders reported lower satisfaction with the police but high satisfaction with the other personnel such as the ones in the court and the detention center. Meanwhile, the probation officers reported positively towards the way the offenders were processed quantitatively but gave mixed responses when asked to elaborate on their responses. The study continued by asking the victims of crime and juvenile offenders their readiness and willingness to participate in a program of restorative justice with four main components: dialogue, forgiveness/apology, reparation of harm, and preference for community or the system. In addition, the probation officers were asked about their perception whether the juvenile offenders should engage in those programs. The findings also indicated that more victim respondents than the offender respondents were ready and willing to have

a dialogue – and the victim respondents were more willing to forgive and let the offenders repair the harms too. Correspondingly, more than half of the juvenile offenders were willing to apologize and repair the harms done. Mixed responses were observed from the probation officers with the main theme being that the participation of the program should depend on the types of crime. This study formulates a model of implementation of restorative justice based on the responses given by the respondents, including a model of risk assessment in relation to revenge.

CHAPTER ONE

BACKGROUND OF THE STUDY

1.1 Introduction

Restorative justice is an evolution of criminal justice system in many countries. Traditionally, the main actors of a typical criminal justice system would be the authority and the offenders, but in restorative justice, the victims and their significant others including the community also play a big role (Wolhuter, Olley, & Denham, 2009). Programs of restorative justice in many countries initially handled cases of minor offences such as mischief, assaults, and theft (Ministry of Public Safety and Solicitor General, 2009). However now they are considered for more serious crimes such as rapes, and violent crimes. Being documented as effective in preventing recidivism (Umbreit, Coates, & Roberts, 2000; Umbreit, Coates, & Vos, 2004), the practice has gained acceptance worldwide and being utilized in a few countries such as New Zealand (Galaway, 1995; Maxwell & Liu, 2006), South Africa (Venter & Rankin, 2006), and in the Europe (Hydle, 2008).

A precursor that became the basis of restorative justice was a practice called dispute resolution, where two parties of conflict would meet and have a face-to-face resolution with mediation, without the involvement of the court (Doerner & Lab, 2012). This practice, then, became well-received by the public, leading to an approval by many parties, including the legal system itself – mostly because this way, one case resolved through dispute resolution, there would be one less case to be contended by the court.

Mediation, then, became a popular choice of conflict resolution. This is the idea that the advocates of restorative justice want to employ, it is that the offenders are

directly accountable to their victims, rather than being judged by an indifferent legal system. The acknowledgement of victims' rights also contributed to what became the basis of restorative justice initiated in the United States (Shapland, Willmore, & Duff, 1985; Austin/Travis County Victims' Services Task Force, 2005; Karmen, 2007).

In general, restorative justice practices resolve issues involving crime without much of an adjudicating authority, whose main aim in the criminal justice system is mostly retribution or punishment of the offence (Roche, 2006; Azman & Mohammad, 2012). Other than that, the objectives of restorative justice are:

1. So victims can come forward and get involve actively to resolve the conflict and make decisions along with their family, community, and of course, offenders (Christie, 1977; Wolhuter, Olley, & Denham, 2009).
2. So the resolution of the conflict will focus more on restoration and reparation rather than punishment (Braithwaite, 2002; Boonin, 2008; Doerner & Lab, 2012).
3. So the victims, offenders, and the community have a mediated dialogue to resolve resentment, offer apology or forgiveness, and to harness offender's sense of accountability and remorse (Zehr & Mika, 1998; Doerner & Lab, 2012).
4. So both the offenders and the victims are reintegrated back to the community (Doerner & Lab, 2012).

Programs of restorative justice are based on the objectives above. Victim-offender mediation (VOA) is one of the finest examples of how dispute resolution and dialogue are the main components of restorative justice (Umbreit et al., 2004). VOA was initially a

practice that existed outside the formal system, which means that government had nothing to do with the implementation of the program (Wolhuter et al., 2009). But then, finance became an issue and VOA was considered to be put in a formal system where government could be involved.

Research on the effectiveness of VOA are focused on the benefits for both offenders and victims. A meta-analysis by Bradshaw, Roseborough, and Umbreit, (2006) found that victims generally felt satisfied with the outcome, the recidivism rate was down by 34%, and both offenders and victims felt that the processes were fair. The documented effects of VOA are argued to be related to the empowering components that it has on both offenders and victims (Choi, Green, & Kapp, 2010), which then led to numerous social workers to pay attention on how VOA can be parallel with the missions and goals of the field of social work.

Expanding the design of victim-offender mediation, family group conferences (FGC) involve wider scale of respondents: including the families of both victims and offenders (Umbreit & Zehr, 1996; Mutter, Shemmings, Dugmore, & Hyare, 2008). FGC's were, and still are, practiced by Maori people in New Zealand (Marshall, 1999; Van Ness & Strong, 2010). Mutter and Dugmore's (2008) evaluation on several family group conferences found that all respondents viewed it as positive. Although the uses of FGS's are mostly for child offenders, but the effectiveness of this program on adult offender has been documented too (Malmberg-Heimonen, 2011).

Other programs of restorative justice that are community-oriented exist such as referral orders and reparation orders (Wolhuter et al., 2009). Community service is one of the programs where offenders are brought to an agreement and he or she needs to take the

reparation of the damage resulting from the crime committed to a wider scale – which is the community. Although less focusing on the role of victims, the focus of these programs to undo the harm of the crime committed by the offenders makes it considerable to be listed down under restorative dogma.

Beginning to acknowledge its effectiveness in treating criminals and bringing forwards victims in the process, Malaysia is beginning to introduce the concept of restorative justice (Prison Fellowship International, n.d.; Koshy, 2008). The Malaysian Government has already called for the need for Malaysian criminal justice system to include restorative justice as part of the processes (Arukesamy, 2011; The Star, 2011). The first step that the government has done was to introduce community service in the welfare system (Jabatan Kebajikan Masyarakat Malaysia, 2009). Although several years earlier more programs of restorative justice have been proposed to be included in Malaysian criminal justice system (Koshy, 2008), the development is still baby-crawling. This may be due to the lack of effort to explore the ways to implement and how it fits into the system of Malaysia.

The following chapter will discuss on why restorative justice should be considered as an important element within the Malaysian criminal justice system. The gaps that can be found inside the system such as lack of welfare of victims of crimes, lack of effective intervention program for juvenile delinquents, and the direction of the system will be addressed.

1.2 Problem Statement

On 1st February, 2012, four unsuspecting persons in a clothes shop were suddenly approached by an aggressive man with a mental illness. The man hugged one of them and

banged the woman's head on the hard floor, followed by a stabbing in the back. The other three frightened persons went to the back of the shop and tried to call for help, but when they peeked what happened outside, the suspect was gone. The victim who was stabbed was in critical condition and treated in Sultanah Nur Zahirah hospital but died the next day (Utusan Harian, 2012).

There was an earlier case of a girl, Haslinda Lahmin, who was victimized by an aggressive snatcher that caused her to lose an amount of money, important documents, and more unfortunately, one of her legs. Financial assistance that was used to be provided by the Welfare Department suddenly stopped without notification, and the victim's mother, who was just a housewife, now had to work beyond her capacity to make ends meet (Utusan Harian, 2011).

These two unfortunate events are just a few from many reported and unreported cases of victimizations where the victims did not just suffer physical losses, but also emotional turmoil. The father of the victim in the first case kept on asking, "*Apa salah anak saya?*" (what has my daughter ever done?) referring to the event where she was stabbed to death by a man who was suspected to be mentally ill (Sinar Harian, 2012). The victim in the second case is now a disabled person and has to depend on a support machine to move, added to the psychological turmoil of having to endure this for the rest of her life.

In terms of the welfare of victims in Malaysia, victims are formally categorized as: the ones with injuries, minors with socially threatening life circumstances, and the ones with domestic threats. Therefore, it makes it quite specific to either children, women, or a domestic partner (Hussin, 2010; Zakaria, 2003). It is because the mention of

welfare of victims are mostly only included in Domestic Violence Act 1994, and Child Protection Act 1999, and Women and Girls Protection Act 1973 (although the last two Acts have been repealed by Child Act 2001). Various non-governmental organizations such as Women's Centre for Change (WCC) and Women's Aid Organization (WAO) also provide some services for female victims. However, the victims of other demographic background will only be treated in the basis of *ad hoc* (Mahmud & Ruslan, 2011).

Malaysian government currently does not have a specific definition of a victim of crime. This perhaps contributes to the phenomenon that victims of crimes do not have an active role in the process of criminal justice (Aziz, 2010). Aziz further argues that perhaps the current system is doing a good job at satisfying the victim's sense of revenge or anger, but their quality of life still stays damaged. The consensus of what the victims can and should expect from criminal justice system can be important as it is one of the ways the criminal justice system can be found as responsible and accountable (Doak, 2011). The cases above illustrate well how victims suffer but still, their voices are not heard, other than a simple newspaper cutting that will be forgotten over the years.

One would ask: what is wrong with the current Malaysian criminal justice system? It seems to be working pretty well and it seems like nothing is problematic. But between the calls for restorative justice by the Malaysian Government and the cases mentioned above, it can be seen there is a gap or a lack of effective element that needs to be identified. Victims in the current system seem to not say or complain about anything, but perhaps it is because no one has ever attempted to document their voice and concerns

over the years. This, therefore, calls for an official documentation of how victims think and feel about the current processes in current criminal justice system.

Restorative justice can also serve as an add-on to the treatment plan offered for offenders, especially child offenders. Persons considered “children” in the Child Act 2001 are the ones below 18 years old. Child Act 2001 categorizes three children who are in need: the ones who are in need of rehabilitation, protection, and both rehabilitation and protection (Pesuruhjaya Penyemak Undang-Undang Malaysia, 2006). The ones who are in need of rehabilitation, if found guilty by the court, will be sentenced to either eight possibilities: released with warning, good behavior with bond, in a custody of those feasible, fine, probation in a detention center, probation in an approved school, lashes (only for male children), and prison (for heavy offences). The focus in this study is the ones who are sentenced to undergo residency in a detention center. Some of the centers are Paya Terubong detention center, Jitra detention center, Sentosa Sentul detention center and many more.

A pilot observation that inspired this study was the experience of the researcher in Paya Terubong detention center as a social worker. In the detention center, the residents underwent a daily routine for the purpose of enhancing their self-discipline (N. Ishak, personal communication, 11th June, 2012). Other than the provision of the basic needs such as food and a place to sleep, their religious performance and daily responsibilities were also monitored. Other than that, there were also annual motivational and educational trip to Langkawi and various leisure activities where the residents were involved to enhance their self-esteem and self-confidence. However, there seemed to be a lack of programs that can address their deeper psychosocial needs. There was even an

unavailability of an in-house counselor where the residents could go for counseling sessions (R. Ibrahim, personal communication, 20th March, 2012).

Other juvenile detention centers such as Sentosa Sentul detention center and Jitra detention center also do not have an in-house counselor (A. H. Husain, personal communication, 12th June 2012; H. Natrah, personal communication, 13th June 2012). When asked what kind of psychological services given to the residents, the only one is counseling sessions by a counselor imported from the headquarter. Counseling sessions are only given when there seems to be a need for them to do so, and if not, the residents will just undergo normal routines in the centers. All the accounts by the personnels in the detention center reflect a gap that needs to be identified as soon as possible.

Another way restorative justice can be beneficial to the offenders is the satisfaction of “revenge” by the victim. Although Aziz (2010) argues that revenge should not be the answer, but it can if the question of “revenge” is viewed in another perspective. Gollwitzer, Meder, and Schmitt (2011) asserted that revenge can be either, 1) because the victims want the offenders to suffer the same thing, which is called “comparative suffering”, or 2) because the victims want the offenders to understand how crime conducted had an impact in the former’s life. Gollwitzer and colleagues’ study shows support on the notion that restorative justice could be the platform for the offenders to empathize with their victims (which is the second type of “revenge” by Gollwitzer et al.), which has been shown to increase satisfaction among victims and also offenders in multiple studies that will be discussed in the literature review.

Wachtel and McCold (2001) made some classifications of criminal justice systems according to their level of control and supports in the services and processes (which will be discussed further in “Theoretical and Conceptual Framework”). Because Malaysia has clear manifestations of laws, rules, regulations, and acts, this country would be considered as high in “control”. Child offenders who are found guilty would have to face one of eight possible outcomes of convictions by the court, which makes it clear for the former to understand that they would have to bear the consequences if they break a law. Juvenile detention center as one of the outcomes, just like prisons and other detention centers for adults, is one of the ways the system in this country shows that those who commit an offence should not be ignored.

However, when it comes to the support for the primary stakeholders, some parts have to be improved, which results in the criminal justice system in Malaysia to be categorized as low in “support”. This is due to two reasons: 1) Victims in this country are not able to receive services in the aftermath of victimizations because there are no clear definitions and legislative rights allocated for them (Zakaria, 2003; Hussin, 2010), and 2) victims are treated as evidence, rather than someone who has been victimized and who has psychosocial needs.

However, in Malaysia, it is not fair for it to be accused of not practicing a restorative system at all. After the call for restorative justice by the government, it can be safely hypothesized that restorative justice is on the verge of its existence within the system here. Even so, some already existing parts of the Malaysian criminal justice system can be considered as “restorative”. Firstly, the implementation of community service order, which is one of the programs of reparation orders, in social welfare

departments in 2006 is the acknowledgment that offenders that are reintegrated to the society are less likely to experience recidivism. However, this order is only limited to child offenders between 18 to 21 years old (Jabatan Kebajikan Masyarakat, 2009).

Secondly, some of the rights of victims of crimes are acknowledged in the system. There are programs that provide protection for children who are vulnerable to sexual and physical abuse, and exploitation (Jabatan Kebajikan Masyarakat, 2009). Spouses – male or female – also deserve to get protection shelter if they are found to be in need of such services, but because of a lack of specific shelter for domestic abuse, some of the victims are put in an elderly home. Based on a conversation with a probation officer in Penang, for the victims of other crimes and other demographic background that are not specified in the policies, the provision of services are in the basis of *ad hoc* (Mahmud & Ruslan, 2011; N. Ishak, personal communication, 20th June 2012).

However, these components, though seem to be victim-oriented, which is what is advocated by restorative justice, they lack one of the main elements that defines restorative justice: restitution. According to Bartol and Bartol (2004), restitution is the process when a victim's financial, physical, and psychological condition that is scarred by the damage of a crime is restored to the original condition as much as possible which can be done through dialogues. Most of what is practiced in current Malaysian legal system is to bring the condition to a new state.

Table 1 shows the flow of events in restorative justice and how it is different than traditional criminal justice system, including Malaysia. "A" is the original condition of victims prior to being victimized. To illustrate the flow, "A" can be exemplified by a person who is psychologically healthy, physically healthy, and/or with a stable current

financial condition. “B” is the event when this particular person is victimized. The result of the victimization can be the scars to his or her psychological state, the person might be injured, and because of the crime, he or she might lose a significant amount of money.

Restorative justice aims to restore the condition from “B” to “A” as much as possible. The aimed restoration are for the psychological (e.g. emotional need, satisfaction, recovery from trauma and fear, empathy for offender’s intention), physical (e.g. offender responsible for the injury resulting from the crime, cost for the replacement of body part), and financial (e.g. offender returning back what he stole or attempt to replace what has been lost) condition. The attempt of restorative justice to restore the condition back to “A” comes from the intent that offender is supposed to be held accountable directly to the victim, not the legal system (Fritz, 2005). However, traditional criminal justice system has a notion that crimes have consequences to the legal system, but not for the individual. Therefore, when an offence is committed, and if proven guilty, most of the time the offender will be punished (e.g. lashes, prisonment), which is “C”.

Table 1.1

<i>Flow of events in restorative justice and Malaysian criminal justice system</i>	
Restorative justice	Current Malaysian legal system
A → B → A	A → B → C
A – Original condition of victims prior to being victimized	
B – Condition experienced by the victims after being victimized	
C – New conditions set by the legal system (i.e. punishment, prisonment of offender, little regards for the victims)	

But the total implementation would still require the country to consider various aspects of this practice and the stakeholders who are involved. It is argued that restorative justice practice is compatible with social welfare system of a country (Judah, 2004; Fritz, 2005), and as so it would be reasonable to adapt restorative justice practice into

Malaysian social welfare system. However, it is warranted to be wary on such implementation as various factors should be considered, such as cultures (National Institute of Justice, 2007), individuality (Williams-Hayes, Dulmus, Nugent, & Sowers, 2004), the legal system (Woolford & Ratner, 2003), and many more. One has to ask: Does Malaysia have the necessary elements before it can introduce restorative justice in its criminal justice and social welfare system?

Therefore, understanding how valuable restorative justice can be in the criminal justice system in Malaysia, this study aims at finding out the implementability of the practice within the Malaysian context. The models designed from the findings can inform the policy makers what to adjust in accordance to the voices expressed by the stakeholders in Malaysia when it comes to juvenile justice, welfare of victims, and the officers that handle the juvenile cases in the Welfare Department of Malaysia.

1.3 Research Questions

What is the issue then? The dual advantages of restorative justice programs (i.e. advantages to both offenders and their victims) can fill in the gap that currently exists in Malaysian criminal justice system. While benefiting the victims through more active role and satisfaction in the processes, offenders can benefit by having their psychosocial issues addressed more objectively and actively. However, blindly implementing this concept into Malaysian criminal justice system can have its own drawbacks. Some issues might loom as Malaysians are introduced with this new idea of processing criminal cases in Malaysian legal system.

Therefore, this study seeks to answer these questions:

- 1) What are the experiences and perceptions of the primary and secondary stakeholders in current practice of Malaysian criminal justice system?
- 2) Why does restorative justice need to be implemented in Malaysian criminal justice system and are the stakeholders ready for its implementation?
- 3) How can restorative justice be implemented into the current criminal justice system of Malaysia?

1.4 Research Objectives

This research seeks to understand the points of views of three stakeholders (two primary and one secondary) of restorative justice programs. The first primary stakeholder is the victims of crimes and their family. This research assessed quantitatively on their satisfaction while dealing with the criminal justice system. In addition, their readiness to participate in programs that would ask them to meet with their own offenders (i.e. restorative justice) would also be qualitatively analyzed. The second primary stakeholder was the child offenders. The child offenders in this study were asked on their experiences with the criminal justice system, along with their understanding of the victims' victimization experience. They were also asked if they would want to participate in the programs that would require them to meet with their victims (i.e. restorative justice). The third stakeholder which was secondary was the probation officers in Malaysia who handled juvenile cases. They were asked on their perception with the current system and if they agreed if programs that employed restorative elements were to be implemented within the Malaysian criminal justice system, especially for child offenders.

Therefore, based on the questions, the study aims at achieving these objectives:

- 1) To analyze the experiences and perceptions of the primary and secondary stakeholders in the current practice of Malaysian criminal justice system;
- 2) To assess the readiness of the stakeholders for the formal implementation of restorative justice into the criminal justice system; and
- 3) To propose an appropriate model of implementing restorative justice that is in line with the criminal justice system, the stakeholders' readiness, and the Malaysian context.

1.5 Significance of Study in Relation to Social Work

Judah (2004) wrote in her book, titled "Criminal Justice: Retribution Vs. Restoration", arguing that one field that is compatible to the missions of the existence of criminal justice is social work. Social work is one of the rare fields that focus on the holistic aspects of improvements of humankind. National Association of Social Workers (2008) lists down several code of ethics that, according to Fritz (2005), matches to what is purported by the criminal justice system:

- 1) Service: One of social workers' main goal is to provide the best of services to address the needs of their clients and to address social problems with solutions.
- 2) Dignity and worth of the person: Social workers deal with people with various backgrounds while protecting their dignity.
- 3) Integrity: Social workers deal with their client in an utmost sense of confidentiality and trustworthiness.

- 4) Social justice: Of all the codes of ethics listed above, social justice would be parallel the most with the aims of a criminal justice system, which is to address and eradicate social injustice that can exist in societies and institutions.

Restorative justice is a practice that ensures both the offenders and the victims are treated the way that they should, with dignity, worth, and justice. The unfortunate reality is that, institutions around the world suffers from the wrong attitudes to those who have committed an offence (Mohammad & Azman, 2012). The researcher who used to undergo a practicum in a juvenile detention in Malaysia between January 2012 to May 2012 observed that there was a clear sense of superiority and gap between some of the staffs and the residents who were adolescents. The residents sometimes complained of being yelled at for nothing, and being refused treatment when they were sick, and most of all, they entered the center just for the basics – that they get their food, drinks, and a place to sleep. When social work is highly valued in an institution, it should be logical that institutions such as the detention centers should have social work values such as non-judgmental attitude, confidentiality, and privacy are seeping throughout the services.

Rather than alienating the offenders from the society, restorative justice aims at uniting them back in the place where they belong, and this is something that social work also looks forward to doing (Fritz, 2005). The basic tenet of social work is to restore a person's social functioning, and where can the social functioning work if not within the society itself? One would argue that there are many other helping professionals in the field of criminal justice, but it seems that most “preparations” are learned in the job (Chaiklin, 2007). One of the beauties of social work is it is such a practical field that

those who are trained are equipped with knowledge of both theories and the realities of the practice. Therefore, it can be argued that social work is a field whose goals are parallel with the ones in criminal justice system, also with the programs of restorative justice that are designed to help the offenders find the alternatives of their treatment and the victims' conditions get their conditions restored to the way it was before.

Social workers are honed with the skills needed to run the programs that are based on the philosophy of restorative justice. Victim-offender mediation, for example, requires the presence of a mediator to assist in the negotiation between the two parties. It has been widely accepted that it is one of the main responsibilities or roles of a social worker to be a skillful mediator and ensure a smooth running of a dispute resolution (Parsons, 1991; Hepworth, Rooney, & Dewberr, 2012). With their holistic knowledge and ethical guidelines, social workers can be an effective mediator in such restorative justice program.

Ritter, Ritter, Vakalahi, and Ofahengau (2008) suggest that social workers, if trained properly, actually have the skills that would enable them to join the team of parole officers, probation officers, counselors in criminal justice system, and many other occupations. Mediators in programs like victim-offender mediation and family group conferences sometimes utilize trained voluntary mediators (e.g. Choi et al., 2010), probation officers (John Howard Society of Alberta, 1998), and sometimes even the police have been considered so (Meyer, Paul, & Grant, 2009). Given the flexibility of social work practitioners in their practice, and given their skills to play different roles in different cases and settings, social workers can help in increasing the number of available

mediators, if not replace those who are already in such as the probation officers as suggested by Ritter et al. (2008).

In Malaysia, juvenile delinquents deal mainly with public servants, namely the probation officers who are tasked under the Child Unit in *Jabatan Kebajikan Masyarakat* (Social Welfare Department). The main involvement of government institutions into the juvenile affairs might be contributed by the attitude of such government institutions that crimes are consequential to the laws, with little considerations for the community and the victims. In the Department, these probation officers would be the one who interview the juvenile delinquents, write a report based on the observation and reports, and also present the report in front of the judge in court. From the arguments from authors who support the notion of social work to be involved in criminal justice system above, it can be that that these probation officers would be one of the best candidates to be the officials who work in programs of restorative justice. However, this study will explore the potential candidacy based on the attitudes shown by the probation officers.

By conducting this study, it is hoped that the understanding on how social workers in Malaysia can help the implementation of restorative justice. The problem is mentioned above, that Malaysian criminal justice system needs an alternative of programs where both offenders and victims can benefit from. Therefore, it is important to understand the position of social workers in this issue, and if it is as visionary as how it is in some other countries.

1.7 Organization of the Study

Restorative justice has been discussed above in Chapter One to revolve from a long-standing practice in many countries and now it has been studied over and over again to see the effectiveness on the intended population. Now, Malaysia seems to start to recognize its benefits and the basic introduction has been done, however, Malaysian criminal justice has not fully adopted the concept in its system. This paper discussed about how restorative justice can fill in the gap that exists in the criminal justice system – that there is a lack of programs that can address the psychosocial needs of the child offenders and how the country is in need of an institution that cares for the welfare of victims of crimes in general. However, implementing restorative justice blindly might have its own drawbacks. Which is why it is pertinent to know the issues that are related to the introduction of a new concept into the system, the learn about the attitudes of various parties, and to see where restorative justice can be situated.

The following Chapter Two will discuss on the empirical literature on the effectiveness of restorative justice and how it has been widely practiced in various countries, which means that it can be culturally-adaptive to be implemented in Malaysia. Also some papers that studied the attitudes of various parties in foreign countries will also be reviewed to have a preliminary view on how the rest of the world thought of restorative justice before and after it has been implemented.

Other than that, papers that discussed on the theoretical parts of this practice will also be reviewed. The current study will look for some theories and perspectives that become the base for restorative justice to be successfully implemented in other countries. Also this study will look for the location of restorative justice in American criminal

justice system and compare with how it can be situated in Malaysian criminal justice system theoretically. Other than that, some of the concepts will be defined conceptually and operationally.

Chapter Three, then, explains the methods the study will employ to answer the research questions. This includes the design of the study, the variables that are involved, the intended sample, and the materials that the study will utilize in this research.

It is followed by Chapter Four, the data analysis which firstly contains the adjustment made to the questionnaires based on a pilot study done. The chapter, then, presented the data findings which comprised of statistical analyses where necessary, and clusters of themes observed in the responses of the respondents in this study. The implications of the findings will be discussed in Chapter Five, drawing the patterns of perception of the respondents on the current criminal justice system and also on the implementation of restorative justice.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

To understand how and why restorative justice exists in many countries and how Malaysia can learn from such evolution, one must first understand the models the criminal justice systems initially have been built on. Although these legal system-oriented models do not diminish per se, other models that are more focused on victims start to become an influence. These models recognize that certain procedures and way of conducting of these criminal justice systems around the world can have an impact on the well-being of both the offenders and the victims.

2.1.1 Criminal Justice System and Victims

Packer (1964) was one of the earliest to attempt at explaining the purposes of a criminal justice system and build two models – crime control and due process models – based on it. Crime control model explains that a criminal justice system acts as a crime suppresser. It is reasonable to assume that up to today's world, criminal justice is still expected to be just so. By having and undergoing all the processes in court, with the police and also the prison, a criminal justice system is seen as a way to deter crimes from rising. On the other hand, due process model might seem to oppose the first model because it assumes that one of the functions of a criminal justice system is to treat and handle offenders in a just manner and that the procedures that are set must be adhered. While crime control model acts to suppress crime as much as possible, due process model asks the system to see if any judgment convicted on an offender is just and reflects fairness.

While these models are good at explaining the consequence of a crime in the direction of a legal system, it ignores the one important stakeholder who is involved when the crime is conducted – the victims. Responding to Packer’s models that are lacking the element of victims, Roach (1999) built other models that recognize the victims’ rights in a criminal process. He, then, further suggested two models – punitive and non-punitive models – that assume a criminal justice system to serve its purposes in two ways: 1) to suppress crimes as propagated by Packer (1964), and 2) to “branch[es] out into other areas of social development and integration” (p. 673). The second purpose is intended to secure the purpose that a criminal justice system also tries to reduce the results of victimization and ensure that victims are well taken care of. Although Roach also acknowledged the importance of restorative justice in putting victims to the front row, his models still focus on retribution of an offender’s crime, which is not advocated by restorative justice practitioners and researchers. Another reason is that victims in this models are still passive, they do not play bigger role than as these models have assumed.

The victims’ more active role in criminal processes is one of the main focuses in a recent model of a criminal justice system (Stickels, 2008). Stickels’ model, victim satisfaction model, assumes that victims should be more involved in the processes and that, at the same time, prosecutors act as their representative as the victims’ primary interests become the focal point to the experience of the processes. Although Stickels makes a great contribution towards bringing the victims forward in their roles, but he unfortunately ignored the role of an offender in the whole process, which is ironically has been focused, primarily or secondarily in the past models. Therefore, this raises a

question: What stakeholders should a criminal justice system focus on when conducting its processes?

An ideal to a great ending to a criminal process would involve the consideration for both the primary and secondary stakeholder of an event of a crime (McCold, 2000). The primary stakeholders consists of the victims, the offenders, and those who have personal relationships with the victims or the offenders such as the family. The secondary stakeholders are those who suffer some kind of loss because of the event of the crime and the government officials fall under this category. They also include the larger communities such as schools, workplaces, and neighbors. Therefore, using this categories proposed by McCold, it can be assumed that a good model of a criminal justice system should focus on the welfare, well-being and restoration of conditions of all the primary stakeholders. While the loss suffered by the secondary stakeholders should also be addressed and considered, they should not take over the attention that should have been given to the primary stakeholders. Sadly, this is what happens in most of criminal justice system in many parts of the world.

McCold (2000) has typologized the stakeholders into primary and secondary in order to respond to the needs and focus of restorative justice programs. Fortunately, now legal personnels and academicians from all over the world have recognized restorative justice. It has also been supported by various studies (will be discussed later) and its effect is observed to be positive for both offenders and victims. In Malaysia, because 1) there are no clear and fixed programs of restorative justice practiced yet (N. Mohamed Nazeri, personal communication, 27th June 2012), 2) the criminal justice system still focuses on punishing the offenders in standardized and bureaucratic manner (Hussin,

2010), and 3) there are some services provided for victims, although mostly only physical ones such as protection service and protection house, it can be assumed that Malaysia is still mostly applicable to Packer's (1964) models, with a cross of Roach's (1999) categories of punitive and non-punitive models. In order to start proposing the implementation of restorative justice as an alternative system, how victims can be affected by a crime and the processes of criminal justice system should be discussed first.

2.1.2 Effects of Victimization and Dealing with a Criminal Justice System on Victims

The effect of being victimized is one of the reasons why a criminal justice system should not ignore victims in its processes. Literature have documented that victims, in various degree, suffer a range of consequences that result from the crime. One of the studies is conducted by Turnera, Finkelhorb, and Ormrod (2006), who made interviews via telephone with 2030 children aged two to 17 and their caregivers. The researchers sought out to see if variables related to victimization could lead to various consequences on their mental health. The four types of victimization in this study which were sexual victimization, child maltreatment, witnessing family violence and other major violence, all have a significant relationship with both depression and anger. Not just violent crime, child victims who were sexually abused also experienced similar negative consequences such as anger, depression, and even post-traumatic stress disorder (Fahrudin & Edward, 2009). Children and adolescents were observed to be affected by the crime in terms of their mental health, with various degrees. How about adult victims?

One study looked at the consequences of intimate partner violence on the mental health of the victims (Coker, Davis, Ileana, Sujata, Sanderson et al., 2002) The

researchers conducted telephone survey to random numbers and obtained 2014 female and 1656 male partners who have been involved in intimate partner violence. The results indicated that intimate partner violence did not just affect physical health outcome, but the victims were also more likely to be associated with negative mental state. Physical health outcome was affected when the partner used physical violence against his or her partner, but the researchers added that even without any physical violence, partners who were psychologically affected would also be more likely to have deteriorating physical health resulting from the affected psychological health.

Kilpatrick and Acierno (2003) compiled the data and sources of the psychological consequences of victimization of crimes in general, which included assaults, homicide, sexual abuse, and others. The authors argued that while victimization and mental illness did have a link, but the data from past literature did not really show which came first – the mental illness or being victimized. But more importantly, with mental illness or not, victims still pay great psychological costs for being victimized, and it includes post-traumatic disorder, depression and even substance abuse, with consideration of gender, age and race.

Not just psychological consequences, victimization also affects adult victims in terms of their quality of life (Hanson , Sawyer, Begle, & Hubel, 2010). Quality of life, according to the authors, is observed through three variables: 1) role functioning, 2) life satisfaction and well-being, and 3) social–material conditions. These authors gathered from past literature that roles can be negatively influenced by history of victimization. Parents, for example, experience various kinds of difficulties when it comes to parenting because they themselves are struggling with emotional distress resulting from