

Restorative Justice in the Malaysian Criminal Justice System: The Legal Position in the Civil Courts

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ABSTRACT

Restorative justice has gained international recognition and has been adopted in various forms within the criminal justice systems of countries such as New Zealand, the United Kingdom, and Australia. Rather than replacing the traditional criminal justice system, restorative justice complements existing mechanisms by providing an alternative approach to resolve criminal cases. In many jurisdictions, a guilty plea may serve as a referral factor for a restorative justice programme, which views crime as not only a violation of law, but also as harm to individuals and relationships. It therefore emphasises reparation, reconciliation, offender accountability, restoration of relationships, and the reintegration of offenders into society to reduce the likelihood of reoffending. In Malaysia, however, there is currently no comprehensive statutory or institutional framework expressly recognising restorative justice as a distinct approach to criminal justice within the Malaysian criminal justice system. This article examines the concept of restorative justice, its practice in selected jurisdictions, and the legal position within the Malaysian justice system. The study adopts a qualitative doctrinal research methodology based on relevant legislation, statutory provisions, reported cases, books, journal articles, and conference proceedings. The findings indicate that certain provisions of the Malaysian Criminal Procedure Code contain elements consistent with restorative justice, although they are neither formally characterised nor regulated as restorative justice mechanisms. Hence, although restorative justice is not expressly recognised within the Malaysian legal framework, existing criminal justice mechanisms contain restorative elements that may provide a foundation for developing a more structured restorative justice approach in Malaysia.

1. Introduction

The criminal justice system has traditionally been dominated by a retributive approach, which views crime primarily as a violation of the law and focuses on establishing guilt and

imposing a proportionate punishment for the offence committed. Retributive justice limits opportunities for victims to express the harm they have suffered, participate in the resolution of the case, or obtain meaningful redress. These limitations have contributed to the emergence of restorative justice as an alternative or complementary approach to conventional criminal justice.

Restorative justice has emerged as a complementary approach that shifts the focus from punishment alone towards repairing the harm caused by the crime. It emphasises the active participation of victims, offenders, and members of the community in identifying the harm caused and determining how it should be repaired. It also focuses on accountability, reparation, reconciliation, rehabilitation, and the restoration of relationships affected by the offence. Restorative processes may include victim-offender mediation, family group conference, and circle sentencing.

The approach has gained international recognition through instruments such as the Council of Europe's Recommendation No R (99) 19 on mediation in penal matters, Directive 2012/29/E, and the United Nations Basic Principles on the Use of Restorative Justice programmes in Criminal Matters. The Directive establishes minimum standards on the rights, support, and protection of victims of crime. The United Nations has likewise established basic principles for the development and use of restorative justice programmes within domestic criminal justice systems. The international development of restorative justice has subsequently been reflected in the criminal justice systems of various countries, including Australia, the United States, the United Kingdom, and New Zealand, although the form and scope of implementation differ between jurisdictions (Xiaoyu, 2017, p.148).

The growing international recognition of restorative justice raises an important question concerning its position within the Malaysian criminal justice system. Although the Malaysian criminal justice system contains certain mechanisms that reflect restorative or rehabilitative objectives, restorative justice has yet to be expressly recognised as a comprehensive approach within the criminal justice framework. Hence, this article examines the concept of restorative justice and the legal framework in international law and selected jurisdictions. This article also examines the position of restorative justice in the Malaysian criminal justice system. This article further considers how restorative justice may be accommodated within the Malaysian criminal justice framework.

1.1 Research Objectives

The study aims:

- i. To examine the concept of restorative justice,
- ii. To analyse the application of restorative justice under the United Nations and the United Kingdom, and
- iii. To examine the legal position of restorative justice within the Malaysian criminal justice system and identify existing criminal justice mechanism that contain elements consistent with restorative justice.

2. Literature Review

Restorative Justice is a process through which offenders are encouraged to acknowledge responsibility for the harm caused by their conduct to victims and the wider community.

In response, restorative justice seeks to facilitate the offender's reintegration into the community. Unlike conventional approaches that primarily perceive crime as a violation of law, restorative justice views crime as a violation of people and relationships, and seeks to address the resulting harm through the active involvement of victims, the accountability of offenders, and the participation of the community in determining appropriate ways to repair the harm, promote reconciliation, and restore relationships.

2.1 Definition of Restorative Justice

Restorative justice has been defined as a process whereby all parties with a stake in a particular offence come together to collectively resolve how to deal with the aftermath of the offence and its implications for the future (Tony, 1996, p.37). It therefore involves those directly or indirectly affected by the offence, including the offender, victim, family members, and members of the community, with the assistance of a neutral third party where appropriate. The facilitator assists the parties in communicating, understanding the harm caused, and identifying appropriate measures to repair the harm, reconcile the parties, and where possible, rebuild relationships affected by the offence (Daniel, Karen, 2015, p.58). Relationship is also an important principle of restorative justice because crime may cause harm not only to the victim but also to relationships between individuals and within the community.

A feature of restorative justice is its focus on the harm caused to people and relationships rather than solely on the violation of criminal law. It seeks to acknowledge and address the victim's injury while creating obligations for the offender to take responsibility for the consequences of their conduct. The offender is encouraged to understand the harm suffered by the victim, and undertake measures of reparation or restitution agreed upon by the parties (Allison, Gabrielle, 2001, p.3). Responsibility requires the offender to acknowledge their role in causing the harm and to take responsibility for the consequences of their conduct. This encourages the offender to understand the impact of the offence on the victim. Although not all harm can be completely restored, restorative justice seeks to identify appropriate forms of reparation based on circumstances of the case and the needs of those affected. Repair may include financial compensation or restitution, apology, returning stolen property, community service, and other forms of making amends.

The community may also play an important role by supporting the offender in fulfilling the agreed obligations and facilitating the offender's reintegration into the community (Daniel, Karen 2015, p.58). Reintegration seeks to restore the offender's positive connection with the community while encouraging the rebuilding of trust and responsible relationships. Where the offender demonstrates accountability and takes appropriate steps to address the harm caused, the community should support their reintegration.

Restorative justice process provides victims and offenders with an opportunity to communicate directly or indirectly about the offence and its consequences. The parties may discuss the circumstances surrounding the offence, express their feelings and concern, ask questions, and identify appropriate forms of reparation, including compensation where appropriate. Importantly, restorative justice gives victims a meaningful opportunity to participate in the process and to contribute to determining an appropriate outcome. At the same time, offenders are encouraged to accept responsibility for their actions, understand the consequences of their conduct, and actively participate in repairing the harm caused (Julie, 2002, p.51).

Restorative justice views crime not merely as a violation of criminal law but as harm caused to individuals, relationships, and the community. Accordingly, those affected by the offence should have an opportunity to participate actively in determining how the resulting harm should be addressed. Restorative justice emphasises offender accountability by requiring offenders to acknowledge the consequences of their actions and to take responsibility for repairing the harm or restoring the losses suffered by the victim (Mark, Marilyn, 2011, p.4). Foundational principles of restorative justice include the understanding that crime primarily involves a conflict between individuals, the objective of justice is to reconcile the parties while repairing the harm caused, and the criminal justice process should facilitate the participation of victims, offenders, and affected communities (Daniel, 2016, p.128). All participants in the restorative justice process are treated with dignity and have a safe opportunity to express their perspectives and experiences. It involves listening to and acknowledging the views of others, including the victim's experience of harm and the offender's perspective. Dialogue between the offender and the victim may also provide an opportunity for the offender to express remorse and demonstrate accountability. At the same time, the victim is allowed to express the physical, emotional, psychological, and other consequences of the offence (Xiaoyu, 2017, p. 155).

2.2 Restorative Justice Models

Restorative justice may be implemented through various programmes employing restorative processes, such as victim-offender mediation, family group conference and circle sentencing. These processes may result in a mutually agreed restorative outcome that addresses the harm caused by the offence and, particularly in cases involving young offenders, supports their rehabilitation and reintegration into the community.

2.2.1 Victim-Offender Mediation

Victim-offender mediation is also known as victim-offender reconciliation, is one of the established restorative justice practices. One of the earliest programmes was established in Kitchener, Ontario, in 1974, followed by the development of the first victim-offender reconciliation programme (VORP) in the United States. The programme was designed to hold offenders, particularly young offenders, directly accountable to their victims through a community-based restorative process (Mark, Marilyn, 2011, p. 113). Victim-offender mediation provides an opportunity for the victim and the offender to participate in a structured dialogue with the assistance of a trained and impartial mediator. The mediator facilitates communication between the parties and assists them in discussing the circumstances of the offence, its impact, and possible ways of addressing the harm caused (Mark, Marilyn, 2011, p.114). During the process, the offender may explain the circumstances surrounding the offence and respond to questions raised by the victim. The victim, in turn, has an opportunity to explain how the offence has affected them and to communicate their concerns, needs, and expectations. The process may take place through a face-to-face meeting, or through separate meetings facilitated by the mediator (Catherine, 2000, p.27).

An important feature of victim-offender mediation is the active participation of both the victim and the offender in determining the outcome. Rather than having the outcome imposed solely by a court or other authority, the parties are encouraged to identify an appropriate and mutually acceptable response to the harm caused by the offence. The

mediator does not determine the outcome but assists the parties in communicating effectively, understanding the mediation process and its conditions, and negotiating an agreement. Accordingly, victim-offender mediation can be understood as a dialogue-based restorative process in which the victim and offender exchange information about the offence, express their experiences and perspectives, and consider appropriate measures to address the resulting harm. Where an agreement is reached, it may include forms of reparation or making amends, depending on the circumstances of the case and the needs and interests of the parties.

2.2.2 Family Group Conference

Family group conference is a restorative justice process that brings together the young offender, victim, their respective families or supporters, and representatives of government institutions or other community agencies to address the consequences of youth offending. The primary objective is to encourage the young offender to understand the harm caused by their behaviour to the victim, their family, and the wider community, while providing an opportunity for the parties to participate in determining an appropriate response to the offence (Mark, Marilyn, 2011, p.144). The process involves the offender, victim, family members, and other relevant participants, with the assistance of a neutral facilitator. Family members are involved because they may also be affected by the offence and can provide emotional and practical support to both the offender and the victim, particularly where the victim or offender is a child. The facilitator organises and guides the conference, assists communication between the participants, and ensures that the discussion takes place in a safe and constructive environment. During the conference, the offender is generally allowed to explain what happened and to reflect on how their actions affected the victim and others. The victim may then describe the impact of the offence on their life and express their concerns and needs. Family members and other participants may also explain how the offence has affected them. The participants subsequently discuss appropriate ways of repairing the harm and addressing the consequences of the offence (Juan, Allison, 2003, 48).

The involvement of a family member is an important feature of family group conference because their presence can provide support and encouragement to the offender in taking responsibility for the offence. Their participation may also strengthen the offender's commitment to comply with the agreed outcome, as family members are involved in the discussion and are aware of the commitments made during the conference. This support may contribute to the offender's rehabilitation and reduce the likelihood of further offending.

Family group conference generally involves several key elements, namely the participation of the victim and offender, the involvement of their families, supporters or other affected persons, the presence of a trained facilitator, an opportunity for the participants to express their experiences of the offence and its consequences, and the development of an agreed plan to address and repair the harm caused (Joan, Kevin, 2015, p.220). Community members and relevant criminal justice or government representatives may also participate where appropriate. However, the victim and offender remain central to the process and should have a vital role in determining how the harm should be addressed (Mark, Marilyn, 2011, p.144). Hence, family group conference not only to hold the offender accountable but also to address the needs of the victim, repair the harm caused, strengthen family and community support, and facilitate the offender's rehabilitation or reparation and reintegration into the community.

2.2.3 Circle Sentencing

Circle sentencing is a restorative justice process that involves the participation of the offender, victim, prosecutor, police officer, judge, the family members of the offender and the victim, and members of the community. The participants sit together in a circle to discuss the offence and determine an appropriate response that takes into account the needs and interests of the offender, victim and wider community (United Nations Office on Drugs and Crime, 2006, 30). Circle sentencing is available where the accused has pleaded guilty and accepts responsibility for the offence. During the process, the offender is given an opportunity to explain the circumstances surrounding the offence and the reasons for their conduct. The other participants are then allowed to express how the offence has affected them and to discuss the harm caused to the victim, their families, and the community. Through this dialogue, the participants collectively consider appropriate measures to address the harm and determine a suitable sentencing outcome (Tyrone, 2016, p.105).

2.3 Restorative Justice under the United Nations

The United Nations establishes principles, standards and guidelines for the application of restorative justice in criminal matters, addressing key aspects such as the restorative process, the parties involved, the role of the facilitator, the possible outcomes, consent, and confidentiality through the Declaration of Basic Principles on the Use of Restorative Justice programmes in Criminal Matters 2002 endorsed by the United Nations' Economic and Social Council (ECOSOC) in 2002. Its objective is to encourage Member States in developing and implementing restorative justice at any stage of their domestic criminal justice process, particularly in appropriate cases involving less serious offences. Restorative justice may provide alternatives to conventional criminal proceedings by facilitating mediation, reparation or compensation to victims, community service, and other measures aimed at repairing the harm caused by crime (Jennifer, Danie, 2014, p.18). The resolution is not binding unless it is incorporated into a domestic law.

The United Nations Resolution defines the restorative process in the Declaration of Basic Principles on the Use of Restorative Justice programmes in Criminal Matters as any process in which where the victim, offender, and any other individuals or community members of the affected community participate actively in resolving criminal matters arising from the offence, with the assistance of a third party. The restorative process provides an opportunity for the parties to exchange information about the offence, discuss the harm caused, and determine appropriate ways of repairing that harm and addressing their respective needs. The process is intended to achieve a mutually acceptable and respective needs. Communication during the restorative process should remain confidential and should not be disclosed, except with the agreement of the parties or where disclosure is required by national law (Daniel, 2005, p.18-25).

The parties to a restorative process primarily comprise the victim and the offender, although other persons affected by the offence, including members of the community, may participate. The application of restorative justice is based on the voluntary participation and informed consent of the parties. Accordingly, the process should not be imposed against the will of the victim or offender (Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Article 7). The parties should be informed of their rights, the nature of the process, and the possible consequences of participating, and should be able to withdraw their consent where permitted under the

applicable framework. Where the parties do not wish to participate in restorative justice, the matter should proceed through the ordinary criminal process. The restorative justice process is facilitated by a trained and impartial facilitator, whose primary role is to assist communication between the victim and the offender and to create a safe environment for dialogue. The facilitator should remain neutral and should not impose an outcome, make decisions on behalf of the parties, or determine the merits of the dispute. The facilitator assists the parties in communicating effectively, understanding each other's perspectives, and reaching a voluntary agreement.

A fundamental feature of the restorative process is that the offender acknowledges responsibility for the offence and the parties have sufficient agreement on the basic facts of the case before an agreement is reached. The outcome may include restitution, compensation, reparation to the victim or affected community, or measures aimed at the reintegration of the offender into the community. The agreement must be reached voluntarily and should be proportionate and reasonable in light of the harm caused. Although the agreement is determined by the parties, the facilitator has an important role in ensuring that the parties understand the terms and implications of the agreement. Where an agreement is reached, appropriate mechanisms may be established to ensure its implementation and judicial supervision. The agreement may be incorporated into a judicial decision and the offender should not be prosecuted for an offence of the same facts (Declaration of Basic Principles on the Use of Restorative Justice programmes in Criminal Matters, Article 15).

Where no agreement is reached, the matter should be referred to the criminal justice process and the court shall decide according to law. Information disclosed or statements made during the restorative process should remain confidential and should not be used against the offender in subsequent criminal proceedings, particularly as evidence of an admission of guilt. Similarly, where an agreement has been reached but cannot be fulfilled, appropriate steps may be taken to address the non-compliance, including referring the matter to the restorative process or to the criminal justice authorities. Failure to complete a restorative agreement should not automatically result in a more severe punishment (Declaration of Basic Principles on the Use of Restorative Justice programmes in Criminal Matters, Article 16). Where the restorative process is inappropriate, unsuitable or unable to resolve the matter, it should be referred to criminal justice authority without delay.

2.4 Restorative Justice in the United Kingdom

In the United Kingdom, restorative justice is recognised within the criminal justice legal framework through various statutory and procedural mechanisms. Restorative justice principles have been incorporated into sentencing, victim participation, reparation, and youth justice processes.

The statutory recognition of restorative justice was strengthened by the Crime and Courts Act 2013, which amended the Powers of Criminal Courts (Sentencing) Act 2000 to expressly provide for restorative justice requirements in court sentencing powers. Under section 1ZA, where the court defers the passing of sentence, it may impose a restorative justice requirement as part of the order. Such a requirement involves participation in an activity that involves the offender and the victim, intending to increase the offender's awareness of the impact of the offence on the victims and provide the victim with an opportunity to describe or express their experience of the offence and its consequences. Participation of the offender and the victim is voluntary and requires the consent of all

persons who participate in the activity, with the assistance of a supervisor (Powers of Criminal Court (Sentencing) Act 2003, Section 1ZA).

The protection and participation of victims are supported by the Code of Practice for Victims of Crime (Victims' Code), which establishes the services and minimum standards that must be provided to victims of crime by relevant service providers. The Code provides victims with various rights, including the right to receive information about the offence and criminal proceedings, to be referred to appropriate support services, to receive information on claiming compensation, to be informed about the trial and its outcome, and to make a Victim Personal Statement. The Victim Personal Statement enables victims to explain the impact of the offence on their lives, including its physical, emotional, financial, reputational, and other impacts. Where the offender is convicted, the court takes the Victim Personal Statement into account when determining the appropriate sentence. The statement may also assist relevant service providers in identifying any additional support required by the victim.

The Sentencing Act 2020 further recognises restorative justice requirements as a form of deferment requirement. Section 7 defines a restorative justice requirement as participation in an activity involving the offender and the victim, aimed to increase offender's awareness of the harm caused by the offence, and provide victims with an opportunity to express their experiences and the impact of the offence. Such a requirement may only be imposed with the consent of all participants. Section 7 of the Act also emphasises restorative justice in the sentencing process through compensation and restitution. Courts may order offenders to compensate victim for losses resulting from an offence and may order stolen property to be restored to the victim.

Restorative principles are also reflected in reparation and compensation mechanisms. Section 130 of the Powers of Criminal Courts (Sentencing) Act 2000, together with section 53 of the Criminal Injuries Compensation Act 1995 empowers the court to order the offender to pay compensation to a victim for any losses resulting from the offence. In addition, section 149 of the Power of Criminal Courts (Sentencing) Act 2000 allows the court to order restitution of property stolen by an offender by requiring its return to the victim (Tyrone, 2017, p.93). These provisions indicate that a restorative dimension of sentencing promotes reparation for harm and compensation to victims. Schedule 16 part 2 of the Crime and Courts Act 2013 also provides for restorative justice requirements within other criminal justice arrangements, including community orders, conditional cautions, subject to the consent of the offender and the victim.

Restorative justice is significant in the context of youth offending, where young offenders may be diverted from formal court proceedings through restorative justice mechanisms, such as youth justice conferencing and programmes designed to encourage offenders to make amends for the harm caused, including through community-based activity. Youth justice conferencing provides an opportunity for the young offender and the victim to meet under the supervision of a trained conference facilitator. This process enables both the offender and the victim to participate directly in addressing the consequences of the offence and determining appropriate ways to repair or make amends for the harm caused (Tyrone, 2017, p.89). The offender has to fulfil the contract as agreed by the victim and the offender, which is normally reparation or rehabilitative activities (Richard, Carolyn, 2012, p.203).

It can be seen that the United Kingdom framework demonstrates that restorative justice has developed beyond informal or voluntary practices and has been incorporated into various aspects of the criminal justice system, consistent with the principles promoted by the United Nations framework. The United Nations framework does not prescribe a single or uniform restorative justice process. Instead, it provides broad principles and standards that allow restorative justice programmes to be adapted to the legal and institutional context of individual jurisdictions, provided that they comply with the fundamental principles and safeguards of restorative justice. In the United Kingdom, although there is no single statutory process governing all forms of restorative justice, its explicit recognition within statutory provisions demonstrates its formal acceptance within the criminal justice system. Its application through restorative justice requirements, victim participation mechanisms, compensation and restitution, community-based measures, and youth justice processes reflects the incorporation of restorative principles into different stages of the criminal justice process. The objectives of these measures extend beyond the punishment of offenders to recognising the harm suffered by victims, allowing victims to participate, promoting offender accountability, facilitating reparation, and supporting rehabilitation and reintegration. The United Kingdom experience therefore demonstrates how restorative justice can be accommodated within an existing criminal justice system without necessarily replacing the conventional criminal justice process.

3. Research Methods

This study adopts a doctrinal legal research methodology, focusing on the analysis of legal materials and authoritative online resources. The data are collected from both primary and secondary sources. The primary sources include relevant legislation and statutory provisions, while the secondary sources comprise books, journal articles, conference papers, research reports, and other scholarly materials obtained from authoritative databases and online sources. This study examines the concept and principles of restorative justice through an analysis of relevant legal provisions and scholarly writings. To examine the application of restorative justice in criminal cases, the study also analyses its implementation in selected jurisdictions, particularly the United Nations framework and the United Kingdom. In addition, the Malaysian legal framework and existing practices relating to restorative justice within the criminal justice system are analysed, with particular reference to the Criminal Procedure Code, to determine the extent to which restorative justice is recognized and reflected in the existing criminal justice mechanisms.

4. Findings

Malaysia operates within a dual court system comprising the civil courts and the Syariah courts, each exercising criminal jurisdiction within their respective constitutional and statutory limits. This article focuses on the civil criminal justice system, under which the civil courts exercise jurisdiction over criminal offences within the legislative competence of the Federal Parliament, including offences under the Penal Code. The criminal process before the civil court is governed by the Criminal Procedure Code, which establishes the procedural framework for the investigation, prosecution, trial, and disposition of criminal cases. It is necessary to examine whether restorative justice is expressly recognised within this legal framework and whether existing criminal procedural provisions incorporate elements that are consistent with restorative justice principles.

Malaysia does not have specific statutory provisions in the Criminal Procedure Code that expressly recognise or regulate restorative justice practices. Under the existing criminal procedure, when a charge is read and explained to an accused person, the accused is required to indicate whether he or she pleads guilty to the charge or claims to be tried. against the accuse person, the options that the accused person has is to plead guilty or claims trial. Section 173 (a) of the Criminal Procedure Code provides that when the accused appears or is brought before the Court, a charge containing the particulars of the offence of which he is accused shall be framed and read and explained to the accused, who shall then be asked whether he is guilty of the offence charged or claims to be tried. Where the accused pleads guilty to the charge, whether as originally framed or as amended, the plea shall be recorded and the accused may be convicted on the basis of plea, following which the court shall pass sentence according to the law. Before recording the plea, the court must ascertain that the accused understands the nature and consequences of the plea and intends to admit, without qualification, the offence alleged (Lee, Che Audah, 2011, p.4).

Several features of restorative justice can be identified within the Criminal Procedure Code. For example, the Code recognises the importance of victim participation in the sentencing process by providing an opportunity for the victim's views and the impact of the offence to be brought to the attention of the court through a victim impact statement. This mechanism enables the court to consider the harm suffered by the victim when determining an appropriate sentence following the offender's conviction (Lee, Che Audah, 2011, p.341). In addition, the process of compounding offences under section 260 provides a limited opportunity for the accused and the victim to resolve certain offences through an agreed settlement. In cases where the offence is legally compoundable, the accused may admit the offence and pay compensation to the victim as agreed between the parties, following which the victim may consent to the withdrawal or compounding of the case (Stanley, Neil, Chan, 2012, p.31). Although the compounding process does not constitute a restorative justice process in itself, it contains certain restorative elements, particularly victim participation, offender accountability, and reparation through compensation; the process provides an opportunity for the accused and the victim to communicate and reach an agreement concerning the consequences of the offence, rather than relying on formal criminal proceedings and punishment. However, its primary objective remains the disposal of a compoundable offence in accordance with the law, rather than the broader restorative objectives of addressing the harm, facilitating dialogue, reconciliation, and repairing relationships.

Section 173 and 295A of the Criminal Procedure Code illustrate that Malaysian criminal procedure contains certain elements that are compatible with the principles of restorative justice, although these provisions do not expressly establish a restorative justice framework. Section 173 empowers the court to adopt alternative forms of disposition by taking into consideration factors such as character, antecedents, age, health or mental condition of the person charged. Among the measures available to the court are compensation for injury or loss, restoration of stolen property, restitution, discharge upon conditions of good behaviour, and rehabilitative measures (Lee, Che Audah, 2011, p.341). These measures reflect certain restorative justice objectives, particularly the emphasis on repairing the harm suffered by the victim, restoring property, compensating for loss, and encouraging the offender to take responsibility for the consequences of the offence.

Similarly, section 295A provides special measures for youthful offenders, including placing the offender under the care of a parent, guardian, or nearest adult relative, requiring the offender to maintain good behaviour, undertaking community service, and undergoing rehabilitative counselling. These measures correspond with the rehabilitative and reintegrative aspects of restorative justice. The involvement of parents, guardians, or other responsible adults may also strengthen the social support necessary for the offender's rehabilitation.

The Criminal Procedure Code does not currently contain specific provisions recognising or regulating restorative justice as a mechanism for resolving criminal offences. Nevertheless, several existing provisions contain elements consistent with restorative justice principles, including opportunities for victims to obtain compensation, restitution, and reparation for the harm or loss suffered. In certain circumstances, offenders may also be required to take steps to repair the harm caused by their conduct through measures such as community service and rehabilitation. These elements demonstrate that the Malaysian criminal justice system is not exclusively punitive, but already recognizes certain measures aimed at addressing harm suffered by victims and rehabilitating offenders. Nevertheless, the absence of specific provisions governing restorative justice means that its application remains limited and dependent on existing mechanisms and particular circumstances. This contrasts with international developments, where restorative justice has increasingly been recognized as a complementary approach to the criminal justice system, particularly in cases involving direct harm to victims. The recognition of restorative justice would provide victims with an opportunity to express the impact and harm caused. Such a process may not only contribute to restoring relationships between victim and offender, but may also assist victims in recovering from the trauma resulting from the offence and support the rehabilitation and reintegration of the offender into the community.

Accordingly, there is a need to consider strengthening Malaysia's criminal justice framework through the introduction of specific provisions on restorative justice. Such provisions could establish a structured mechanism for referring and resolving appropriate criminal cases, particularly minor offences that cause direct harm to victims and where the offender is willing to admit the offence and accept responsibility for the harm caused. This approach would not seek to replace the existing criminal justice system, but rather to complement it by providing an avenue that places greater emphasis on victim recovery, offender accountability, reparation and the restoration of relationships.

5. Conclusion

Although restorative justice has gained international recognition and has been adopted in various forms across different jurisdictions, Malaysia has yet to formally recognise restorative justice as an integral component of its criminal justice system. There is currently no specific statutory framework within the Criminal Procedure Code that expressly establishes and regulates restorative justice practices. Nevertheless, the Criminal Procedure Code contains certain mechanisms that are compatible with the principles of restorative justice, although these provisions do not expressly establish a restorative justice framework. Restorative justice generally involves the active participation of victims, offenders, a neutral facilitator, and members of the community in identifying the harms caused by an offence and determining how the harm should be repaired. The existing provisions of the Criminal Procedure Code, however, do not

expressly require victim-offender dialogue, victim participation in determining the appropriate outcome, or restorative agreement between the parties. Nevertheless, the recognition of compensation, restitution, reparation, rehabilitation, community service, and good behaviour reflects certain restorative and rehabilitative objectives. These existing mechanisms may therefore be regarded as elements within the current criminal justice framework that are capable of supporting restorative outcomes and may provide a foundation for the development of a more structured restorative justice approach in Malaysia.

Ethics Approval and Consent to Participate

This manuscript is based on information obtained from the printed and online materials only. No human participants are involved in any of these findings. Ethical Approval & Consent is not necessary.

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Conflict of Interest

The author declares no conflict of interest.

References

- Allison, M., Gabrielle, M. (2001). *Restorative Justice for Juveniles: Conferencing, Mediation and Circles, Introducing Restorative Justice*. Hart Publishing.
- Catherine, L. (2000). Family Group Conferencing: Cultural Origins, Sharing, and Appropriation- A Maori Reflection. Gale, B., Joe, H(Ed.).*Family Group Conferencing: New Directions in Community-Centered Child and Family Practice*. Transaction Publishers.
- Daniel, W. V. N. (2005, April 18-25). *An Overview of Restorative Justice Around the World*. Workshop 2: Enhancing Criminal Justice Reform, Including Restorative Justice, Thailand.
<https://biblioteca.cejamericas.org/server/api/core/bitstreams/501b9d42-d387-4008-99c2-a47f43323cb7/content>
- Daniel, W. V. N., Karen, H. S. (2015). *Restoring Justice: An Introduction to Restorative Justice*. Routledge.
- Daniel .W.V. N. (2016). Restorative Justice and International Human Rights. In Theo, G (Eds.), *Restorative Justice*, Routledge. Handbook on Restorative Justice Programmes. (2006). United Nations Office on Drugs and Crime, New York, 2006, 30, https://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf
- Jennifer, J. Llewellyn, Daniel, P. (2014). *Restorative Justice, Reconciliation, and Peacebuilding*. Oxford University Press.
- Joan, P. Kevin, R. (2012). *The Oxford Handbook of Sentencing and Corrections*, Oxford University Press.

- Juan, T., Aliison, M. (2011). Re-forming Justice: The Potential of Maori Processes. Eugene, M. Gordon, H. (Eds). *Restorative Justice: Critical Issues*. SAGE Publications
- Lee, C.F, Che, A. H. (2011), *The Process of Criminal Justice: Trial Proceedings, Sentencing and Appeals*. Lexis Nexis.
- Mark, U., Marilyn, A. (2011). *Restorative Justice Dialogue: An Essential Guide for Research and Practice*. Springer Publishing Company.
- Richard, Y., Carolyn, H. (2012). Restorative Justice and Punishment. Sean, M (Eds). *The Use of Punishment*. Routledge.
- Stanley, Y., Neil, M. Chan, W. C. (2012). *Criminal Law in Malaysia and Singapore*. Lexis Nexis.
- Tony, M. (1996) 37. The Evolution of Restorative Justice in Britain. *European Journal on Criminal Policy and Research*, 4 (21-43).
- Tyrone. K. (2016). *Victims and the Criminal Trial*, Macmillan Publishers.
- Xiaoyu, Y. (2017). *Restorative Justice in China: Comparing Theory and Practice*. Springer.