

# The Readiness of Probation Officers of the Implementation of Restorative Justice in Malaysia

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## Abstract

Probation officers or *pegawai akhlak* working in Social Welfare Department of Malaysia are among the most significant authority figures in juvenile offender's life going through a criminal process. This implies that their voice and opinion is an important part of assessment process when it comes to delivering intervention measures for the juvenile offenders. The Malaysian government has already called for the implementation of restorative justice within its juvenile justice and this means that obtaining the probation officers' feedback on this would be pivotal which is this study's aim. Twelve probation officers working in several states in Malaysia were interviewed by phone and asked with their readiness and perception on three main components of restorative justice which included a dialogue/meet-up between an offender and his or her victim, apology/forgiveness, and reparation of harm. The responses showed a trend of acceptance but with a degree of wariness when it comes to reparation of harm which was seen material by the respondents. In addition, the probation officers also emphasized on the feasibility of restorative justice programmes on only certain types of crime. These probation officers' thoughts on restorative justice and the implication on the possible implementation will be discussed further.

Keyword: Probation officers, restorative justice, juvenile offenders, Malaysia

## 1. Introduction

An ideal role of a criminal justice system in Malaysia is said to be punitive and at the same time rehabilitative (Samuri & Mohd Awal, 2009). However, it has become a trend in criminal justice systems in many countries to put punishments as the heavier option (Black, 2016). This is perhaps why one of the more popular ways of rehabilitation is through institutionalizations. In Malaysia, there are a few ways where the juvenile offenders undergo institutionalizations: probation hostels, specialized schools, and prisons. Different institution caters to juvenile offenders with different needs and intensity by which the order of which one has to undergo depends a lot on the report by a probation officer.

Although a number of non-institutionalized interventions have been supported as effective (e.g. Bradshaw, Roseborough, & Umbreit, 2006; Chung & Steinberg, 2006; Galbavy, 2003; Leve & Chamberlain, 2005), others have observed that institutionalization can still be effective. An example of an effective institutionalized programme is on that addresses the social skills and the cognitive-behavioral aspects of the offenders (Lipsey, Wilson, & Cothorn, 2000).

Although institutionalization in Malaysia is quite a popular choice, the Malaysian government has introduced a few measures that adopt the ideology of deinstitutionalization. In Child Act 2001, among the orders that would be sentenced to the convicted juvenile offenders were non-institutionalized intervention such as *Bengkel Interaktif* that group the juvenile offenders with their families and good-behaviour bond where the offenders would be monitored for good behaviour. Among other measures taken is the implementation of community service order (Jabatan Kebajikan Masyarakat, 2009), but this is only for offenders between 18 to 21 years old.

In discussing about the approach of deinstitutionalization, restorative justice is a prominent form of deinstitutionalized intervention for juvenile offenders that become increasingly popular in the modern criminal justice system. Restorative justice is an ideology that emphasizes on the primary stakeholders' (i.e. the victims and the offenders) roles in the criminal process (Wolhuter, Olley and Denham, 2009). Many studies have demonstrated the effectiveness of restorative justice in reducing recidivism (Bradshaw, et al., 2006; Umbreit, Coates and Robert, 2000), increasing victim satisfaction (Mutter, et al., 2008; Umbreit & Bradshaw, 2003).

Malaysia has begun to acknowledge the benefits of introducing restorative justice in the country (The Star, 2011), and an assessment done on Malaysian citizens hinted at their willingness to accept restorative justice programmes that is laced with community elements, dialogue and forgiveness (Mohammad & Azman, 2014). However, further assessment on readiness is required to see the specific adjustment we will have to do in order to for restorative justice within the Malaysian context.

### **1.1 The Probation Officers and the Aim of this Study**

In Malaysia, probation officers or *pegawai akhlak* play an important role in a juvenile offender's life. Given their important role, it should not be a surprising that a study found that the way a probation officer works may affect the recidivism of the juvenile offender (Andersen & Wildeman, 2015; Papanozzi & Gendreau, 2005). This may be due to the argument that pointed out how the relationship between the probation officers and their clients (i.e. the juvenile offenders) is among the strongest tool in their service (Burnett & McNeill, 2005; Worrall & Mawby, 2014).

In the field of policy formulation, listening to the perspective of the people affected by the policies is a pivotal step (Dorey, 2005). Given the important role held by a probation officer in the rehabilitation of juvenile offenders, this article argues that probation officers are among the figures we need to listen to, as probation officers' perception and feedback in what works or does not work can shed lights in formulating effective juvenile policies (Annison, Eadie, Knight, 2008).

This includes the implementation of restorative justice within the Malaysian juvenile justice. Along with the staffs at the juvenile detention centers, probation officers assigned to deal with juvenile cases are among the contacts close to the juvenile offenders. The argument by Dorey (2005) and Annison et al. (2008) would dictate that their feedbacks and perception on the implementation of restorative justice in Malaysia would be valuable information necessary for effective implementation.

Therefore, this study aims at interviewing probation officers in Malaysia on their readiness towards the implementation of restorative justice within the Malaysian criminal justice system. The next section underlines the method employed to achieve such objective.

## **2. Methods**

### **2.2 Sample**

In this study, the probation officers recruited had to have already been assigned in Child Unit of Social Welfare Department Malaysia during the interviews. This is an important inclusion criterion as there were also probation officers who had not been gazetted as probation officers – which meant that they would not have served as probation officers under the Department. Those who had been gazetted would have firsthand experience in dealing with juvenile cases and the experience is regarded as important in this study. A total of 12 probation officers working in different states in Malaysia were recruited. All interviews were conducted through telephone and recorded with a voice recorder for later transcription.

## 2.2 Method of Data Collection and Materials of the Interview

This study employed a fully structured in-depth interview. For the questionnaire used in the interviews, three elements of restorative justice made up the items of the questionnaire which were: 1. A dialogue and a meet-up (Christie, 1977; Wolhuter, Olley and Denham, 2009); 2. Reparation of harm (Braithwaite, 2002; Doerner & Lab, 2012), and; 3. Forgiveness/apology (Doerner & Lab, 2012; Zehr & Mika, 1998). Every item was started as yes-or-no question, then, a follow-up open-ended question was asked requesting them to explain why they responded with a yes or no. Then, a thematic analysis is conducted to see the emerging themes from the responses.

## 3. Results

The themes observed from each item of the interview which were dialogue/meet-up, reparation of harm, and forgiveness/apology. Note: Although originally the researcher expected a 'yes' or 'no' response for each item, some respondents opted for a third option, "it depends on the case" which was neither a 'yes' nor 'no' response.

### 3.1 Item 1: Dialogue/Meet-up

For this item, only two probation officers responded with a "no" (Respondent 2 and 7). Respondent 2 said, "*Nanti akan melibatkan keluarga. Malu pada dia takut orang tahu identiti dia.* (It will involve family. He would be ashamed and I am concerned people would find out about his identity)." He said, "*Menyukarkan lagi keadaan dan memanjangkan lagi hal. Lepas tu, timbul ketidakpuasan hati.* (It would make things difficult and prolong the issue. And then, dissatisfaction might occur)."

There are five respondents who said 'yes' (Respondent 5, 6, 9, and 12). The first theme observed from the 'yes' responses had an emphasis on the victims (Respondent 5, 6, and 12). Respondent 5 highlighted on how restorative justice could enhance the empathy of the offenders, "*Supaya budak-budak ni dapat tahu kesan perbuatan tu. Berhadapan dengan mangsa dan bercakap dari hati ke hati.* (So the kids would know the effect of their crime. Facing the victims and talking from heart to heart)." Respondent 12 added, "*Bila dia bersemuka dia ada rasa malu dan mangsa boleh memaafkan sebab lepas ditangkap dia rasa bersalah.* (When he faces the victim, he would feel the shame and the victim can forgive him, because after arrest, he would feel guilty)."

Respondent 6 and 9 were similar in their point that restorative justice programme should be done before trial. Respondent 6 said, "*Tapi kalau sebelum perbincangan lagi bagus.* But if it's done before trial, it is better). Respondent 9 said along with her point on the involvement of court, "*Seelok-eloknya sebelum dituduh. Dapat kurangkan penglibatan mahkamah. Dan benda ni dapat menimbulkan rasa erat dalam hubungan dan dendam pun tak ada. Tapi, untuk hubungi mangsa susah. Pelaksanaan susah sikit.* (It is better before conviction. It can lessen the involvement of the court. And this thing can improve the relationship and revenge can be eradicated. But to contact the victim is difficult. The operation might be challenging)."

Respondent 1, 4, 8, 10, 11's responses underscored the importance of considering the type of case in looking at whether restorative justice is suitable. Respondent 4 said, "*Depends on the case. Kalau [jenayah] seksual atau fizikal tak perlulah.* (Depends on the case. If it is sexual or physical [crime], there is no need)." Respondent 1 and 8 responded similarly. Respondent 10 added on the ambiguity of offender-victim status, "*Kes lain-lain. Tak semua mangsa adalah mangsa dan mangsa juga tak dapat dikenalpasti. Kes untuk ditarik balik susah. Dan benda ni melibatkan banyak pihak.* (Different cases are different. Not all victims

are victims and sometimes victims cannot be identified. To withdraw the case is also difficult. And this involves a lot of parties).”

### **3.2 Item 2: Forgiveness/Apology**

For this item, only two respondents (Respondent 1 and 11) thought that the element where the juvenile offenders offer apology should depend on the type of the case. Respondent 1 said, “*Kena ikut kes, macam saya cakap tadi, kalau kes rogol tak perlulah.* (It depends on the case. Like I said earlier, if it is a rape case, then there is no need [for this]).”

However, the rest of the respondents agreed that this element should be implemented. Respondent 10 emphasized that it is good for the victims and the juvenile offenders, “*Saya bagi sebab berlaku sengaja ke tidak, untuk menolong juvana juga.* (I would like it because whether it is intentional or not, it is to help the child offenders too).” Respondent 2 added, “*Mestilah. Dia dah lakukan kesalahan kan? Dia dah malukan keluarga jadi dia kena jernihkan keadaan.* (Of course. He has made a mistake right? He has shamed his family so he has to clear the situation).” Respondent 3 said similarly while Respondent 5 highlighted, “*Sebab minta maaf tu salah satu langkah awal untuk perubahan.* (Because apology is a first step towards changing).” Respondent 8 emphasized that the offenders had to be willing, “*Tapi dengan sukarela. Dia kena kehendak sendiri. Kena ada kesedaran sendiri.* (But it must be voluntary. He must want it. Must be on his own realization).” Respondent 12 added a religious element, “*Islam kalau buat salah kena minta maaf jadi kira mengajar juvana.* (In Islam, if you make a mistake, you apologize to teach the offenders).”

### **3.3 Item 3: Reparation of Harm**

Respondent 1 and 11 said “no” to this item. Respondent 1 specifically talked about the socio-economic status of the offenders, “*Tak patut untuk juvana sebab mereka dah ada hukuman sendiri. Lagipun selalunya mereka miskin.* (It is not right for the offenders because they already have their own punishments. And also they are usually poor).”

Six respondents said “yes” (Respondent 4, 6, 7, 9, 10, and 12). For other responses, generally, two sub-themes were observed: 1) Emphasis on self, and; 2) Emphasis on others. For the emphasis on self (Respondent 4 and 12), the respondents focused on the benefits of repairing the harm on the juvenile offenders themselves. Respondent 4 said, “*Supaya mereka menyedari kesilapan dan level kesedaran mereka tu naik.* (So they realized that they made a mistake and their level of awareness increased).”

For the emphasis on others (Respondent 6, 7, and 10), the focus of the responses was on other people. Respondent 7 and 10 said that repairing the harm is one way to convince people that the offenders have improved. Respondent 10 said, “*Sebagai salah satu cara untuk refleksi diri. Dan untuk meyakinkan orang.* (Because it is one way to reflect on themselves. And it is to convince other people).” Respondent 6 added, “*Ibu bapa pun kena bertanggung jawab. Kalau hilang mungkin kena tolong ganti rugi.* (The parents must also be responsible. If [anything] gets stolen, it might have to be replaced).”

Respondent 2, 3, 5, and 8 said that it depends on the case. Respondent 3 said, “*Maksud saya semua ini kena bergantung kepada juvana dan juga bergantung kepada perbincangan atau situasi.* (I mean this all depends on the offenders and the discussion and situation).”

## **4. Discussion**

This study assessed the readiness of 12 probation officers on the implementation of restorative justice in Malaysian context. Their responses were analysed using thematic analysis and the emerging themes were identified and analysed altogether. In several ways, the responses by the probation officers in this study did not just reflect on their readiness

towards the implementation of restorative justice, their responses were also helpful in how it can be implemented in the criminal justice system which will be discussed.

Among the striking theme of the responses was the acknowledgment of the position of the victims of crime in the criminal process. Restorative justice has been defined as an approach that views the victims as the primary stakeholders and whose role should be deemed important in the criminal process (National Commission on Restorative Justice, 2009) and for the victims to have an important position in the criminal justice, their position has to be acknowledged in the first place by the system (Bednarova, 2011; Doak, 2008). Observing this acknowledgment in the current study by the probation officers is a positive indication that restorative justice would be accepted in some part of the institutional level in Malaysia.

Another angle where the victims are acknowledged by the probation officers in this study is how it is also an important element in the rehabilitation of the juvenile offenders. Although studies reported mixed findings with some reporting victim empathy in offender rehabilitation to be a weak element (Mann & Barnett, 2013; Vachon, Lynam and Johnson, 2014), others observed that integrating empathy towards the victim may be a valuable component in rehabilitation (Lummer & Hagemann, 2015; Marshall, O'Sullivan and Fernandez, 1996). Victim empathy is also an important component of restorative justice (Chakraborti & Garland, 2015). Hence, the observation that the probation officers in this study regarded victim as an important element in rehabilitation is another indication that integrating victim in the criminal process can be a positive step towards implementing restorative justice.

Responding to the suitability of the components of restorative justice applied in juvenile justice, several probation officers expressed concern on the possibility that it would be shameful for the juvenile offenders and their families. However, many scholars have argued over the benefit of shame in juvenile offender rehabilitation (Braithwaite, 1989; Stokkom, 2002). Braithwaite (1989) emphasizes on the two-pronged concept of shame that may increase or inhibit recidivism and the one that inhibits is the one that instils respect and does not stigmatize the offender. Tangney, Stuewig, and Martinez's (2014) study supported Braithwaite's argument that shame can be constructive on the level of recidivism. Therefore, shame that may be experienced by participating juvenile offenders as concerned by the probation officers in this study may be used constructively if the strategy is employed in evidence-based manner.

There are also a few responses that indicated the non-suitability of restorative justice – particularly on the component of reparation of harm – on the basis of the socio-economic status of the offenders which implies the misunderstanding that reparation of harm is mainly physical and financial. Zehr (2015) expressed the concern over this ambivalent definition of reparation of harm while emphasizing that reparation of harm can be physical or symbolical. There is also an argument that stated on the importance of focusing on the emotional side of the crime in order to make wholesome reparation of harm (Brooks, 2012; Dignan, 2004). The responses by the probation officers who gave the implication that “reparation of harm” was associated mainly with material outcome shows the necessity in various forms of training in order for the secondary stakeholders of the criminal justice system such as probation and police officers have the accurate idea of what restorative justice is.

Furthermore, the responses that only certain types of crime suitable for restorative justice is worth discussion. The concern that restorative justice may be questionable in sexual and violent crime does not just come from Malaysian practitioners, it is observed in other contexts too (Pelikan & Trenczek, 2007). However, although restorative justice was initially an alternative approach to dealing with petty crimes, its use has been extended to more serious crimes (Balahur, 2010). Joyce-Wojtas and Keenan (2016) argue that the traditional

criminal justice systems do not appropriately address the needs of the victims of sexual crime, calling for innovative alternative justice including restorative justice that may provide the needs of various stakeholders and this also applies to other serious crimes (Wager & Wager, 2015).

## 5. Conclusion

The probation officers' responses shed lights on how restorative justice can be implemented in the criminal justice system and their voice should be heard for their close relationship with offenders. In this study, several factors as observed from the responses have to be considered in the implementation of restorative justice such as the types of offences, the time restorative justice can be implemented, the training aspect, and the involvement of the victims of crime. Further investigation should be conducted to further assess how restorative justice can be situated in the criminal justice system and how it plays out in real-life practice.

## 6. Acknowledgment

This research was funded by a Top Down research grant by Universiti Sains Malaysia. Special thanks to the participants for their dedicated time and commitment in the mediation sessions.

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