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Restorative Justice in The Child Justice System: Implementation in Other Jurisdictions

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ABSTRACT

Developments in the child criminal justice system internationally, indicate that restorative justice has been adopted as one of the mechanisms of resolving criminal cases. Some countries, such as the United Kingdom and New Zealand integrate restorative justice process into the child justice system to complement the available law in dealing with child offenders. It can be regarded as an alternative or complementary to the child justice system that allows the perpetrator and the victim to resolve the criminal dispute based on their needs and interests with the assistance of a neutral third party. Unless the discussion or agreement is unable to reach, the case will be forwarded to the court that has jurisdiction to hear and determine the case. However, Malaysia does not have specific provisions in the law that allow criminal offences committed by a child to be resolved through restorative justice. Thus, this article examines the concept of restorative justice and its implementation in the child criminal justice system in New Zealand and the United Kingdom. This article also examines Malaysian position on restorative justice for child offenders and how it can be integrated into the Malaysian child justice system. It is proposed that the Child Act 2001 be amended so that restorative justice can be introduced and implemented as part of the child justice system in Malaysia. This article adopts qualitative research with reference to printed and online materials such as books, journal articles, acts, and decided cases that are available in the library and the internet.

Contribution/Originality: This study examines the practice of restorative justice for child offenders in other countries as encouraged in the CRC, and the finding is that it is can be implemented as part of child justice system in Malaysia.

1. Introduction

The paradigm of child justice system has developed from formal and punitive in nature to less formal approach and restorative justice. Taking into consideration, the children's environment and development, it is encouraged to rehabilitate the children through restorative justice instead of imposing punishment upon commission of an offence (Tali, 2001, p. 166). Restorative justice process can be applied as an alternative to the litigation, for example instead of punishing the offender with custody, the offender may discuss with the victim on how to deal with the offence according to the needs of the offender and the victim.

In restorative justice, the accused is required to hold responsibility directly on the victim by repairing or making amend the harm that is affected by the offence, after the offender pleads guilty and both parties' consent and are willing to communicate and discuss on how to deal with the offence (Lorren, 2013, p.8).` It is indeed a relief for the victim, as the victim's voice is heard in determining the best outcome. In ensuring the success of the process, the role of a neutral third party who is experienced and trained is important. The mechanisms adopted are such as family group conference, circle sentencing, victim offender mediation and referral order.

The United Nations Convention on the Rights of the Child (CRC) also encouraged that the state parties to apply restorative justice measure in their law, procedures or policies to cater the issue of child offender due to its positive impact towards children. Besides, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules) also promotes the prosecutors to take alternative measures and stressed that the detention of children should only be taken as a measure of last resort. Due to this, restorative justice has been practised widely around the nations as part of the criminal child justice system as a mechanism to resolve a criminal offence which is committed by a child.

The modern child justice system in several countries like New Zealand, and United Kingdom has shifted from formal court adjudication to restorative justice procedures which provides more informal platform of resolving cases involving children. Such alternative is necessary to secure the best interest of the child and to serve a sustainable benefit to the society either in long term or short term. New Zealand for instance, has expressly provided restorative justice process in the Children, Young Persons and their Families Act 1989 whereby the child offender will be referred to the family group conferencing to resolve a criminal case other than murder, or manslaughter. Similarly in the United Kingdom, restorative justice process is applicable for child offender as governed under the Crime and Disorder Act 1998, and under the Powers of Criminal Courts (Sentencing) Act 2000.

There is numerous research conducted that relates to restorative justice against child offenders. In research done by the United Nation Office, it showed that the victims satisfied with the restorative justice process. The reasons given were that they had the opportunity to communicate with the offender, faced the offender and received an

apology. The process had helped the victims to restore emotion through sincere apology by the offender, and make them feel safe, do not seek revenge, and suffer less traumatic stress symptoms. Victims also satisfied with the outcome of the process such as restitution or compensation and community service (Heather et al., 2013, p. 1-59). Indirectly, restorative justice can make child offenders remorse, and repent of the criminal offences committed. At the same time, there is possibility that the child will not repeat criminal offences in the future. In sequence, parents of the child offender and the victims are also contented with the process and the outcome of the process as there are more flexible and focused on the welfare and interests of the child.

Although Malaysia has yet to officially recognised restorative justice for child offenders, there are calls from various field to implement this process. There is an urge that the Child Act 2001 to be amended to enable restorative justice to be recognised, and implemented as part of the child criminal justice system in Malaysia (David, 2019). The recognition of restorative justice for child offender in minor offences such as stealing, or house-breaking is in line with the United Nation's Convention on the Rights of the Child (Wong, 2011, n.p). Therefore, this research examines how restorative justice is incorporated in the child justice system by referring to the international law, and the law in the United Kingdom and New Zealand. Since the Malaysian position towards the implementation of restorative justice for child offender is unclear thereby this article will examine on how the application is workable to be integrated in the Malaysian child justice system.

2. Definition of Restorative Justice

Restorative justice is a process whereby all parties with a stake in a particular offence come together to resolve collectively on how to deal with the aftermath of the offence and its implications for the future (Tony, 1996, p.37). Basically, restorative justice involved with those who are affected with the harm including the offender, the victim, the family, the community with an assistance of a neutral third party to facilitate in searching a solution to repair, reconcile, and rebuild the relationship which is affected by the crime (Daniel & Karen, 2015, p. 58).

Restorative justice focuses on the violation of people and relationship, support the victims by acknowledge their injury and by creating obligations to make things right. A crime is the fundamental violation of people, the aim of restorative justice is to heal the relationship of the offender, the victim and the community (Allison, Gabrielle, 2001, p. 3). The process require participation of the offender, the victim, and others who are affected with the crime in the process. It creates obligations of the offender towards the victim by understanding the harm suffered by the victim, for reparation or restitution as agreed by the victim. The community also plays a vital role by giving support for the offender in fulfilling the agreement, and to assist the offender be integrated into the community (Daniel & Karen, 2015, p. 58).

In restorative justice process, the offenders and the victims have an opportunity to exchange information about the crime such as why the offender attacked the victim, how the victim affected with the crime, the offenders and the victims can describe their feelings, ask questions, and seek compensation. Restorative justice allows involvement of the victim in the process and determining the outcome. It aims to hold the offender accountable by requiring them to get involved in the process and to explain to the victim as why and how they can repair the harm. The effect of restorative justice is the parties focus on reconciliation, reparation, and reintegration (Julie, 2002, p. 51). Restorative

justice can be accomplished through restorative justice programmes that uses restorative processes or aims to achieve restorative outcomes that is an agreement reached as a result of restorative process that promote the child's rehabilitation and reintegration.

2.1. Restorative Justice Models

There are various restorative justice models that are available as criminal conflict resolution mechanisms which target to achieve reparation of the victim and community, and reintegration of the victim and the offender. Restorative justice models that are commonly practising among others, victim-offender mediation, family group conference, and circle sentencing.

The victim and the offenders together with assistance a mediator coordinates and facilitates the meeting to discuss about the crime and how to deal with the crime. In the meeting the offender and the victim will exchange information about the crime. Normally the offender informs the victim why he or she committed the crime against the victim and respond questions by the victim. The victims explain to the offenders how the offence had affected the victim. The process can be conducted in the same sitting, otherwise the parties can inform how they felt to the mediator. It is expected that the parties have to come out with a resolution on the crime (Catherine, 2000, p. 27). In the process the parties are expected to actively involved in the discussion and to determine the outcome that are fair to both parties.

In a family group conference, the offender, the victim, together with their families with an assistance of a neutral third party will get involve in the process and determine the resolution. Family members are involved as they are also affected with the crime, and to give support to the offender and the victim. The facilitator assists the parties to hold the meeting, and to facilitate the communication in the meeting. The offender begins the discussion by explaining what happened and how they think their actions had affected others. The victims then describe how the crime affected their life. The family members are allowed to share how they are affected by the crime as well. Then all of them will discuss how to repair the harm (Horward & Harry, 2003, p. 48). In this process, involvement of a family member is a need in order to show their support especially to the offender, and the victim if they are still a child. The presence of family members helps to give motivation to the offender to be accountable for the crime that he or she had done. Moreover, since the discussion about the crime, and the outcome are also witnessed by the family members, it helps the offenders to stick to his promise to repair the harms as agreed by the parties. Hence, this can prevent the offender from redoing the offence in the future.

Circle sentencing process requires involvement of the offender, the victim, the family members of the offender and the victim, as well as a member of the community, with an assistance of a neutral third party. In the process, the offender explains about the crime as why he or she committed an offence. Then, everyone in the circle has the opportunity to express the effect of crime on them, and to discuss how to resolve the crime (Tyrone, 2016, p. 105).

Though there are variety restorative justice processes in practice, the aim is to bring the offender, the victim and other stakeholder together discussing about the criminal offence, and how to deal with the offender. The role of a neutral third party is vital to facilitate

parties to communicate and exchanging information, with a hope that the parties are able to reach a mutual agreement at the end of the process.

2.2. Restorative Justice in The United Nation Convenction on The Rights of The Child (CRC)

The United Nations Convention on the Rights of the Child (CRC), clearly states that state parties shall recognise the right of every child who is alleged or accused of committing a criminal offence to be treated in a manner consistent with the promotion of the child's sense of dignity and worth. As stated in article 3 of the CRC the best interests of the child shall be a primary consideration when dealing with children in all actions including at courts of law.

The CRC encourages the state parties to enact the laws and procedures to dealing with a child who infringed the laws. The state parties shall promote measures for dealing with child offender without resorting to judicial proceedings. For instance, article 40 states that the criminal case can be disposed by counselling, probation, and other alternatives to institutional care in order to balance the well-being of the children and proportionate to the offence. Alternative mechanisms that can be applied to resolve criminal case includes diversion from criminal proceeding, and any restorative justice process. In addition, article 37 says that torture or other cruel punishment and the use of capital punishment shall be imposed as a measure of the last resort and for the shortest period of time (William & Helmut, 2006, p.3).

The CRC recommends all state parties that a child offender shall be treated justly as children and also have to be responsible for the action that has been committed. It does not exempt the responsibility of a child who infringed a criminal law, rather than to encourage the state parties to use alternative measure to resolve a criminal case. Even though the term of restorative justice is not expressly stated in the CRC, however it can be implied from article 40 and 37 that provide the state members are encourage to use alternative measurement in dealing with a criminal case. Hence, the state members shall consider to implement any restorative justice process as part of the child justice system which can balance the well-being and the offence done by the children. The state parties are encouraged to integrate the use of restorative justice in the criminal justice system. Article 2 of the CRC, defines restorative process as any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.

Hence, in order to balance the best interest of a child even against the child offender, the state parties are encouraged to deal with a child offender through restorative justice process. Since the CRC has not specify any restorative justice process to be adopted, this gives flexibility on the state parties to determine and legalize any restorative justice process that can suit the needs and interest of the child in the country.

2.3. Restorative Justice in The United Kingdom Child Justice System

The United Kingdom legalises restorative justice process in the child justice system as required in the CRC. Restorative justice process is integrated into the United Kingdom child justice system through a youth conditional caution under the Crime and Disorder Act 1998, and a referral order under the Powers of Criminal Courts (Sentencing) Act 2000.

2.3.1. Youth Conditional Caution under the Crime and Disorder Act 1998

The application of restorative justice can be seen in the Crime and Disorder Act 1998 through youth conditional cautions as response to youth offending for a criminal offence done by a child, a person under the age of 14 or youth offender, a person under the age of 18 at the pre-trial process. The Act encourages the offender to make a reparation for the damage suffered by the victim or community, allowing the victim to participate in the process, and determination of the outcome which is vital in the restorative justice paradigm (Karren, 2020, p.82).

Youth conditional caution is a caution that be given by an authorised personal with certain conditions to the offender. The objective of conditions that can be attached to caution is to rehabilitate the offender, repair the harm, and punishing the offender. In addition, section 66B states that there are certain requirements to apply for a youth conditional caution, namely the authorised person has evidence that the offender committed an offence, that there is sufficient evidence, the offender admitted that he committed the offence, and the authorised officer must explain to the offender the effect of the youth conditional caution and the consequence if breached the condition. The offender shall sign on the document which contain details of the offence, admission of the offender, the offender's consent and the conditions (Karren, 2020, p.82).

The prosecutor or authorised person may discuss with the victim before deciding conditions to a youth conditional caution, the prosecutor or the authorised person may discuss with the victim. The prosecutor shall take into consideration the victim's view and shall consider whether the offender will carry out any actions listed in the community remedy document. Community remedy document provides a list of action that must be complied by the offender to the victim such as the offender has to do reparation to the victim or community which is proportionate to the offence committed by the offender. After getting a condition as suggested by the victim, the prosecutor shall attach this suggestion to the conditional caution. If the offender has to pay financial penalty, the amount shall not be more than £100, and the amount of penalty shall be specified and attached to a youth conditional caution. Nevertheless, prosecutor may modify, omit or adding another condition with the conditional caution (Mike & Diane, 2010, p.111).

It can be seen through the process that the child offender is given a chance to be responsible for the act done against the victim without having to go through a prosecution. It requires the offender and the victim to communicate in the presence of a third party in determining on how to deal with the crime. The process reflects the application of restorative justice that focuses on active participation of the parties in the process and also in determining the outcome. Unless the offender breached the agreement or the condition, or even disagreed to the condition as suggested by the victim, the case will then be referred to the court. Unless the offender is breached the agreement, or condition, or even disagree to condition suggested by the victim, the case can be referred to the court.

2.3.2. Referral Order under the Powers of Criminal Courts (Sentencing) Act 2000

The application of restorative justice can also be seen in The Power of Criminal Court (Sentencing) Act 2000.This Act allows a youth court to refer the offender who had pleaded guilty or upon conviction to an offence to a referral order.

The intention of a referral order is to provide a forum alternative to the court proceeding that can allow the offender, the family, and the victim to consider circumstances surrounding the offence, and the effect on the victim The youth court has power to determine a referral order as a punishment provided that the offence is not connected to a punishment which is fixed by law, the court is not proposed to impose a custodial sentence, or make a hospital order and the court is not proposed to discharge the offender (Richard, 2001, p. 101). In imposing the referral order, the court shall refer the offender to a youth offender panel. Youth offender panel consists of members from the community, and a member from the youth offending team. The purpose of the panel is to encourage members to practice restorative justice in the process (Peter, 2014, p. 31). After the referral order is issued, the youth offending team shall establish a youth offender panel for the offender, and arrange the first meeting of the panel. The panel shall then notify the offender, and the parent or guardian about the date, the time and the place for the meeting.

The meeting shall be attended by the offender's parent or guardian if the offender is aged under 16 years at the time of conviction. Otherwise, the court may invite a representative of the local authority if he is looked after by a local authority. At the first meeting, the youth offender panel shall seek to reach an agreement with the offender on a programme with an aim to prevent the offender from reoffending. The term of the programme may include to make financial compensation or reparation to the victim, to carry out unpaid work or community service, or to attend mediation. If a settlement is reached, the panel shall record the agreement in writing, and must be signed by the offender, and members of the panel. The term of the programme shall take effect as a youth offender contract between the offender and the panel. However, if no agreement is reached, the offender will be referred to the youth court. In order to monitor the performance and compliance of the offender to the agreement, the panel may then arrange progress meetings with the offender. These meetings will enable the children to recognise the consequences of their offence and to be accountable for their actions. Through the meeting, the offender, and the victims have an opportunity to communicate, exchange information about the crime, and discuss how to resolve the offence. They have to reach an agreement which then become a contract. It can be a reparation or restitution to the victim, by repairing any damage or compensation, or attend a programme or activity to address their offending behaviour. The panel and the offender have to meet in a final meeting to review the offender's compliance with the contract and decide whether the offender had completed the contract before discharging the referral order. Then the panel shall give the offender a written confirmation of its decision. If the panel satisfied that the offender had complied and completed the contract, the referral order can be discharged. The panels have to review the offender's completed and compliance with the contract (Richard. 2001, p. 109-115). Thus, if the panel found that the offender failed to comply or incomplete the contract, the panel will refer the offender to the court.

It can be seen that a referral order as applicable in the United Kingdom reflects the implementation of restorative justice process. The referral order allows the offender and the victim to discuss and exchange information relating to the crime. Of course, it also requires agreement of both parties in dealing with the crime such as to pay compensation to the victim, reparation or to do community service. This platform gives an opportunity for the offender to be accountable directly to the victim, and to give a space for both parties to discuss and determine the outcome. Nevertheless, in case the communication fails, or if it is proven that the offender is unable to comply with the condition or

agreement, the offender shall be referred to the court. At least, a referral order helps the offender to admit the wrongdoing that he had done, to learn the consequence of the act, to restore the victim's rights by repairing the harm and this will assure the offender not to repeat the offence in the future.

2.4. Restorative Justice in The New Zealand Child Justice System

Child justice system in New Zealand is governed by the Oranga Tamariki Act 1989 or the Children, Young Persons, and Their Families Act 1989. The Act aims to address welfare and youth justice (Darrel, 2018) as stated in the Act that a criminal proceeding should not be instituted against a child or young person if there is an alternative means of dealing with the matter. New Zealand has incorporated restorative justice process into the child justice system through family group conference to resolve criminal offences other than murder or manslaughter (Mark, 2008, p. 3). The function of family group conference is to consider the care or protection, and well-being of the child and young person or in need of assistance to make decision and review the decisions, recommendations or to formulate the plan.

Referral of a child or young person to the family group conference is allowed for offences other than murder and manslaughter by the chief executive, police officer, youth justice coordinator, or the Youth Court. Family group conference is applicable at any stage, such as when the child or young persons is under the police custody before the prosecution, or before the court hearing the charge. The family group conference can be attended by the child or young person, a member of the family, the care and protection coordinator, the victim, or any barrister and solicitor representing the child or the young person. Persons who can attend the family group conference are allowed to review a decision, recommendation, or plan. The care and protection coordinator roles as a neutral third party to facilitate the communication during the family group conference process. The coordinator has to discuss with the child or young person and the family about the place, the time, the persons who can be involved as well as the procedure for the family group conference. If all the information related to the time, date, place for the process of family group conference is fixed, the care and protection coordinator has to serve notice to every person that is entitled to attend the conference (Darrel, 2018, p. 14-16).

At the conference, usually the child or young person and the victim will exchange information related to the offence. For instance, the child explains why he or she committed the crime or attacked the victim. The victim is also given an opportunity to explain on how the action of the child affected the victim. Based on the information obtained, the family of the child as well as the victim will deliberate the recommendation or plans on how to amend the harm which is agreeable to all parties without neglecting the best interest and welfare of a child (Cathy, 2006, p. 10). Any decision, recommendation or plan that has been decided in a family group conference must be communicated by the care and protection coordinator to every person who is involved with the implementation. The coordinator is required to seek agreement to the decision from the family members as well as the referring professionals (Marie & Margaret, 1999, p. 26). As such, if no agreement in relation to the decision, recommendation, or plan is reached, the care and protection coordinator may make report to the person reports on the matter, or to the chief executive, or to the court.

Thus, it can be seen that parties and the family members are involved in the process and in determining the punishment for criminal offence through a family group conferences.

Since the Act aims to protect the well-being of the child and young persons, though the parties suggest for the outcome, the court shall consider any recommendations and plans that are agreeable by all parties to be imposed and binding upon them. In the family group conference, all parties are bound by the agreement. As in other restorative justice processes, the family group conference in New Zealand provides an opportunity for all parties to discuss matters related to criminal offences such as why the accused attacked the victim, and the implications of the crime on the victim. At the end of the process all of them need to discuss to determine appropriate action taken by a child offender based on the needs and interest of both parties. The parties must first agree on the agreement before the court may record and make it binding on all of them.

2.5. The Position of Restorative Justice in The Malaysian Child Justice System

The laws governing child criminal justice in Malaysia have yet to recognise restorative justice as a method of resolving criminal offences committed by a child. It is urged on the recognition and implementation of restorative justice in the child justice system in Malaysia to allow child offender and the victim to resolve a criminal offence through restorative justice.

In Malaysia, if a child is found for believing of committing a criminal offence, the child will be investigated by police officer, and can be charged for the offence. The child is brought to the Court of Children and will be asked whether he or she opts to plead guilty or ask for trial. If the accused pleads guilty, he or she will be punished accordingly. However, if the accused asks to be tried, the process and procedure during the trial as stated in the Child Act 2001 shall apply (Muzaffar, 2015, p. 260-267). If the child offender is found guilty, and convicted, before the trial court determining a sentence, the voice of victim will be heard through a victim's impact statement. Victim's impact statement was incorporated into the Criminal Procedure Code (Amendment) 2012. As stated in section 11(6) if there is lacuna in the Child Act on procedure, reference may be made to the standard procedures under the Criminal Procedure Code. Since the Child Act is silent on victim's impact statement, the process and procedure shall be adopted from the Criminal Procedure Code. This process enables to the victim or the victim's family to express the implications of a crime on their physical, emotion, psychology, or property that they suffered due to the offender's action. This will help the court to impose a judgment that balance the rights of the accused and the rights of the victim.

As illustrated in *Pendakwa Raya lwn Noor Aqilah bt Abdul Rahman [2020] 9 MLJ 766*, where the respondent was charged at the Selayang Sessions Court under s 31(1)(a) of the Child Act 2001 for causing injuries to the head of the victim and also charged under s 201 of the Penal Code for disposing of the body of the victim with intent to conceal the death of the victim. The respondent had pleaded guilty, unconditionally, to both charges. The Sessions Court judge accepted the plea and found the respondent guilty and convicted to both charges. The respondent was sentenced of imprisonment of three years and six months from the date of conviction and a fine of RM5,000 in default six months imprisonment and a three-year bond of good behaviour with a security of RM8,000 with one guarantor and community service order for 200 hours in aggregate within six months from the date of conviction pursuant to s 31(2) of the Child Act 2001. For the second charge, the respondent was sentenced to 18 months of imprisonment from the date of conviction and a fine of RM5,000 in default six months imprisonment under s 201 of the Penal Code. The imprisonment sentence for both charges were to run concurrently. This case was appealed to the High Court due to dissatisfaction with the punishment. The High

Court judge take into consideration the victim's impact statement that was written by the victim's mother under section 183A of the Criminal Procedure Code, victim's mother and family felt the impact and having long term traumatic effects due to the respondent's conduct that caused the victim's death. The Court also has to balance the aspect of deterrence and rehabilitation before imposing a sentence to a child offender. In this case, victim's impact statement has been considered by the court before determining the sentence on the child offender. Though the process is not stated in the Child Act 2001, the court has referred to the Criminal Procedure Code in considering the implication of the crime on the victim and how the victim's family suffered from the crime.

The Courts for Children has power to order punishment which is stated in section 91 of the Act, including probation order, fine, compensation, or order the child to be sent to an approved school. If the punishment if compensation, the court may require the parent or guardian of the child to pay compensation for the child to the victim. Compensation order is to be paid by the parent or guardian in the manner provided by the Criminal Procedure Code as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

It can be seen that in the Malaysian child justice system, the offender has options to plead guilty or claim trial. If the accused chooses to plead guilty, as required by law, the child will be punished accordingly. Similarly, if the accused claims trial, there are certain process and procedure that must be observed by the offender, and involvement of the victim is necessary for victim's impact statement before the court determine sentence on the child offender. Thus, if a child offender is found guilty and convicted, the child will be punished in accordance with the Child Act 2001. However, if the child is found not guilty, he is released from any criminal charge and acquitted. Nevertheless, nothing in the Act allows the child accused and the victim to settle criminal offences between them as practised in the restorative justice system. Communication between the victim and the accused is limited to the extent that victim's voice is only heard through the victim's impact statement. Although the law allows victims to voice out through the victim's impact statement, its objective is to inform the offender and the court how the criminal action impacts the victim, which then will be considered by the court in determining how to dispose of a criminal case.

In short, in the Malaysian child justice system, children who commit criminal offences will be resolved in the Court for Children. The process and outcome to resolve the criminal offence as stipulated in the Child Act 2001 is silent on the recognition and the practice of restorative justice. Nevertheless, there is no prevention or restriction in any laws concerning the application of restorative justice for child offender in Malaysia. Hence, the Child Act 2001 need to be amended by adding Section 91(l) to refer the child offender to restorative justice process in order to enable restorative justice be integrated into the Malaysian child justice system.

3. Analysis

As emphasized in the United Nation, the welfare and best interest of a child is a paramount consideration even in the criminal child justice system. Every child offender should be held accountable for the offense committed. International law allows child offenders to go through a judicial process that begins with investigation, charges, trial, and finally punishment if found guilty. However, considering the welfare and best interest of a child

and if the offence committed is less serious offences, child offender can be resorted to restorative justice.

Restorative justice required participation of the offender, victim, family members, with assistance of a neutral third party in the process and determining the outcome. The involvement of the community and parents in the discussion and determine the outcome, indirectly indicates moral support to the offender. This helps the offender to improve themselves and not repeat the mistakes they have made in the future. The process of restorative justice although varied, the resemblance that can be seen is that the offender pleads guilty, and has to apologize to the victim. The process allows all parties to communicate and focus on their respective needs. It can only be successful if a mutual agreement reached by the parties, and the child offender completely fulfilled what was has been agreed.

The integration of restorative justice in the United Kingdom child justice system can be seen in the youth conditional caution and the referral order. These processes allow the accused and the victims and their families with the assistance of the third parties to discuss and determine how to resolve the case. In New Zealand, the family group conference is a process that must be undergone by a child who has been charged or convicted for offenses other than traffic offences, murder, and sexual offences. This process involves the perpetrator, victim, family or guardian of both if the victim is a child, a third person in community to discuss and determine a resolution. If a mutual agreement reaches, the offender has to fulfil what has been agreeable. Since restorative justice process in the United Kingdom and New Zealand is applicable to certain offences only, court proceeding is necessary to deal with other serious offences committed by children, such as murder, manslaughter, and sexual offences. Likewise, if restorative justice process fails, or if the offender breaches the agreement, the case will be taken to court for further proceedings.

Although New Zealand, and the United Kingdom take seriously the United Nation's encouragement to enable juvenile offences to be resolved through alternative mechanisms such as the restorative justice process, in the Malaysian child justice system, offences committed by children can only be resolved in the Court for Children. Children who are accused of committing a criminal offence are given the right to plead guilty or ask to be tried in court. The Child Act 2001 is silent on restorative justice as a criminal resolution for child offenders. Nonetheless, victims can voice out how the offence has affected them through the victim’s impact statement before the court passing a judgment. Right of the victim can be restored through compensation order on the child offender to be paid to the victim.

It is recommended that the Child Act 2001 be amended to recognise and implement restorative justice as part of the child justice system in Malaysia. Among other things that need to be included in the Child Act 2001 is a referral order so that a child offender can be referred to restorative justice process. Since restorative justice process is commonly applied for minor offences, the same can be practised in Malaysia. This helps the court to expedite disposal of minor offences committed by children by making them accountable directly to the victim according to the needs and interests of both parties. Moreover, number of pending, and appeal cases can be reduced. The process and procedure of restorative justice process must be clearly stated in the Child Act 2001 for example process of opening statements, meetings, agreement, and how to make the agreement enforceable. A neutral third party also must be equipped with the skills to facilitate

communication between the parties throughout the process. The Act shall include other possible outcome such as reparation, community service so that the parties can have more options to dispose of the case. However, in case any of the parties breached the agreement, or unable to comply with the agreement, the case will be brought to the court for further proceeding. Hence, restorative justice shall be integrated into the Malaysian child justice system as a mechanism to resolve criminal cases committed by children.

4. Conclusion

Restorative justice in the child justice system provides an opportunity for child offenders to acknowledge the wrongdoing committed to the victim, as well as to take responsibility for what had been done. Restorative justice requires direct involvement of the parties affected by the criminal offence and assisted by a neutral third party to discuss about the crime and how to deal with the criminal offender by focusing with their needs and interests. However, if restorative justice process fails, such as they are unable to communicate and reach a mutual agreement, or comply with the agreement, the child offender will be referred to court for further action. Although this system is recommended in international law, and has been integrated into the child justice system in several countries, Malaysia has yet to recognise restorative justice in the child justice system. Looking at the latest developments in the child justice system internationally, and as the aptness of its application in other countries, restorative justice should be introduced in Malaysia and be integrated into the child justice system.

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Conflict of Interests

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