

The 3rd International Conference on Sustainable Future for Human Security
SUSTAIN 2012

The necessity of restorative justice on juvenile delinquency in Indonesia, lessons learned from the Raju and AAL cases

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Abstract

Since the Netherlands introduced and implemented modern law in Indonesia (1918), Indonesian people have turned to modern law as a tool for conflict resolution. Indonesian people generally tend to resolve conflicts with *musyawarah mufakat* (deliberation/consensus). It is Indonesia's typical conflict resolution mechanism. The court, for Indonesian people, is last resort that should be conducted only if *musyawarah mufakat* fails to mediate the conflict. The implementation of modern law (the court system) usually creates social problems. Juvenile delinquency law enforcement is one issue that so far has increased societal tension. Recent cases attracting widespread concern are the Raju and AAL cases. Muhammad 'Raju' Azwar was possibly less than eight-year-old^a boy when the court decided to detain him for assault as a result of a fight with a schoolmate. The societal opinion was that the detention was overzealous and extreme. Another case that inflames societal emotions is the 'sandal case' of AAL. AAL was a 15-year-old boy accused of stealing sandals belonging to a policeman. In the sense of modern law, a crime is a crime, laws should be enforced. However, most Indonesian people believe that the cases mentioned above are too insignificant to be tried in court, which can negatively impact the children's futures. Other methods exist to settle such petty crimes. In Indonesia, we call such methods *musyawarah mufakat*, referred to in other countries as restorative justice.

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Selection and peer-review under responsibility of SUSTAIN conference's committee and supported by Kyoto University; (OPIR), (GCOE-ES), (GCOE-HSE), (CSEAS), (RISH), (GCOE-ARS) and (GSS) as co-hosts.

Keywords: *Musyawarah*; Restorative Justice; Juvenile Delinquent; Juvenile Delinquency

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^a Raju's actual age, however, remains in controversy, as there is conflicting data regarding his age.

1. A Brief History of Indonesian Law

The aim of this study is to propose restorative justice, a new system of justice that is predicted and expected to be a better method of handling crimes, particularly for juvenile delinquency. Nevertheless, the Indonesian legal system will be addressed briefly in this article as well, in order to obtain better understanding of the law in Indonesia. For the purposes of case study, the Raju and AAL cases will be analyzed in the framework of restorative justice.

In regard to legal family, Indonesia has been categorized as a civil law country as opposed to a common law country. Civil law is Romano-Germanic Law, which is differentiated from Anglo-Saxon Law (Anglo-American Law). Big difference between civil law and common law is that civil law relies less on court precedent and more on legal codes, while common law places more emphasis on court precedent [1]. Hence, choosing legal system to be established in a country is a critical matter having its own consequences. The civil law system, because of its heavy reliance on codes, is more rigid in the context of law enforcement. Once one's behavior is stipulated as a criminal offense, the criminal justice system will be set in motion and be responsible for settling the case.

The choice of legal system for Indonesia was made by its former colonizer (the Netherlands) and was built based on the civil law tradition. This includes the field of criminal law. The civil law tradition was adopted and maintained by the Indonesian government after its independence [2]. The first codified Indonesian criminal code was entitled *Wetboek van Strafrecht voor Nederlands Indische/WvSNI* (Criminal Code for Netherlands Indie)^b, which was established in 1915^c and activated on January 1st, 1918. The code applied to everyone who committed a criminal offence in Netherlands Indie. This period provided cornerstone for Indonesian people to apply modern law as a mean to settle criminal cases, proposing relatively new system of settling criminal disputes for the Indonesian people. Prior to this time, most Indonesian people applied the indigenous *adat* law and Islamic law. In fact, most *adat* law is influenced by Islamic law. *Adat* law is similar to customary law in light of its common law tradition. *Musyawarah* is one of *adat* law methods used to resolve conflicts. I will describe more about *musyawarah* under the section on restorative justice later in this study.

After the Independence of 1945, the Indonesian government adopted *WvSNI* as the Criminal Code of Indonesia with establishment of Act No. 1/1946. The name of the code then was changed to *Kitab Undang Undang Hukum Pidana/KUHP* (Criminal Code). Several changes were made to adjust the criminal code due to societal developments. Though there were several amendments, for the most part, as a whole it remains the same as the old code, i.e., *WvSNI*.

In 1997, an act for the children's court was established. With this act (Act No. 3/1997), the general provision for children, which was regulated under the KUHP, was abolished and replaced by the act. With this act, children between the ages of eight to under 18-years-old fall within the jurisdiction of the juvenile court.

The practice of law enforcement in Indonesia reveals that these legal systems, adopted from the Dutch, do not fit with Indonesian values. Frequently, law enforcement triggers dissatisfaction and anger among

^b Netherlands Indie is the name for Indonesia before Independence.

^c Declared by Crown Ordinance (*Koninklijk Besluit*) of 15 October 1915, Ned.Stb.33; declared in Indonesia by Ind. Stb.1915 Number 732.

the Indonesian people, as with the recent cases, to mention a few, of Raju and AAL, minors who have to face adjudication by the juvenile criminal court. These cases prove that there are weaknesses in the current (juvenile) criminal justice system. In several cases, this system is not suitable for the Indonesian legal culture.

2. The Cases

2.1. *The Raju case: a young detainee* [3]

Iswandi, a third grade elementary school student, stayed home for ten days. He did not want to go to school because he was afraid of being bullied by Raju, his classmate at 05663 Elementary School, in Langkat, North Sumatera, Indonesia. Raju used to *menokok*^d Iswandi's head. Ani, Iswandi's mother, reported the bullying to the school. Jamal, a teacher at the school, summoned Raju in order to address the situation. The teacher's investigation became contentious. Raju denied that he bullied Iswandi. Jamal lost control and slapped Raju's face. Raju, upset with his confrontation with the teacher, looked for Iswandi in order to take revenge, but found only Armansyah, Iswandi's elder brother, who was a 6th grade student at the same school. They fought and both were injured, with Raju suffering a bloody lip and a scratch to his face. Armansyah was more severely injured. Based on a doctor's *visum et repertum*, Armansyah sustained a bruised hip and ribs. His mother, Ani, then visited Saedah, asking that Saedah be responsible for Armansyah's medical care. Ani took Armansyah to a paramedic, but the pain did not stop and the paramedic suggested that Ani see a doctor. Since Saedah refused to fund further medical treatment, Ani reported the case to the police, after which the Raju case went all the way to the Stabat District Court, Langkat, North Sumatera.

Three times Raju failed to appear in court as summoned by the public prosecutor. When Raju finally appeared in court a week later than his last required court appearance, Justice Tiurmaida found Raju and his parent to be in complete disregard of the court and the victim's interests, decided to detain Raju. This decision incited considerable public tension and gained public interest because Raju was apparently under eight years old and there was no detention house for children in North Sumatera. Therefore, Raju would have to share a room with an adult detainee. Sudjono Evi, chief of the Pangkalan Brandan Detention House, administered a special policy for Raju. Even though Raju was officially detained, Sudjono released Raju and disobeyed the Stabat District Court order. Justice Tiurmaida finally suspended his decision to detain Raju after Raju's parents paid one million rupiah to Armansyah's family as redress.

Raju was later found guilty, but returned to his parents without punishment.^e

2.2. *Controversy concerning Raju's age*

According to Article 1 Act No. 3/1997, a person who has reached the age of eight, but is not yet 18 and is unmarried, is considered a child for the purposes of juvenile court. Raju's exact age could not be clarified since several versions of his age exist. Based on Raju's mother's testimony in the police investigation report, Raju was born in May of 1997, which would make him eight years and three months

^d A North Sumatera term for humiliating someone by knocking their head.

^e Based on Article 24 (1) Act No. 1/1997.

old at the time he committed the assault. His family card, however, indicates that he was born on 9 December 1997, which would mean that he was just seven years and eight months old when the incident occurred. Therefore, the court could not try him and there could be no criminal responsibility against Raju. The prosecutor required further evidence and found that Raju was born on 5 December 1996 based on his educational report book in his elementary school.

Raju's actual age is critical to determine whether he is old enough to be tried in juvenile court. In the end, the court determines that Raju met the age requirement to be tried in juvenile court based on the police investigation and Raju's educational book reports. However, public opinion holds that Raju is too young to be tried and detained, since a family card is also significant and considered a legal document.

This case became a study case for amending the minimum age for a child's criminal responsibility. Eight was considered to be too young to bear criminal responsibility. Currently, the minimum age stipulated in Art. 1 Law No. 3/1997 has been amended by the constitutional court to 12.

2.3. *The AAL case* [4] [5]

A 15-year-old boy, identified only as AAL, became a symbol of law enforcement injustice in Indonesia. The case began when AAL and his friend found a pair of sandals near the house of police officer First Brig. Ahmad Rusdi Harahap. Simply, AAL took the sandals and put them into his bag. Later, in May of 2011, Rusdi summoned AAL and charged him with the theft of his sandals. Rusdi's partner, First Brig. Simson Jones Sipayung, who accompanied Rusdi in the informal interrogation, then beat AAL in order to obtain a confession. AAL's parents reported the beating to the police internal affairs division. The Central Sulawesi Police disciplinary court found against Rusdi and Simson, and sentenced them to 21-days incarceration in a police detention center. In retaliation, Rusdi filed a charge of theft against AAL.

AAL was never detained, but the public was outraged by this case. Though AAL was believed guilty of stealing the sandals, the majority felt that criminal court was not the best solution for this case since the crime was not serious and AAL was only a teenager. A court process would too harshly stigmatize him as a thief. During the trial, many people, non-governmental organizations, and the National Commission for Child Protection, a government agency concerned with children's issues, supported AAL and collected thousands of pairs of sandals as a symbol of the perceived injustice. The movement was called '1000 sandals to free AAL' and became a symbol of law enforcement injustice. This movement spread throughout the archipelago, even though the case occurred in Palu, Central Sulawesi, and continued further beyond Palu and Sulawesi Island. People from Jakarta, Solo, and Jogjakarta voluntarily took part in this movement [6].

The collected sandals were given to law enforcement agencies, such as the police and the prosecutor's office, as these agencies were believed to be the most responsible for processing and passing the case to court.

Justice Rommel F Tampubolon, a judge at Palu District Court, finally found AAL guilty of stealing “someone’s”^f sandals. As with the Raju case, Justice Rommel returned AAL to his parents without imposing punishment.

3. Diversionary System for Juveniles in Conflict with the Law

3.1. Restorative justice as a safeguard for protecting children’s futures

Raju and AAL are just two cases among many other juvenile delinquency cases. The great and widespread support from community reflects the general opinion that criminal court process is an inappropriate way to settle criminal disputes involving juvenile defendants, especially for petty crimes. Previously, before the modern civil law (here represented by the criminal court system) was implemented in Indonesia, most Indonesian people tended to resolve their disputes with *musyawarah* rather than filing a complaint with the criminal court.

Soekarno, the first president of Indonesia, mentions *musyawarah* as one of three great indigenous assets that exist in Indonesia. The other two are *gotong royong* and *mufakat*. *Gotong royong* can be simply defined as helping each other by working together. The terms *musyawarah* and *mufakat* tend to be applied together as one package. *Musyawarah* is the process of non-coercive negotiation involving all interested parties [7]. In the present context, all persons involved in a crime, that is to say, the victim, offender, and also the community, are affected by the crime and can participate in *musyawarah*. *Mufakat* is the result of the negotiation process. *Mufakat* is the fruit of the *musyawarah* process and the unanimous consensus of the collective. *Musyawarah* has had a significant role in conflict resolution in Indonesia for hundreds of years before the advent of modern law. Since the introduction of the ‘modern’ criminal court, the role of *musyawarah* has slowly been replaced by the criminal court system, mainly for serious crimes (felonies). However, most Indonesian people continue to use *musyawarah* in their daily life as a means to resolve conflict, mainly for less serious crimes. Thus, in the Raju and AAL cases, most Indonesians believe that using the criminal court is too extreme.

What is felt by society is reflected in the United Nations (UN) Standard Minimum Rules for the Administration of Juvenile Justice (Resolution 40/33), often called the Beijing Rules. In Point 6 of the general part of the resolution, in view of the varying special needs of juveniles, as well as the variety of measures available, an appropriate discretionary scope shall be allowed at all stages of proceedings and levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow up of disposition [8].

According to the Beijing Rules, discretion is permitted in juvenile cases in order to divert out of the criminal justice system at all stages and levels. Such diversion can be understood since juveniles play a very important role as the next generation in light of a state's sustainability. This notion corresponds to the Declaration of The Right of The Child (UN General Assembly Resolution 1386), which states that children shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable them to develop physically, mentally, morally, spiritually, and socially in a healthy and

^f The sandals actually submitted as evidence in court were a different brand than the victim’s. Rusdi’s sandal brand is Eiger, while the sandals in evidence were the Ando brand.

normal manner and under conditions of freedom and dignity. In the enactment of laws for this purpose, the best interest of the child shall be the paramount consideration [9].

Based on this idea, we should determine the best settlement for juveniles in conflict with the law in order to create a safeguard that protects the children's future. One such method is what we know as restorative justice.

3.2. Restorative justice

There are many definitions of restorative justice, but for ease I will propose the definition of Tony Marshall. Marshall says that ‘restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.’ Paul McCold underlines the minimum requirement for a restorative justice program based on Marshall’s definition: *First*, victims and their offenders have a face-to-face meeting. *Second*, they determine the outcome [10]. Generally, McCold's minimum requirement leads to Victim-Offender Mediation, a form of restorative justice. However, the development of the form of the restorative justice program can be variable and flexible. For example, there are also other forms such as Family Group Conferences (FGCs), where the victim and offender meet, and either the victim or the offender, or both, brings along a family member/supporter [11]. Frequently, in FGCs, the community that is affected by the crime participates in the conference as well [12]. In addition to FGCs, there is indirect mediation. This form tends to be used when the victim does not want to meet the offender, but still wants to join in the restorative justice process in order to resolve the conflict, which, in this form, is generally limited to an apology and practical reparation.

Proponents of restorative justice believe that this new process can alleviate the incompleteness of the formal criminal justice system, which tends to leave the needs of the victims, offenders, and communities unmet and the harm caused by the wrongdoing unrepaired, while restorative justice is an integrated process that addresses all of the parties' needs [13]. To understand the restorative justice process better, please refer to the table below, created by Howard Zehr, which clearly differentiates restorative justice from criminal justice [14].

Table 1. Two Different Views of Justice

Criminal Justice	Restorative Justice
Crime is a violation of the law and the state	Crime is a violation of people and relationships
Violations create guilt	Violations create obligation
Justice requires the state to determine blame (guilt) and impose pain (punishment)	Justice involves victims, offenders and community members in an effort to put things right
Central focus: Offenders getting what they deserve	Central focus: Victim needs and offender responsibility for repairing harm

The restorative justice process is inspired and developed from indigenous law [15]. For example, the United States, which developed their system of restorative justice from the Navajo Nation, inhabits three

states (Arizona, Utah and New Mexico) [16]. As of 2009, there are twenty-five states that utilize a restorative justice program as a diversionary program designed to operate in lieu of the formal criminal justice process and provide alternative outcomes [17].

Similar to the United States, indigenous law inspires New Zealand to exercise restorative justice. In New Zealand, the restorative justice program is designed primarily for juveniles. Historically, the New Zealand Department of Justice is advised to allow the Maori Nation to use their own local wisdom to resolve conflicts among them. In 1989, the practice of Family Group Conferencing, which was partly based on the Maori justice practices and philosophies, was established for youth offenders [18]. Through the Children, Young Persons and Their Families Act 1989 (CYPFA), law enforcement agencies in New Zealand may use FGCs instead of formal criminal justice proceedings for handling cases of juvenile delinquency [19].

3.3. *The necessity of restorative justice in Indonesia for juvenile delinquency*

As I describe in the first part of this study, the influence of civil law tradition has rendered most legal provisions in Indonesia less flexible, including juvenile law, which is rigid and provides for no possibility of discretion or a diversion program. Even if the case has already been solved through *musyawarah* among the parties, since there is no legal basis for *musyawarah* in juvenile law, the state can exercise jurisdiction and re-indict the case. Conversely, there are many cases that are not serious and can be solved with *musyawarah*, which has the same values and ideas as restorative justice.

In New Zealand, it is possible for cases such as Raju's and AAL's to be resolved outside of formal criminal court process. It is clearly stated in Section 208 (a) of the CYPFA that "...unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter." In Indonesia, since there is no clear and strict provision that permits law enforcement agencies to exercise discretion or undertake alternative dispute resolution, there is no possibility to 'save' the children even if society (the public) demand it.

What happened in the Raju and AAL cases is a reflection of the need for an alternative means to save our children's futures. With a restorative justice process, Raju and AAL might have the opportunity to clearly see, without undue pressure or threats, that they have wrongfully harmed their victims and what can be done to put things right and repair the injury. The victims can express their feelings and the impact of the delinquency on their lives, including what redress they want from the delinquent, especially in the AAL case, in which the parties are both victim and perpetrator (AAL stole 'someone's' sandals and was unjustifiably beaten by a police officer, while First Brig. Rusdi lost his sandals and at the same time committed an abuse of power against AAL). Restorative justice presents the possibility of resolving such a criminal dispute and Family Group Conferences have the capacity to resolve conflicts comprehensively.

In light of Indonesian legal culture, the restorative justice process has the same basis as *musyawarah*. Therefore, it would not be difficult to implement a practice of restorative justice in Indonesia. Indonesian society will easily adapt to this new process of justice as they are actually already familiar with its core values.

4. Conclusion

In the context of human security, restorative justice takes on the exceedingly important role of ensuring that children's rights are protected and preserved. Unfortunately, Indonesia has not established restorative justice as a mean of resolving conflicts of juvenile delinquency yet. Even though Indonesia has *musyawarah*, which shares the same ideas as restorative justice, without a blanket provision, there is no guarantee that those who utilize *musyawarah* will be free from the possibility of double jeopardy.

The effort of creating and utilizing alternative measures for adjudicating cases of juvenile delinquency, such as restorative justice, should be encouraged in order to obtain a better criminal justice system in Indonesia.

Acknowledgements

This article is dedicated to my supervisor, Professor Hidehiko Adachi, who always supports my research. I would also like to thank to my father Aman Sukarso, my wife, Dewi Wahyuni and my three 'little angels' Syifa, Aisyah and Sakinah for their great supports.

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