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**THE *AL 'AFWU* (FORGIVING EACH OTHER)
APPROACH IN RESTORATIVE JUSTICE FOR
DISPUTING MUSLIMS**

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Abstract

In criminal law, restorative justice is a new thing. Previously, Islam had already known the term restorative justice in its criminal law (*jinayah*) with the term *al-istiadah*. Forms of application of *al-istiadah* include *islah* (peace) and *al-'afwu* (forgiveness). As something new, the implementation of restorative justice has resulted in reforms in the criminal justice system in Indonesia. In this study, the author tries to explain the benchmarks for implementing restorative justice in terms of the values of the mutual forgiveness approach (*al 'afwu*) for those who believe in Islam. This descriptive research uses normative legal research methods that prioritize secondary data and are analytical and descriptive in nature. The results of this study indicate a benchmark for the implementation of restorative justice as an alternative settlement of criminal cases using the *Al 'Afwu* approach in the context of resolving criminal cases for Muslims. The restorative justice system strives to fix or recover the impacts of a criminal act. But there needs to be the perpetrators' efforts to return or fix the condition due to the impacts caused by the criminal actions they carried out.

Key words: Forgiveness, restorative justice, *al-'afwu*.

INTRODUCTION

There are some causes behind the adoption of restorative justice in Indonesia, including the situation in prisons and arrest facilities that accommodate a large population of inmates (Hozeng et al., 2021, p. 29). The application of the criminal court system is used as a repressive instrument without consideration for the interests of the victims and perpetrators. It is projected that this will end with the application of restorative justice in the criminal justice system in Indonesia (Sodiqin, 2015, p. 64).

As efforts to resolve disputes outside of court or alternative dispute resolution that focus on dialogue and mediation (Mareta & Kav, 2018, pp. 314–318), restorative justice involves related parties to achieve justice for the perpetrators and victims of

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criminal cases by emphasizing returning the condition to how it was before the crime occurred. It also focuses on returning the good relationship patterns in society (Ramadhanti et al., 2022, p. 418). In *jinayah* (Islamic criminology), restorative justice is called *al-Istiadah*. It aims to resolve cases and repair what was harmed by the involved parties (Daly, 2000).

The issue of law enforcement is currently seeking a way to enforce the law which allows it to fulfill the aim of the law, namely achieving legal justice, legal benefit, and legal certainty (Muhaimin, 2019). It is a new revolution that is different from the criminal justice system in the past that applies retributive justice. It is a backwards-looking paradigm that justifies the imposition of criminal sanctions as an appropriate response (*lex talionis*) or punishment towards perpetrators of criminal acts (Sodiqin, 2013). The renewal of the penal system in Indonesia is a good step in creating a law that is more accommodating towards the development of crime (Muhaimin, 2019).

In its current development, criminal law no longer refers to the imposition of criminal sanctions (backwards-looking) as a response or punishment (*lex talionis*) (Rado & Badilla, 2019). Even so, it shifts into three different types of justice, namely corrective justice, restorative justice, and rehabilitative justice (Setyowati, 2021). These three forms of justice are different from one another. Corrective justice emphasizes correction and sanctions imposed on perpetrators of criminal actions. Then, restorative justice is a form of justice that protects and recovers the victims' rights. Meanwhile, rehabilitative justice is directed to both perpetrators and victims to recover both of their rights (Setyowati, 2021).

The law enforcement effort that is known as restorative justice is a process where the parties involved in a criminal case come together to find a solution for the criminal consequences for the sake of the victim's future (Flora, 2018). Restorative justice as a criminal justice system is a new thing in the treasure of knowledge as it was only introduced around the year 1977 (Daly, 2000). The simplest form of restorative justice implementation is the pardoning of crime perpetrators by victims (reparation) (Umbreit, 1998). The Islamic *fiqh* (Islamic jurisprudence) has applied the form of pardoning (*al 'afwu*) or peace-making (*islah*) in resolving criminal cases (*jinayah*) (Marbun, 2017, p. 202) through the concept of pardoning long before the existence of the restorative justice theory (Ramadhanti et al., 2022).

The concept of pardoning in the Indonesian legal order that is applied by judges (*rechterlijk pardon*) is an implementation of restorative justice (Zehr, 2002). *Rechterlijk pardon* means that if a criminal action committed does not bring significant

impacts to society, the criminal perpetrators are still deemed guilty but they are not imposed with penal sanctions (Baqi & Wahyuningsih, 2020).

A true example of the application of restorative justice in Indonesia can be found in the case No. 46/Pid.B/2009/ PN.PWT (Marbun, 2017). In this case, there was a tug-o'-war between legal justice, legal certainty, and legal benefit. In the end, the judge assembly gave a verdict on the decision of probation sentence, a decision that shows the judges' pardon (*rechterlijk pardon*) (Flora, 2018). Apart from that case, there were other similar cases as in Decision No. 1104 K/Pid/2010, Decision No. 132/Pid.sus/2011/PN.MLG, and Decision No. 2615 K/Pid.Sus/201 under the name of Muhammad Mufid (Ali & Nurhidayat, 2011).

There are many challenges in the revolution of the criminal justice system in Indonesia, including the emergence of the assumption that the application of restorative justice softens the penal law's imposition of sanctions on crime perpetrators. This is a challenge to influence the perspective of the general society on the positive values in the application of restorative justice in Indonesia (Ramadhanti et al., 2022).

The aim and scope of this research are understanding the effectiveness of the application of restorative justice as an alternative dispute resolution for criminal cases using the approach of the values of Islamic religion's teachings to forgive each other (*al'afwu*) for conflicting parties that are Muslims (Nugroho, 2018).

RESEARCH METHOD

The analytical narrative research method was applied in this research. It was a method which used the literary study approach (book questionnaires) (Ibrahim, 2006). It was conducted by describing, evaluating, and mentioning primary and secondary data which were consistent with the discussion of the research object (Dimiyati & Wardiono, 2014).

RESULTS, DISCUSSION AND ANALYSIS

A. The implementation of restorative justice as an alternative dispute resolution for criminal cases in Indonesia

In Indonesia, the basic principles of restorative justice have been applied for years. This is because the Islamic norms and law contain values of peace that are the

same as those attached to the concept of restorative justice. When used to handle criminal behavior, restorative justice has the following characteristics:

- 1) It identifies the losses caused by the criminal case and actions are taken to retrieve them.
- 2) It involves all related parties.
- 3) Efforts are carried out to change the historical relationship between how the public and the government react towards a crime (Flora, 2018, p. 147).

The practice of restorative justice is very well understood by the legal culture of the general society and the judicial branch of the government. The understanding of justice that only discusses the essence of law cannot obtain benefit from this principle. For it, justice is the right of the state to impose sanctions on the citizens who have previously violated norms. The attention of justice is dominated by the interests of perpetrators, the people, and the state. Then, banishment and or rehabilitation become its crucial aspects (Rado & Badilla, 2019, p. 155).

According to the theory of restorative justice, it is not only the job of the state to handle crime when it happens. But society also has a role to play. In consequence, the basis of restorative justice is the idea that losses related to crimes can be fixed, according to the harm suffered by the victims and losses caused by society. In the efforts to discover alternative criminal prosecution in cases that involve young perpetrators, the restorative justice paradigm was created. Various actions are carried out to achieve humane justice. An agreement is made by determining the rights of perpetrators and victims during mediation, which becomes a point of focus in the application of restorative justice (Setyowati, 2021, p. 95).

In the case of criminal actions, the restorative justice system at least strives to fix or recover the impacts of such actions. This is carried out by perpetrators through actions that bring benefit to perpetrators, victims, and society. The related parties are directly involved in resolving the issue. The aim of the law is decorated with “societal protection” and “protection or rehabilitation”, which is different from how adults are handled, which ends with the perpetrators themselves.

Harmonization between members of society (rather than punishment) is the aim of restorative justice. Restorative justice focuses on five main components, namely:

1. In many crime-related situations, restorative justice is more often used in developed countries. The criminal justice system or the legal idea of the penal process is deemed universal.

2. Restorative justice regards crime as an action of crime towards victims rather than the state or society. This can be carried out to a person or a group of people.
3. Restorative justice focuses on the pain or harm suffered by the victims. It doesn't emphasize the punishments burdened to perpetrators.
4. As part of restorative justice, direct or indirect dialogs may be carried out in trial rooms, mediation sessions, or reconciliation sessions.
5. As aforementioned in the description above, restorative justice is not only manifested in a traditional reconciliation.

The communication process between perpetrators and victims is a crucial aspect and a key component in applying restorative justice in various philosophies and models. By having direct communication with the perpetrators, victims can express what they felt and what they expected in the achievement of their rights and goals to resolve the criminal case. As a result of the criminal activities that were carried out under full knowledge, it is hoped that the perpetrator, through the discussion, is moved to improve himself, know his mistakes, and be responsible for his actions. Society can obtain benefits from this discussion approach by taking part in reaching the goal of the agreement and monitoring its application. Thus, the basic definition of restorative justice is case resolution through mediation (penal mediation).

The approach of restorative justice is usually used to resolve juvenile criminal cases; mild cases or criminal actions; as well as in cases which involve women against the law, underage children as victims or witnesses of criminal cases, drug addicts, or drug abusers.

For instance, there was a case of abuse towards a child which happened in 2019. A 30-minute video showed footage of a woman slapping a grade two elementary school girl in Makassar. Based on the litigation process, this lady was deemed guilty. Then, this case was stopped because the perpetrator and the victim's parents had made peace, facilitated by the head of the local hamlet. The perpetrator also acknowledged her wrongdoing and apologized with feelings of regret directly to the victim, the parents, and society through the media. The child who became the victim has also gone through a recovery process through medical and psychological rehabilitation services (Lembaga Badan Hukum Makassar, 2023).

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Another case was the case of motorcycle accidents where victims only suffered from light wounds. In such cases, restorative justice is often applied. The two parties carried out mediation and made an agreement where the perpetrator agreed to compensate for the losses suffered by the victims. The perpetrator also acknowledged his mistakes and was willing to compensate for the material and immaterial losses suffered by the victims.

Restorative justice is a process which aims to fix the social harm which occurred. It also aims to fix the relationship between society and the perpetrator. Because the focus of the restoration is the resolution of each case, the restoration of the justice system which focuses on the evidencing of the criminal case is substituted with communication and mediation processes which result in other justices. The end goal of this strategy is to evoke the sense of fear on the subjects and to change the desires of subjects to achieve the resolution of the criminal case with the entity which caused sanctions. There are some benefits that come with the application of restorative justice, including giving society room to resolve the legal disputes themselves. Thus, the punishments or sanctions given are deemed as more just by society. The second benefit is decreasing the administrative sanctions burdened to the state.

Based on the description above, the level of effectiveness as well as the benchmark of restorative justice in Indonesia has so far run well. This is because the benchmark of restorative justice's success is the success of the agreement between the two parties. This restorative justice approach is effective in handling light and simple cases. It can cut the administrative cost of case resolution. This is so that the state budget can be allocated to other penal needs as such cases do not need to reach the level of sanctions in the form of imprisonment.

The restorative justice approach can also eradicate the social impacts of society towards perpetrators in a case. This is because if the perpetrator is the breadwinner of the family and must obtain income to feed the family, there may be a chance that the children will be neglected and drop out of school. Moreover, there is a negative stigma from society in families where its members are imprisoned. There is a chance that society will insult and label the children as "children of a prisoner or an evil person". Apart from that, restorative justice may also maximize the function of guiding and service to improve the rehabilitation process for inmates. This is because if the prisons are overcapacity, the guiding and rehabilitation processes become suboptimum. This increases the chance for crimes to reoccur in the future. This is no

different from cases of drug misuse where the users are mostly victims of drug dealers and they make up the largest population in prisons.

Therefore, law enforcement becomes more effective in achieving public order and fulfill people's sense of security as well as the rights and justice of all citizens. Restorative justice must also be applied without discriminating against the perpetrators' social status. Thus, its application can bring highly beneficial results for the perpetrators in the long term so that they do not commit the same actions. It also gives the perpetrators a chance to improve themselves with the supervision of related parties.

B. The application of the Al 'Afwu proposition in increasing the effectiveness of dispute resolution through restorative justice for disputing parties that are Muslims

Restorative in the term of Islamic law is known with the term *al-istiadah*. This is because the application of restorative justice is closer to the concept of substituting penal punishments (*qisas*) with fines (*diyat*). In Islamic law, *Al-istiadah* is a parable to the restorative justice concept of Western law. Both have similarities in the form of involving disputing parties with the aim of fixing damage.

The concept of restorative justice also encompasses *al-afwu*. According to the Great Indonesian Dictionary (*Kamus Besar Bahasa Indonesia*), the word "sorry" (or *al-afwu*) encompasses three meanings. The first meaning is freeing a person from any punishments (accusation, fines, etc.) that may be caused by mistakes. The second aspect is the verbalization of the authority's demand to carry out a certain action. Third, the term "sorry" is usually used in the context of demanding an apology or expressing sadness (Tim Penyusun Kamus Besar Bahasa Indonesia, 1995, p. 794). What is included in the category of *al-afwu* is tolerance towards mistakes and injustice committed by other people without feelings of hate or worse revenge in the heart. Even though repaying evil with evil is permitted with the goal of protecting oneself if the feeling of wanting to repay or have revenge over that evilness is still embedded in the heart, this way of thinking is far from the parameter of the *al-Afwu* concept (Shihab, 2004, p. 364).

A weak person who has no power to carry out many efforts is a person who can forgive other people. This perspective is not included in the category of redemption, and it is not included as forgiving a person if in his heart, the victim is

still annoyed and angry with the person who abused him (Al-Hasyimi, 2009, pp. 357–358).

Al-afwu encompasses four main meanings, namely:

- 1) The redemption of mistakes without any punishments for those mistakes.
- 2) Excess that should not exist and must be abandoned, in other words, by giving it to those who ask for it.
- 3) Getting rid of something, making sure that it is truly destroyed as well as ridding something from its foundation.
- 4) Forgiving an individual who has made mistakes through compassion without keeping feelings of hatred in the heart.

In several verses of the Al-Qur'an, Islam which is known as a religion of peace places a significant emphasis on the need of humans, especially Muslims, to show an act of forgiveness as one of the pillars that form peace. For example, Allah the Most High stated in Chapter *as-Syuura* (The Poets) verses 39 and 40, "*Walladziena idza ashaabahumul baghyu hum yantashiruun. Wa jazaa'u sayyiatin sayyiatun mitsluhaa. Faman 'afaa wa ashlahu faajruhuu 'alallaahi*". Meaning "And who enforce justice when wronged. The reward of an evil deed is its equivalent. But whoever pardons and seeks reconciliation, then their reward is with Allah."

Based on the verse stated above, it is clear that theoretically, a person may have to protect himself when he suffers or when he becomes a victim of a crime. Apart from that, it is also justified to repay an evil act with an equal act (through suitable punishments). If the person who became the victim chooses to have patience, forgive, and keep on doing good towards the wrongdoers, it is deemed as an act of redemption. Therefore, according to Allah, such an attitude is deemed as more noble and the doer will obtain great rewards. Allah has the direct responsibility to give a person a reward for that attitude.

According to Professor Dr. Hasby Ash-Shiddieqy, Islamic law has certain *maziyah* (courage) and *muhasanah* (doing good). It is a beauty which makes Islamic law the richest and the most prepared law to fulfill the demands of society. This characteristic makes Islamic law able to answer all cases that happen in human life. In relation to the Islamic law on sources of formal law, if seen from the law of the Qur'an, its application in society with its binding powers is not only seen from the aspect of material or formal satisfaction, goodness, and usage. But there must also be a consideration of whether or not these legal regulations contradict the obligations

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and prohibitions of the Qur'anic norms. Because as Muslims believe, the Qur'an is the basis of all laws (Ash-Shiddieqy, 1975, p. 119).

But there are still explanations for the term redemption with the aim of knowing the boundaries and types of redemption that may be given for *jarimah* (prohibitions) or the crime committed. Even though the terms on redemption in Islamic criminal law are not very much formulated by *fiqh* scholars, there are still explanations for this term. Based on the previously described analysis, it can be concluded that there is a difference in the meaning of the terms *ishlah* and *al-afwu*. *Ishlah* is specially related to the peacemaking process, whereas *al-afwu* refers to redemption (Shahrour, 2004, pp. 256–257).

In analyzing the importance of the compensation initiatives, there is the implicit creation of a bordering line between *al-afwu* and *shulh* in their relations with the *jinayat* doctrine and, more specifically, the case of murder. It is deemed as *shulh* if both parties take the initiative to compensate for the *qisas* or punishment (peace). Meanwhile, if the victim is the only party which takes the initiative of compensation, this initiative is included in the definition of *al-afwu*.

It can be said that the difference between *al-afwu* and *shulh* as a method of resolving an issue can be said as only reaching the level of concept, even though in reality, it can truly be imagined that there are technical similarities in the application of the two. *Shulh* is a general concept of peace which encompasses everything, starting from personal issues to issues of state politics. *Shulh* emphasizes the results of the mutual agreement and places the same weight on the two. Apart from that, *shulh* also discovered the field of criminal law. On the other hand, *al-afwu* is a doctrine which aims to resolve differing opinions with the act of redemption, thus freeing perpetrators from any responsibility for that crime. As a consequence, victims have the choice to ask for compensation (*diyath*) or not ask for compensation at all (Ali & Nurhidayat, 2011, p. 290).

The use of restorative justice is actually an important component of the Islamic legal system. In the legal system of the modern Western world, it is often criticized that the punishments determined by the judges do not support the victims or are not meant to uphold their rights. For instance, the state often acts as a victim in certain cases where a person is deemed guilty of murder or other unlawful acts. In the journey of criminal justice, victims are often ignored. The punishments given often violate the victims' sense of justice and do not bring any form of benefit to the victims and their families (Ali & Nurhidayat, 2011, p. 290).

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Those who do not want to forgive others in essence do not want to receive redemption from Allah the Most High. The perspective upheld in Islam which encompasses the capacity to forgive others is part of the highest and most noble goodness. It is a characteristic of pious people and represents characteristics that are prioritized in the road directing to Allah the Most High. The following is a quote from a *hadeeth* (traditions and sayings of Prophet Muhammad) which is related to Imam Ahad bin Hanbal. When the prophet's companion, Uqbah bin Amir, the prophet what deeds were most important, the prophet stated (Hanbal, n.d., p. 206):

“From Uqbah bin Amir, he said, “I met the prophet, then I held his hand and said, “O Prophet, tell me what deeds are most important.” He (the prophet) said, “O Uqbah, maintain the ties of kinship with those who severed it, give to those who do not want to give to you, and forgive those who abused you.”

Therefore, if someone makes a mistake or abuses us, the Islamic religion emphasizes that forgiving is more noble than repaying the abusive act. Even though repaying evil is also allowed, forgiving is deemed a more noble thing. On the contrary, in daily life, forgiveness is usually only given after the perpetrator of the mistake or abuse asks for forgiveness beforehand. But if we carefully read the verses in the Qur'an which are related to the topic of redemption (*al-afwu*), we can see that the idea of *al-afwu* is an instruction to give redemption to perpetrators of abuse without waiting for the wrongdoer to ask for forgiveness.

Islam must answer the challenges in the ideas of social justice by applying the principle of proportionality in society on the forgiveness of mistakes and abuse. This topic is related to the idea that forgiving someone cannot be used as a facility of penal mediation. It must be used very selectively to prevent it from exceeding the value of justice that tends to be directed to the destruction of social cohesion. With the aim of achieving essential peace, in the case of *ishlah*, Islam gives a solution that is just and beneficial for both parties that are involved in the case, where the perpetrator is freed from his sin and the heart of the victim is cleansed from the feelings of hate towards the perpetrators. On the other hand, *Al-afwu* is a direction from Allah that must be followed as a blessing from the Most Merciful, the Most Just, and the Lover of Peace.

Al-Afwu is also used in correctional centers, where inmates have the right to forgiveness or what is known as remission if they have made positive changes in their lives. One of the stages to maintaining the benefits and preventing monasticism is understanding the meaning and goal of *Al-Afwu*. *Al-Afwu* also aims to respect the rights of every citizen over their regret after carrying out bad deeds.

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According to Article 44 clause 4 of the Law on the Eradication of Domestic Abuse, penal mediation is used in cases which involve domestic abuse. It was used in the case of a perpetrator with the initials NK in case No. LP/B/22/III/2017/Jawa Tengah/ResBbs/SPKT. Perpetrator NK committed criminal actions by physically hurting his wife with the initial S by attacking her. This incident happened in the house of the Plaintiff at Gang Kota Baru Street, Hamlet 03/02, Brebes Regency on February 13th, 2017 at 6 a.m. The suspected perpetrator hit the Plaintiff once with his fist, pushed her to the wall, and twisted her body. According to the evidence from the *visum et repetum* No. 02/PKM-XXI/IV/2017, the plaintiff then exited her house and suffered from wounds on the left cheek, right cheek, left shoulder, right wrist, and left shinbone.

In the investigation process on February 20th, 2017, the plaintiff or the victim (the wife) wanted to make peace with the husband on the basis that they have a child who is still under the responsibility of NK as the father who is still under their mercy. On February 22nd, 2017 a mediation was organized with witnesses, parents of both parties, and legal advisors. It was stated that the defendant acknowledged his mistakes and regretted his actions. He apologized to the plaintiff and on the other hand, the plaintiff has also forgiven the defendant (Nugroho, 2018, p. 296).

Based on the case of domestic abuse above, the *al-afwu* principle was applied to a criminal case where both parties can forgive each other. Each party has its own tendency to protect its ego every time it faces occurring conflicts. Because of that, *al-afwu* is an early indicator of the development of a person's goodness and piety that can give a basis for reconciliation in human existence. Al-Qur'an gives a motivation that can inspire and motivate people to find peaceful solutions in cases of dispute to find peace, one of which is through *al-afwu* behavior or forgiving each other. The decision to achieve peace must follow the decision to forgive each other because peace is a theology/belief as stated in the Holy Qur'an, chapter *Al-Baqarah* (The She-Cow) clause 208. Even, this verse is deemed as a verse on peace.

In the current paradigm, victims in a criminal case are positioned as the party which suffered from losses. This has been acknowledged by experts. Indonesia currently has an institution that specially gives protection to witnesses and victims, namely LPSK (*Lembaga Perlindungan Saksi dan Korban/The Institution for the Protection of Witnesses and Victims*). Therefore, now a question arises, is it important to give special attention to victims of a crime? Thus, the answer is that it is important.

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Victims of a crime is a party which was harmed in the case of a crime. The harm experienced by the victims in a criminal act may be in the form of material or non-material losses. The law basically exists to guarantee security and order as well as to achieve justice (Gosita, 1993). The main goal of justice is paying attention to the interests of the victims by fulfilling their rights or by imposing the right punishments on the perpetrators. One of the victims' rights is to obtain compensation from perpetrators, thus perpetrators help the victim by decreasing the suffering they experienced due to the perpetrators' actions (Resna, 2011). Therefore, it is reasonable when perpetrators give compensation to victims, even though victims have forgiven the perpetrators, as an effort to resolve issues through the restorative justice system.

CONCLUSION

It is in the human nature to make mistakes. No human is perfect. Thus, humans must absolutely forgive each other. Those who are unwilling to forgive others or forgive each other (*al-afwu*) basically do not want to obtain redemption from Allah the Most Forgiving. This concept can be applied to encourage the disputing parties to forgive each other in a criminal case so that the occurring issues can be resolved through the restorative justice system without needing to go through the trial processes in court.

In principle, the restorative justice system strives to fix or recover the impacts of a criminal act. This is carried out by the perpetrators through actions that bring benefit to perpetrators, victims, and the environment. These parties are directly involved in the problem-solving process. Because of that, in dispute resolution through restorative justice with the application of the approach to forgiving each other (*al-afwu*), it is not enough to just forgive each other and then the issue is resolved. But there needs to be the perpetrators' efforts to return or fix the condition due to the impacts caused by the criminal actions they carried out. Such actions can be carried out by giving compensation or compassion funds to the victims of the crime. By applying the concept of forgiving each other (*al-afwu*) and followed by the act of returning the condition or giving compensation the potential of resolving issues through the restorative justice system will be more effective and it will have a direct impact on the decrease in the number of litigation cases in court.

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