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Critical Studies in the Implementation of Restorative Justice's Principle to Realize Religious Justice

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Abstract

The justice that has been going on in the criminal justice system in Indonesia is a retribution retribution oriented for vengeance and suffering, this concept is obsolete by various legal experts. So was born the principle of restorative justice Whose fashion leads to a preliminary recovery of victim, the perpetrator, and the public are known by the restorative justice principle. In islamic criminal law, the concept of restorative justice has long been known to become even the principal model of accommodation in cases accommodation in qisos-diyat principles. The implementation of qisos-diyat as one of the principal solvency principles in Islam has also been accommofied by the samin indigenous people in blora to solve a problem they use a restorative justice approach with the name Rembuk Rukun. The study adopted a socio-legal approach, seeing aspects of the law that remained independent of such other aspects as economics, politics, and socio-culture.

Keywords: *Law Enforcement; Restorative Justice; Criminal Justice*

Introduction

Efforts on criminal countermeasures in Indonesia can be divided into two, namely, on the "penal" (penal law) and on the "nonpenal" (outside of criminal law) paths. The "penal" task of counterterrorism itself has more emphasis on "repression" (bullying/eradication) after the crime has occurred, versus the "non-penal "approach of the "non-penal" has more emphasis on the quality of "preventive" before the crime takes place. This is also defined by the G.P Hoetnagels opinion that criminal law application can be pursued: prevention without punishment, and clouding the public's view of crime.[1]

[1] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, PT. Prenadamedia Group, Jakarta, hlm. 45

Looking at the above explanation, the "non-penal "countermeasures that have pressed crime onto the penal line have been responsible for treating the factors that contribute to crime. Such conducive factors can include those that center on immediate or indirect social conditions that can contribute to or contribute to evil. Thus nonpenal efforts occupy key and strategic positions in coping with causes and conditions that have resulted in crime. Beyond that, if we have been able to find the "penal" approach without the "non-penal" approach, it is certain that the end results have not been adequately realized because the problems with the "penal" approach have not been able to touch the kausa on a penal case.

Furthermore, on the completion of the "non-penal" approach is currently hot to talk about. Because until now the solution of a cause has been dominant by virtue of liberal individualist causes not by familial approaches. Nowadays, any criminal lawsuit ends up in prison bars, a fee the state has to pay for a prison that is overextended is a considerable problem. Though ideologically we have pancasila asa philosophical basis rich in godly, family, human and rational values. Thus, in this case, the concept of the restorative justice system as a means of the solution.[2]

In the second world bank of Indonesia, there is no need for justice. Restorative justice or restorative justice is understood to be: "a restoration of the relationship and redemption of the guilt that the perpetrators of the crime (the family) wanted to commit (the family) (peace) out of court with the intent and purpose of making legal problems resulting from the criminal act can be well resolved by the achieving of agreements and agreements between the parties".

The justice that has been going on in the criminal justice system in Indonesia is justice retribution, where justice retribution is reactionable it is a class-oriented, neo-classic theory oriented for equality of criminal sanctions and sanctioned action. In the theory of retribution, criminal sanctions sourced on the idea of "why there are detectives". In this case criminal penalties place more emphasis on the element of reactive (reactive) reactive action. He is the willful agony imposed on a transgressor.[3]

This is a process by which all parties involved in a particular crime together solve the problem of how to address the future consequences. Restorative justice is a criminal crime settlement model that brings immediate recovery to victims, perpetrators and communities. The key principle of the restorative justice is the participation of victims and perpetrators, citizen participation as facilitators in case completion, so there is the guarantee that children or actors no longer disrupt the harmony already created in society.

The completion of the established criminal case should place more emphasis on the social balance of society, the balance between the perpetrator and the victim of the crime, thereby recreating social harmony in society. This settlement takes place in a balanced way with the deliberation between the parties involved and the victims. The concept presents crime as part of the symptom that forms part of the social action, so its resolution always focuses on local wisdom in accordance with the prevailing code of society.

The result is the result of the restrucative justice in Indonesia, he said. Some examples of existing regulations such as the decision of the director general of public justice let's Number 1691/DJU/SK/PS.00/12/2020 on the application of restorative justice guidelines. The government of the Indonesian republic of Indonesia's prosecutor Number 15 year 2020 has quit prosecution on the basis of restorative justice, Indonesia's police chief rule Number 6 year 2019 on criminal investigation, Indonesia's police release Number. SE/8/VII/2018 on the application of restorative justice (restorative justice) in the completion of a criminal case, The law of the law has issued a wide range of law enforcement measures,

[2] Suteki, *"Hukum dan Masyarakat"*, PT. Thafa Media, Yogyakarta
[3] Andi Hamzah,*Sistem Pidana dan Pemidanaan Indonesia,dari Retribusi ke Reformasi*,(Jakarta: Pradnya Paramita, 1986), hal. 53

as well as the potential for an overlapped between one and the other, which is contributing to the condition of our regulatory regulations. [4]

The next issue is regarding restaurant justice coverage at this time still under threat of minor crimes, women dealing with the law, child and narcotics cases only. In contrast with islamic criminal laws and tribal laws that accommodate restorative justice is broad enough as a key step toward achieving a balance to harmonizing with a deliberative course involves local prudence. Moreover, understanding local prudence for criminal settlement is far from relevant if it does not present a religious aspect to its completion because the religious aspect is the breath of local wisdom in our community. Then the religiosity of religiosity in criminal settlement as if only sweeteners were not the main ingredient in problem solvency, reflected in local community wisdom that always comes to the kiyai or older of the community if they find problems from bad boys to bigger one.

Similar to this is a consideration of the 1980 United Nations resolution Number. 3 of the 1980 congress, about "effective measures to incrimincrime," stated in part: the prevention of crime depends on manhimself (that crime prevention is prevent on manhimself). That the evil prevention strategy should be based on efforts to arouse the spirits or souls of men and refortify confidence in their ability to do good. (that crime prevention stategies should be based on feeding the spirit of man and painting his faith in his ability to do good). In another sense the result of this UN resolution recognizes the importance of the role of religion to lead to the path of good.[5]

From the UN resolution it seems to suggest that one can be controlled by the nature and behavior of a person is increasing his religious character in life, if we address our heterogeneous society in which indonesians are full of their individuality and belief supported by the philosophy of our state of pancasila where first precepts are the supreme deity, Should researchers point out that the country of Indonesia isa religious country, as well as its law enforcement must surely accommodate it.

However, the implementation of the religious practice of the positive law is still important, as in the case of the restorative justice, which is considered as weak in its religious aspect, and is not yet properly regulated in our criminal justice system, whereas in islamic criminal law, the solution to the establishment of the restorative justice principle is *Qisas-Diyat*. What is more, an aspect of the cultural culture of the Indonesian people has also accommodated such things as the samin blora indigenous people with its rugs, since traditional laws are a law that reflects the personality and soul of the nation, it is believed that some of the customary laws of the law were necessarily relevant to the establishment of the Indonesian legal system.[6]

Some of the thoughts embodied in living law theory state that in a process of forming legislation are essential to regard values and values-laws that live and apply in society. When legislation runs contrary to values and values-norms that live by and apply in its societies, it is bound to be rejected. In the context of Indonesia, the living law of the Indonesian people is the law of custom.[7] Lacking optimization in its application it seems to produce law enforcement in Indonesia like a distant proverb roasted from fire. The expected sense of justice from law enforcement is not fully enjoyed by the people of this country.

[4] Nukila evanty, Sardini Nur Hidayat dkk, *Muladi dan Pembaharuan Hukum Pidana di Indonesia,* PT RajaGrafindo Persada, Depok Hlm 216.
[5] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, PT. Prenadamedia Group, Jakarta. Hal. 51
[6] Lihat Ratna Winahyu Lestari Dewi, "*Peranan Hukum Adat dalam Pembangunan Dan Pembangunan KUHP Nasional*", Jurnal Perspektif Vol. X No. 3
[7] Sulastriyono dan Aristya, "*Penerapan norma dan AsasAsas Hukum Adat Dalam Praktik Peradilan Perdata*", Jurnal Mimbar Hukum Vol. 24 No. 1 Februari 2012, hlm 1-186., di download dari http:// mimbar.hukum.ugm. ac.id/index.php/jmh/article/view/381.

Formulation of the Problem

1) How are the characteristics of restoration justice in law enforcement in Indonesia?
2) Why implement religious aspects in the application of the restorative justice principle in Indonesia?

Research Methods

The method of research used in this study is empirical with a socio-legal approach that sees the law in its complex face, not just the norm alone, but it involves a number of disciplines, since the law cannot be separated from the political, social, cultural, and economic context.[8] The first stage of the study was conducted with the goal of discovering how the characteristics of the implementation of restorative justice in Indonesia. Then at the next stage, searches were made on specific norms through the process of legislation. Recently analysed with offers relating to religious concepts in Islam and samin customs. The data source comes from a primary source, information that comes from the interview directly with the village chief Klopoduwur, the indigenous samin elder and the village secretary as an informer and those directly connected to the crime and society asa person in the study. Researchers also use secondary data sources of legislation, journals, thesis and other writing.

Discussion

1. The Characteristic of Restorative Justice in Law Enforcement in Indonesia

The restorative justice is justice which emphasizes improvement over damages caused or associated with criminal actions. The restorativ justice is made through a cooperative process involving all stakeholders. The restorative justice is an alternative or other way that the criminal justice pursues its integration approach on one side and the victim/society on the other as a unit to find solutions and return to the pattern of good relations in society. The key word of restorative justice is "righteousness", even this phenomenon is its restorative heart (the heart of the restorative ative), therefore its restorative justice is determined by this empowerment. In traditional concepts, the victim is expected to remain silent, accept and not interfere in criminal proceedings. Basically, the idea of a restorative justice is to re-enact such a role of victims, from passive waiting to see how the criminal justice system deals with "their" crimes, is empowered so that the victim has the personal right to participate in criminal proceedings. In the literature on restorative justice, it is said that "costs" are associated with the parties in criminal cases (victims, perpetrators and society).[9]

Its importance, its empowerment, or empowerment ina restorative justice context is the process of meeting in this matter between the offender and the victim or society to discuss and actively participate in the resolution of the criminal problem. It is an alternative or other choice of the effects response to evil. The concept of restorative justice theory offers answers to key issues in criminal settlement: first, critics of the criminal justice system, which provides no special opportunity for the victim Second, eliminating conflict particularly between perpetrators and victims (taking away the conflict from them); Third, the

[8] Lexy J, Moelong,. 2002, "*Metode Penelitian Kualitatif"*. Bandung: Remaja Rosdakarya. Hlm 1
[9] Kuat Puji Prayitno, "*Restorative Justice Untuk Peradilan Di Indonesia (Perspektif Yuridis Filosofis Dalam Penegakan Hukum In Concreto)"* Journal Fakultas Hukum Universitas Jenderal Soedirman diakses dari file:///C:/Users/HP/Downloads/116-136-1-SM.pdf , tgl 9 Desember 2022

fact that the feelings of helplessness experienced asa result of criminal abuse must be overcome in order to achieve improvement (in order to achieve reparation).[10]

The position of restorative justice on the criminal justice system is divided into two that is: outside the criminal justice system and inside the criminal justice system. Reality shows people are still largely adhering to the laws of the state and the procedures available. In addition, policymakers still believe and depend on a functioning criminal justice system. In this regard, both legislative and executive legislation views the use of restorative justice approach as only an alternative criminal justice model offered in a legal system that differs from current state law..

The position of restorative justice in Indonesia Strictly regulated in detail in various constitutional regulations, The constitution of the Republic of Indonesia in 1945; The 48th 2009 bill on the power of justice, the 1985 bill of Number 14 as was amended by the 2004 act on Number 5, as was recently amended with the 2009 Number. 3 act on the Supreme Court. Thus, given that the Supreme Court (MA) is the body of the state that carries out the power of justice and as its Supreme Court, it would be necessary if the Supreme Court (MA) adopted or adopted and adopted the approach or concept of restorative justice (restorative justice).[11]

Moreover, the justice power act, Indonesia's 48th 2009 constitution, on article 5, strongly states that the judge is under obligation to unearth living values (the living law or local wisdom). Thus, the basic value of the judge must or must be required to implement an approach or concept of restorative justice for the completion of the matter because of its approach to restorative justice (restorative justice) according to the Indonesian spirit of pancasila, according to traditional legal values and according to religious values.[12]

The implementation of the restaurant justice is also found in the new policy related to the closing of the case by the public prosecutor. The district attorney general of the year published no. 15 of the country's prosecutor's regulation Regarding the removal of the prosecution based on its legal justice, judging from its legal side, several considerations based on the publication of the 2020 prosecutor's decree are:[13]

1) The Indonesian government, as its governing body, must be able to achieve the certainty of law, order of law, justice, and truth based on law and observance of religious norms, courtesy, and decency, as well as the obligation to explore the values of humanity, law, and justice that live in the community.
2) The completion of the criminal justice by subjecting restoration to its original state of justice and the balance of protection and interest of the victims and appeased-oriented criminals is a legal necessity of society and a mechanism that must be built in the execution of the prosecution authority and the renewal of the criminal justice system.
3) The attorney general serves and authorizes the process of law enforcement given by the law in regard to the principles of swift justice, simple, and light costs, as well as imposing and formulating case management policies for the successful prosecution executed independently for legal justice and conscience, including the prosecution using a restorative justice approach executed in accordance with the regulations of the law.

[10] *Ibid*
[11] Hanafi Arief, Ningrum Ambarsari "*Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia"* Jurnal Fakultas Hukum Universitas Islam Kalimantan
[12] Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman
[13] Suteki, *Hukum dan Masyarakat*, PT. Thafa Media, Yogyakarta. Hal 213

2. The Religious Aspect in Applying Principles Restorative Justice in Indonesia
a. The Application of a Religious Aspect

The guidelines for the implementation of religious aspect in the application of the restorative justice are bound to the 48th 2009 judiciary rule on judiciary rule in article 5. It requires further research on the values living in a society with a conception of restorative justice through our nation's philosophy of pancasila, by attributing traditional legal virtues to the first divine deity which of course perpetuates religious values.

As to this, a consideration of resolution Number 3 of the 1980 6th congress, regarding "effective measures to incrimincrime," was stated, as follows: crime prevention is prevention on manhimself). That the evil prevention strategy should be based on efforts to arouse the spirits or souls of men and refortify confidence in their ability to do good.(That crime prevention stategies should be based on exalting the spirit of man and reinforcing his faith in his ability to do good). After considering the above, the resolution then stated: to ask the UN secretary to concentrate the prevention of evil on reaffirming human confidence in his ability to follow the path of truth. (Requests the Secretary-General to focus his efforts in crime prevention on reinforcing man's faith in his ability to follow the path of good). From the foregoing resolution it clearly shows how important and strategic religious education and various forms of religious education can play in reaffirming human confidence and ability to follow the way of truth and goodness. With effective religious education and education, it is hoped that not only will a healthy human soul/spiritual person be destroyed but also the building of a wholesome family and a wholesome social environment. The development and cultivation of public mental health meant, not just spiritual /mental health, but also cultural and values of community view.[14]

Furthermore, in this resolution there needs to be another balance with the goal of public health cultivation or a healthy social environment (as one of the nonpenal efforts on criminal political strategies), not only must the religious approach be oriented but also the national cultural identity approach. The importance of this national cultural identity approach has been brought up, since it has been argued in the 1980 United Nations 6th congress that "the importation of foreign cultural applications which did not favor with the criminogenic effect" as well as in the 1990's 8th UN congress, states, among other things, that one of the most conducive factors for evil to occur is a factor "the destruction of original cultural identities".[15]

1) Islam as a Model Application of a Religious Aspect

Islam as a full religious teaching has imbibed universal values, which, of course, as a reference to the application of the concept rligius, is known in the islamic penal law as the Syara ' prohibits by god, there are three penalties in the jarimah: *Hudud, Qisas-Diyat* and *Ta'zi*. The jarimah sense here can be confused with the term in our positive laws of crime.[16]

- The *jarimah hudud* is the *jarimah* that is threatened with the penalty of having (a punishment that is specified in number and is the right of the Lord) and thus has no lowest or highest boundary. The understanding of god's right is that the punishment cannot be eliminated by individual (the victim of jarimah). Nor by the people represented by the state. The punishment inherent in god's right is every punishment desirable to the common good (society). As for generating serenity and safety of the people, and the benefits of the inflicting of such punishments will be felt by society's continuity. According to *fuqoha* jarimah-jarimah hudud is divided into seven categories: adultery, *qadzaf*

[14] Barda Nawawi Arief, *"Bunga Rampai Kebijakan Hukum Pidana"*, PT. Prenadamedia Group, Jakarta. Hal. 52-55
[15] *ibid*
[16] Ahmad D Hanafi, *"Asas-asas hukum Pidana Islam",* PT. bulan Bintang, Jakarta hal 6-9

(accusing others of committing adultery). Drinking, stealing, *hirabah* (robbery/robbery, security nuisance), apostasy (out of religion) and *al-baghyu* (insurgency).

- The *jarimah qisas-diyat* referred to in the jarimah are works that are threatened with qisas' punishment or dynasdic punishment. Among *qisas* or *diyat* are the prescribed penalties that have no lowest or highest limits, but become individual rights. With the understanding that the victim can McForgive the perpetrator, and if the victim does so the punishment is eliminated. *Jarimah qisas-diyat* is divided into five parts, namely: a. accidental murder (*al-qathlu amdu*); b. Semi-intentional murder (*al-qathlu svibhul amdi*) c. murder by mistake (*al-qatlul khata*) d. intentional persecution *(al-jarhul amdu)* e. accidental persecution (*al-jarhul-khata* '). For the record the *jarimah-jarimah qisas-diyat* above the portion *fuqoha* also refers to *(jinayat* or *al-jirah*" or *ad-dima'*) and is also often called the hudud (meaning its limited-boundaries punishment from *syara*')
- The *Jarinah ta'zir* has the sense of rendering instruction (*ath-ta'dib*) but in the sense of islamic criminal law the term has its own sense. In fact, the syara 'does not specify the varied penalties for each jarimah *ta'zir*, but it mentions only the various penalties from the lightest to the heaviest. In this case the judge was given the freedom to choose which of these punishments to fit the manner of the *jarimah ta'zir* and its maker's circumstances as well. So the penalties of the jarimah *ta'zir* are endless. Nor are the jarimah ta'zir indefensible limits, being at the *jarimah jarimah hudud* and *qisas-diyat* fingers already determined and indeed the *jarimah ta'zir* is impossible to determine the number. Syara' only determined part of *ta'zir jarimah-jarimah*. Which works which will forever remain regarded as fingers such as riba, embezzling of the party, cursing people, phishing and so forth. The majority of the *jarimah ta'zir* is left to the rulers to decide. Requirements must be in accord with community interests and must not go against nas-nas (provisions) syara 'and its general principles. The intent of granting the issuance of rights to rulers is that they may govern society and maintain their interests and be in a better position to cope with the sudden circumstances.

From the foregoing researchers, Islam knows the two paradigms of litigation resolution: non-litigation paradigm. A litigation paradigm is a fundamental view and belief that the only proper institution for solving a case is going to trial. Instead, non-litigation paradigms go from the basic assumption that litigation is not always legal and judicial resolution. The ways outside the court are part of an unabandoned and proven model of settling a case without leaving any wounds and grudges. It is this approach to what is now called restorative justice.

The completion of the case may be based on the initiative of the guilty party, and may involve a third party, in islamic criminal law, or a common mediator being called hakam. Hakam served as a arbiter of two or more parties concerned. Hakam equals with existing mediator or arbitrary ators. The smooth way of settling is a tradition that has long been rooted in Arab society even before Islam was present. After Islam's presence, the doctrine is further amplified by the admonition to always create peace and harmony in rnasyarpeople, it is this harmony which states that islampun is familiar with the concept of restorative justice.

Not only is the forgive doctrine embodied in *qisos-diyat* in islamic law recognized as an altemative form of settlement with the attainment of the most ideal demands of idylation. Through this society of forgiveness, justice can result in a balanced justice between perpetrators, victims, and communities, so here researchers can point out that the restoration of justice is seen in a strong way in the imposition of *qisas-diyat jarimah*.

The new aspect found in qisas administration is the prosecution process qisas is still the victim's family. The *fuqaha* regard that murder act as civil wrong or civil matter. The settlement of the matter depends upon an agreement between the two parties, the perpetrators and the families of the victims. However, the authority to decide that the punishment of *qisas* is in the hands of the judge. It is certainly in contrast with the modern legal world where murder is categorized asa public matter because it threatens

the safety and security of the general public. Such matters are within the authority of the government to handle them. The victims only have the right to report and demand to those who have legal authority. The state represented by the law institution being the legal authority to handle and enforce sentences for the islamic criminal law murder does refer to the government's existence as part of *qisas'* punishment, but its existence is only a matter of observing the implementation of the punishment by the rules. Although *qisas*' right of prosecution rests in the family of the victim, he cannot do so alone without the delegated knowledge of the government which the judge or *qadli* and *qisas* demanded by the victims' families can only be executed after a dissolution of the judge.[17]

For the record, forgiveness is something only a victim can provide. Because of course his forgiveness has an effect so that the victim can pardon *qisas*' sentence and then be replaced with the *diya*t as he can free the perpetrator from the diyat punishment. The head of state in his position as supreme ruler cannot extend forgiveness, for forgiveness in *qisas'* fingers belong only to the victim or her guardian. But if the victim was not of age (under or under a state of mind) when he did not have a guardian, then the head of state (ruler) could become his guardian and extend forgiveness and was not granted free. So his position was clearly just a surrogate, allowing the state to pardon the deliberate murderers forgiven by the victims' families. Then the perpetrator is not immediately above punishment, but the fuqaha rewards the pardoned perpetrator with a penalty of substitution by paying *diyat*, if the victim continues to forgive in the penalty of punishment then the law falls on *ta'zir*.[18]

The philosophical implementation of *qisas* as above is reformative, that is to improve the behavior of evildoers and the behavior of society in general. The position of *qisas* punishment is the maximum punishment, meaning that qisas remains subject to the perpetrators as a final alternative. The reformative nature of *qisas*' efficacy is also illustrated in the prevention principle of preventing society from further murder and preventing society from committing similar actions. These precautions are aimed at keeping people alive, so they do not get stuck in the tradition of revenge as in *Masajahiliyah.*

Reject the above explanation, the philosophy of punishment for alleged perpetrators of murder in Islam adheres to the restorative justice principle. The principle gives broad portions to parties in his involvement in criminal settlement. These are criminal actors, victims of criminal crimes and families, communities and countries that are represented by law enforcement officials. The country in this case has no position to monopolize the completion of criminal ACTS, but rather the medium to ensure that the completion of criminal ACTS has been approved by the parties.[19] *Qisos*' application as one of the peinsip completion of the main problem in Islam also appears to have been accommofied by the samin indigenous people in Blora who believe they are muslims, associated with the completion of a judicial problem they also use the restorative justice approach they call the *Rembuk Rukun*.

2) The Religious Aspect of the Application of the Restorative Justice Principle by Samin Indigenous People

The indigenous samin community is the indigenous community that was spearheaded by Kiai Samin Surosentiko and Mbah Ngrek, they planted a teaching that combines local wisdom's views with certain elements in the teachings of Java. What they do to love nature, the creator and fellowmen are named with men, men in terms of language meaningful doing, whereas from sacrifice is a kind of sacrifice they make to love nature in balance then do worship to the Lord and love their fellowmen. There are also anasbestos on Hinduism and budhism. The teachings of samin are viewed as one of those that is

[17] Nor Soleh, *"restorative justice dalam hukum pidana islam dan kontribusinya bagi pembaharuan hukum pidana materiil di iindonesia"* Jurnal dari Universitas lslam Sultan Agung Semarang diakses: file:///C:/Users/HP/Downloads/640-1978-1-PB.pdf pada 10 Desember 2022
[18] Ahmad D Hanafi, *"Asas-asas hukum Pidana Islam",* PT. Bulan Bintang, Jakarta hal 6-9
[19] *ibid*

practiced in everyday life and are able to form an exclusive community, either as a Samin or often referred to as wong siphin ora sedulur siphin. From the results of their research research, the Javanese and Javanese groups have established a philosophy called wong siiron or sedulur siphin. So that researchers could sort out the indigenous people of wong siiron and part of the Javanese.

Based on their own propagation of the samin indigenous communities spread across areas such as sebang, grobogan, pati, holy, tuban, bojonegoro, awi and vicinity, however, researchers are focusing on the samin communities found in the village of klopoduwur, the flood district of blora. From the village of klopoduwur, the village of klopoduwur is known to the community as the village that still has the samin tribe with the largest number of about 240 souls and its teachings are indigenous and at the heart of the samin indigenous indigenous peoples of different areas and has often been made a cultural tour of the community.

The village of klopoduwur itself is divided into 6 (six) du, Wotrangkul, Badong Geneng, Badong Kidul, Sale and Sumengko by the population of 5,046 men and 2481 sexes (January 2015). Based on the religious or religious view of the village community of Klopoduwur is mostly Muslim and only 2 (two) christians are based on data from the village hall of Klopoduwur. From this data it is concluded that communities in the village of kelopoduwur are predominantly Muslim. Supported by interviews with researchers with the lasio who was an elder of the samin custom, religion was the basis upon which each person had to live and was the "clothing" for them, so they believed that each religion was a good, what distinguished its behavior.

In view of the legal arrangement itself the people of the Samin tribe rarely used a written law but used unwritten teachings from the tribal law, a written law was used when an agreement from the law was not binding, and settled on a matter. In the conduct of their daily lives the people of the Samin tribe hold fast to the teachings handed down through their ancestors. Based on documents obtained from interviews and research, there is a doctrine that has so far been firmly held by his followers as embodied in *Panca Sesanti Sikep Samin*:

a) *Seduluran* Which means that fellow humans should be brothers to one another not to get into a quarrel. The philosophy affects criminal thought and settlement.
b) *Ora seneng memungsuhan* That has no intention of making fights or quarrels. The philosophy taught the samin to live in peace, not to harm one another and to follow a family path.
c) *Ora seneng rewang kang dudu samestine* Which means not to like to help those things or actions that you're not supposed to do. It is connected with the interactions of fellow samin tribes.
d) *Ojo ngrenah liya* It means that to hate someone should not be spoken out of the mouth of offensive words and should be kept in the heart because, basically, one's brother is a brother and is inappropriate to condemn one's own brother.
e) *Eling sing kuwoso* To remember the almighty.

Besides *Panca Sesanti Sikep Samin* There were also teachings *Panca Wewaler Sikep Samin* yang terdiri dari:

1) *Tresno pepadhane urip* That has the sense of accepting what the almighty has given us. This affected simple living patterns
2) *Ora nerak wewalerane negoro* Means no breaking state rules. This philosophy taught the Samin tribe to always submit to and abide by the rules that the republic of Indonesia had issued.
3) *Ora nerak sing dudu mestine* It means teaching the samin tribes not to violate what should have been set up by the government or the samin clan elders.
4) *Ora cidro ing janji* Is to teach the people of the samin tribe not to break the promises that have been made. It has to do with trustworthy speech.
5) *Ora sepoto nyepat* Which means not to interfere with other people's affairs which are not his.

In regard to the application of the restorative justice principle, the samin indigenous people also settle it by using a familial way called rembug reconciliation (this concept was born under the samin tribal principle to consider all societies as brothers). Certainly principles *rembug rukun* ini Based on principles *Panca Sesanti* and *Panca Wewaler*. Something important can be squeezed out of principle *rembuk rukun* It is associated with the inherent value of the Lord's involvement in his decisions, which is morally binding in their decisions.

Almost as is the principle of Islam, the principle *Rembuk Rukun* Puts the restoration of justice at the forefront. The difference is that the principle of the restoration of justice in Islam is only centered in *qisos-diat*, while in solving the problem in the remedial occupies almost all of the problems, ranging from adultery to theft to persecution. In the concept of justification, it has been explained that the above is limited to small crimes, women who deal with law and narcotics.

There are several cases researchers have found regarding the application of principles *Rembuk Rukun:*

a) The Matter of Adultery:
   1)a tribal elder who either finds out or has been reported guilty of adultery calls on both the male and the female parties accompanied by the family.
   2)The party and family present to the elders of the samin tribe at the appointed time and place.
   3)Some elders of the samin tribe got together and listened to both sides' reasons for committing crimes and opinions or wishes on the part of the family.
   4)The samin tribal elder gave counsel that such practices are prohibited both religiously and legally and in an extended way to obtain a settlement.
   5)Both sides of the family agree to settle the family, in turn the tribal elders command both sides to promise not to repeat the act.
   6)Both sides promise not to repeat their actions and to do good with the tribal elders as well as to read a system that is believed can result in bad results if both are repeated.
   7)There is an unwritten agreement in which it is in the form of a handshake between the male and the female and the tribal elders, with the fal.
   8)If the two repeat the crime, then the solution still follows a familial solution along with a warning that if done again, it will be processed national law.
   9)If for a third time both parties still commit such crimes, it will be conducted legally (interview with mbah lasio the traditional elder).

From the foregoing the case it is clear that the completion of the criminal enterprise in the samin tribe was concluded almost familiarously by involving the male and female families of the two, the problem over the Samin tribe elders did not involve the Samin community and the village; it was due to the committing of adultery that was so private that the solution would not involve the community.

b) Felony Theft

The theft of teak committed by the samin tribe in late 2014 was committed by four Samin tribal communities known to perhutani to collect teak in the forest so that perhutani reported directly to the village for the execution of the village's leader (Interview with Diana utami as chief of the then Klopoduwur village hall). After the village had received reports from the perhutani, the village immediately began calling the people suspected of having committed the theft of the teak. The village then proceeded to work on the rehabilitation of four alleged teak holders. This was done directly by the village chief Klopoduwur of the samin people who committed a crime in the form of counseling and directing that it not be repeated. In that case the peaceful settlement initiative came from the perhutani, who immediately alerted the village to the development of the suspect. In the process of village building gives direction to the people of the samin tribe who are accused of committing a crime in order not to

repeat themselves along with the consequences of the law that is received if it is repeated, so that they are aware and understand what he is doing.

A crime solved peacefully through mediation (*rembuk rukun*) By village and tribal elder samin, there are, among other things, theft of teak, libel, theft, adultery and fights that cause lesions, the theft of crops that are ultimately inherited because they are little denomination and stolen goods are food for investigation, and the theft of a motorbike.

Basically in the village of Klopoduwur there are a number of criminal crimes where people consider such as common or common abuse, and domestic violence unknown to the village but known only to the general population. The community considers the phenomenon of violence that is going on inside the family to be a common internal problem in the family, so they do not report to the village or the law enforcement authorities. But if the crime is known to the village then the village directly seeks a peaceful settlement through mediation.

Interestingly, indigenous Samin people keep a positive law asa final solution if the perpetrator is not guilty of the tribal punishment, as in the case of adultery above, with the ancient record of dumping the perpetrator in the authorities, 3 times repeating the same problem. Then in the case of the theft of teak committed by the four samin indigenous people, if referring to positive laws they could be charged with article 12, article 83 of 18 year 2013, with the threat of a five-year prison sentence. However, in the village of klopoduwur positive law is made a final alternative to this theft case, if they repeat it again.

Conclusion

The characteristic of the implementation of restorative justice in law enforcement in Indonesia is that the judiciary emphasizes improvements on the costs caused by or associated with criminal actions. The restorativ justice is made through a cooperative process involving all stakeholders. The restorative justice is an alternative or other way that the criminal justice pursues its integration approach on one side and the victim or society on the other as a unit to find solutions and return to the pattern of relationships in society. Fundamentally this idea of a restorative justice to be arranged in Constitution of the republic of Indonesia in 1945; Act number 48 in 2009 on the power of justice and is in the new policy with regard to the closing of cases by the public prosecutor. The district attorney general of the year published no. 15 of the country's prosecutor's regulation About the cessation of prosecution based on restorative justice

Regarding the religious aspect of the implementation of restoration justice to substantive justice in Indonesia is through the jarimah *qisas-diyat* principle in islamic law, which is certainly inspiring in law enforcement in Indonesia, especially toward the supposed attainment of what falls under the classification category very light to weight. Since the concept of rendering (restoration) in Islam has not been restricted to the question of small crimes, it has, until now, its application of restorative justice in Indonesia has only been limited to criminal, child crime, women dealing with law and narcotics (under the rule of law*)*.

Regarding the application of the restorative justice principle by samin indigenous people almost equates with islamic principles, the remedial principle places the restoration of justice as the first. The difference is that the principle of the restoration of justice in Islam is only centered in *qisos-diyat*, while in solving the problem in the remedial occupies almost all of the problems. The most significant similarity is each resolution completed in the name of deity and familial. So that the two perspectives of islamic law and samin tribal law could be a model for reform in addition to the implementation of the restaurant justice in Indonesia today.

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