

The Application of Concept Restoration of Justice in the Perspective of Local Wisdom in the Samin Tribe

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Abstract

This research examines the application of the concept of restoration of justice in the perspective of local wisdom in the Samin tribe. Restorative Justice is basically a method in handling cases to uphold the values of justice in a legal event by carrying out legal remedies. In maintaining justice, other community groups, especially the Samin people, also have their own perspective. The Samin tribe has the wisdom to behave well to maintain social order in the life of its people. independent in dealing with the process of life. The writing method used is the Juridical Empirical writing method. The formulation of the problem in this study is: How is the concept of restorative justice used by law enforcement in Indonesia. Is restorative justice also a local wisdom practice in the Samin community. Then the restoration of justice in its application has been carried out by law enforcers, especially in mild cases, then basically the Samin people with their local wisdom are very relevant to the concept of restoration of justice.

Keywords: Restorative Justice, Local Wisdom, Samin Tribe

INTRODUCTION

Indonesia is basically a country that has various legal systems, from one region to another, has different local wisdom and is obeyed by its people. Without the presence of a legal system adopted from outside, the local legal system can basically cover and resolve the problems of social order that occur. The existence of customary law, as the original heritage of the Indonesian people's ancestors, is an answer, that the Indonesian people have their own legal system.

In the current development of law which is considered modern, in upholding a sense of justice in society we are familiar with the term Restorative Justice which in the Indonesian sense is called restoration of justice or restorative justice. Restorative Justice is: "a concept of approach or rapprochement or redemption by providing an opportunity for the perpetrator to make amends, which also involves the community and related parties, and takes place outside the court. The goal is to achieve justice for all parties and it is hoped that it will be created conditions as before the crime occurred (the condition was restored), and prevent further crimes from occurring, so that it can be resolved properly and an agreement and agreement is reached between the parties.

Along with the increasingly modern law-abiding Indonesian society, there is also one group of our society or one tribe out of tens of tribes in Indonesia that has an existence that carries out the system of social relations of life with character, its own characteristics which are more called local wisdom. This community group still exists in maintaining social and legal order. This community group is the Samin tribe.

The Samin community is a group of people who adhere to the teachings of Saminism. This teaching comes from a figure named *Samin Surosentiko* who was born in 1859 in *Ploso Kedhiren Village, Klopodhuwur, Randublatung, Blora*. The teachings of Saminism emerged as a reaction against the Dutch Colonial government which was arbitrary towards native people. Their resistance

was not carried out physically, but in the form of a conflict with all the rules and obligations that the people had to carry out towards the Dutch government at that time, including refusing to pay taxes.

Samin people have a personality that is innocent and honest. That is, they are open to anyone, including people they don't know. They consider everyone as brothers so that the attitude of togetherness is always prioritized. Honest and open nature is reflected in the behavior, attitude and language used, and always has an open attitude to anyone. What is said corresponds to the reality that is experienced. Everything that was done was never engineered. Honesty is one of the manifestations of the Samin people's character from the teachings they adhere to. The interesting thing about the attitude of the Samin people today is that even though they have 'opened themselves up' to the 'outside world', they still adhere to their teachings, namely the Saminis teachings came from their ancestors, namely by upholding honesty, tolerance, togetherness and mutual cooperation in other words still maintaining existing traditions.

In order to maintain a sense of justice in the community of legal actors in the current conditions, many use the term restorative justice. In restorative justice, of course, the rules contain the principles of good behavior. And it seems that one of our community groups in the past also had local wisdom to behave well to maintain social order in the life of its people. Seeing this, the researcher took the title "Application of the Concept of Justice Restoration in the Perspective of Local Wisdom in the Samin Tribe"

Formulation of the problem

The formulation of the problem in this study is:

1. How is the concept of restorative justice used in law enforcement in Indonesia?
2. Is restorative justice also a local wisdom practice in the Samin community?

Research purposes

The objectives of this research are:

1. To know and understand the concept of restorative justice.
2. To find out the behavior of restorative justice in the Samin tribe
3. To find out and analyze restorative justice in the Samin community.

Benefits of research

The benefits of this research are:

- a. Scientific Aspect (Theoretical)

The results of this research study are expected to contribute to the development of science, especially customary law and introduce knowledge of the theory of restorative justice. as well as knowing local wisdom in upholding justice in the Samin tribe

- b. Applied Aspect (Practical)

The results of this study can later be used as a reference for further research. There is also strong support for lecturers who carry out the tridharma assignments. As well as providing input to stakeholders regarding legal programs and development that are appropriate for the Samin community

Literature Review

A. Restorative Justice Concept.

Restorative Justice is a concept of approach or rapprochement, namely providing an opportunity for perpetrators to atone for their mistakes by involving the community, victims, and related parties which are carried out outside the court, aiming to achieve good for everyone and hoping that there will be circumstances or conditions. which is no different from before the crime occurred (the state of being restored), restrained the continuation of the crime (retaliation), and could be resolved properly, and reached an agreement and good among all those involved (Peace).¹

Handling criminal cases using a restorative justice approach that benefits everyone and is a component that is needed by society. Judging from history, settlement of cases using this concept has actually occurred centuries before, with the perception of the idea of dealing with problems/problems through this method, one of which is in the Ur-Nammu Code, the oldest law book written around 2000 (BC) in the Sumerian state, clearly expressed a commitment to pay compensation to the perpetrators of crimes.² there is a mainstream saying in Germany (if there are no accusations, then there is no settlement that can be resolved by the judges in court ("wo kein ist, ist kein richter"). forgiveness, then problems/problems can later be resolved properly and relieve all parties.³

This can be seen from the issue of the management framework that has passed where there is no difference between general lawsuits and criminal charges, he stated that what is good is that it is filed by parties who feel disadvantaged by the impact of criminal acts in criminal matters and their consequences. errors or defaults in existing problems.⁴

In handling problems/problems using Restorative Justice it turns into retributive justice, along with the take over of criminal cases by the state this is represented by the public prosecutor. Where this situation is characterized by a change in prosecution by state authorities called private investigators to become public. With the transfer of the transfer of cases by the state, this takeover makes the fulfillment of the victims' rights unrealized and the state's interference becomes more powerful. However, in traditional groups in Indonesia, the concept of Restorative Justice is still enforced.⁵

With the existence of retributive justice in dealing with criminal problems it is felt that it does not fulfill the wishes of the community and it is also felt that it has not been profitable for the community, especially for those who are experiencing it, namely victims and perpetrators of crimes. Therefore, advanced criminal justice frameworks are now beginning to re-enforce the beneficial justice approaches. This method of thinking existed in the 1960's, as well as during the 1970's. Standards of remedial justice include all types of support, for example rapprochement between victims/offenders actualized by criminal justice frameworks in North America and Europe. broader and have global consequences.⁶

It is clear and visible from the efforts of the United Nations which is evidenced by the implementation of the "Congress for the Prevention of Crime and Violating Treatment" every 5 years the UN congress is held. In the supporting archives of the 1995 Ninth UN Congress administratively identifying the courts that were sentenced, it emphasizes the importance of all those deemed "to strengthen some elements of legal authorization and equity" and "(ADR)

Alternative Dispute Resolution" which incorporates payment/compensation, intervention , compensation, as well as placement within the framework of criminal justice.⁷

From the explanation above, it tends to be seen that current progress states that a justice approach that is useful in handling problems/problems is of interest to criminal framework analyzers in various parts of the world. Even the United Nations has endorsed therapeutic methodologies as methodologies that can be utilized in advanced criminal justice frameworks. Meanwhile, countries are also pushing to actualize the standards of justice which are useful in legal methods. is very large compared to the methodologies used in conventional criminal justice frameworks.⁸

To better understand the theory of Restorative Justice, here are some descriptions by legal experts regarding the designation, meaning, and framework of Restorative Justice:

a. Tony Marshall :

Restorative justice is a step in which all parties join together with the aim of solving problems/problems together, and also discussing how to make agreements about the (bad) causes of an offense and its future implications.

b. Dignan

(Restorative justice is a new work environment for violations and conflicts, which can quickly be accepted and supported by jurisprudence and social associations as well as social counseling and community associations. Restorative justice is based on a response value approach to violations and problems where the focus is on the victim, perpetrators of crimes and affected citizens.⁹

Experts state a meaning of Restorative Justice which is summarized and described in various categories, but thus the various definitions actually have the same substance, that Restorative Justice is an approach that seeks to resolve a criminal problem peacefully by bringing together different aspects. have an interest in solving the problem, by solving it peacefully. The perpetrator realized his mistake and voluntarily was able to compensate the person who had been harmed, with the aim of receiving forgiveness.

B. Law Enforcement and Living Law.

Law and law enforcement are like two sides of a coin, both are determinants of the currency's value. The law becomes non-operational and cannot fulfill the purpose of the law, when its enforcement is problematic. Meanwhile, according to Soerjono Soekanto in Nyoman United Putra Jaya, that the essence of law enforcement lies in the activity of harmonizing the relationship of values which are spelled out in solid and embodied principles and the final attitude to create, maintain and maintain social peace. Disturbance to law enforcement may sometimes occur if there is no harmony between the triad between "values, rules and behavior."¹⁰ The role of law enforcement agencies in law enforcement, according to *Sajipto Raharjo* in *Nyoman Sarikat Putra Jaya*; "is an effort to realize ideas and concepts into reality. Enforcement is a process to make legal wishes come true."¹¹ The law in it contains and contains ideal things than it should, requires efforts from elements from outside the law, namely law enforcement officials, to operate and uphold it for the sake of justice.

Laws that should be upheld within the framework of social order are not limited to written laws. Laws that live and unite in society must also be upheld. Law enforcement that lives in society is of course the community itself, with its culture of loyalty to the law. Lawrence Friedman divides several elements, namely: (1) Structure. (2) Substance, is a rule, norm, provision or rule of law made and used to regulate human behavior. (3) Culture (legal culture), regarding values, attitudes, community behavior and non-technical factors is a binding legal system.¹² The ideal law, is the law that grows from the values of the nation. Local wisdom (local wisdom) of an area is basically a living law (living law) which is strictly obeyed by its people. For this reason, ignoring the living law will result in a shock to the existing social system. Ideally, the process of forming legal material is not a creation ex nihilo, because this legal development can be carried out by adopting practices, attitudes, and behaviors that exist in people's lives, or even by borrowing considerations or ratio decidendi of decisions. courts including foreign courts for the field of law that has universal value. practices that live and develop in society, new attitudes and behaviors that exist in society.¹³

Marginalizing the living law attached to indigenous peoples means depriving the people of their constitutional rights which are explicitly regulated in the 1945 Constitution Article 18B paragraph (2) which states "The state recognizes and respects customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law". Thus, the existence of customary law is basically equal to written law, and is part of the national legal system.

METHOD

A. Approach and Type of Research.

Legal Research Methods is a process to find legal rules, legal principles, and legal doctrines in order to answer the legal issues faced.¹⁴ The method according to Setiono¹⁵ is a tool to find answers from problem solving, therefore a method or tool must be clear in advance what to look for.

This research approach uses a qualitative approach. A qualitative approach is a research procedure that produces descriptive data, namely what is stated by informants in writing or orally, and real behavior.¹⁶ The approach used in this study is an approach by seeing, studying, and understanding the reality and practice in the field through observation and interviews.

Research in this writing includes sociological or non-doctrinal legal research and is supported by secondary data. According to *Soejono Soekanto*, empirical sociological legal research includes research on legal identification (unwritten) and research on legal effectiveness.¹⁷ The operation of law in society can be assessed from the level of effectiveness of the law. While seen from its nature, this research includes qualitative descriptive research. Descriptive research aims to describe the data collected in order to solve research problems.

This writing takes into account some of Soetandyo's opinions, so the writing in this research is a type of empirical legal research. Therefore the concept of law in this study is the

fourth concept, namely law is institutionalized patterns of social behavior, existing as empirical social variables.

B. Research Locations.

Samin people. In this study the authors chose the samin tribe in Bojonegoro district.

C. Data Sources.

1. Data

Primary data is data obtained and collected directly from the field which is the object of research or obtained directly from informants in the form of information or facts.

Secondary data, secondary data is data that supports and supports primary data obtained from library materials in the form of documents, journals, books, reports, archives and literature relating to the problem under study.

2. Data Source

Data sources in this study consist of primary data sources and secondary data sources. Primary data sources are data obtained from the first source either from individuals or individuals such as interviews or the results of filling out questionnaires. Primary data sources in this study were obtained directly in the field by conducting interviews with informants using a purposive sampling technique. Interviews were conducted with parties who could provide information related to the researcher's research,

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D. Data Collection Techniques.

To obtain information and data to be processed in this study, the data collection method used by the author is as follows:

1) Observation

The author makes observations by observing the conditions in the field and looking at data related to the conditions and behavior of the Samin people. The data I got from direct observation in the Samin Bojonegoro community.

2) Interview

Interviews are a method of collecting data by way of communication, namely through contact or personal relationships between data collectors (interviewers) and data sources (informants) through a process of interaction and communication. Interview means the process of obtaining information for research purposes by way of question and answer while face to face between the interviewer and the informant or the person being interviewed. The purpose of the interview is to obtain valid and accurate data information from the parties who are used as informants.

The type of interview used was unstructured (semi-structured) interview. The interview guide used is only an outline of the problems to be asked. This interview can use a guide list of

questions or debriefing is done freely, the important thing is that the researcher gets the data needed.

E. Data Analysis.

As a follow-up to the data processing process, to be able to solve and describe the problems to be studied based on the data obtained, it is necessary to have data analysis techniques. After obtaining the necessary data, the authors conduct a qualitative analysis by describing the existing data to answer questions based on existing theories so that a conclusion can be drawn. All data collected as a whole, both in the form of literature studies and field studies, was then analyzed. Data analysis used in this research is descriptive analysis. Descriptive analysis is carried out by describing or describing the data that has been collected as it is without intending to make general conclusions or generalizations.

RESULTH AND DISCUSSION

A. Upholding Justice Restoration in Indonesia.

The concept of restoration justice is a concept, which is offered as an alternative in resolving cases that so far have prioritized the provision of punishment for perpetrators (restitutive justice). The model of a restitutive justice approach is seen as irrelevant, in efforts to improve both perpetrators and victims. Enforcement in Indonesia has adopted a justice-retortion model in several cases handled by law enforcement.

The police, as law enforcers at the forefront, have been given the authority to process a case using the concept of restoration justice, as explicitly stated in the Circular Letter of the Republic of Indonesia Police No.08/VII/2018 concerning the Application of Restorative Justice in the settlement of criminal cases. . This circular letter from the Head of the Indonesian National Police will be used as a legal basis and guideline for investigators and Polri investigators who carry out investigations, including as a guarantee of legal protection and supervision of control, in the application of the principles of restorative justice in the concept of investigation and investigation of criminal acts in order to realize the interests of general public and a sense of community justice, so as to realize uniformity in the understanding and application of restorative justice within the Polri environment.¹⁸ This Polri circular letter at the same time emphasizes that not all criminal cases are resolved by trial and punishment.

In cases of settlement of crimes committed by children, it has also shifted to the concept of restoration of justice, as stated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The Juvenile Criminal Justice System in resolving criminal cases involving children is processed by prioritizing the best interests of the child, the development of the child and the rights of the child. This is in line with the values contained in Pancasila (The Five Priciples), including the 2nd precept, a just and civilized humanity.¹⁹ Children who are involved in criminal cases to obtain justice must be treated humanely based on human values, bearing in mind that children are immature, vulnerable in their mental state, easily influenced by social interactions with their environment, their mental and reasoning development is not yet perfect. Therefore, even though children are perpetrators, on the other hand children are also victims. So that children who are dealing with the law need to get special treatment in solving criminal cases.²⁰ The approach to juvenile justice using the concept of restoration of

justice is seen as ideal, because both perpetrators and victims both still have opportunities for change in a positive direction in the future.

Juridical data showing that in Indonesia, the concept of justice has shifted towards restoration of justice, and can also be used as a basis for implementing the concept of restoration of justice, including:

1. Article 76 paragraph (1) of the Criminal Code that except in cases where the judge's decision is still possible to be repeated, a person may not be prosecuted twice for an act for which an Indonesian judge has already been tried with a decision that becomes permanent.
2. Article 7 paragraph (1) of Law 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) at the level of investigation, prosecution and examination of children at the District Court is required to seek diversion.
3. Article 15 paragraph (2) of law Number 42 of 1999 concerning Fiduciary Guarantees that Fiduciary Guarantee certificates have the same executive power as court decisions that have obtained permanent legal force.
4. Article 51 paragraph (7) of Law Number 21 of 2001 concerning Special Autonomy for the Papua Province part that in order to acquit criminal perpetrators and criminal charges according to the applicable criminal provisions, a statement of approval is required to be carried out from the Head of the District Court in whose territory it is obtained through the Head The Public Prosecutor's Office concerned with the place where the crime occurred
5. Article 7 paragraph (1) letter J of Law No. 08 of 1981 concerning Criminal Procedure Code, that investigators because of their obligations have the authority to take other actions according to the law who are responsible;
6. Article 16 paragraph (1) letter L and Article 18 Law Number 2 of 2002 concerning the Indonesian National Police and Article 5 paragraph (1) number 4 of Law No. 08 of 1981 concerning Criminal Procedural Law that the other actions referred to in Article 16 paragraph (1) letter L is an act of inquiry and investigation which is carried out if the following conditions are met:
 - a) Not contrary to a rule of law;
 - b) In accordance with the law that requires the act to be carried out;
 - c) Reasonable consideration based on compelling circumstances;
 - d) Must be reasonable, appropriate, and within the scope of his position, and;
 - e) Respect human rights (HAM).
7. Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, that for the public interest the Head of the Indonesian National Police in carrying out his duties and authorities can act according to his own judgement. Article 18 paragraph (2) of Law Number 2 of 2002 concerning the Indonesian National Police as referred to in Article 18 paragraph (1) can only be carried out in very necessary circumstances by taking into account the law and the Police Professional Code of Ethics.
8. Article 22 paragraph (2) letters b and c of Law Number 30 of 2014 concerning Government Administration states that any use of government officials' discretion aims to fill the legal vacuum and provide legal certainty.
9. Article 3:1 Republic of Indonesia Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution based on restorative justice. That the public prosecutor has the authority to close the case for the sake of law.

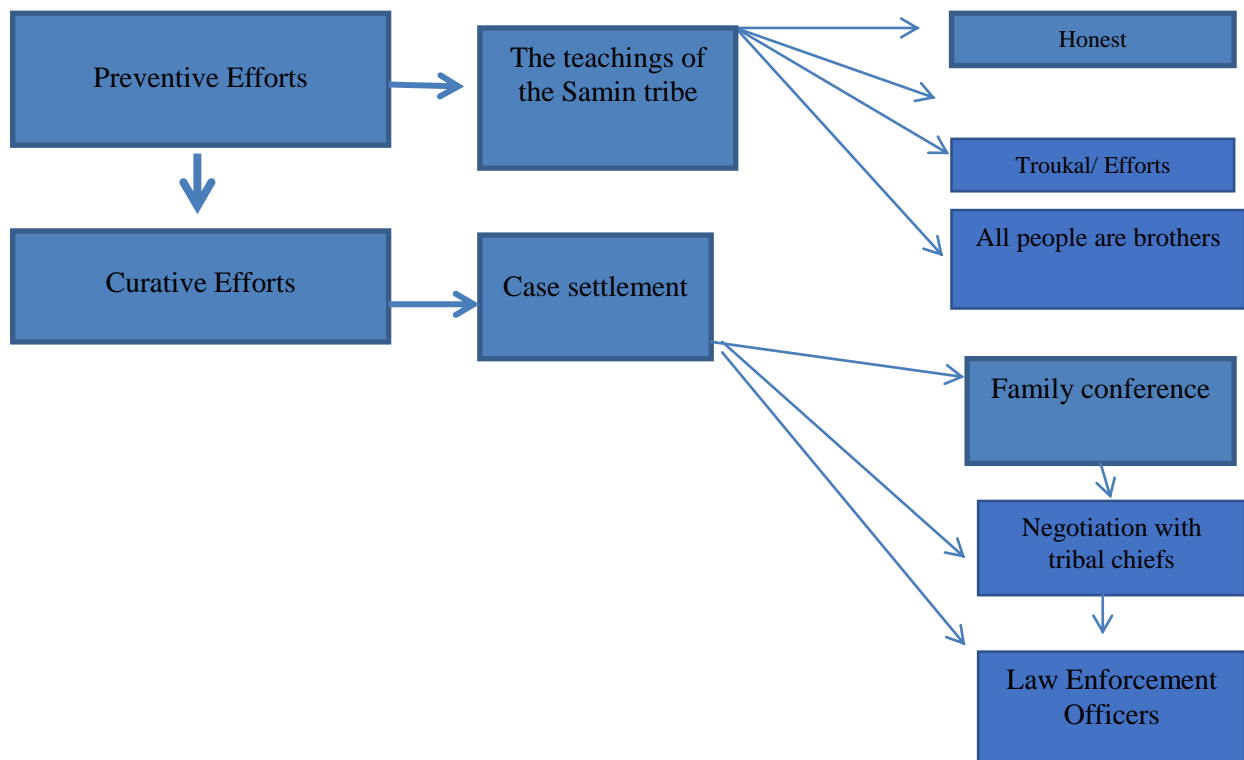
Some of the juridical foundations above, are legal standing for law enforcers in enforcing the law, to make it more concrete that one of the goals of law is for the benefit of improvement and benefit, by using a justice restoration approach.

B. Local Wisdom of Samin and Restoration of Justice.

Indonesia is a country that has not only cultural and ethnic diversity, but also local wisdom as a characteristic of each culture and ethnicity. Local wisdom is often ignored along with the entry of outside elements into a nation. Local wisdom owned by an ethnic group is an instrument of behavior that is adhered to by this ethnic group in order to create an ideal atmosphere for them.

Samin tribe, is a cultural entity with local wisdoms attached to the tribe. The interesting thing about the Samin tribe is their loyalty to the teachings passed down by their ancestors and are always taught (transformation) to younger generations, so that they become a kind of creed that serves as the basis for social behavior within the tribe.

The Flow of Social Order of the Samin Tribe²¹



Based on the flow of the map above, it can be explained that the Samin Tribe²² strongly adhere to the teachings of his ancestral heritage. Loyalty to this order is the key, for the Samin tribe in building their social life order. The teachings of the Samin tribe have become a way of life, the Samin tribe and the loyal attitude shown by the Samin is a preventive line so that social system chaos does not occur.

When there is friction,²³ in the Samin community, the steps taken are:

- a. Family meeting, if no solution is found then;
- b. Deliberation with tribal leaders; and the next stage if no solution has been found;

c. Law enforcement officers, and even then, can still use a kinship approach.

Based on the steps mentioned above, in fact the Samin tribe in solving its social governance problems, the approach used is in accordance with the characteristics of the justic restoration approach.

Interview results with Bambang Sutrisno;²⁴ Mbah Hardjo Kardi, as the elder of the Samin community, also always guarded and taught the teachings of his predecessor Samin leadership (I. Samin Surosentiko, II. Surokidin, III. Surokarto Kamidin, to his family, descendants, and followers of Samin.). In terms of behaving in everyday life, the concepts conveyed are honesty, truth, togetherness, and simplicity. To do so, he has a teaching called *pandom urip* or the law of life for the Samin followers.

Teachings for followers of samin include:

a. Particle *anggers* (norms of behavior or behavior)

These particle *anggers* (norms of behavior) are popularly known as *drengki* (envy), *srei* (envy), *panasten* (easily angry), *colong* (stealing), *petil* (miserful), *pinch* (take a little), *persuade* (lying), *apus* (tricking), *sense* (tricks), and *krenah* (bad advice). This means that the Samin people should not be arrogant, hate other people, be jealous, fight, anger other people, be jealous, play gambling, take other people's belongings, while not even touching. In fact, the purpose of these teachings is basically expected to be honest between thoughts and actions or behavior.

b. *Angger-angger pangspoke* (norm of speech)

Angger-angger pangjuang (norm of speaking), *panguntung saka lima bundhelané ana pitu* and the pronunciation of *saka sanga bundhelane ana pitu*. The purpose of this law, the person speaking must put his speech between the numbers five, seven and nine. The numbers here are purely symbolic. The general meaning is that we must guard our mouths from all obscene words or words that can hurt other people. Not "guarding" the mouth, resulting in human life in this world is not perfect. So one should speak kindly to others

c. *Angger-angger lakonana* (norm of everything that must be done)

Angger-angger lakonana (the norm of everything that must be done). The play patient *trocak*, patient *diéling-éling* and *trokale* are performed. That is, the Samin people are always expected to remember that patience and fortitude are carried out in everyday life. In dealing with all problems, the principle of patience and fortitude in solving problems is the main reference. On the other hand, always placing all forms of happiness and sadness as a natural part that must be accepted. In general, this principle can be related to the Javanese philosophy *wong patient* will be fertile (a patient person will prosper or be happy in the future) or *nrimo ing pandum* (accepting God's gifts sincerely).

For the Samin people, the three teachings mentioned above, the direction is none other than to be able to do good with real intentions, so that they don't hesitate anymore. The determination is not to be shaken by any temptation, and one must exercise physical and mental patience. All actions that are born must be able to accept all the trials that come to him, even if he gets sick, his life experiences difficulties, people don't like him, people make fun of him, everything must be accepted without grumbling and complaining, let alone retaliating for doing evil, but one must always remember God. The Samin people teach that humans are not easily tempted by what they see, hear and feel, but must go through careful thought and consideration before going further. Lust, greed, kindness, and honesty must work in balance, that is, be able to position the situation and not just favor one.

CONCLUSION

Based on the research that the researchers conducted, the following conclusions can be drawn from the research: Whereas in the application of positive law enforcement, law enforcers have obtained legal standing in applying the concept of restoration of justice. The justice restoration approach in positive law is explicitly contained in the law on the juvenile justice system, the Attorney General's Regulations, the National Police circular and implicitly contained in the law on the state police. The teachings of the Samin tribe, which are transformed into their tribal people, are intended to create harmony in their social life system. When there is social friction, the approach used is deliberation with family, tribal chiefs and finally it is handed over to law enforcement officials if the deliberative approach does not reach an agreement.

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22. Social clashes in a community are natural things to happen, in any ethnic entity, what is more important is how the solution is offered so that the conflict ends in peace.