

THE IMPLEMENTATION OF TRADITIONAL OR TRIBA MOOTS AS AN EFFORT TO SOLVE MINOR OFFENCES IN SAMIN TRIBE OF BLORA REGENCY

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ABSTRACT

This paper is based on the result of previous research done by a member in this tribe service team in 2014 entitled "Penal Mediation as an Effort to Solve Legal Conflict in Samin Tribe of Blora Regency". This cultural background attracted the team to apply Traditional Village or Triba Moots Model as an effort to solve minor offences in society. Problem which was tried to be solved was to know any efforts done by Samin tribe in handling minor offense. Furthermore, this tribe service also tried to apply Traditional Village or Triba Moots Model as an effort to solve minor offences. Methods applied in this tribe service included participatory rural appraisal (PRA), exploratory, topical, evaluation and monitoring. Participatory rural appraisal is a set of approaches and methods encouraging village communities to participate actively in upgrading and analyzing their knowledge of their own conditions so that they can formulate a plan based on the issues in their region. This activity aims 1) to analyze and map issues related to customary law in the tribe; and 2) to know the application of Traditional Village or Triba Moots Model in Samin Tribe. The outcomes of this activity are an article for journal/proceeding publication, speakers in a seminar, textbook of Criminal Law courses as well as practically intended for perpetrators, victims, and the society. This activity provides a deterrent effect and as a mechanism of sanctions to the perpetrator. For the victim, it gives justice value in the form of compensation or sanction. For the society, it improves skills in applying Traditional Village or Triba Moots Model as an effort to solve minor offences in Samin tribe and regenerates cadre who have expertise in practicing Traditional Village or Triba Moots Model.

Keywords: Traditional Village or Triba Moots Model, Minor Offences, the Samin Tribe

1. INTRODUCTION

The Samin tribe in Blora regency is unique. They are known as a tribe that is still very strong in maintaining local wisdom *as the way of life*. Warren (in Suyarni, 2007: 2) explains that local wisdom in the indigenous knowledge system is a distinctive knowledge of a particular society or culture that has long developed as a result of a reciprocal relationship between society and its environment. The system of local knowledge develops and becomes a cultural treasure as the solution during its period and even at present. This proposal is based on the result of previous research done by a member in this tribe service team in 2014 entitled "Penal Mediation as an Effort to Solve Legal Conflict in Samin Tribe of Blora Regency"

The story of the Samin Tribe started from belief developed by Samin Surosentiko. He was born in 1859 in Ploso Kedhiren village, Randublatung Blora Regency – son of Raden Surowijaya or known as Samin Sepuh. Another interpretation says that the word Samin originated from the word *sami-sami amin*, or abbreviated with samin (Purwasito, 2003: 16).

Saminism is embodied in low-class, named as Samin Sepuh. Society has different perspectives on Samin tribe. While some view them as well-behaved community, the others disregard them. Samin is perceived as a group of atheists, strange and less-developed. Most people more frequently overlook Samin with blurred or negative view. They are identical to society who are uncooperative, unwilling to pay taxes, and rebellious.

As a form against the Dutch Colonial Government, a positive view saw the movement of saminism originated from Raden Surowijoyo's anxiety which turned into a cultural description. This subtle movement against Dutch Colonial used by Samin people who started to call themselves as *Sedulur Sikep*. Literally, *Sedulur Sikep* is interpreted as good and honest relatives or persons, referring to the community beliefs (Titi Mumfangati, 2004: 10). This interpretation dismisses negative stereotypes among people who do not know the real meaning of Samin.

Beliefs developed by Samin tribe are unique and firmly held by the adherents. Those Samin beliefs (Suyami, 2007: 29) are including

- 1) *Agama iku gaman, Adam pangucape, man gaman lanang*. It means religion is a weapon or life direction.
- 2) *Aja drengki srei, tukar, padu, dahpen, kemeren. Aja kutil jumput, bedhog nyolong*. It means not to disturb, fight, envy others. Do not take other's stuff.
- 3) *Sabar lan trokal empun ngantos drengki srei, empun ngantos riyo sepada empun ngantos pek-pinepek, kutil jumput bedhog nyolong, napa malih bedhog colong, napa nilik barang, nemu barang teng dalan mawon kulo simpangi*. It means

- to be patient and not arrogant, not insult and take others' treasures. Furthermore, when I find others' goods, I will stay away from it.
- 4) *Wong urip kudu ngerti uripe, sebab urip siji digawa salawase.* It means as living together with the one and only spirit forever, people must understand their own life.
 - 5) *Wong enom mati uripe titip sing urip. Bayi uda nangis nger niku sukma ketemu raga. Dadi mulane wong niku mboten mati. Nek ninggal sandhangan niku nggih. Kedah sabar lan trokal sing diarah turune. Dadi wong, salawase dadi wong.* It means that if young people die, their spirit is entrusted to a living spirit. Crying baby gives sign the meeting of the spirit with the body, therefore the spirit of the dead does not die but only leave his clothes. Human beings have to be patient and trustworthy for their descendants. The spirit does not die, but it gathers with the living spirit. Once a person does good, he will be a good person forever.
 - 6) *Pangucap saka lima bundhelane ana pitu lan pangucap saka sanga bundhelani ana pitu.* When people start talking from number five, it stops at number seven. When they start from number nine, it also stops at number seven. It means that they must be careful with their saying.

Other beliefs include *kudu weruh te'e dhewe, lugu, lan mligi*. *Kudu weruh te'e dhewe* which means that people must understand their ownership. It aims to distinguish between private treasures and others. Therefore, they have to use their own. When they have to use others, they have to ask their permission. *Lugu* means consistent in which if there is an agreement, there are only two choices, yes and no. It is intended not to cause the other's disappointment when the answer is contradictory. *Migi* means to be consistent or responsible to the life principle held and leave the taboo of life.



This local wisdom does not make the Samin tribe live without any problems. Theft crime still often happens in Klopodhuwur Village, Banjarejo District, Blora Regency. As the Samin tribe holds *sedulur sikep* belief, the system of kinship is always used to solve the crime. This allows the perpetrator to repeat the crime as it does not provide deterrent effect. This cultural background makes the team interested to apply Traditional Village or Triba Moots as an effort to solve minor offences in the society.

Punishment in customary law is more based on the harmony philosophy or what has been taught by the ancestors. In customary tribe organizations in the form of customary law associations attaches an authority to overthrow customary law. When it comes to the Samin people's reaction to the thief, it is already reflected in their view of the meaning of theft itself. They never considered a theft when it was done by members of their own tribe, therefore they have no special punishment for the perpetrators. The sanction imposed by the Samin people is very minor in accordance with the sense of justice exists within the Samin tribe. According to the Samin people, the law is in the everyone's heart respectively. In their belief, they are always considered as the Samin peoples' fellow. Therefore, as the fellow brothers, there is no need to waste time to handle legal issues. If it is possible, when there is someone in the Samin area committing an act against the law such as stealing, it should not be punished according to Criminal Code (KUHP). It is better to remind them or to advise them not to repeat the disgraceful acts. As a result, the sanction given will arise deterrent effect in their heart of themselves respectively.

In this case, the Samin people tend to prioritize familial approaches for the perpetrators. When there is someone who commits theft interrogated by the Samin Head, she/he must answer the questions truthfully as the Samin people are more pleased with honest people though they have committed unlawful acts and harming them. The perpetrators will only be verbally reprimanded by members of the customary tribe if the deed happens for the second time for reminding the perpetrator that his/her action is wrongdoings and no longer the normal deeds in the family. Then, when the perpetrator still repeats his/her actions, the approach taken is to invite the perpetrator working and praying for a fortune and no need to do theft.

Nevertheless, when the perpetrator is outsider, the familial approaches are no longer available, and the Samin tribe are still obey to the criminal law in which the sanctions is based on Criminal Code in accordance with the rules applicable to the perpetrators of thefts. Basically, Samin people are based on *seduluran* or *gotong royong*. The most preferred thing is

togetherness and *gotong royong*. When there is a problem, it is better to discuss it first. By obtaining these habits, the Samin tribe will never disappear and always be tighter so that they can live in peace and prosperity.

The penal mediation model applied when the theft offence does not have a widespread impact in the society is the “**Traditional village or triba’ moots**” penal model as this penal mediation model only involves several parties who meet in the process of mediating penalty including theft victims, perpetrators theft, the families of both the sovereign, and the mediator. In this case the chosen mediator is the head of the Samin tribe. “**Traditional village or triba 'moots**” model is a penal mediation model that moves in the agreement of the parties as the alternative form in the litigation process for not leading to the imprisonment.

The “**Traditional village or triba moots**” model involves the whole community to meet in order to solve the crime among the citizens. This model exists in some less developed countries and in rural / inland areas.

- 1) This model prefers the benefits to the wider community.
- 2) This model precedes the western model and has inspired most modern mediation programs. Modern mediation programs often try to introduce the advantages of *tribal moots* in an adapted form of the structure of modern society and the legal rights of individuals.

Based on the situational analysis and theoretical explanation of the “**Traditional Village or triba moots**” model above, it is necessary to apply it to overcome the minor acts occurred in Klopodhuwur Village, Banjarejo District, Blora Regency.

2. METHODOLOGY

Participatory Rural Appraisal (PRA) was used for mentoring activities. Etymologically, PRA means participatory area assessment while theoretically, PRA is a set of approaches and methods that encourages village society to actively participate in improving and analyzing their knowledge of their own living conditions, therefore they can make action plans according to the problems in their region.

Outsiders such as facilitators, companions or field officers only analyze the conditions including the potentials and problems exist in the village, while decision-making is in the society itself. Then, they are facilitated to create an activity plan in accordance with the potentials and problems exist in the village or outside the environment.

3. RESULTS AND DISCUSSION

The implementation of community service activities had been done well based on the plan. The target audience in this community service was the Samin tribe in Klopodhuwur Village, Banjarejo district, Kabupaten Blora. Here, the team delivered the material related to **Traditional village or triba 'moots** penal mediation to settle the minor offences. The material presented was as follows:

Conflict resolution mechanisms existing in societies in Samin tribe marginally had similarity. The similarity among the six tribes laid on the mechanism of consensus deliberation used to solve the problem. The Samin people prefer to use customary laws in solving the problem rather than bring them into the legal domain (police or judiciary). The social conflict resolution based on customary law of the Samin tribe aims to avoid disputes by seeking a favorable agreement between the conflicting people. As the win-win solution, there is no either the win or the lost parties. Therefore, the conflict does not last long impacting the relationship between the parties in conflict. In addition, the advantages of settling a dispute with customary law are very numerous, including low cost, fast resolution, satisfying the parties in conflict as it is cooperative, preventing the accumulation of cases in court, vengeance, strengthening the relationship and maintaining the values of local customs.

For Samin people, when the settlement cannot be reached, it is delegated to the authorities and settled in accordance with the national law applied in Indonesia. If the perpetrator is outsider, based on Mrs Diana as the chief of Klopodhuwur Village, the settlement is submitted directly to the relevant authorities and resolved by the National Law applied in Indonesia. Basically, in Indonesia's positive law, criminal case cannot be settled out of court, but in certain cases it may be possible to settle cases outside the court through the discretion of law enforcement officials, peace mechanisms, customary institutions and so on. As the settlement of disputes / conflicts done by the tribe outside the court has no formal legal, many cases have been informally settled and obtained a peace agreement through customary law, but it is still proceeded to court according to the positive law applied. The problem arises when the results of mediation penal done by the customary law of the Samin tribe is not recognized by the positive law applied in Indonesia. It happens as an out-of-court settlement has not been recognized in the criminal trial system, therefore the authorities should act based on written laws completely.

Based on the description above, it can be inferred that the dispute or problems exist in the Samin tribes settled by deliberation or called as penal mediation, otherwise also known as "Mediation in criminal cases" or mediation in penal matters. It is also called as “*strafbemiddeling*” in Dutch, “*Der Aubergerichtliche Tatausgleich*” (abbreviated as ATA) in Germany, and “*de mediation penale*” in French. Mediation is a process whereby a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement on their dispute in order to settle the matter without going court. The

settlement of a criminal case by using Penal Mediation is not a new matter as it is evidenced by the settlement of the deliberative approach. Historically, Indonesian cultures strongly uphold the consensus approach prioritizing traditional decision making and resolution through customary mechanisms (Mushadi, 2007: 38).

The settlement of a crime or dispute has also been explained by Barda Nawawi Arief, regarding with Penal Mediation in his book entitled "*Mediasi Penal. Penyelesaian Perkara Pidana di Luar Pengadilan*" as follows:

Penal mediation prioritizes to confront the perpetrators of crime with victims, therefore penal mediation is one alternative form of disputes settlement outside the court (commonly known as ADR – Alternative Dispute Resolution or *Apropriate Dispute Resolutin*)

Also, criminal cases are often settled out of court through various discretion of law enforcement apparatus or deliberation / peace or forgiveness mechanisms existing within the society (family consultation, village meetings, customary deliberations, etc.). The practice of settling criminal cases outside the court has no formal legal basis so far, therefore there is often a case that informally having a peaceful settlement (though through customary law mechanisms) but it is still proceeded to court according to applicable law (Arief, Barda Nawawi, 2012: 3).

Otherwise, the position of penal mediation as an instrument of settlement of criminal cases can be placed in two categories including the settlement of dispute or dispute of criminal case as an alternative of the conventional criminal justice system, and the part of conventional criminal justice system providing legal protection against the interests of victims (Luthan, 2013: 45). Barda Nawawi Arief explains the reason of using penal mediation in the settlement of criminal case as the idea of penal mediation is related to some issues including the issue of Penal Reform, the problem of pragmatism, the idea of victim protection, the harmonization idea, the restorative justice idea, and the idea of overcoming the stiffness (formalities) and the negative effects of the criminal justice system and the prevailing punishment system, as well as an effort to seek alternative punishment other than prisons.

Relating to the relevance of Customary Criminal Law as a contribution to the Renewal of Criminal Law in Indonesia, Penal Mediation is one of the real contributions of Customary Criminal Law in the Renewal of Criminal Law in Indonesia. Furthermore, Barda Nawawi Arif also explains as follows.

In the development of theoretical discourse and the development of renewal of criminal law in various countries, there is a strong tendency to use criminal / penal mediation as an alternative to solve problem in the criminal law field. According to Prof. Detlev Frehsee, the increasing users of restitution in criminal proceedings suggests that the development between criminal and civil law is not so great, and the differences become non-functioning (Arief, Barda Nawawi, 2012: 3-4).

When discussing about Penal Mediation, it cannot be separated from the idea and the principles of Penal Mediation in which it is based on Stefanie Trankle Idea and Principles of Penal Mediation cited by Barda Nawawi Arief, as follows:

- a. **Conflict Handling** (*Konfliktbearbeitung*)
The mediator's job is to make the parties forget the legal framework and encourage them to engage in the communication process. It is based on the idea that crime has created interpersonal conflict. Conflict is what mediation leads to.
- b. **Process Oriented** (*Prozessorientierung*)
Penal mediation is more quality-oriented than the outcome including awaken the perpetrator; the crime of wrongdoing, the needs of the conflict are resolved, the peace of the victim from fear and so on.
- c. **Informal Proceeding** (*Informalitat*):
Penal mediation is an informal and non-existent process, avoiding strict legal process.
- d. **An Active and Autonomous Participation exists** (*Parteiautonomie / Subjektivierung*)
The parties (perpetrators and victims) are not seen as objects of criminal procedure, but rather as subjects with personal responsibility and ability to act. They are expected to act on their own free will.

In the "*Explanatory Memorandum*" of the European Council Recommendation No. R (99) 19 about "*Mediation in Penal Matters*" there are several models of penal mediation (Arief, Barda Nawawi, 2012: 5-10) as follows:

- a) **"Informal Mediation" Model**
This model is implemented by criminal justice personnel in its normal duty done by the Public Prosecutor by inviting the parties to undertake informal settlement with objectives, not proceeding prosecution if agreement reached; being able to be performed by a social worker or a probation officer, by a police officer or judge. This type of informal intervention is common throughout the legal system.
- b) **"Traditional village or triba 'moots" Model**
According to this model, the whole community meets to solve the crime conflict among its citizens.
 1. This model exists in some less developed countries and in rural / inland areas.
 2. This model prefers the benefits to the wider community.

3. This model precedes the western model and has inspired most modern mediation programs. Modern mediation programs often try to introduce the advantages of tribal moots in an adapted form to the structure of modern society and the legal rights of individuals.
- c) **"Victim-offender Mediation" Model**
 1. Mediation between the victim and the perpetrator is the most model in people's minds.
 2. This model involves the various parties who meet with the appointed mediator. Many variations of this model including mediators who are formal officials, independent mediators or combinations.
 3. This Mediation may be held at each stage such as the process at the stage of police policy, prosecution stage, punishment stage or after the crime.
 4. This model applies to all types of offenders; some are specific to children; some are for certain types of criminal programs (e.g theft, robbery and type of violence); some are mainly shown on child actors or beginners, but there are also for the west offense and even for the recidivist.
- d) **"Reparation Negotiation Programmes" Model**
 1. This model is solely to assess / judge the compensation or remedies to be paid by the offender to the victim which happens usually at the time of trial in court.
 2. This program is not related to reconciliation between the parties, but relates only to material improvement planning.
 3. In this model the offender cannot be subjected to a work in order to save money for paying compensation.
- e) **"Community panels or Courts" Model**

This model is a program to divert criminal cases from prosecution or judiciary to community procedures which is more flexible, informal, and involving mediation and negotiation.
- f) **"Family and Community Group Conference" Model**

This model has been developed in Australia and New Zealand involving society participation in the SPP (Criminal Justice System). This model is not only involving victims and perpetrators of criminal acts, but also the families of perpetrators and other community members, certain officials (such as police and child judges) and victim supporters. The perpetrator and his family are expected to produce a comprehensive and satisfying agreement of the victim and help to keep the offender out of the next trouble.

From the description above it can be inferred that the mediation model applied by the Samin tribe is the *Traditional village or triba 'moots* model although it has not been recognized by the positive law in Indonesia, yet applied by the Samin community. The Samin tribe people who use the source of the unwritten law (customary law) in their daily life give own consequences in which the customary law regulates the human beings' behavior to each other in Indonesia as a custom and habit that actually lives in customary peoples which embraced and maintained by the tribe members as well as the whole regulation about sanctions for the offenses set by the chief including the village heads, the customary heads or the community leaders. (Muhammad, Bushar, 1984: 27). The Samin tribe people who still recognize the values contained in customary law cause most people of the Samin tribe not know the written law (laws and regulations) prevailing in Indonesia.

That situation becomes the base for the settlement of conflicts / problems related to the law resolved according to the customary law by involving the whole community and led by the head of the tribe / village leaders. The Samin tribe belief against customary law and adherence to the village heads / leaders who have become a habit of hereditary following with the negative stigma and fear of the Samin tribe against law enforcement officers are the reasons for conflict resolution process / problem led by village chief / leader. In addition, *Traditional village or triba 'moots* model also provides acceptable results for conflicting parties as well as communities. This is influenced by the involvement of the community and the local community's needs considerations in the process of settlement.

Penal mediation has been applied in solving criminal cases. It has become a part of the criminal justice system, either as an alternative outside or within the criminal justice system itself. Although its circumstances and applications vary based on the institutions, penal mediation has been alive and actual in accordance with the justification of the underlying instruments and legal institutions, as well as the wide variety of concepts, philosophies, social cultures that surround them. (Arief, Barda Nawawi, 2012: 7).

4. CONCLUSION

The resolving conflict mechanism in the Samin tribal society is largely done by means of consensus used to solve the facing problems. The Samin people prefer the settlement of customary social conflicts rather than bringing them into the legal domain (police or judiciary). Conflict resolution by consensus is known as mediation penal.

The mediation model applied by the Samin tribe is the *Traditional village or triba 'moots* model. The Samin tribe people who still recognize the values contained in customary law cause most the Samin tribe people do not know the written law (laws and regulations) prevailing in Indonesia. Although largely unrecognized by the positive law in Indonesia, in practice it has been applied by the Samin community.

5. REFERENCES

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