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Relevance of Legal Value of “Dalihan Natolu” for Solving the Legal Issues in Indigenous Communities

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Abstract:

The aims of research were to determine the relevance of legal value in dalihan natolu as a part of the Indonesian legal system for law enforcement efforts. This study is normative and empirical research, the emphasis is library research (library research), and the study of law as a reality (behavior) is empirical in that it carried out a study of the behavior or the behavior patterns of the community is that the values of law and justice community as a law of life (the living law). This research was conducted in the village of the District Sibisa Parsaoran Ajibata, because the village is considered one of the villages in the district Ajibata Tobasa district that still cling to the values of law that developed in indigenous communities. The results showed that the values in dalihan natolu still relevant and is used as a law enforcement efforts in the community Batak Toba, and that is supported by the recognition of the country constitutionally, and the reality of the use of the value contained in the principle of dalihan natolu is recognized as a normative basis of the behavior patterns of society, as well as the reality of the court which is always basing its decision on the values of customary law derived from the dalihan natolu in resolving legal issues that occur in society.

Keywords: Relevance, customary law values, dalihan natolu, legal issues

1. Introduction

The concept is very basic in kinship the community *Batak Toba* is clan/*marga*. Clan is a group of people who are descended from the same grandfather with interesting lineage of the father, called the patrilineal nature. *Marga* is a sign that the people who use it are the descendants of the same grandparents or with the belief that people who use the same clan established a blood relationship with the result that there is a ban on married women and men who have the same surname. Kinship ties are known of *dongan sabutuha/dongan tubu* (descendants of the stomach). *Patrilineal* system is what controls the entire life of the *Batak Toba*, which consists of descendants / *semarga* all connected with the male lineage. Son of the men who formed the kinship group, while girls create relationships be *san (affina relationship)* because he must marry the son of another patrilineal group. The creation of a *relationship affina*, through this marriage created kinship (*mamungka partondongan*) that is not just about a couple who had been married and the first generation were born, but also enforce a state that will continue between the generations of boys who unloaded girls earlier in the parties and generations of young children derived by the father as well as groups agnatanya (*semarga*) on the other.

Patrilineal kinship system which greatly affects the joints of the *Batak Toba* community life which includes the system of inheritance, marriage, land ownership and habitation patterns. In addition, marriage can also give birth kinship is *hula-hula* with *boru*. Third kinship families in *Batak Toba*, connected by a common thread that exists in kinship *dalihan natolu* is a framework which includes relationships blood relatives and marriage that connects a kinship group consisting of men who collateral with the men that which has to marry their daughter to a group of men that the collateral.

The various aspects of social life as well as many important things such as happiness and well-being of the *Batak Toba* strongly influenced by the relationship of kinship *dalihan natolu*, as in any traditional ceremonies is always followed these three elements. The principle of *dalihan natolu* also contains legal values and sense of justice are alive and recognized its existence in the process of settlement of the conflict in *Batak Toba* indigenous peoples. In the conflict resolution principles contained in the *dalihan natolu* prefers the values of deliberation to get a collective agreement.

The fact that the process of litigation through the court system in Indonesian positive law cannot always be accepted by the public because of the judge's decision is not always based on the sense of justice in society (the living law). As a result of the decision always is appealed or the appeal. Whereas in principle litigant's justice is done with a simple, fast, and low cost as defined in Article 2 (4) of the Law on Judicial Power shall be applied. The weakness of the country's judicial system is an opportunity for the existence of legal values in the *dalihan natolu* as part of the legal system of Indonesia's law enforcement efforts to resolve the dispute which is basically more promoting settlement amicably and peace.

2. Problems

The problems posed in this research was, how the relevance of legal value in *dalihan natolu* as part of the Indonesian legal system in law enforcement?

3. Method of Approach

This research is normative research that seeks to legal norms, or *das sollen*, in principle of *dalihan natolu*, which relevant with the Indonesian legal system. The emphasis of his research is based on library research in the form of legal materials. Legal materials constitute official documents in the form of all the publicity about the law (Marzuki, 2005: 141). To complement the secondary data was also conducted legal studies as a reality (behavior) empirical because the behavior patterns of society are the values of law and justice community as a law of life (the living law). This research was conducted in the village of the District Sibisa Parsaoran Ajibata, because the village is considered one of the villages in the district Ajibata Tobasa district that still cling to the values of customary law.

3.1. Dalihan Natolu as System

According Mertokusumo (2007: 20) that law is a system, because the law is a whole complex of elements consisting of regulation, ruling, court, institution or organization and the values are organized in interaction with each other to achieve the goal of the law is order in society. The legal system contained in various levels. The system is known as the system of civil law, customary law systems, criminal justice system, and the system of constitutional law in which the overall national legal order known as the national legal system.

Furthermore Mertokusumo (2007: 25) asserts that the system is a unity in which has been provided an answer or a solution for all the problems that arise in the system. In a legal system is never allowed to be a conflict between elements or parts protracted, because in fact the nature of the legal system is consistent and steady. If there is a conflict, it will not be allowed to drag on, as consistently be resolved by the legal system and the legal system itself has provided the principles of law as a solution.

Customary Law Batak Toba as a sub part of the national legal system consists of values organized in interaction with each other to achieve the purpose of the law is order in society and within it is also available an answer or a solution for all the problems that arise in society *Batak Toba*. In the structure of kinship in the community *Batak Toba*, patterns of behavior people are arranged in a regular pattern and continuously into a legal system. The atmosphere of togetherness in *Batak Toba* indigenous peoples, tied to kinship. Kinship in all the various lives of kinship and other important things such as happiness and well-being of families in the community *Batak Toba* summed up in a tangle of red thread called *dalihan natolu* in which there are close links all kinship relationships.

Dalihan natolu is a framework that includes kinship relationships by blood and kinship by marriage, or kinship that occur as a result of marriage that connects a kinship group consisting of men who collateral (*dongan tubu*) with a party of men who collateral that have been mated their daughters (*hula-hula*) with men other blood kinship group (*boru*) (JC Vergouwen, 1986: hlm.17)

As a sub-system of customary law which constitute the basic framework for all kinship in social organization among on the Batak Toba, which consists of three elements, namely *hula-hula* (the male collateral/*semarga* with female/wife, *boru* (the male who married the daughter of a *hula-hula*) and *dongan tubu* (male party collateral/*semarga* with the *hula-hula*) is built with the belief that the *hula-hula* is given supernatural powers, so as to reflect the splendor and glory and vitality to *boru* parties. Thus, the *dalihan natolu* as sub a system of customary law is the basic framework for all kinship in social organization among the Batak Toba, which consists of that the three elements.

Principle of the *dalihan natolu* which is a sub-legal system and already rooted in social life in the area Batak Toba, containing the legal values that govern how should the law society Batak Toba it behaves, and in it there is also a division of tasks in resolving conflict contained in bond kinship in the community but it also contains ways to resolve the conflict in the system.

These three elements, have value and their respective duties in the social patterns in society Batak Toba, and in case of conflict in society, *dalihan natolu* have procedures for the settlement of its own in and by the *dalihan natolu* system, such as the dispute between the *hula-hula* and *boru* will be addressed in an atmosphere of kinship. Mediator/arbitrator in the matter will be resolved by traditional and customary legal system with the phrase: "*sinabi lait, binahen tu ni harang nihoda, molo gulut boruna, amana do martola, molo gulut amana, boruna do martola.*" That is, the grass mown, incorporated into a food cart horse, if the fight between *boru* then *hula-hula* which as a mediate; if between the *hula-hula* fight, then the party of *boru* that the mediates.

3.2. Dalihan Natolu as System Value

Customary law relating to the current condition, basically unwritten but grow and develop within the community itself in accordance with the development interests of society. Therefore, in general, not written, then the customary law reflected in the legal phrase is often called the proverb/simile (*uppama, turi - turian*) which contains the value of what the public should behave so as to avoid a conflict even danger. In general, the value of law developed in accordance with the development of society. Legal values in Toba Batak society is also experiencing growth. The development of legal values is influenced by the inclusion of religion, life experience, education, and marriage.

Customary law derived from customs that live and thrive in society, but not all of that the customs is legal customs. According Supomo (1987: 35), customs who live in the community recognized as law if the judge finds that there are values of law and justice contained in the customs are still maintained by the head of customs. Customs is a common law, when authorities impose penalties against the offender rules or values that the law of life and is retained in the indigenous communities (Ter Haar, 1990: 275).

Dalihan natolu, as the system contains the value of the underlying value throughout the life of the Batak Toba. In the kinship between the three elements of the family in *dalihan natolu* contains philosophical value is believed to be the

basis of normative control of any pattern of community life that consists of legal value i.e. "*manat mardongan tubu, elek marboru, somba marhula-hula*." Optionally, the expression that is normative, can be interpreted, as prudence in acting against blood relatives because of a fight that occurred between relatives, will reduce the number of the relatives. In indigenous communities, these relatives who become friends in the same boat in all events of joy and sorrow.

The second attitude is imperative to love *boru*, although the position of *hula-hula* ceremonial higher than *boru*, by no means, *hula-hula* can treat *borunya* arbitrarily, but must be respected and loved, because if *boru*, offended due to the behavior *hula-hula*, the *hula-hula* will feel disadvantaged because of reduced which will help if there is a traditional ceremony (*ulaon*), conducted by *hula-hula* as ceremonial (*ulaon*) conducted by *hula* who take care of the implementation of ceremonies (*ulaon*) is *boru*. The third attitude is respectful to *hula-hula* even highly appreciated because philosophically, *hula-hula* regarded as the representative of God on the earth, who has given of their girls to the family's males for breeding other genera. *Hula-hula* relationship with *boru* very strong in Toba Batak people's lives can be expressed by "*durung do boru, tomburan hula-hula*" means *boru* is a net, and *hula-hula* as a fishing spot.

Dalihan natolu indigenous philosophy has become a local wisdom Batak Toba. *Dalihan natolu* which means that a three-legged furnace is the philosophy both in public life Batak after faith in God Almighty depicting life by establishing with relation with God and neighbor relation. A life balance will be created if the harmonious relationship in the family furnace maintained. In addition, these three elements, have value and their respective duties in the social patterns in society Batak Toba, and in case of conflict in the community, and *dalihan natolu* also has a procedure for the settlement of its own in and by the system *dalihan natolu* itself, such as disputes between the *hula-hula* and his *boru* will be addressed in an atmosphere of kinship. Mediator/arbitrator in the matter will be resolved by traditional and customary legal system with the phrase: "*sinabi laitu, binahen tu harang ni hoda, molo gulut boruna, amana do martola, molo gulut amana, boruna do martola*."

If it is associated with the opinion that the value of conceptually understood in the double meaning in the sense of subjective and objective sense (FX, Sutrisno, Mudji, 1993: 20). Subjectively can be expressed as a value, if the requirements are met element (need) and the estimated (estimation). Objectively speaking, something regarded as having fulfilled the elements value if the benefits (utility), and interest (importance). Legal values depicted in *dalihan natolu* expressed through proverbs (*umppasa*) or figurative (*turi-turian*) known to contain a subjective sense because the value of the proverbs/custom phrase is already fulfilled the needs and forecasts.

Values aimed at meeting the needs of the parties when the value contained in principle *dalihan natolu* can be used to establish a balance in the system of kinship and also resolve conflicts that may occur in the kinship that, and it is estimated that the unmet needs of the parties concerned, it can create justice and legal certainty in/ indigenous communities. Objectively, too, the value contained in *dalihan natolu* already meet the elements of the value of the benefits (utility), and interest (importance) because the three elements that make up *dalihan natolu* were based on normative values that govern the behavior patterns in the lives of kinship contained in the phrase "*manat mardongan tubu, elek marboru, somba marhula-hula*," beneficial to the community and also to protect the interests of every human being is bound in kinship. In indigenous communities in case of conflict will be resolved by legal values that live and thrive in the community, so that the decision contains a custom called objective value because the decision was expected to be useful for resolving disputes so that their interests can be protected.

4. The Relevance of Value Law in Law Enforcement

Law enforcement is the process of law enforcement or the process of maintaining the moral values contained in the law in the normal way, or without any dispute and in case of any violation of the law (Rahardjo, 1986: 32). This means the enforcement of the law in question is the behavior of retaining legal values that grow and develop in society, and in case of violations of conduct to the values of the law will soon be resolved in order to create balance in society.

Article 19 of the Judicial Power Law stipulate that judges are officers who perform judicial power to enforce the law and justice. As law enforcement, the judge is obliged to enforce the law, especially in case of the violation of the law, an offense can result in disrupted order in society. If the disrupted order in society, there will be an imbalance in the society. In the legal system, imbalance in the society must not be allowed to drag on, but should be recovered by way of upholding the law. This is the main task of the law, which strikes a balance order in society (*restitutio in integrum*) that the goal is reached, the order in society.

The process of law enforcement, basically influenced by the legal system by Friedmann (1975: 14) says there are three factors that affect the legal system itself, which is the substance of the law, i.e. rules, norms, and behavior patterns of a real human being in the system, the factor structure, namely law enforcement institutions, and culture or cultural factors, the attitudes, values, thoughts and hopes of humanity. Peter de Cruz (1995: 34) gives some of the factors that affect the legal system, which is the background of the history of a nation, the characteristics and the way of thinking, the type of sources of law and ideology.

The changes are driven by the legitimacy of the law also can transform the life of a community of local ethnic traditional to a modern life with the national mood, despite the changes transformative as this often creates problems because the progression can not always be offset by the dynamics of change therefore does not understand the policy and the contents of the legal content of the law by indigenous peoples. The existence of entry into force of legal values contained in *dalihan natolu*, can be known from the reality of people's acceptance to always obey the law itself (*longa et inveterata consuetudo*), which give rise to a general belief (*opinio necessitatis*) that the behavior is repeated it deserves objectively done. Confidence of the people to always obey them in any pattern their behavior in relationships with others become the essence of law enforcement to create order in society.

Batak Toba society kinship system is patrilineal, which draw lineage from the father. The lineage of the fathers will be forwarded by the son, and become extinct if not born in a family of boys. In the kinship between the three elements of the family in *dalihan natolu* containing philosophical values that underlie all life Toba Batak society in achieving peace and prosperity are believed to be created when all members of a kinship to behave according to the teachings of normative, i.e., "*manat mardongan tubu, elek marboru, somba marhula-hula*." The phrase is normative, it can be interpreted, first, caution in acting against relatives *semarga* because of a fight that occurred between relatives, will cause the loss of relatives. In indigenous communities, these relatives who become friends in the same boat in all events of joy and sorrow. The second norm is the attitude of love *boru*, requires, even though the position of the *hula-hula* ceremonial higher than *boru*, by no means, *hula-hula* can treat his *boru* arbitrarily, but must be respected and loved, because if *boru*, offended due to the behavior of *hula-hula*, the *hula-hula* will feel disadvantaged because of reduced which will help if there is a traditional ceremony performed by *hula-hula* (*ulaon*), because *ulaon* conducted by *hula-hula* who take care of the implementation is *boru*; The third norm, *hula-hula* must be respected even rewarded because philosophically, *hula-hula* regarded as the representative of God on the earth, who gave his daughter to the man who married his daughter (the *boru*) to breed.

As a sub- system of customary law which constitute the basic framework for all kinship in social organization among the Batak Toba, built with the belief that the *hula-hula* is given supernatural powers, so as to reflect the splendor and glory and vitality to the *boru*. Kinship bound in *dalihan natolu*, has a magical-religious character. The *boru* considers that the *hula-hula*, as a person endowed with special powers (*sahala*) which can be regarded as a mighty power, exceeding that of the latent power of *tondi* (spirits), which can emit a beneficial effect and save for the *boru*, and in the meantime his power creates fear and respect him. This means, *boru* should refrain from actions that could harm or offend *hula-hula*, and *boru* never negligent show gratitude for the goodness derived from his *hula-hula*.

Principle *dalihan natolu* a legal system that has been rooted in social life in the area *Batak Toba*, and in the structure of kinship in Batak Toba, patterns of behavior people are arranged in a regular pattern and continuously into a legal system, the system is a unity in which has provided answers or solutions for any problems that arise in the system. In a legal system, is never allowed to be a conflict between elements or parts protracted, because in fact the nature of the legal system is consistent and steady. If there is a conflict, it will not be allowed to drag on, as consistently be resolved by the legal system and the legal system itself has provided the principles of law as a solution.

The existence of the value of customary law as a sub-national legal system continues to be recognized constitutionally as mentioned in Article 18B paragraph (2), that the state recognizes and guarantees the existence of entry into force of customary law and their traditional rights as part of the national legal system within the Unitary State of Indonesia Republic. The provisions of Article 18B paragraph (2) is then implemented through the provisions of Article 5, paragraph (1) of the Judicial Power, which requires the judge to explore, follow, and understand the legal values and sense of justice in the community hear and decide the case submitted to her.

Indonesian positive law also provides space for the entry into force of customary law as stated in Article 4 paragraph (1) of the Judicial Authority that the trial judge according to the law. The words "according to law" is defined as a written or unwritten law, so this article became the basis for the judge to menantiasa written rules and laws that actually live in the community in the process of law enforcement.

Based on research conducted by Kurniawarman (2009: 299):

that the customary dispute resolution outside the country's judiciary is still underway in West Sumatra. Judicial settlement of disputes outside the country, is said to still exist in resolving indigenous judge actions, as may be more effective and the benefits can be felt directly by the parties. Furthermore, in the study, said that the traditional dispute resolution outside the court states in the West Sumatra, not to mention explicitly that the institutional name as customary justice.

Law on Judicial Power, the completion of customary as it can be termed as dispute resolution outside the court. Judicial dispute resolution outside the country is still recognized by Article 58 of the Judicial Power Law. These provisions specify that the mediation in civil justice can be done outside the country through arbitration and alternative dispute resolution.

As raised by I Nyoman Shirta (2012: 159), the power of people using customary law (*awig awig*) as the cornerstone interact socially live in a society can prevent conflict, in case of conflict in society will be resolved based on customary law for peace so that indigenous people's harmonious life restored. In fact, dissatisfaction with the formal court judgment in deciding criminal cases make the existence of indigenous customary justice into something very important to consider the life of national law.

According Elwi Danil (2012 : 594), ttherefore, factually in the absence of formal rules that explicitly criminal case, where traditional justice is something that still looks urgency for indigenous peoples, such as the existence of KAN in Minangkabau still can be placed within the framework of law as an institution that works to resolve disputes custom. Batak traditional philosophy *dalihan natolu* which became a local wisdom Batak society. The values of local wisdom are the knowledge and experience of indigenous peoples in the face of problems and resolve problems faced wisely. The term is composed of a local word meaning regional / local and wisdom means wisdom. Basically, local wisdom more emphasis on the aspects of the system idea/ideas in cultural values are defined as the values of humanity, togetherness and ideals contained in the cultural environment. Local wisdom is evident from a range of knowledge and experience of citizens in the form of the teachings and advice and ban or better known as the value system.

Customary law which are generally unwritten and religious nature, so that the values of indigenous Toba Batak also religious. It can be seen from all the events that occur in the community has always been associated with magical powers and religious. Associated with the values of customary law that grew and developed in indigenous communities

Batak Toba, the values of a legal nature that are often implemented with sayings / phrases, such as expressions as follows with regard to boys as heirs, "*singir ni ama , singir ni anak, utang ni ama ba utang ni anak*," that is to interpret, that the father of accounts receivable, accounts receivable his son, the father's debt must be repaid his son. Also related to the rights of boys as heirs, obligation boys through the expression, "*niarit tarugi pora - pora, molo tinean uli, teanon dohot gora*" that is, people whittle a stick palm, inherited joy, inherited riot too.

In principle *dalihan natolu*, girls (*boru*) do not become heirs because of the marriage, will breed offspring of her husband who earned the right to inherit from their parents. Marriages performed by girls form a kinship with his parents called *hula-hula*, family formation becomes *boru*. The creation of such a mindset, because kinship relations laid out in this system handed down for generations. When breaking the traditional order, it means breaking the advice ancestral means also against the will of the surrounding community can certainly be a talking point, or ostracized from their communities. Tapanuli has issued Regulation No. 10 of 1990 concerning *Indigenous Institute Dalihan Natolu*, which is a traditional institution established Regional Government as an institution of deliberation involving indigenous elders who truly understand, master and appreciate the customs environment. In Article 6 of Regulation No. 10 of 1990 states that the institution has a duty to carry out a variety of businesses/activities in order to dig, maintain, preserve and develop the culture of the area including the customs and the arts for the purpose of development and consultative nature of the government. Article 1 letter h determine *Dalihan Natolu* institutions as a consultative institution/Batak of agreement which was established by the role of customs, culture, art area, mutual aid and kinship. The institute is located in a village/district level *Kecamatan* dan as defined in Articles 5 and 7 of Regulation No. 10 of 1990. Membership and management institutions *dalihan natolu* Elders Indigenous s correct understanding, mastering and live customs. Moreover, it is clear that members and officials must be faithful and obedient to the Pancasila and the Constitution of 1945 and devoted to God Almighty.

According to the research, *dalihan natolu* also play a role in solving a problem or a crime that occurred, such as adultery, domestic violence, verbal insults, defamation or slander, as well as other criminal acts such as theft disruption to the general welfare. As well as the sanctions given as a punishment to the offender is as removed from indigenous communities them, pay fines that are required for the victims, apologized to the victims or their families in the presence of elders customs, as well as the obligation to bear all the cost of eating *dikeluarkan* at the time the criminal act is settled.

5. Conclusion

Legal value in *Dalihan Natolu* still relevant, and are used as law enforcement efforts in the community *Batak Toba*. It can be seen from the following:

- The recognition of the reality of the law of value in principle *dalihan natolu* as a normative basis in regulating the behavior patterns of indigenous peoples which is a unit of kinship contained in principle *dalihan natolu* namely *dongan tubu* collateral relatives) *boru* and *hula-hula* about how it should behave, tied to the value of the law, *manat mardongan tubu, elek marboru and somba marhula -hula* in order to create order and public welfare *Batak Toba*.
- The law in principle *dalihan natolu* often used to resolve disputes that occur in the community because as the legal system, the principle *dalihan natolu* have ordinances and distribution firm in resolving the conflict between relatives who are bound in this principle.
- The reality, application of the principle of *dalihan natolu* supported by the recognition of the constitutional state and implemented in the Judicial Power Law that obliges judges as the law enforcement agencies to keep up to date values of law and public justice to hear and decide the case that confronted him.

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