Review Urgency Implementation of Dalihan Na Tolu Institutions in Legal Justice System in Indonesia

Ika Khairunnisa Simanjuntak  
Law Faculty, University of Indonesia  
The 2nd Floor of IASTH Building, Jl. Salemba Raya No.4 Central Jakarta  
E-mail: ikakhairunnisa@rocketmail.com

ABSTRACT
The Indonesian Constitution recognizes and respects the unity of indigenous and tribal peoples as long as they are alive and in accordance with the development of society and the principle of the Unitary State of the Republic of Indonesia as regulated in Article 18 B Paragraph (2) of the 1945 Constitution. This respect is grounded by tribal, indigenous and cultural pluralism that flourishes in Indonesia, which still exists largely and serves as a guideline for community life. In the event of a dispute as unavoidable in the realities of daily life, indigenous and tribal peoples often choose customary law to resolve disputes between them. Choosing customary law to resolve disputes, not only because indigenous people still adhere to their local wisdom. Another thing that also affects the limited ability of state institutions to provide access to justice quickly and affordably for the community, especially in relation to the limited access to justice through formal justice. This is of course a significant barrier to indigenous peoples, to resolve the problems they face through formal institutions. While in public law disputes such as punishment, they can not fully rely on customary law. This fact proves that equality before the law is still difficult to achieve in Indonesia. In fact, in the history of legal practice in Indonesia, once known a special court based on an adat law. But since the reign of President Soeharto, the existence of this court was abolished. Degradation of formal justice on the one hand when faced with the large number of legal communities exist in Indonesia who live hereditary in certain legal rules, is not an easy problem. So it is important to encourage efforts to strengthen and utilize other alternatives in order to gain access to justice outside the formal tribunal by means of informal justice with various variants such as mediation (non-litigation) and the implementation of customary justice. One of the institutions known to resolve the customary law dispute is the Dalihan Na Tolu institution by the Batak Tapanuli community in North Sumatra, Indonesia. Dalihan Na Tolu is a philosophy of life that will never be abandoned by the Batak community until whenever. Dalihan Na Tolu has a mechanism to resolve all conflicts that occur in this group through close family meetings, custom meetings or community meetings by means of mediation or arbitration. This study aims to see how the position, role, and effectiveness of Dalihan Na Tolu institutions in Indonesia, especially to ensure access to justice and protection of the rights of indigenous peoples. In addition, this study also wants to see the urgency of applying Dalihan Na Tolu in the legal system in Indonesia.

Keyword: Dalihan Na Tolu, Legal Institution, Indonesia Legal System.

1. INTRODUCTION

Indonesia is known as a rich country with various ethnic and tribal cultures where each ethnic and tribe has long lived with their respective customs. Each custom has its own uniqueness as a guide in managing their lives. Adat for them is believed to be a legacy of ancestors who must be respected, obeyed and used as a guide in daily life. Based on Aliansi Adat Masyarakat Nusantara (AMAN) data, the total number of indigenous and tribal peoples communities joined by the alliance amounted to 2,332 indigenous communities and still retains their life as an indigenous community to date.1

Indonesia has acknowledged and respected the unity of these indigenous and tribal peoples as long as they are alive and in accordance with the development of society and the principle of the Unitary State of the Republic of Indonesia as stipulated in Article 18 B Paragraph (2) of the 1945 Constitution. In addition Indonesia has also become The UN member that support the adoption of The UN Declaration on the Rights of Indigenous People as a form of respect for indigenous and tribal peoples.

But the written commitment has not been properly realized. Jimmly Asshiddiqie said that within 15 years of reform, Indonesia has not seriously implemented this honor mission in its public policy.2 Especially in the field of law, the fulfillment of justice, legal certainty and

---


protection of customary law community rights are still faced with a number of obstacles. Even until 2017 countless customary disputes that do not find a solution.

The presence of formal justice is also unable to resolve this issue, especially when faced with the problem of congestion cases that must be resolved. Other issues are the limited burden of formal proof, the emergence of hatred among the disputants, the lack of judges' capacity to understand customary rules, the limited ability of the state to provide access to justice in a fast, low cost and reaching remote villages to cause unfulfilled justice in Customary dispute resolution. All these problems are the reason for the loss of indigenous peoples' trust in legal formal institutions.

Yet as a state of law and as set in the Constitution, Indonesia must be able to guarantee every citizen for equality before the law, as one of the basic principles that become demands in the life of nation. On the basis of that principle, every citizen is entitled to obtain legal efforts as well as the fulfillment of human rights, especially the right of justice and the guarantee of access to justice which is constitutional guarantee of human rights.

One of the best efforts that can help solve this problem is by reviving the dispute resolution procedure through customary institutions. In the Batak tribe known a Dalihan Na Tolu institution that has long been very successful in solving the dispute among indigenous people batak. The presence of formal justice as the only legitimate dispute resolution institution has caused Dalihan Na Tolu to be abandoned primarily by modern urban society. Nevertheless, until now the majority of Batak people still hold firm Dalihan Na Tolu as life guidance and rules of kinship system among them.

It has been proved in several previous studies that there are many Batak people who still use the Dalihan Na Tolu to resolve their dispute. However, the position of Dalihan Na Tolu has not provided legal certainty because there is no legitimate of its existence as a dispute resolution institution. Although Dalihan Na Tolu is revived as a recognized dispute resolution institution, it will not be able to resolve all types of cases because serious criminal cases must be submitted to the formal justice system. Therefore it is important to review the urgency of the implementation of the Dalihan Na Tolu in Indonesia and to determine the most appropriate position as a form of implementation in the legal justice system in Indonesia.

Based on this background, this study focuses on two things, namely: First, how the mechanisms and roles offered by Dalihan Na Tolu in settling disputes in Indonesia. Second, what is the urgency of Dalihan Na Tolu's implementation in the national justice system by first reviewing the recognition and position of customary court in Indonesia with Dalihan Na Tolu as one of its components.

II. METHODOLOGY

The type of research used in this study is normative juridical by examining library materials or secondary data as the main data. However, to support this secondary data, the author also conducted interviews with the Batak person in the form of clarification. Data obtained through literature study by viewing, analyzing and comparing library materials and previous research. While the research approach is legislation approach that is research approach by using legislation and regulation. The reason for the selection of this approach is related to research that tries to analyze the problem from the perspective of legislation.

The secondary data used in this study can be distinguished into primary, secondary and tertiary legal materials. The primary legal material that author use is obtained directly from written legal rules, ie:
1. Constitution of the Republic of Indonesia;
4. Every year the Supreme Court of the Republic of Indonesia leaves a case that has not been decided. The remaining data of cases in 2015 reached 3,950 cases. Refer, MA Berhasil Kikis Tumpukan Perkara, www.hukumonline.com, (accessed 7 July 2017).
5. Article 1 paragraph (3) UUD 1945.
8. This statement is reinforced by the birth of Act No 14 of 1970 in Article 3 states that "All courts in the territory of the Republic of Indonesia is a State Court and established by law."
9. Interview with Mr. Arip Rahman (batak toba tribe) on July 5, 2017 in Rantauprapat City.
10. In the research is usually known at least 3 types of data collection tools, namely: document studies or library materials, observation and interviews or interviews. The three types of data collection tools, can be used each, or together to get the maximum results possible. This is because, because each type of data collection tool, has its weaknesses and advantages. Ibid, p. 66.
3. Local Regulation of Tapanuli No. 10 of 1990 on Customary Institution of Dalihan Na Tolu. To support and explain the primary legal material, the author also uses secondary legal materials in the form of books, scientific papers, scientific journals, and dissertations related to the field of dispute resolution and the legal system of Indonesia. In addition to the above mentioned data, the author also uses tertiary legal materials that provide guidance as well as explanations of primary legal materials and secondary legal materials, such as magazines, newspapers and the internet.

III. DISCUSSION
A. Mechanisms and Role of Dalihan Na Tolu in Dispute Resolution in Indonesia
Indonesia consists of thousands of tribes, customs and cultures that each have their own unique characteristics. Like Batak tribe also has a uniqueness as a local wisdom that until now made the order of life and also become a source of motivation behave. That local wisdom is Dalihan Na Tolu which in Indonesian is often called Tungku Nan Tiga. Dalihan Na Tolu is very proud of Indigenous Batak people as a social kinship system that provides guidance for orientation, perception, and definition of reality.

A.1. Definition of Dalihan Na Tolu.
Dalihan Na Tolu is actually a kinship system of indigenous Batak people based on blood relations (genealogis) and marriage. Not only as a kinship system, Dalihan Na Tolu is also respected as a living guide that regulates, controls and gives direction to the behavior and deeds of every Batak person. So it can be said Dalihan Na Tolu is the ideology of Batak society. Based on these functions, Dalihan Na Tolu is considered as a means to maintain the integration and identity of Batak tribe as a nation of Indonesia.

In terms, Dalihan Na Tolu comes from the Batak Language which means "Tungku Nan Tiga" that is taken from the philosophy of a traditional cooking stove that is commonly used by Batak tribe earlier.

According to the Batak people, the cooking stove has an analogy with family relation, because:

a. The stove can not be separated from human life. Humans need food to live so that when talking about food it will always be related to the Dalihan (furnace) which is a tool for cooking food;

b. The three stone furnaces at Dalihan Na Tolu are one unity as the foundation where the pots are stacked firmly for the soil, so that no fill of the pot is spilled and can be cooked perfectly;

c. To heat or cook there must be a fire. The fire in the furnace must remain lit, so that the furnace can function perfectly. Fire is considered a clan that revives social relations and solidarity among Batak people.

The analogy is then supported by the philosophy that Dalihan Na Tolu has three furnaces to create a balance in holding the cooking place. Three furnaces need balance

---

12 Ibid, p.31.
13 Ibid, p.31.
16 Interview with Mr. Arip Rahman (batak toba tribe) on July 5, 2017 in Rantauprapat City.
19 The stove consisting of the three stones is the foundation, where the stucco is placed firmly for cooking. Refer J. P. Sitanggang, Raja Napogos, (Jakarta: Jala Permata Aksara, 2010).
in holding the load above it. If one of the three furnaces is damaged, the furnace will not be used. In contrast to a five or four-stove furnace, if one of its stairs is damaged then it can still be used by slightly adjusting the laying of the load on it.

Then Dalihan Na Tolu can be interpreted as the tolu sahundulan (three elements sitting together) in balance and unity. This balance means that the function of the three elements is not one-sided, whereas this unity means the three inseparable elements or they must function simultaneously.

This philosophy illustrates that Dalihan Na Tolu is a symbol of unity, harmony and balance created from three elements:

a. Somba Marhulahula;

Interpreted as respect to Hula-hula. Hula-hula is a clan group of wife, clans of mothers, clans of grandfather's wives, and generations. Hula-hula is suspected as a source of blessings and descendants that must be upheld and respected.

b. Elek Marboru;

Defined as gentle and unconditional affection to Boru. Boru is a daughter or clan group that takes the wife from our daughter. The gentle attitude to the boru is necessary because she/he has the role of helping on customary activities. Without the presence of boru, the implementation of an adat feast is impossible.

c. Manat Mardongan Tubu.

Interpreted as a cautious attitude with people of one clan. This cautious attitude aims to avoid misunderstanding in the implementation of custom events. The plurality of Batak tribe often causes conflicts, such as conflicts of interests, positions, and so forth.

Table 1. Definition of Adat Philosophy Dalihan Na Tolu

<table>
<thead>
<tr>
<th>Filosofi</th>
<th>Pengertian</th>
</tr>
</thead>
<tbody>
<tr>
<td>Somba Marhulahula</td>
<td>1. Respect</td>
</tr>
<tr>
<td></td>
<td>2. Protect</td>
</tr>
<tr>
<td></td>
<td>3. Honor</td>
</tr>
<tr>
<td></td>
<td>4. Courtesy</td>
</tr>
<tr>
<td></td>
<td>5. Supports</td>
</tr>
<tr>
<td>Elek Marboru</td>
<td>1. Serve</td>
</tr>
</tbody>
</table>

So the Batak people symbolically have a pattern like an equilateral triangle. Each corner is an important position in regulating the rights and obligations of each kinship group.

The core of Dalihan Na Tolu is mutual respect and helping each other. It does not talk about one-way relationships but talks about the mutual and team work between each element in it with all the anticipatory and reactive actions that arise in every shared activity.

The placement of na tolu is not a caste because every Batak person will in turn experience these three positions depending on the event he faces.

Beside to the previously mentioned functions, Dalihan Na Tolu also serves as the basis for consensus of Batak tribe. This is because Dalihan Na Tolu is a legal guidance to every community. Because of its function as the basis and components in Batak forum, Dalihan Na

20 Ibid
21 This element serves to determine the status, rights and obligations of a person or group of people or organize and control the behavior of a person or group in the life of customary communities. Refer, T.M. Sihombing, Filsafat Batak Tentang Kebiasaan-kebiasaan Adat Istiadat, (Jakarta: Balai Pustaka, 1986), p. 71.
25 Three positions in Dalihan Na Tolu are called not immortal or not caste because every Batak person will in turn experience these three positions depending on the event he faces.
**Tolu** then used as a dispute settlement institution for the Batak tribe.

### A.2. Mechanism Dalihan Na Tolu in Resolving Various Dispute.

The dispute resolution mechanism of Dalihan Na Tolu institution is very close to the *musyawarah* tradition. Since the basic is a deliberation, its implementation is done through family meetings or customary meetings such as mediation in alternative dispute resolution, of course with the presence of the three elements of Dalihan Na Tolu as the hallmark of this institution.

Dalihan Na Tolu (Hula-hula, Dongan Tubu, and Boru) in dispute resolution acts as executor of the dispute settlement process. The three working directly in the meeting by meeting to discuss about problems or dispute. 27 Indeed, the Hula-Hula and Dongan Tubu act as parties directly involved in the deliberations, whether to give peace approval, apologize or implement sanctions which are all very dependent on the dispute model. While boru only serve as the party that prepares events such as determining the place of deliberation, inviting the parties needed, providing food into the dish in the deliberations and etc.

In addition to the presence of the three elements of Dalihan Na Tolu, the settlement of the dispute is led by a mediator named sihal-sihal. Sihal-sihal is selected from the elders or people who are respected by the parties in the community. Sihal-sihal must come from outside parties or people who are not involved in conflict or dispute. It aims to maintain neutrality and justice. However, sihal - sihal can also be chosen from the element of Dalihan Na Tolu, if the conflict or dispute to be resolved is privacy or light.

Sihal-sihal acts as a mediator or interpreter and decision-makers or dealers as a way out of dispute of the parties. 28 To be a sihal-sihal should be considered the following things:

1. Competence, ability, best insight in the field:
   a. Knowledge of *Dalihan Na Tolu* on indigenous people of Batak;
   b. Basis of problems being faced by both parties.
2. Wisdom, dignity and personality of a person in the midst of indigenous people of Batak. 29

Disputes settlement through this institution is pursued to achieve peace. With firmness in holding the values of *Dalihan Na Tolu* each party is required to create a condition of kinship and happiness. In some cases, a win-win solution is not difficult to achieve as each party has been strongly bound by the inward pressure to respect *Dalihan Na Tolu*’s values. Moreover, each person has also displayed a moral obligation and personal commitment to obey. 30

This is of course very different from formal judiciary that is so procedural that many indigenous people to be confused even try to avoid it. 31 In addition, the threat of family outbreaks due to Court decisions (losing-win mechanisms) by Judges who do not have a bond to them causes them to be reluctant to go to court. 32

### A.3. The Role of Dalihan Na Tolu in Dispute Settlement in Indonesia.

*Dalihan Na Tolu* regulate and control the life of Batak people not only in the context of adat bonds, but also in the economic, religious, political, and even bureaucracy. 33 As a guide to life as well as the basis of deliberation and consensus, *Dalihan Na Tolu* has an important role in the settlement of disputes. The types of disputes settled through *Dalihan Na Tolu* are as follows:

a. Marriage Dispute Settlement;

Solving the problems that often occur in marriage Batak people will not be done without *Dalihan Na Tolu*, because the element of *Dalihan Na Tolu* from the parties is the main implementer of the dispute settlement that has the initiative in finding out the current dispute,

---


30 Doangsa P.L, Situmeang, *Dalihan Natolu Sistem Sosial Kemasyarakatan Batak Toba*, (Jakarta: Kerabat, 2007), p xvi


34 Doni Boy Faisal Panjaitan, *Peranan Dalihan Natolu Dalam Hukum Perkawinan Masyarakat Adat Batak Toba (Studi Mengenai Hukum Perkawinan Adat Batak di Kecamatan Balige)*, Dissertation on Law Faculty University of Sumatera Utara of 2010, p. i.
what, why, and how the dispute occurred, then invited to gather, and deliberate to resolve the current dispute.

In practice, the role of Dalihan Na Tolu as mediator is effective enough to help solve marital problems in Batak people, if Dalihan Na Tolu has been involved, it will be definitely found a solution to the problem. Basically the result of the mediation's decision is to seek harmony not a separation, although sometimes there are differences of opinion between the three elements of Dalihan Na Tolu.35

b. Inheritance Dispute Settlement;

As with marital disputes, Dalihan Na Tolu also has an important roles in the settlement of inheritance disputes. Batak people embrace the patrilineal kinship system, which takes into account family members according to the lineage of the father. As a result only boys get inherited while girls get a share of their husbands' parents or through grants. Therefore, boru has no position in this inheritance dispute. Settlement of inheritance disputes through Dalihan Na Tolu is done through a deliberative approach involving elements of Dalihan Na Tolu.

c. Land Dispute Settlement;

Land dispute is also done by the method of deliberation and involves the elders as a mediator and three elements of Dalihan Na Tolu as parties. Interested parties are required to show valid and strong evidence to be used as a basis for peace. Legal evidence may be proof of Headman (anyone eligible to issue land), Certificate of Inheritance or other evidence that can be accounted for. Based on the evidence, the elders can decide who has the right to the land.36

d. Economic Dispute Settlement;

Although Dalihan Na Tolu has less influential in economic activities, in fact each of the economic actors from Batak society really involves members of relatives in developing their economic business. They assume that it is better to provide an economic opportunity to the family itself than by giving that opportunity to others.37

Thus Dalihan Na Tolu is also used in case of economic dispute among Batak people.

e. Settlement of Criminal Cases.

In addition to the settlement of cases in the private domain, Dalihan Na Tolu is also used to resolve cases in the public aspect such as criminal cases. This is motivated because written criminal law in Indonesia can not regulate all the legal needs of the community. In settling the criminal case, Dalihan Na Tolu has a very big role especially in resolving complaints such as adultery, domestic violence, oral insults, slander or defamation and other criminal acts such as disruption to the general welfare.38 The sanctions granted to perpetrators are excluded from their customary communities, paying the compulsory penalty to the victim, apologizing to the victim or even his family before the elder, as well as the obligation to bear all meal expenses incurred when the criminal act is resolved.39

The dispute settlement mechanism should be preceded by complaints from the public or parties who feel harmed by a crime. Then the elder who acts as an adat judge, attended by all the parties directly solves the dispute. If one party is not present then the dispute can not be resolved, including by presenting the victim, perpetrator, witness and all elements of Dalihan Na Tolu.40

B. Urgency and Position of Dalihan Na Tolu in the Legal Justice System in Indonesia.

B.1. Urgency Dalihan Na Tolu in the Legal Justice System in Indonesia;

Customary law is part of life of Indonesian nation. However modern Indonesia, will never be separated from this law because Indonesia consists of various kinds of indigenous peoples who have never understood the custom as an entity separate from the law.41 Although not written, the true customary law is what certain groups of people believe as the right way of living according to their sense of justice and propriety.42 This rationale concludes

---

37 Robert Siburian, Dalihan Na Tolu dan Kegiatan Ekonomi : Studi Kasus Pada Orang Batak Toba di Porsea, Dissertation on Social and Political Science Faculty University of Indonesia of 2004, p. 210-211.
38 Tota Pasaribu, Kewenangan Dalihan Na Tolu dalam Penyelesaian Tindak PIDana Secara Hukum Adat Batak Toba (Studi di Kec. Borbor, Kab. Toba Samosir), Dissertation on Law Faculty University of Sumatera Utara of 2008, p.x.
39 Ibid.
that Dalihan Na Tolu can still exist as a justice seeking institution for the community, especially the indigenous people of Batak.

It has been mentioned earlier that formal justice has not been able to bring justice for the people to this day, especially when faced with adat issues. In contrast, the persistence of Batak society in respecting Dalihan Na Tolu still exists to this day. This became the main force to make Dalihan Na Tolu local wisdom as dispute settlement.

Data released by The Asian Foundation states that "86 percent of respondents believed that deliberation is preferable to court or other formal procedures as a means of settling legal disputes". Especially in the Batak customary meeting, the results of Anwar Sadat and Ahmad Laut Hasibuan's research in 2009 show that 85% of respondents answered that the result of the decision issued based on the result of deliberation from the Batak people is very acceptable, and there are 10.83% regular answer and 4.17% answered Less acceptable.

Table 2.
Respondents' answers about the public perception of the marriage dispute settlement from the results of deliberation organized by Batak people

<table>
<thead>
<tr>
<th>No</th>
<th>Respondents' answers</th>
<th>Amount</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Very Acceptable</td>
<td>102</td>
<td>85</td>
</tr>
<tr>
<td>2</td>
<td>Regular</td>
<td>13</td>
<td>10.83</td>
</tr>
<tr>
<td>3</td>
<td>Less acceptable</td>
<td>5</td>
<td>4.17</td>
</tr>
<tr>
<td>4</td>
<td>Not acceptable</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>120</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Primary Data 2009

It can be assessed that the majority of Batak people trust the settlement of marriage disputes through Dalihan Na Tolu rather than resolved through the courts, as they consider the verdicts delivered based on the results of deliberations to provide more justice, benefit and legal certainty. This condition is influenced by several things:

1. Dispute settlement through deliberation is a settlement that has long been maintained since the time of the ancestors;
2. The parties acting as decision makers shall be respected because they are from the royal lineage, adat leaders and representatives of the Dalihan Na Tolu family;
3. Dispute settlement based on deliberation has very strict requirements and procedures, so the subject of the problem can be known. Subsequently, the provision of appropriate decisions to the parties is witnessed by the entire community so that the public can supervise the execution of the decision;
4. The sanctions imposed on the results of the deliberations are moral sanctions by considering civil sanctions such as compensation, fines, revocations of certain right, and etc.

In general, the urgency of customary institutions including Dalihan Na Tolu in dispute resolution are:

1. Limited adat people access to existing formal justice;
2. Traditional societies still have a strong legal tradition under their traditional law. This is a reality where tradition or custom still prevails in many places in Indonesia;
3. The type of problem solving offered by formal justice is considered inadequate and lacks justice in communities that still hold their own legal traditions;
4. Lack of infrastructure and resources possessed by formal justice to fulfill the justice of the local community.

Another problem is the very serious buildup of cases. As a note, when viewed at the highest state judicial institution, the data of the YLBHI indicates that at the end of every year there are 8 thousand cases remaining in the Supreme Court.

B.2. Position Dalihan Na Tolu in Legal Justice System In Indonesia.

Customary justice existed in Indonesia within the scope of the state justice system. But its existence was explicitly abolished by the Soeharto government through Law no. 14 of 1970 on Kekuasaan Kehakiman.

46 Ibid, p. 266.
49 For instance are Inheemsche Rechtspraak (Customary Justice) and Zelfbestuur Rechtspraak (Swapraja Justice).
Nevertheless, adat justice is not simply abolished because certain communities are still bound by their respective customary law rules. Even then the existence of the judiciary increasingly existed when local governments provided 'recognition' in the form of local regulations.

The Dalihan Na Tolu Institute for example has been recognized through the Regional Regulation of Tapanuli Number 10 of 1990 as a deliberative institution whose task is to preserve and preserve the local culture for the purpose of development and its consultative nature to the government. This institution is located in the Village, Sub-District, District at the District level. However, based on data search, the author did not find any specific mention of the presence of this institution as a dispute resolution institution. Even if its presence also includes dispute resolution, its scope will be very limited to the Tapanuli area only.

The basic question to be answered from this section is how does this institution relate to the national legal system? Is it right apart or united? What is the position of Dalihan Na Tolu institution desired in the judicial system in Indonesia? To address this, consideration should be given to the possibilities of court and adat institutions.

First, positioning Dalihan Na Tolu institution as a formal institution. Model formalization in the national justice system which has been put forward in the writings of Lilik Mulyadi (2013), is assessed to impose the Supreme Court. This is also inconsistent with the concept of the importance of recognition of the pluralism of customary justice practices in various regions. This form of formalization has consequences on formal procedural mechanisms and procedural-based procedural standards. It is also difficult to determine the competence of customary courts.

Second, positioning Dalihan Na Tolu as a non-formal institution outside the national justice system. This possibility of positioning Dalihan Na Tolu does not depend on the presence or absence of state acknowledgment but prioritizes public awareness to choose the Dalihan Na Tolu institution rather than formal justice. As we mentioned earlier this possibility causes the decision of the Dalihan Na Tolu institution to have no legal certainty even though this weakness has been overcome by the supervision of indigenous peoples, sanctions from indigenous elders if the verdict is not enforced and awareness of each customary law community to comply with Dalihan Na Tolu.

Third, positioning Dalihan Na Tolu as a complementary by unifying formal legal logic with informal legal logic. The problem of this position is the contradiction between customary law and national law. This possibility is procedurally perceived as nebis in idem if the decision of indigenous elders is reexamined at the national court level.

In this study the best position according to the author is to propose a "Choice of Law". As for the minimum requirements of legal choice:

1. Prioritizing substantive justice is not limited to formal justice or mechanisms;
2. The settlement of cases enabling the choice of law should reflect the principle of justice that focuses on the interests of the victim, either indigenous or non-indigenous.

This choice of law is based on community judgment and personal awareness to choose the best type of settlement that can resolve their dispute. This legal choice is based on:

1. Not all cases can be settled through Dalihan Na Tolu institutions for example cases involving big companies or cases involving non-indigenous people (ex: Manggarai Tambang Mangan case);
2. The institution of Dalihan Na Tolu should be viewed as a solution with a more dynamic mechanism, as well as having a sociological significance;
3. National judiciary and Dalihan Na Tolu institutions have different legal logic and are separate from the state's formal law and justice. Enforcing submission

50 Article 6 of Regional Regulation No. 10 of 1990.
51 Article 5 and 7 of Regional Regulation No. 10 of 1990.
52 This question wants to answer the application of customary law in two levels of legitimacy, be it social legitimacy (indigenous community) and political legitimacy (state recognition).
54 The possibility of this position is submitted by the Working Team of the Ministry of Justice and Human Rights of the Republic of Indonesia, Refer Herlambang Perdana Wiratman, Laporan Akhir Tim Pengkajian Hukum Tentang Peluang Peradilan Adat Dalam Menyelesaikan Sengketa Antara Masyarakat Hukum Adat dengan Pihak Luar, (Jakarta : Kemenkumham, 2013), p. 33.
56 The formalization of customary justice in the national justice system will remove the dynamic nature of customary justice itself. An example is the Central Kalimantan (Kedamangan) customary court. Refer Herlambang Perdana Wiratman, Op. Cit, p. 31.
under the formal law of the state would be contrary to respect for customary law;

4. Both the Dalihan Na Tolu and the national justice institutions have their respective strengths and weaknesses which the people can consider before choosing;

5. The fact that some acts which according to the consciousness of the law of society are a disgraceful act, the rule of national law does not regulate it so as to create a legal vacuum, for example: Criminal Code of Indonesia.

To support the implementation of this choice of law, it should be followed by local government recognition of the Dalihan Na Tolu as a dispute settlement institution. It is also important to encourage public confidence to resolve traditional disputes through customary justice. This can be achieved by promoting the workings of customary justice in accordance with the principles of local wisdom, social justice and human rights.

IV. CONCLUSION
The conclusions from this study are:

1. Dalihan Na Tolu is a kinship system of indigenous Batak people based on blood relation (genealogical) and marriage which is not only respected as life guidance but also believed to be a dispute settlement institution among indigenous Batak people. The dispute settlement mechanism through Dalihan Na Tolu is implemented through deliberation and consensus by involving the three elements of Dalihan Na Tolu namely Hula-hula, Dongan Tubu, and Boru as the driving force of the dispute settlement process. The settlement of the dispute is led by a mediator named sihal-sihal elders or people who are respected by the disputing parties in the community. This mechanism has several advantages over the formal justice mechanism. The Dalihan Na Tolu Society plays a role in solving various community problems such as marriage, inheritance, land, economic and criminal issues;

2. Formal justice has not been able to achieve community justice, especially when faced with adat issues. Past research also mentions that people are more confident in resolving traditional disputes than formal justice. There are three possible positions of customary justice in the national justice system. However the best attitude to determine the position of the Dalihan Na Tolu institution is to provide an opportunity for the legal choice of the parties with the foregoing considerations. This attitude should be followed by local government recognition of the Dalihan Na Tolu agency as a dispute settlement institution and increasing public confidence to resolve traditional disputes through customary courts.