

***Punguan* as an institution for resolving disputes of the Toba Batak community in Medan**

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Abstract. Toba Batak, famous for the nomadic nature of its people, is one of the indigenous tribes of North Sumatra that inhabits Medan. Many of them have left their hometown in North Tapanuli to seek occupations outside the agricultural sector. Those who live in Medan formed a new community. Their customs, culture, and traditions, which are their ancestral heritage, are still being practiced even outside their hometown. This community is called *Punguan*, which is formed based on territory and genetics. This study describes the existence of *Punguan* as an institution for resolving disputes of the Toba Batak community in Medan. This is legal research using a juridical normative method. Data was collected through a literature review and analyzed qualitatively. The existence of *Punguan* has become a social need for the people of Toba Batak, especially in Medan. In addition to functioning as a media of interaction, *Punguan* is also an institution for effectively resolving internal conflicts with a win-win solution. The existence of *Punguan*, which is the embodiment of one of the values of Pancasila, deliberation to reach consensus, is expected to be an effective alternative institution for a dispute resolution. This effort requires detailed and sensitive regulations as well as cooperation with local governments in creating derivative regulations relating to customary law institutions.

1. Introduction

North Sumatra is one of the provinces in Sumatra Island with an area of 71,680 km². The native inhabitants consist of Malay, *Batak*, *Nias*, and Acehnese. The coastal areas of North Sumatra, namely the east and west regions are mostly inhabited by the Malays and the *Mandailing* tribe. Mountainous areas, which include *Silindung*, *Samosir*, *Humbang*, and *Toba* (collectively known as North *Tapanuli*) consist mostly of *Batak* tribes. The western islands are occupied by *Nias* tribe. The migrants consist mostly of the Javanese. Other tribes include the Chinese and other minorities.

As the capital of North Sumatra Province, Medan has become the meeting point for various tribes, including *Batak* tribe who are famous for their nomadic activities. This nomadic behavior is called *mangaranto* and the person is called *pangaranto*. Generally, the *pangaranto* are men leaving their villages before starting a family to seek a better living outside the agricultural sector. The success of the previous *pangaranto* has motivated others to follow.

When *Batak* people left their hometown and settled in Medan, they are considered to only be a part of the Toba *Batak* community. They are no longer subject to customary laws from their hometown; they have become part of a compound and pluralistic Toba *Batak* community.

The *pangaranto* then formed a new community in Medan. It is an internal community that still upholds ancestral culture in customs, culture, traditions, and life values of the Batak tribe. This community is called *Punguan*, which means "a gathering place." As the definition suggests, this institution is a gathering place for indigenous Batak people based on their territory and genetics. Members who are considered competent, capable, wise, and broad-minded will be elected and appointed as administrators. The institution manages cultural ceremonies, such as marriage, birth, or death, where administrators will carry out their respective duties and obligations.

Other than managing cultural ceremonies, the members also schedule meetings to meet and get together so that they are more familiar and bonded with each other. Furthermore, *Punguan* can also resolve internal disputes. This study will elaborate on how the *Punguan* acts as an alternative dispute resolution institution for the Toba Batak community in Medan.

2. Research method

This is legal research using a normative legal method. The data are secondary data comprised of (a) primary legal materials such as legislations, (b) secondary legal materials such as writings, either books or articles covering commentaries or analysis related to topic of discussion, and (c) tertiary legal materials like dictionaries [1]. Literature review and document analysis were used to collect the data. The data were analyzed using a qualitative deductive reasoning method. Afterward, the explanation was systematically presented in a discussion to answer the problem.

3. Result and discussion

Residents of an indigenous community who have lived in a certain area since their birth and are bound and subject to certain customary laws with a high sense of solidarity among the members are defined as members of a customary law community [2]. In a patrilineal kinship system, the *Marga* carried by the male lineage plays a very important role in the social order of the Toba Batak customary law community. *Marga* is the name of the fellowship of the brothers, siblings, and descendants of the paternal line that owns a shared land in their hometown or ancestral land [3]. From the definition, *Marga* is a hereditary name listed after a person's name. Each *Marga*, as the name of the entity or fellowship of the family, has been imprinted to its members since they are still in the womb. Therefore, *Marga* is considered a name, an identifier, and an identity, both personal and communal.

The foundation of the *Marga* is the family (husband, wife, and sons and daughters as intimate entities, who experience and enjoy life together, owners of family heirlooms and responsible for the continuation of the offspring). The *Marga* serves as a basic foundation that regulates discipline and order towards the relationship between individuals and groups, whether among themselves or one another in the context of the *Dalihan Na Tolu* social order.

Dalihan Na Tolu is an institution with 3 (three) important elements that support its performance, namely the *Hula-hula*, the *Dongan Tubu*, and the *Boru*. The *Hula-hula* is defined as people who originate from the *marga* of the wife and must be given the utmost respect. Of the three Batak social castes, the *Hula-hula* holds the second highest position after the Customary King. For example, if a male bearing the *Panggabean marga* is married to a woman bearing the *Boru* (prefix for the *marga* of women) *Tobing marga*, then the *Hula-hula* of the *Panggabean* man is every male member of the *Tobing marga*. The *Dongan Tubu* (*Dongan Sabutuha*) is defined as those who come from the same womb. For example, fellow males of the *Siregar marga* are considered *Dongan Tubu* of a *Siregar* man. The *Boru* means the female family members of the husband (sisters of a man with similar *marga*) who receive blessings from the *Hula-hula*. The *Boru* must be treated well, sweet-talked, and loved as a father loves and protects his children. As a consequence, they are in charge of serving guests in customary events while the *Hula-hula* sits in a respectable place. For example, if a *Panggabean* man married a *Boru Tobing* woman, the *Boru* of the *Panggabean* is the entire *Panggabean* women and their husbands.

The three groups above are mutually moving, in harmony, balanced and unwavering in one social order. In their interactions, each person will have a different attitude towards each group. They will *Manat Mardongan Tubu* or "well behave to the *Dongan Tubu* (fellow *marga* members)", *Elek Marboru* or "care for the *Boru* (women of similar *marga* and their husbands)", and *Somba Marhulahula* or "respectful to the *Hula-hula* (families of the wife)".

Examples of the *Punguan* in Medan, grouped by *Marga* or family names include: *Punguan Rambe Raja Nalu* (*Rambe* community), *Punguan Raja Siambaton Boru dohot Bere* (*Parna* community), *Punguan Silalahi Raja* (*Silalahi* community), *Punguan Somba Debata* (*Siahaan* community), *Punguan Raja Siagian Boru Dohot Bere* (*Siagian* community), *Punguan Simanjuntak Sitolu Sada Ina* (*Simanjuntak* community), *Punguan Raja Sihotang Boru Dohot Bere* (*Sihotang* community), *Punguan Parmasna* (*Sigalingging* community), *Punguan Raja Panjaitan Dohot Boruna* (*Panjaitan* community), and so forth. The total number of *Punguan* in Medan is not recorded because its establishment does not require administrative registration requirements. These *Punguan* are located in large cities such as Medan. A *Punguan* with a smaller number of members is a part of a larger *Punguan*. Therefore, almost every member of the Toba Batak community in Medan is part of a *Punguan*. *Dalihan Na Tolu* allows one to enter more than one *Punguan*.

Many disputes have occurred within the Toba Batak community in Medan, but not all of them are resolved through the *Punguan*. Disputes that can be resolved generally involve negotiations or deliberations to reach a peaceful consensus towards the best interests of all parties involved. Some of them include family-related disputes, such as inheritance, marriage, divorce, land-related social disputes, and customary crimes.

Disputes are resolved through a Consultation, Negotiation, and/or Mediation model. This model is considered to be quite successful in resolving disputes compared to the litigation process of the Court [4]. In addition, this process directs more effort at finding a win-win solution for the parties involved by emphasizing on the principle of deliberation to reach a consensus. However, cases involving murder are difficult to be resolved through this method.

Pancasila is the philosophy of every Indonesian, where each precept contains the most fundamental values in social life, nationality, and statehood. 'Deliberation for consensus' is one of the values contained in the fourth Precept. This shows that a resolution through deliberation for consensus among disputing parties has been commonly known and implemented by Indonesians.

Furthermore, the 1945 Constitution of the Republic of Indonesia, Article 18B Paragraph (2) states that "the State recognizes and respects customary law communities along with their traditional rights insofar as they are alive and in accordance with the development of society and principles of the Republic of Indonesia, which is regulated by the law." Article 1 point 15 of Law Number 7 of 2012 concerning Social Conflict Management (SCM Law) states that customary institutions are institutions born of customary values that are respected, recognized, and adhered to by the community. Moreover, Article 40 affirms that the Government has allowed customary institutions as a mechanism for resolving social conflicts. Other regulations regarding dispute resolution are contained in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR Law). Article 1 point 10 states that Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through a procedure agreed upon by the parties, namely an out-of-court resolution by means of consultation, negotiation, mediation, conciliation or expert judgment.

A proverb in Toba Batak says "*Togu urat ni bulu, toguan urat ni padang, togu na ni dok ni uhum, toguan na nidok ni padan*", which literally means "the root of bamboo is strong but the grassroots are stronger, the (positive) law is strong but the common consent is stronger" [5]. *Punguan* is a customary institution that can resolve disputes or conflicts. The *Dalihan Na Tolu* concept affirms the cultural position of each *Punguan* member.

So far, Indonesian people have already implemented the peaceful alternative dispute resolution through deliberations for a common consent and also through Customary Institutions that are carried out in accordance with the customary law. In Indonesia, customary dispute resolution can vary depending on the context of the situation. Such resolution is known as the implementation of the *receptio in complexu* principle, in which both customary as well as religious laws are applied. Religious law can also be implemented and referred to as customary law [6].

The indigenous community should not be considered merely as cultural arts and cultural tourism objects. Customary law is part of binding law or laws regulating legal relations among the community and between the community and the state [7]. Customary institutions still carry out their function as a media for conflict resolution if their solutions can be accepted by the parties and successfully subside or even end the conflicts completely. Therefore, good cooperation is needed to achieve a common agreement involving elements of the indigenous society and the government, one of which is through a discussion forum. Hopefully, the discussion can generate some insights and recommendations for customary institutions that will benefit the people.

4. Conclusion

The principles and philosophy of life of the Toba Batak community to prioritize "deliberation to reach a consensus" and uphold family values are built from generation to generation and are still carried over wherever they travel. The social order of *Dalihan Na Tolu* manifested in the Toba Batak Community in Medan upholds *Punguan* as a respected customary institution. The solution to disputes is first pursued through a deliberation for the best interests of all parties. Judicial dispute resolution is not considered as an effective solution. The appropriate dispute resolution models used successfully by the *Punguan* in Medan are Consultation, Negotiation, and Mediation.

As a recommendation, the customary institution must be supported to become a competent alternative resolution for private and civil disputes, as well as for public disputes according to the basic rules of ADR Law. However, this effort requires detailed and sensitive regulations in the development of customary institutions. Every authorized regional government, namely district/city government, needs to create derivative regulations that are by the context of the development of customary institutions.

References

- [1] Soekanto S and Mamuji S 2004 *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada) p. 10
- [2] Susan N 2014 *Laporan Pengkajian Hukum Tentang Peran Pranata Adat dalam Pencegahan/Penghentian Konflik Antara Kelompok Masyarakat* (Jakarta: BPHN Kementerian Hukum dan HAM) p 43.
- [3] Situmeang D P L 2007 *Kerabat: Dalihan Natolu, Sistem Sosial Kemasyarakatan Batak Toba* (Jakarta: Dian Utama) p 32.
- [4] Manalu W S 2009 *Eksistensi Penyelesaian Sengketa Alternatif pada Masyarakat Batak Toba* (Medan: Magister Kenotariatan Universitas Sumatera Utara) p 96.
- [5] Wignjodipoero S 2004 *Pengantar dan Asas-asas Hukum Adat* (Jakarta: Haji Mas Agung) p 73.
- [6] Simanjuntak N 2013 Penguatan lembaga adat sebagai alternatif penyelesaian sengketa *J. Negara Hukum*. **Volume 4** Number 1 pp 35-66.
- [7] Permana N A 2002 Revitalisasi lembaga adat dalam menyelesaikan konflik etnis menghadapi otonomi daerah: Studi kasus pulau Bangka *J. Antropologi Indonesia*. Number 68 pp 74-85.