

Legal Setting Model About Forest Destruction Prevention Based On Indigenous People Of *Dalihan Na Tolu* In North Sumatra

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Abstract - Many tribes and indigenous people exist throughout Indonesia. There are indigenous peoples who have their own traditional values in forest destruction prevention i.e indigenous people of Dalihan na Tolu with their local wisdom. The research used empirical legal research method. The approach used is anthropological approach, and sociological juridical. Long before the existence of regulation about in Indonesia, the indigenous people have had their own rules in preventing the forest destruction in North Sumatra. The custom law of Dalihan na Tolu has regulated about: the stages in implementing deliberation in preventing forest destruction, strategies that is implemented by the customary leader in preventing forest destruction, form of sanctions that is imposed on parties that commit forest destruction, implicit rules in indigenous people, dan the form of supervision in preventing forest destruction with the mechanism of controlling and supervisory that rest on the condition and potential of the indigenous people.

Key Words: *Legal Setting; Forest Destruction Prevention; Indigenous People of Dalihan na Tolu*

1. Introduction

In the last three years, massive forest destruction happened in the form of forest burning, timber theft, illegal logging, land clearing, timber smuggling, deforestation, expansion of agricultural areas and plantations in the forest area without regard to the condition of the surrounding environment. The data shows that thousand hectares of Indonesia's forests has been damaged by human activities, such as following cases:

Tabel 1. Forest and Land Burning in Indonesia

No	Date	Location of Forest Burning
1	5 June 2015	Hiking Trails of Mt. Andong, Regency of Magelang, Central Java
2	24 October 2014	Village of Suko Brajo in Pematang Raman, District of Kumpeh, Muaro Jambi Regency, Jambi
3	1 October 2014	Prabumulih Muara Enim and Banyu Asin, South Sumatra
4	30 September 2014	Wonotirto, District of Samboja, Kutai Kartanegara Regency, East Kalimantan
5	29 September 2014	Mt. Ciseda Slope at Perhutani Forest Block of Cadas Pangeran, BKPH East Manglayang, Cigendel Village, District of Pamulihan,

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No	Date	Location of Forest Burning
		Sumedang Regency, West Java
6	27 September 2014	Nunukan Regency, Malinau Regency, Bulungan Regency, Berau Regency, West Kutai Regency, and Paser Regency, East Kalimantan
7	26 September 2014	Mt. Biru Kencur Slopes Block Mt. Bakal Block Puthuk Sembung Block Puthuk Sigiran Block Puthuk Duro Block Puthuk, District of Gondang, District of Pacet, Mojokerto Regency, East Java
8	18 February 2014	Bengkalis Regency, Indragiri Hulu Regency, Kampar Regency, Kuansing Regency, Pelalawan Regency, and Siak Regency in Riau
9	25 September 2012	Mt. Batur Area, District of Kintamani, Bangli Regency, Bali

Source: <http://geospasial.bnpb.go.id/pantauanbencana/data/datakbhutanall.php>.

The sequence of forest destruction above occurs, from the lack of firm, fair and the benefits of legal regulatory materials on preventing the destruction of existing forests, also because of the lack of empowerment of indigenous peoples potential in the field of forest destruction prevention.

Indeed, of the many tribes and indigenous people that exist throughout Indonesia, there are indigenous people who have their own traditional models or values in the prevention of forest destruction, such as indigenous *Dalihan na Tolu* with their local wisdom.

The indigenous people of *Dalihan na Tolu* are able to prevent forest destruction of most of the forests in regency level of North Sumatera province, such as state forests, customary forests, protected forests, conservation forests, natural forests, conservation forests. Because of the concept of indigenous people *Dalihan na Tolu* that the three elements of indigenous people that exist, namely: Mora (all families who come from the men's family in-laws), Kahanggi (all families who have a blood relationship from the father), and Anak Boru (all families of parties of women's family in-law), have the duties and responsibilities of each in the prevention of forest destruction.

In indigenous people *Dalihan na Tolu*, it has been set up in its customary law a guide of the procedures and system of deliberation in preventing the destruction of forests, the types of sanctions imposed on the parties that do the destruction of forests, customary court equipment in preventing the destruction of forests and the parties responsible for the sustainability of forests, rivers and lands that are in the customary territory (Called *Luat*).

Each customary territory is led by the customary leaders of a particular clan who are responsible in their territory in preventing forest destruction by using the rules of the Surat Tumbaga Holing. For example, the customary territory (Luat) of Portibi located in North Padang Lawas Regency is led by clan of Harahap, customary territory (Luat) Hajoran led by clan of Siregar, customary territory (Luat) Sibuhuan led by clan of Hasibuan and so on. So the leaders in each customary territory (Luat) is responsible for preventing the destruction of forests in each region.

Preventing the destruction of forests wisely is not an instant initiative that comes for granted, but it is a social project that must be nurtured and directed, so as to create conservation and protection of forests throughout Indonesia. That way, the society will be spared from various natural disasters that can threaten health and human life.

Legal settings of the prevention of forest destruction by utilizing existing local wisdom is a basic requirement that must be met, since the Indonesian population is a population with various customary tribes that can be empowered in preventing forest destruction.

Marthin (2014: 153) assumed that the implementation of forest preservation that based on custom law will be more effective and efficient, as well as potential to reach a wider territory such as remote area.

Aminah (2011: 97) Concluded that indigenous peoples have their own rules in protecting the surrounding forests, because forests for them are the source of irrigation of fields and so they maintain, preserve and prevent them from any damage through their customary law.

While Sahlan (2012: 320) Argue that communities around the forest have their own environmental conservation concept that enables forest maintenance measures in line with, even, or supports forest conservation efforts that are now encouraged by the government.

Based on the background that has been presented above, the research problem is formulated as follow:

- A. How is the forest destruction prevention model based on the indigenous people Dalihan na Tolu in North Sumatra?
- B. How is the procedure of settlement of forest destruction dispute in indigenous people Dalihan na Tolu?
- C. How is the sanctions that imposed on the parties who committed forest destruction based on the indigenous people Dalihan na Tolu in North Sumatra?

2. Methodology

The research begins with: a) conducting an inventory and analysis of all instruments of statutory provisions related to the research matter (Arfa 2010: 69). Inventory activities are intended to:

- A. Find the identification criteria for resolving which norms should be referred to as positive legal norms, and those which are referred to as other non-legal social norms;
- B. Make correction to the norms that are indicated as positive norms (law)
- C. Organize the norms that have been successfully identified and collected into a comprehensive system.

In this research, inventory is conducted toward regulations that is related to forest destruction prevention. After that: b) Field data collection through: observation, interview, questionnaire, document study. Activities are then undertaken: c) A thorough analysis of the problems in society, the prevailing procedures in society and the particular situations of a phenomenon related to the prevention of forest destruction.

The research method used is empirical law research method¹, because empirical law research is research about law that live in society, which applied or implemented by member of society (Arfa, 2010: 69; Wijayanti & Achmad, 2011, 97).

The approach used is an anthropological approach that studies the patterns of disputes and their resolution to simple communities, as well as societies that are undergoing developmental processes and sociological approach (socio legal approach) or empirical juridical approach, By studying social phenomenon in society which legal aspect can be identified (Ali, 2008:13-15).

3. Finding And Discussion

3.1. Model of Forest Destruction Prevention Based on Indigenous People of *Dalihan na Tolu*

The indigenous people of Dalihan na Tolu as one of the indigenous peoples in Indonesia are indigenous peoples who have various customary rules related to the prevention of forest destruction, either directly or indirectly. Through these universal rules, the Dalihan na Tolu indigenous people are able to prevent actions that could lead to forest destruction, such as excessive logging, plantation clearing, deforestation and so on. All such actions can be prevented through the rules contained within the indigenous people of Dalihan na Tolu.

A. Prevention of Forest Destruction is Realized using Universal Rule of *Dalihan na Tolu* Custom

The indigenous people of Dalihan na Tolu strictly prohibit members of the community or other institutions from destructing forests, because forests for them are a source of water that can be used to irrigate rice fields, plantations and fisheries. In addition, water is also a requirement of drinking water as a customary society. Thus, forests are one of the main sources of life for the people, so that its existence they care, and they prevent from the damage and disaster caused by human actions. In doing the prevention of forest destruction, the indigenous people of Dalihan na Tolu use some of the customary universal rules of Dalihan na Tolu as follows :, namely:

- a. *Harangan do mulmulan, saba do panyabian, kobun do paccalongan, aek do parihanan, bagas do parpodoman, pakarangan do parsipurpuran.* (Forests as a source of springs, rice fields as a place to harvest rice, gardens as a place to pick vegetables, river where to find fish, home as a resting place, the yard as a place to breathe fresh air).
- b. *Na tola mangarabi bulu di topi ni aek* (Prohibited to cut the bamboo trees that are on the edge of the river). This rule indicates that it is strictly forbidden for the indigenous people of Tolu to cut down the whole bamboo tree on the riverbank, as it can lead to erosion of land on the banks of the river. As a result, it can widen the river and simultaneously degrade the river which at any time will be able to threaten the danger of flooding for the surrounding community. Therefore, for indigenous people Dalihan na Tolu will not dare and will not do the cutting of bamboo trees that are on the edge of the river.
- c. *Na tola manaba hayu giot digadis* (It is prohibited to cut trees for sale). According to the customary law of Dalihan na Tolu community is prohibited from logging, either in the forest or outside the forest to be traded.
- d. *Na tola manaba haruaya parsilaungan* (It is prohibited to cut the banyan tree, because it serves as a shelter from the sun and rain). For the indigenous people *Dalihan na Tolu*, it is forbidden to cut down the banyan tree, because this tree is a tree that is respected as a symbol of the nature of a king where the banyan tree has dense leaves that can win what and who is under it and the big tree that can be used as a place for shelter from the rain and the heat of the sun and can also be used as a hiding place.
- e. *Taba sada, tanom dua* (cut a tree, add two trees instead). This rule shows that if a person cuts down a tree for the purpose of building a house or building a *Sopo Godang* (traditional house), it is required him to plant two (2) similar tree seedlings or other tree species in lieu of the previously felled tree. This rule is intended to maintain the preservation of the forest and also

maintain the type of trees that have been felled. Thus, the existence of this rule provides enormous benefits for the forests in the surrounding indigenous people of *Dalihan na Tolu*, among others:

- 1) The realization of forest conservation;
- 2) Maintaining the existing tree species in the forest;
- 3) The implementation of legal logging controlling based on the consideration of forest need and sustainability;
- 4) Regulating a logging period in the forest. Through this rule, community members should not be indiscriminate in cutting down trees according to their individual tastes, but there is certain time, location and tree species that can be logged. Members of indigenous peoples who wish to cut trees in the forest, must obtain permission from the Harajaon (royal) and from the Hatobangon (traditional leader) of Dalihan na Tolu.
- 5) *Na tola mangarimba kobun dohot saba di harangan ni gunung dohot tor* ((Do not open gardens and rice fields by cutting down the forest around the mountains and hills). Through this rule, every member of the customary community of Tolu dalihan is prohibited to open and develop rice fields, gardens and fisheries in the environment or forest area. Because it will have a negative impact on the sustainability and damage of the forest itself. The opening of rice fields, gardens and fisheries is only allowed in a certain fields called *padang-padang* (large flat land) and also in the valleys away from the mountains and hills. This strategy is done so that the water supply from the forest is well preserved.
- f. *Na tola mangarabi harangan ni saba, kobun dohot huta* (Not to cut down the forest around the rice fields, farming and settlements). Through this rule every member of *the Dalihan na Tolu* is forbidden to cut down trees growing around rice fields, plantations and settlements, as trees growing around rice fields, plantations and settlements become the source of springs and also as *parsilaungan* (shelter for taking a rest).
- g. *Eme na hu pagodang-godang, eme na pagodang-godang au* (The rice that I keep and bred, the rice also has a role to raise me). Through this *rule* the indigenous people of Dalihan na Tolu have the principle that every thing that has a role in giving life, happiness and joy of life, then something that must be loved, nurtured and maintained to be sustainable and provide maximum benefits continuously.

B. The Prevention of Forest Destruction is Realized Based on the Duty Delivery as ruled in The Custom of *Dalihan na Tolu*

Based on the custom rule of *Dalihan na Tolu*, it has been arranged to divide the tasks of the three elements of indigenous people of *Dalihan na Tolu* proportionally and deeply programmed in environmental management especially concerning the prevention of forest destruction, namely:

- a. Generally, the duty of *Mora* is to plant bamboo trees around villages up to the riverside. *Mora* also has the task of planting a banyan tree at the gate of the village (*huta*). *Mora* is regarded as a person who protects and provides comforts like a banyan tree that provides shade and bamboo trees that provide a security fence from enemy disturbances;
- b. The task of *Kahanggi* is to guard, supervise and protect various trees that are protected according to customary law. Who interferes with and cuts down custom-protected tree species will get the sanction as set by the

Dalihan na Tolu indigenous people. Supervision by *kahanggi* is realized by making visits to the surrounding forest to monitor whether there are people or other parties who do the logging without permission of *Harajaon* and *Hatobangon*;

- c. The task of *Anak boru* is to nurture, care for and raise the types of trees protected by the indigenous people of *Dalihan na Tolu*. Siregar (2013: 75-76) concluded that in addition to caring for trees, *Anak boru* is also obliged to provide routine reports on environmental conditions along the custom territory.

The existence of indigenous people in preventing the destruction of forests has been regulated in the prevailing laws and regulations in Indonesia. Mentioned in Article 67 paragraph (1) of Law No. 41 of 1999 on Forestry that customary law communities as long as they carry out their respective duties and responsibilities that contained within the Indigenous people of *Dalihan na Tolu*, hence the prevention of forest destruction in the realm of society. The reason, through the implementation of these tasks will undoubtedly occur prevention, either directly or indirectly (Law No. 41 of 1999 on Forestry)

Based on the prevailing laws and regulations in Indonesia that indigenous people are involved in preventing forest destruction. Article 34 of Law Number 41 Year 1999 on Forestry reads that the management of forest area for special purpose as meant in Article 8 can be given to: a. Indigenous people, b. educational institutions, c. research institutes, d. social and religious institutions. Whereas indigenous people are traditional societies that are still related in the form of community has the form of institutions and traditional law instruments that are still adhered to, and still hold the collection of forest products in the surrounding forest area which existence is confirmed by the Regional Regulation (Barus, Syahrin & Arifin, 2015:112)

Astan Wirya argued that Law No.18 of 2013 on Pencegahan dan Pemberantasan Perusakan Hutan (P3H) or Prevention and Eradication of Forest Destruction mandated the establishment of Lembaga Pencegahan dan Pemberantasan Perusakan Hutan (LP3H) or the Institute for the Prevention and Eradication of Forest Destruction. P3H institutions have the authority of duties and functions to prevent forest destruction undertaken by community participation, fulfillment of the need for raw material resources, anti-forest destruction campaign and others.

C. Prevention of Forest Destruction Through Philosophical Experience of *Dalihan na Tolu*

Despite the sacred and great regulation contained in *Dalihan na Tolu* custom, it can not be denied that it is also possible that there are disputes and problems in the field of forest destruction. In order to prevent forest destruction in the midst of society, the indigenous people always guided and utilized *Dalihan na Tolu* custom philosophy. The philosophy of *Dalihan na Tolu* indigenous people in question is: "*Somba mar Mora, Elek mar Anak Boru, Manat-mar Kahanggi*". Understanding this philosophy can be explained and detailed through the following information:

Table 2. Philosophy of Indigenous People of Dalihan na Tolu in Preventing Forest Destruction.

Philosophy	Meaning
<i>Somba mar Mora</i>	a. to respect b. to keep up the honor c. Politeness d. to support
<i>Elek mar Anak Boru</i>	a. to propitiate; b. to flatter; d. not being rude; e. d. love
<i>Manat-Manat mar Kahanggi</i>	a. to beware b. to be careful. c. to keep heart

Mora has the highest position in *Dalihan na Tolu* indigenous people. They are always respected, their remarks always contain prayers and counseling for their *Anak boru*, and they are always kept in honorable places in every traditional event, including in solving problems and disputes in the community. In the field of management and prevention of forest destruction, the position of *mora* is a guide and advisor (*pangidoan poda*), both in the *siriaon* (happiness) customs implementation and in the implementation of *dat* in the field of *siluluton* (condolence) (Rajamarpodang, 1992: 53). In the custom, the *Mora* must be respected well and if not cared for and respected, it is like challenging the sun, so that the effect of the eyes can be dark and not knowing the direction. According to the custom the *Mora* is the place to ask for blessings and luck, and they are the ones who give the blessing of the custom ceremony, they are *dongan tumahi* (friend to ask for advice) (Azwar, 1997:17).

D. Resolving Forest Destruction Dispute in *Dalihan na Tolu* Indigenous People

Although the custom of *Dalihan na Tolu* is adhered to, respected and practiced by indigenous peoples, there are still some members of the community who continue to violate the rules by illegal logging (Harahap, 2016: 134-135). In case of deforestation without the permission of *harajaon* party and the *hatobangon* party, the settlement shall be done by:

- a. *Tutur* (Speech Act) that is contained in *Mora*;
- b. *Tutur* (Speech Act) that is contained in *Anak Boru*;
- c. *Tutur* (Speech Act) that is contained in *Kahanggi*;
- d. *Harajaon* (A person who is descendants of the king or called *Bona Bulu*);
- e. *Hatobangon* (A public figure);
- f. *Orang Kaya* (A person who understand *Dalihan na Tolu*);
- g. *Ompu ni Kotuk*;
- h. *Goruk-Goruk Hapinis*.

3.2. The Form of Sanctions Sentenced to The Parties That Commit Forest Destruction Based on Indigenous People of *Dalihan na Tolu* in North Sumatra

Although the rules of prevention and prosecution of acts of forest degradation in *Dalihan na Tolu* customs are respected by the community, there are also people who commit abuses related to the act of forest destruction itself. If indeed there are

people who commit acts of forest destruction as prohibited in the customary, then the perpetrators will be subject to sanctions in accordance with the rules contained in the custom. Some of the rules in this case are:

- 1) *Dipaingot* (Giving verbal and written warnings and advice witnessed by harajaon, hatobangon and Dalihan na Tolu's representative). This type of sanction is granted to the perpetrators of the first crime and the consequences of their crime have not yet disturbed the wider public interest and have not yet entered the categorical unsettling life of the community. Sanctions of *Dipaingot* (given warning) relating to:
 - a. Provide warning in the field of danger of forest damage for humans;
 - b. Provide advice on the benefits of maintaining the condition and preservation of forests and the environment;
 - c. Provide advice on how to prevent actions that may damage the forest;
 - d. Community participation in restoring the condition of forests and damaged environments;
 - e. Legal material on prohibition against forest destruction;
 - f. Give warning about the existence of sanction from deed of forest destruction.

All forms of warning are presented in a meeting of *Dalihan na Tolu* customary assemblies held by *Harajaon* and *Hatobangon*.

- 2) *Didondoni* (Sanctions in the form of fines in accordance with the results of council from the parties of *harajaon*, *hatobangon* and representatives of *Dalihan na Tolu*). This type of sanction is granted to the perpetrators of acts of forest destruction who have already done forest destruction and have been given sanctions in the form *sipaingot*. If a sanction in the form of a *sipaingot* has ever been imposed on a person acting in the act of forest destruction and he repeats his act again, he is given a sanction in the form of *didondoni* (ban). Sanctions of *didondoni* are in several kinds, namely:
 - a. Fines of amount of damage assessed for their actions in forest destruction. This kind of fines are imposed on people who cut down the forest beyond their basic needs;
 - b. Fines as much as 2 (two) times what a person takes, if a person takes wood in the forest beyond his basic needs and does not plant trees in lieu of the trees he has cut down;
 - c. Fines as much as 3 (three) times for people who do logging trees for the purpose to be traded. How much he has sold, the culprit will replace it 3 (three) times of the amount of that already sold.
- 3) Someone's degrees and dignity are degraded. If he used to be a descendant of the king, after doing various actions that cause harm to the community, including the destruction of the forest, so that the environmental dispute arises, then he is no longer considered a descendant of the king again, but is considered as ordinary people. Such sanctions are imposed on someone who has damaged the forest over a third of the forest and is also involved in selling the land around the forest to another party for use as a plantation or other land. Any land in and around the forest should not be traded. This land can only be used for the sake of basic necessities and can not be commercialized or let alone to be traded to individuals or to organizations or companies.
- 4) *Dibondarkon* (Persons who do not comply with the outcome of the decision of the customary assembly are excluded from all activities in indigenous peoples. As if he is considered no longer exists). On the contrary, if he wants to do a

good activity in the form of siriaon (all forms of activities that are happiness and family happiness in the midst of society, such as weddings, promotion, fortune and others) or in the form of silulutons (misfortune), family mourning in the midst of society, such as feast of death, fire, flood and others), People will not care. Usually the person who gets punishment in this type of mambondarkon is not last long, in the end he will apologize to the hatobangon and kings by promising to obey all decisions of the custom assembly in the future. This type of sanction is imposed on people who do forest destruction in the environment of plantations, rice fields, rivers and settlements themselves, so that the surrounding community becomes restless and disturbed due to the person's action in doing forest destruction in their own area. To give a deterrent effect to the perpetrator, then the sanctions are imposed i.e. *dibondarkon*.

- 5) Evicted from *huta* (eviction sanction is to stay out to another village). He can not stay in the village after the eviction decision is dropped, and if he apologizes, then he is given an opportunity to repair himself. In the process of apology, he must invite people to eat in condition that the person slaughter a goat, as an official in which he conveyed his apologies for his mistakes so far. This type of sanction is granted to perpetrators of forest destruction by inviting other parties, or providing facilities to other parties, individuals and organizations for forest destruction in the form of clearing of plantation land or other business land.
- 6) *Disula* (Sentenced to death through a wooden puncture in his stomach and body. Operationalization is an induced act of indigenous criminal actors on sharpened wood that has been planted first. The punishment at this level only applies to the offender of murder, beyond which this type of punishment is not permitted. *Sula* punishment (death penalty) is only committed to the perpetrator of intentional and planned murder, while murder is wrong, not punishable by death. Therefore, Batak custom law is really selective and careful in applying and imposing any kind of punishment, including the death penalty). This type of sanction is imposed on the perpetrators of the destruction of the forest with accompanying murder to the customary authorities *Dalihan na Tolu* who is in charge of overseeing and preventing any who do the destruction of the forest. For perpetrators of forest destruction with murder of indigenous people, will be punished by punishment *disula* (death sentence).

4. Conclusion

Prevention of forest destruction can no longer be based on the prevailing rules of law, but it must also be integrated with existing local wisdom, such as the *Dalihan na Tolu* custom, because by using the *Dalihan na Tolu* custom law, it will be more respected and practiced according to legal ideals (*rechtidea*) and legal feelings (*rechtgevoool*).

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