



## Provisions of criminal offenses committed by children according to Dalihan natolu kinship

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### Abstract

Restorative justice is a concept developed in the juvenile justice system in Indonesia which involves components of the community, victim's families, offender's families, offender, victims, observers of children, social departments, Bapas and other related parties to jointly resolve the criminal acts that occur. This restorative justice is in the Dalihan Natolu kinship. The provision of a criminal offense in the family system of Dalihan Natolu is not explicitly determined in a written regulation, but the provisions exist and live within the community. Customary leaders who know about customary rules that exist in their communities. According to the customary community in the system of Dalihan Natolu kinship, the criminal act that occurs when disturbing the balance in the community, then efforts will be made according to the customary law existing in the community by including all components of the community and groups in the Dalihan Natolu kinship.

**Keywords:** provision, children, Dalihan natolu

### 1. Introduction

Restorative Justice is a concept developed in the juvenile justice system in Indonesia as developed in Law no. 11 of 2012 concerning the Juvenile Justice System. The law takes a restorative justice approach. Restorative justice involves the community component, the victim's family, the offender family, the offender, the victim, the child observer, the social department, the Bapas and other related parties to jointly resolve the crime that occurred <sup>[1]</sup>. Basically the Restorative justice approach is a familial approach with deliberations and consensus that has been known in the lives of indigenous peoples in Indonesia.

Communities in Indonesia, especially in North Sumatra, have resolved criminal acts that have developed in their lives, one of which is the settlement carried out in the Dalihan Natolu kinship system in the Mandailing, Angkola and Sipirok communities. The problem is whether the kinship settlement system is based on the substitute and is the criminal action completion system according to the concept of restorative justice. For this reason, it is necessary to conduct a research on the policy to solve the midwife action according to the concept of the Dalihan Natolu in the customary community kinship system in Mandailing in North Sumatra.

### 2. Research Method

The method of research used is normative legal research and empirical legal research. Normative legal research is a scientific procedure for finding truth based on legal scientific logic from the normative side <sup>[2]</sup>. Normative legal research is research that refers to legal norms contained in legislation. Normative legal research includes research in the form of legal inventory, research in the form of efforts to find the principles of law and the basis of the philosophy (dogma or doctrine) of positive law and research in the form of legal discovery efforts that are appropriate to be applied to resolve a particular legal case. This research includes

normative legal research that is based on the principles of criminal law and synchronization of the rule of law as well as theories and doctrines related to the process of resolving criminal acts against children as perpetrators. Furthermore, empirical research is looking for information data in the field through data collection techniques related to the completion of criminal acts carried out in the Dalihan Natolu kinship system in North Sumatra.

### 3. Child Protection

Society is a group of people who are in a certain environment, who know the conditions and situations inside. Children will develop and adapt to society in their surroundings. The family and community environment and the environment around the child will affect the child's development. Therefore, when children become criminals, they must be saved, because children are assets owned by a nation. Children are a great hope for families and countries to continue the development and progress of the family and nation in the future. Children need protection from the state and society in the long term ahead <sup>[3]</sup>. For children who have committed criminal acts, a criminal justice system strategy is needed that seeks to minimize the intervention of the criminal justice system <sup>[4]</sup>. UU no. 11 of 2012 concerning the juvenile justice system, regulates the concept of diversion and restorative.

This protection is important because there are many factors that cause children involved as delinquency to commit acts that violate the provisions of state law and also the provisions and compliance in society <sup>[5]</sup>. Delinquency is also due to socialization difficulties in the family, economic stress, suffering from physical and sexual deficiencies <sup>[6]</sup>. Society, parents can know early the child is likely to become delinquency of the child's social condition in school, society, behavior of the nature of the arguments, difficult to manage, problems at school, lack of interaction with parents, behavior of truant, lack of discipline, like liquor, the

environment the poor and social problems and broken home<sup>[7]</sup>. This condition requires the community to act and prevent children from developing in the direction of delinquency. Through the kinship system, by Dalihan Natolu kinship in the community can play a role in resolving conflicts that occur not only handed over to the government through the Juvenile Justice System.

Although the existing rules have shown that a fair child criminal justice provides protection for the rights of the child, either as a suspect, defendant, or as a convict / inmate for protection of the rights of the child. [8] Birth of Law No. 11 The year 2012 on the Juvenile Justice System provided emphasis on protection of children in Indonesia with the development of the concept of restorative justice<sup>[9]</sup>. Restorative justice is the solution to criminal cases by involving the perpetrator, the victim's family of other related victim families to jointly seek a just solution by suppressing recovery and not retaliation. The concept of restorative justice requires the role and role of all parties in the efforts of rehabilitation of law-abiding children. The concept of restorative justice is a form of criminal remedial directed towards informal settlement by involving all the parties involved in the related crime, so the solution to the concept of restorative justice can solve crime<sup>[10]</sup>. The concept already exists in Indonesian society with the concept of mediation.

#### 4. The concept of the Dalihan Natolu Kinship

The concept of consensus agreement that exists in the Dalihan Natolu Kinship has a concept value with a restorative justice approach which is also a concept of resolving criminal acts in the community. In the Mandailing, Sipirok and Angkola indigenous communities, there is a kinship system called the Dalihan Natolu which means three cooking furnace elements consisting of mora, kahanggi and anak boru. The three elements contained in Dalihan Natolu that have an element of balance and harmony. These three elements have certain positions and functions in the structure of society. The three components are not permanent, at one time can be kahanggi, at another time as a anak boru or can be as mora.

As for matters discussed at the level of the deliberative institutions include social life and traditional life. The place of deliberation is Sopo Godang, while the traditional level of family consultation involves family members consisting of Mora, Kahanggi, Anak Boru, Hato Bangon and Harajoon. Deliberation conducted to take an agreement is called *domu ni tahi* in the life of the people of South Tapanuli in order with traditional and Islamic values. Custom based on *paho* or *holong* or affection, *uhum* or law and *ugari* or ethics and manners. According to Abas Pulungan, a study stated that in the traditional Mandailing, Sipirok and Angkola communities there are groups of people who have the right to establish custom and there are those who have the right and obligation to regulate it throughout the custom. The groups entitled to establish custom are: *anggi* and *namora-mora*, *anggi ni raja*, *suhu*, *bayo-bayo*, *natoras-natoras* and *halak najaji*. Community groups that are obliged to regulate along the customs are: *kings* and *namora-mora*, *anggi ni raja*, *suhu*, *bayo-bayo*, *natoras-natoras*.

The meeting place for the interests of the people and their

government is Sopo Godang. Every decision resulting from deliberation is considered valid if it has been approved and approved by the king, but the king cannot make a decision without the consent of all the *namora ratoras*. Religion according to the community aims to get the happiness of living in this world and in the hereafter, the happiness of life is obtained by carrying out God's commands and leaving the prohibition while the happiness in the hereafter is to enter heaven. Dalihan Na Tolu as a kinship network that runs on rights and obligations occupies equality between the three elements namely *kahanggi*, *anak boru* and *mora*. These three outer circles support the implementation of *horja*, the middle circle is *horja* which produces the result of cooperation for the three elements<sup>[11]</sup>.

#### 5. Provisions of criminal offenses committed by children according to Dalihan Natolu kinship.

The Batak community is one of the communities that has many uniqueness ranging from language, marriage system, kinship system and philosophy of life which is held in high esteem, namely Dalihan Na Tolu. Batak people have a philosophy of life that is always carried out in every social activity, such as in marital activities, death ceremonies, ceremonies occupying new homes and so on, which is very interesting to study, especially for people outside the Batak ethnicity. In every activity undertaken by the Batak people, they will continue to use the philosophy of life that they have, namely Dalihan Na Tolu. For the Dalihan Na Tolu Batak community is a philosophy of life that will never be left behind at any time.

The highest life philosophy of the Batak people is the Dalihan Natolu philosophy which is also called "*Tungku nan Tiga*" which will then be abbreviated as DNT is an expression that states the unity of family relations among the Batak tribe. In DNT, there are three elements of family relations. The three elements of family relations are *Dongan Sabutuha* (one clan-friends), *Hula-hula* (family from the wife's party), and *Boru* (family from our son-in-law's party). Meanwhile, according to Marbun Dalihan Natolu is the basic of life for the Batak community, consisting of three elements or frameworks that are an inseparable unity namely *Dongan Sabutuha*, *Hula-hula*, and *Boru*. All three move and are interconnected in harmony, balance and firmness by the existence and principles of clans.

The kinship system in the Toba Batak community called Dalihan Natolu. The elements are:

1. Hula-hula (Giver girl),
2. Boru (Girl Recipient), and
3. Dongan Tubu / dongan sabutuha (one clan-Friends)<sup>[12]</sup>.

Dalihan Natolu (DNT) is a philosophical expression of the Batak people related to the kinship relationship of the Batak tribe. The literal meaning of Dalihan Natolu is a three-legged cooking furnace that symbolizes an absolute balance. If one of the cooking furnace legs is damaged, the cooking furnace cannot function properly. Likewise, with the kinship relationship depicted in the philosophical Batak people. This is what was made by the ancestors of the Batak people as a philosophy of living in a kinship order between *mardongan tubu* (brothers), with *hula-hula* (Wife's family), and against *boru* (daughter or sister).

**Table 1:** Criminal Actions That Can be Resolved in the Dalihan Natolu Concept

No	Opinion of Respondents	All Criminal	Acts Certain Crimes	Not Knowing	Not Answering
1	Mandailing Community	90%	10%	-	-
2	Batak people	80 %	10 %	10 %	-
3	Karo people	60%	30 %	10%	-
4	Malay Community	50%	30%	10%	10%
5	General Public	50 %	30%	10%	10%
	Sum	66%	22%	8 %	4%

Based on table 1, shows that almost about 66% stated that all criminal acts can

Be resolved with the Dalihan Natolu kinship system approach.

**Table 2:** Rules concerning Crimes According to the Dalihan Natolu Concept

No	Opinion of Respondents	All Criminal	Acts Certain Crimes	Not Knowing	Not Answering
1	Mandailing Community	90%	10%	-	-
2	Batak people	80 %	10 %	10 %	-
3	Karo people	80%	10 %	10%	-
4	Malay Community	80%	10%	10%	-
5	General Public	80 %	10%	10%	-
	Jumlah	82%	10%	8 %	-

Based on table 2, it shows that the rules of criminal offenses according to the Dalihan Natolu concept 82% stated not recorded. This means that there are provisions in the community, in this case the only people who know the rule of law are the customary leaders and their nature is carried from generation to generation from the chairperson to the next custom leader.

The function of custom as a guideline and relationship, especially in a kinship environment, both as individuals and as groups. Specifically, the Dalihan Natolu serves to:

1. Establish the functional position of individuals and groups in the kinship system.
2. Set the pattern of kinship relationships between individuals with kinship groups.
3. Regulate the rights and obligations of each person in every activity.
4. Become the norm or code of conduct for everyone in the kinship system in everyday life.
5. Become a means for all members to manifest mutual love.
6. Providing a place for community members who feel isolated and isolated, especially in a pluralistic and individualistic city community
7. Provide identity <sup>[13]</sup>.

The core teachings of Dalihan Natolu are moral rules containing the teachings of mutual respect (masipasangapon) with the support of moral rules: mutual respect and help. Dalihan Natolu becomes a media that contains objective legal principles

According to Satochid Kartanegara, Criminal Law is a number of regulations that are part of a positive law that contains restrictions and requirements determined by the state or other authorities that are authorized to determine criminal regulations, prohibitions or compulsory where accompanied by a criminal threat, and if this violation arises from the right of the state to make claims, carry out crimes, and carry out crimes.

Based on the description of the definition of criminal law by the experts above, the writer concludes that the criminal law is a sanction law both material sanctions and formal sanctions.

Some views on customary law, custom in the sense of

courtesy is a behavior which by custom will, has been adopted (received public recognition in the community). In the sense of law is a regulation of human behavior that comes from morality or regulations governing the association of human life which is a precipitate of decency.

Customary in the sense of courtesy or in the legal sense, the maintenance is left to personal freedom given the threat of punishment, including in the form of the family of members of the community concerned. Judging from the description above, the understanding of customary law depends on the conscience of the people (the condition of the indigenous peoples concerned except understanding according to the scholars). The Term of Customary Law Is a translation from the Dutch language "Customary Rechts". This term was first a social control system, which means that the system exists and lives in Indonesian society.

Customary criminal law or criminal law that is not written in Dutch is known as ongeschreven strafrecht. According to Soerojo Wignjodipuro among the fields of customary law, customary criminal law is the field of customary law whose existence is pressured by the existence of colonial law. Some scholars then give an understanding of customary criminal law to be able to provide further understanding, which certainly rests on the characteristics of criminal law in general. Van Vollenhoven interprets customary offenses as unlawful acts <sup>[14]</sup>. Van Vollenhoven's pupil, Ter Haar, then defines an offense as any one-party disturbance of balance and every collision in terms of the material things of life and immateriality of a person or of many people who are one entity (a group), such actions lead to a reaction whose nature and size are determined by customary law is custom reaction (adat reactie), because the reaction is where the balance can and must be restored (mostly by payment of violations in the form of goods or money).

Customary Criminal Law is original Indonesian law that is not written in the form of legislation that contains elements of religion here and there, feared and obeyed by the community continuously, from one generation to the next <sup>[14]</sup>. Whereas the definition of Customary Criminal Law according to Hilman Hadikusumah Customary criminal law is also called Deliken Customary Law (adat delicten recht) or Customary violation law are legal rules governing events or acts of error that result in the disruption of community

balance so that it needs to be resolved (punished) so that the balance of the community is not disturbed <sup>[15]</sup>.

## 6. Conclusion

The terms of a juvenile delinquency the Dalihan Natolu kinship are not strictly specified in a written rule, but they are disseminated in the existing customary conditions and live in the community. Customs leaders know about the rules of custom in their community. According to the customary society in the kinship system that inherits the crime that occurs when it disrupts the equilibrium in society, it will be done to resolve the law according to the common law in that society.

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