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BATAK PEOPLE'S DALIHAN NA TOLU IN THE PERSPECTIVE OF HUMAN RIGHTS

Abstract:

Legal tradition of Indonesia, as a chthonic law of Indonesia, is the original law of people in Indonesia, born from the earth of Indonesia - not from the outside. This legal tradition is known as a customary law which is believed to be a legal system that has a special character that can only be found on the earth of Indonesia. Van Vollen Hoven, in his finding, has divided the customary law of Indonesia into 19 customary law environments (rechtkringen), and one of them is the Batak (Tapanuli) customary law. Batak customary law has a philosophy known as "Dalihan Na Tolu" (three legs of a stove). Dalihan Na Tolu becomes a framework covering the relations of blood relatives and marital relationships that associate one group, and consists of three following things that form the common ground: 1) somba marhula; 2) elek marboru; and 3) manat mardongan tubu. This study examines how Dalihan Na Tolu becomes the right of the people, which is indispensable to human right principles, as recognized, respected and protected by the state. This is evident in the provision of Article 28I Subsection (3) of the 1945 Constitution of the State of the Republic of Indonesia, which states: "the cultural identity and rights of traditional communities are respected in harmony with the development of times and civilizations". Furthermore, emphasized by Article 6 of Law Number 39 of 1999 on Human Rights, it is stated in Subsection (1): "in the context of human rights' enforcement, the differences and needs of indigenous peoples shall be addressed and protected by law, society and government", and in Subsection (2): "the cultural identity of indigenous peoples, including the rights over communal lands, is protected, in harmony with the development of times".

Keywords:

customary law, Batak people, Dalihan Na Tolu, human rights

I. Introduction

Long before the legal tradition entered the Indonesian archipelago, the people living in this archipelago were believed to have a rule of law derived from the legal values of "chthonic". The term "chthonic" here comes from the Greek term "khthôn" or "khthônōnos" which means earth. Terminology "khthôn" or "khthônōnos" means original or first known to exist in a region/country. *Chthonian* or *chthonic* has a meaning: to dwell or exist in the earth.¹ The term *chthonic* is used to refer to the tradition of customary law which is believed to have lived since the beginning of the formation of society in the archipelago cluster in Indonesia. Living in a *chthonic* way means living a close and familiar life with the earth. Describing Indonesian legal tradition as Indonesian *chthonic* law is thus just an attempt to photograph the original law of society in this region as a law born from the Indonesian earth and not the one born outwardly. Therefore, to understand the original law of the Indonesian region is by understanding the internal criteria of indigenous people of Indonesia. The description of Indonesia's *chthonic* legal tradition will therefore be focused on a legal tradition known as customary law, which is believed to be a legal system that has a special character that can only be found on Indonesian earth.

Customary law, essentially, is a reflection of what the society believes as a view of life in accordance with the feelings of justice and propriety.² In its traditional formulation, customary law is generally characterized by its delivery that is not written in the society life. It is through this tradition that the authenticity of custom can be maintained, where in such form the relationship between the past, the present and the future of society can be safeguarded. Thus, since the information communicated in the community is communicated orally, customary law is seldom codified. Even if the codification takes place, it is not a rule but an exception. In some places where we see written customary sources, such as on the island of Bali and Lombok, their main function lies largely in their prescriptive statements. People in those places are usually more dependent on the power of their collective memory and feelings than the written sources of law.

Customary officials, while addressing various issues in society, convey interpretations and translations of the general principles of customary law to provide the detailed norms of each behavior and deeds associated with social interaction. Such terms as 'flexible', 'simple' and 'supple' are therefore the main characters of customary law. This does not mean, however, that the principles of customary law are entirely volatile: the general principles remain stable, for they become the medium which links the "today" society with the teachings and traditions of the ancestors, which contain not only the dimensions of worldly life but also the supernatural elements. The dynamic and flexible character of

¹ ONIONS, Ch. T. (1975). *The Shorter Oxford English Dictionary*. vol. 1. Third Edition, Oxford: Clarendon Press.

² LUKITO, RATNO (2013). *Tradisi Hukum Indonesia*. Cianjur: IMR Press, 2013.

customary law lies more in its detailed dosage, rooted in the ever-evolving experience and necessities of life in line with time shifts. Therefore, the role played by customary officials in providing practical explanations of all customary law principles is important.

II. Batak's Customary Law with Principle of *Dalihan Na Tolu*

Van Vollenhoven has described the indigenous customs of the Indonesian nation as diverse, yet show a regular pattern, distinct from the patterns of western law known to western law scholars. The customary law according to Van Vollenhoven is a whole or positive attitude which on the one hand has sanctions (therefore it is called "law") and on the other hand is in an uncoded state (therefore it is called "custom"). Furthermore, Van Vollenhoven in his findings has divided the customary law of Indonesia into 19 customary law environments (*rechtkringen*) and one of them is the customary law of Batak (Tapanuli).

Batak tribe is known for its uniqueness of customs, where how strong family ties in the Batak tribe is strongly influenced by factors of nature. Natural conditions inhabited by the community encourage them to undergo farming activities, where the production process is done by moving, not settled in one area/region as occurs in the pattern of rice production. The need to move around is more effectively done through a small work unit; and the smallest effective social unit for this kind of productive pattern is the family. This condition is believed to build the bonding power of kinship in Batak society.³ From here also the concept of Batak culture was born, namely "Dalihan Na Tolu". This concept became the basic foundation for the Batak community. Not only in traditional ceremonies, *Dalihan Na Tolu* is also a valid obligation in the daily life of Batak people.

In Batak customary law, the definition of *adat* or custom is essentially the same as the definition of 'law' which is a definite fact in terms of regulating all aspects of the relationship between a person and his relatives and the whole community. In the implementation of the custom itself, it is concerned with and regulating all aspects of the life of the Batak people, from the time when they are still in the womb, born and grow into adulthood, grow old, to the time when they die and after death. One of the rules concerning the life of Batak people is the Law of Kinship (*Adat Partuturon*) which regulates the interconnection between elements of *Dalihan Na Tolu*, namely *Dongan Tubu*, *Boru* and *Hula-hula*.

Batak culture based on *Dalihan Na Tolu* philosophy has built a kinship relationship. The definition of *Dalihan Na Tolu* is "three legs of a stove".

³ SUMARDJO, JAKOB (2007). *Akreologi Budaya Indonesia*. Jakarta: Qalam, 2007.

Figure 1: Three legs of a stove

Source: A book written by B.M. Siahaan entitled "Parrambuan Adat Batak Dalihan Na Tolu" (2009)

The *Dalihan Na Tolu*'s definition of "three legs of a stove" is known as the three functional groups of Batak custom, namely *Dongan Tubu* (friends from the same clan or family name), *Hula-hula* (the group of wive-givers) and *Boru* (the group of wive-takers). *Dalihan Na Tolu* becomes a framework covering blood relatives and marital relationships that link one group and consists of three points of common ground, namely: 1) *somba marhula-hula*; 2) *elek marboru*; and 3) *manat mardongan tubu*.

Dalihan Na Tolu principle gives birth to a way of community in Batak custom which has a role and function that is proportional in every implementation of custom, with understanding as follows:

- 1) *Somba Marhula-hula*, with the understanding of always respect, appreciate, be polite in speaking and submit to the decision taken by *hula-hula*;
- 2) *Elek Marboru*, with the understanding of always be caring, loving, appreciating and taking into account *boru*'s suggestions and opinions in making decisions and able to place the functions and positions of *boru*; and
- 3) *Manat Mardongan Tubu*, with the understanding of always respect each other, esteem each other, be careful in acting and speaking, be wise in giving advice and thought, and always be intimate in the situation of joy and sorrow.

Along with the grouping, the three legs of a stove (*Dalihan Na Tolu*) are used as a symbol, which illustrates the principle of collaboration of the three components of society; and the Batak people are then called *Dalihan Na Tolu* society. *Dalihan Na Tolu* was established on the basis of equality (sitting equally low, standing equally tall), and has responsibility according to the function of each group.

The application of *Dalihan Na Tolu* is still maintained by indigenous people of Batak both who are in the land of ancestors (hometown) and who are in overseas, where the kinship system is still well established. In general, Batak indigenous people when meeting each other will communicate with each other by way of *martarombo*. The term is to determine the kinship or family connection of a person through *Dalihan Na Tolu* system in determining the Law of Kinship (*Adat Partuturon*), namely *Dongan Tubu*, *Boru* and *Hulahula*.

The custom of *Dalihan Na Tolu* in Batak indigenous communities is still carried out in the event of joy and sorrow. The likes of them are known as *Haroan Las Ni Roha*, such as marriage event and *Habot/Arsak ni Roha*, such as funeral event. In addition, *Dalihan Na Tolu* principle is also applied in the settlement of existing cases in society, such as problems related to land, indebtedness, inheritance and even fights and quarrels that occur in the family and so forth.

The philosophy of *Dalihan Na Tolu* (*somba marhula-hula*, *manat mardongan tubu*, *elek marboru*) shows the mutual respect and cooperation in the events of joy and sorrow in indigenous people and solves the problems by deliberation and kinship.

III. Legal Recognition towards The Principle of *Dalihan Na Tolu* as a Customary Law

Customary law is the whole regulation that incarnates in the decisions of legal functionaries who have the authority and influence and in the implementation it is applied spontaneously and obeyed wholeheartedly. Thus customs become customary law if it is already a legal decision, namely the decision taken by customary functionaries, namely customary chiefs and customary judges.

The existence of indigenous people is acknowledged if in fact it fulfills the following elements: (1) the community is still in the form of societal group (*rechtsgemeenschap*); (2) there is an institution in the form of its traditional ruling device; (3) there is a clear customary-law area; (4) there are institutions and legal instruments, especially traditional court which is still adhered to; (5) the community still holds forest product gathering in the surrounding forest area for the fulfillment of daily needs.

Legal recognition of indigenous community includes three things: (1) recognition of existence; (2) recognition of the rights to natural resources; and (3) recognition of customary institutions.⁴ Recognition of customary law recognizes or regulates the

⁴ SIMARMATA, RIKARDO (2006). *Pengakuan Hukum Terhadap Masyarakat Adat Indonesia*. Regional Initiative on Indigenous Peoples' Rights and Development (RIPP). UNDP Regional Centre in Bangkok, 2006.

indigenous people both on the aspects of communal land rights, customary law, local government as well as customs and customary institutions.

The rights to natural resources include communal rights or common property rights and individual rights. Communal rights is placed as one of the collective rights possessed by indigenous and tribal people. This can be seen because: (1) the history of legal recognition of customary law is older than the history of recognition of the right to natural resources; and (2) the recognition of customary law, its existence and rights to natural resources can in fact be mutually assuming. Therefore, the recognition of the existence of indigenous and tribal people is the basis for the implementation of customary law as well as the recognition of their rights.⁵

The regulation on indigenous and tribal people can be seen in the provisions governing the basis of the enforcement of customary law. Judging from the history of the constitution in Indonesia, Article 146 Subsection (1) of the Constitution of Republic of Union of Indonesia and Article 104 Subsection (1) of the Tentative Constitution are the articles that give legitimacy on the law enforcement. The two articles state that all court decisions must contain reasons, and refer to the rules of law and the rules of customary laws as the laws on which people make decisions.

Furthermore, in the 1945 Constitution (Amandment), Article 18B Subsection (2), it is stated: "The State recognizes and respects the unions of indigenous and tribal peoples along with their traditional rights 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, arranged in the law. In its explanation, it is stated that governmental units at the village level such as *Gampong* (in Aceh province), *Nagari* (in West Sumatra province), *Dukuh* (in Java), *Desa* and *Banjar* (in Bali province) as well as various community groups in various regions live based on customary rights such as *ulayat* or communal rights, but on the condition that indigenous and tribal peoples exist and live truly, not involuntarily, not made up. Therefore, in its implementation, the groups should be further regulated in the regional regulations established by the DPRD (Local House of Representatives). In addition, the designation is of course with a limitation, that is, it should not be contrary to the principles of a unitary state. Similarly, Article 28I Subsection (3) mentions: "The cultural identity and rights of traditional society are respected in harmony with the development of the era and civilization".

This shows how the state has recognized and respected the unity of indigenous peoples along with traditional rights as long as it is alive and in accordance with the development

⁵ ABDULRAHMAN (2005). *Kedudukan Hukum Adat Dalam Perundang-Undangan di Indonesia*. Jakarta: Akademika Pressindo, 2005.

of society, or, in other words, the Constitution has basically guaranteed this matter. Thus, the indigenous communities have a constitutional basis to defend their rights as contained in the articles of the Constitution.

In relation to the legal politics of state recognition of communal rights contained in indigenous peoples, the very relevant purpose of the state is to protect the entire Indonesian nation and the entire Indonesian blood sphere. This means that the legal politics of state recognition of the communal rights is to protect indigenous peoples as part of the Indonesian nation. In addition, the recognition of customary rights should not cause separation of the territory of the Unitary State of the Republic of Indonesia, and the legal politics of state recognition of these rights also aims at promoting the welfare of indigenous and tribal peoples.⁶

In the formation of national law, customary law is an important source for obtaining materials of the building of national law towards legal unification which will be done through the legislation, without neglecting the emergence or growing of customary law and courts in legal development. Thus, customary law is placed in an important position in the process of national development, next to the modern law. Customary law and modern law will not be contradictory, where in the development of national law, the following characteristics of modern law should be met (Lawrence M. Friedman): (1) secular and pragmatic; (2) interest-oriented and a conscious effort by human beings; and (3) open and containing elements of deliberate change. Furthermore, Lawrence M. Friedman uses legal culture as a means to characterize modern law. This legal culture is in the form of value and attitude that affect the work of law. Therefore, the important thing is not that the character of modern law is rational, but it is the people who think they should behave accordingly.⁷

In Batak society, *Dalihan Na Tolu* is what binds the kinship system in Batak culture. It is dynamic as well as specific in the implementation of custom. All three parts have an equally important position with their respective functions and roles. Until now the culture is still maintained, both in traditional ceremonies and daily life of the Batak tribe. Each Batak individual must understand the nature of *Dalihan Na Tolu* through the slogans: *somba marhula-hula*, *manat mardongan tubu*, and *elek marboru*. If paraphrased, Batak people must respect *Hula-hula*, keep familiarity with *Dongan Tubu*, and nurture the *Boru*. Just like three legs of a stove. Each of the three has an important role to sustain the cauldron – the container in which food as the basic need of life is processed.

⁶ SUKIRNO (2018). *Politik Hukum Pengakuan Hak Ulayat*. Jakarta: Prenadamedia Group, 2018.

⁷ FREDMANN, W (1996). *Teori & Filsafat Hukum*. Telah Kritis Atas Teori-Teori Hukum (Terjemahan Legal Theory). Jakarta: RajaGrafindo Persada, 1996.

Dalihan Na Tolu is also very instrumental in solving a problem or a crime that occurs, as mandated by the Local Regulation Number 10 of 1990 in particular concerning offences such as adultery, domestic violence, oral insults, defamation or slander, as well as other crimes such as theft and disruption to public security. The sanctions given as punishment to a perpetrator include being expelled from their traditional community, paying the compulsory penalty to the victim, apologizing to a victim or even his/her family before the elders, as well as the obligation to bear all food expenses incurred at the time of the crime is resolved.

Penalties in the form of fines and apologies constitute the best legal judgment in members of indigenous peoples. As a moral and reasoned person, being presented in the midst of society and traditional leaders to accept a punishment for his/her actions is already a very severe punishment for him/her, because he/she must bear the moral burden forever. Implementation of customary law sanctions in the community will bring the impact of prevention of wrongdoing. This is known as a principle in the institutionalization and civilization of customary law, which states "so it is not to be experienced, do not cause others to experience it". The settlement of criminal acts through customary law will provide effectiveness and efficiency in the settlement of conflicts between members of the community to achieve the objective of the law that is order in society, while still bringing good relations and harmony for the parties in conflict.⁸

The settlement through *Dalihan Na Tolu* institution consisting of three elements namely *Hula-hula*, *Dongan Tubu* and *Boru* is conducted by discussion and family relationship. With the principle of *Dalihan Na Tolu* these three elements are actively moving to find a solution when a dispute arises between people, so it can be said that *Dalihan Na Tolu* plays the role as the driving force of alternative dispute resolution in Batak society.

IV. Principle of *Dalihan Na Tolu* of Batak People's in the Perspective of Human Rights

In examining the customary law system, it must be understood that this legal system is completely different from the western legal system and all its follow-up concepts, including the concept of the existence of a State.

Human Rights is a set of rights attached to the nature and existence of human beings as creatures of God Almighty and is a gift that must be respected, upheld and protected by the state, law, government and everyone, for the honor and protection of human status and dignity. It is undeniable that human rights are universal. It is this universality of

⁸ SIAHAAN, RUDY HAPOSAN (2013). *Penyelesaian Tindak Pidana Penganiayaan Dalam Hubungan Keluarga Melalui Hukum Adat Laraga di Kepulauan Nias Sumatera Utara*. Konsorsium Hukum Progresif 2013. Yogyakarta: Thafa Media, 2013

Human Rights that encourages it to enter all layers of life all over the world. The efforts of the international community to establish recognition and respect for human rights reached its culmination on December 10, 1948 with the acceptance and proclamation of Universal Declaration of Human Right. Besides, in order to have legally binding force, the 1948 Universal Declaration of Human Rights provisions were then outlined in two covenants; each of which categorizes rights and freedom in civil and political field (International Covenant on Civil and Political Right) as well as the rights and freedom in the economic, social and cultural field (International Covenant on Economic, Social and Culture Right).

In the 1945 Constitution (Amendment), the provisions and regulations on Human Rights are set out from Article 28A to Article 28J.

Table 1: Materials on Human Rights in 1945 Constitution (Amendment)

No	Article	Human Right Profiles
1	28A	Right to live and life
2	28B Subsection (1)	Right to form a family
3	28B Subsection (2)	Right to live and life
4	28C Subsection (1)	Right to live and life
5	28C Subsection (2)	Right to live and life
6	28D Subsection (1)	Right to fair treatment of law
7	28D Subsection (2)	Right to work
8	28D Subsection (3)	Right to participate in government
9	28D Subsection (4)	Right to citizenship
10	28E Subsection (1)	Right to have a religion
11	28E Subsection (2)	Right to the conviction of conscience
12	28E Subsection (3)	Right to associate
13	28F	Right to communicate
14	28G Subsection (1)	Right to have protection from fear
15	28G Subsection (2)	Right to be free from torture, punishment, or cruel, inhuman treatment
16.	28H Subsection (1)	Right to a decent life
17.	28H Subsection (2)	Right to equality before the law
18.	28H Subsection (3)	Right to social security
19.	28H Subsection (4)	Right to ownership
20.	28I Subsection (1)	Right to live and life
21.	28I Subsection (2)	Right to be free from discrimination
22.	28I Subsection (3)	Right to custom and cultural identity
23.	28I Subsection (4)	Obligation of the State to guarantee the protection, promotion and enforcement of human rights

24.	28I Subsection (5)	Government residues in the form of rules of law
25.	28J Subsection (1)	Obligation of every person to respect human rights
26.	28J Subsection (2)	Obligation of every person to submit to the restrictions established by law.

Source: 1945 Constitution (Amendment)

In the 1945 Constitution (Amendment) there are at least three main provisions that can form the basis for the existence and rights of indigenous and tribal peoples. The three provisions are Article 18B Subsection (2), Article 28I Subsection (3) and Article 32 Subsection (1) and Subsection (2) of the 1945 Constitution.

Table 2: Recognition of Indigenous Communities in 1945 Constitution (Amendment)

Article	Specification
Article 18B Subsection (2)	The State recognizes and respects units of indigenous communities as well as their traditional rights as long as they are still alive and in harmony with the development of society and principle of the Unitary State of the Republic of Indonesia, as governed by law.
Article 28I Subsection (3)	The cultural identity and rights of traditional communities are respected in harmony with the times and civilizations.
Article 32 Subsection (1) and (2)	Subsection (1) The State fosters the national culture of Indonesia in the middle of the civilization of the world by ensuring the freedom of the society in maintaining and developing its cultural values. Subsection (2) The State respects and safeguards local languages as treasures of national culture.

Source: 1945 Constitution (Amendment)

Article 18B Subsection (2) of the 1945 Constitution, as one of the constitutional foundations of indigenous peoples, states a declarative recognition that the State recognizes and respects the existence and rights of indigenous peoples. However, such recognition provides restrictions or requirements for a community to be recognized as an indigenous community. There are four requirements for the existence of indigenous peoples according to Article 18B Subsection (2) of the 1945 Constitution, among others: (a) Still existing; (b) In accordance with the development of society; (c) In accordance with the principle of the Unitary State of Republic of Indonesia; and (d) Regulated by law.

Furthermore, Indonesia also passed Law No. 39 of 1999 on Human Rights. Article 6 affirms:

- 1) In order to enforce human rights, differences and needs of indigenous peoples shall be observed and protected by law, society and the government.
- 2) The cultural identity of indigenous peoples, including the rights to communal lands, is protected, in harmony with the times.

This confirms that customary law which is truly practiced and upheld within the community of indigenous people must be respected and protected in order to protect and enforce human rights in the community by observing laws and regulations. Furthermore, in the context of human rights enforcement, the identity of national culture of indigenous peoples, customary rights still firmly held by indigenous peoples, remain respected and protected as long as they are not contradictory to the principles of state of law having a core of justice and the welfare of the people.

Table 3: Materials on Human Rights in Law No. 39 of 1999

No	Article	Human Right Profiles
1	9	Right to live
2	10	Right to have a family and produce offspring
3	11-16	Right to self-development
4	17-19	Right to justice
5	20-27	Right to personal freedom
6	28-35	Right to security
7	36-42	Right to prosperity
8	43-44	Right to participate in government
9	45-51	Right of women
10	55-56	Right of children

Source: Law No. 39 of 1999

The government, through the Regulation of Minister of Home Affairs No. 52 of 2014 on Guidelines for Recognition and Protection of Indigenous and Tribal Peoples, released a reference for regional heads to provide recognition and protection of indigenous and tribal peoples. The head of the Second-Level Region (Regent/Mayor) may establish Committee of Indigenous People of the regency/city, which is responsible for identifying, verifying and validating the indigenous people. The results of verification and validation are then submitted to the Governor or head of province. The regent/mayor shall establish the recognition and protection of indigenous and tribal peoples based on the recommendation of the Committee of Indigenous People, through the regent's or mayor's decree. Subsequently, the regent/mayor together with Local House of Representatives might issue a Local Regulation concerning the recognition of the customary law. Given the two legal umbrellas, there is no reason for local governments to ignore the recognition and protection of indigenous peoples by arguing that there is no reference. Thus, the

local government can give full attention to the existence of indigenous peoples. Rejecting the existence of indigenous peoples is equivalent to allowing discrimination against indigenous peoples in this country.

If we look at the legal system in Indonesia, then the first and foremost thing is to look into the ins and outs of the Indonesian constitution, in which we find that the customary law is the basic law for the legal system in Indonesia. This is reflected in the 1945 Constitution. The Constitution shows the recognition and use of the term customary law. Indeed, from the formulations contained in it, we can see the noble value and the soul of customary law. The preamble of the 1945 Constitution, which contains the view of life of Pancasila, reflects the personality of the nation, which lives in the values, mindsets and law of the custom. Article 29 Subsection (1) states that the State is based on the belief in one and only God, while Article 33 Subsection (1) states that the economy is structured as a joint effort based on the principle of kinship. At the practical level, based on the 1945 Constitution, the State introduces a right called the Right to Control the State, which is raised from communal rights and mastery rights, which are traditionally recognized in customary law.⁹

In connection with the substance of legislation, there are two things that must be considered by the legislators. First, arrangements that limit human rights can only be made by law and are restricted by provisions of Article 28J Subsection (2) of 1945 Constitution. Therefore, Government Regulations, Presidential Regulations and other lower regulations shall not be able to limit human rights. Second, the substance of legislation should always be in accordance with the provisions of human rights that exist in 1945 Constitution.

Violation of either of these two aspects may be a reason for a person, legal entity or indigenous community to submit a petition for judicial review of the law to the Constitutional Court and if it is contrary to the Constitution, the law or rule may be partly or entirely not binding. Therefore, the mechanism of control over the power of the legislators is done by the people through the Constitutional Court. Such a process makes our Constitution a living, dynamic and practical constitution that guards a democratic nation's journey and respect for human rights. However, the enforcement of human rights will not be realized simply by including it in the constitution. All parties are obliged to implement it in all aspects of life. We are aware that the enforcement of human rights is not like turning a palm of a hand. It must start from the lowest level, which is ourselves.

⁹ MUHTAJ, MAJDA EL (2017). *Hak Asasi Manusia Dalam Konstitusi Indonesia*. Dari UUD 1945 Sampai Dengan Perubahan UUD 1945 Tahun 2002. Jakarta: Kencana, 2017.

Human rights violations are any acts of a person or group of persons including any state apparatus, whether intentionally or unintentionally or negligently, which unlawfully reduce, hinder, limit and/or remove a person's or a group of persons' human rights guaranteed by law, that there will be no fair and just legal settlement under the applicable legal mechanism (Article 1 Number 6 of Law No. 39 of 1999 on Human Rights).

The addition of the formulation of human rights and the guarantee of respect, protection, implementation and promotion for it into the 1945 Indonesian Constitution of Republic of Indonesia is not merely due to the will to accommodate the development of views on human rights which increasingly assumes the importance of human rights as a global issue, but because it is one of the requirements of a State of law. Human rights are often used as an indicator to measure the level of civilization, the level of democracy, and the level of progress of a country. The formulation of human rights that already exists in 1945 Constitution needs to be supplemented by incorporating the views on human rights that have developed to date. The inclusion of human rights formulation into 1945 Constitution of Republic of Indonesia is a major progress in the process of change of Indonesia as well as one of the efforts of the Indonesian nation to make the 1945 Constitution become a more modern and increasingly democratic constitution.

With the formulation of human rights in the 1945 Constitution, human rights of every citizen and people of Indonesia have been constitutionally guaranteed. In this connection, Indonesia considers that human rights should take into account the characteristics of Indonesia, and a human right must also be balanced with duties, so mutual respect for the rights of each party or person can be created.

In examining the customary law system, it must be understood that this legal system is totally different from the western legal system and all its follow-up concepts, including the concept of the existence of the State. *Dalihan Na Tolu*, as part of customary law for the Batak people, seen in the perspective of human rights is placed in the context of respecting and protecting the rights of indigenous peoples, namely the right of a group of people (certain communities) to continue their cultural life. Indeed, human rights are not alien to the Indonesian nation. The struggle to escape from the shackles of foreign invaders for hundreds of years is a struggle for the realization of the right of self-determination as the most basic human rights. Indonesia's commitment to the promotion and protection of human rights throughout the territory of Indonesia stems from Pancasila, particularly the second principle: "just and civilized humanity", and relevant articles of 1945 Constitution formulated prior to the birth of Universal Declaration of Human Rights by the United Nations in 1948, which was subsequently put forth in economic, social and cultural rights and freedoms (International Covenant on Economic, Social and Cultural Rights). Besides, the values of the customs and religions in Indonesia

are also the source of Indonesia's commitment to the promotion and protection of human rights.¹⁰

The rights of indigenous peoples in Indonesia are an integral part of the conception of human rights as recognized, respected and protected by the State in 1945 Constitution and several other laws and regulations, so that the fulfillment of the rights of indigenous peoples should be met by the State, as well as pointed out in the concept of human rights that the State is responsible for the fulfillment of the rights of every individual in its territory.¹¹

The existence of indigenous peoples in Indonesia is recognized, respected, protected, and pursued through a series of laws and regulations in Indonesia. Although in Indonesia there is no special regulation on the rights of indigenous peoples, but in separate legislation it can be assumed that indigenous peoples in Indonesia are known as customary law communities. The existence of indigenous peoples in Indonesia has been mandated by the Indonesian constitution of the 1945 Constitution and the laws and regulations including the Law from the ratification of the International Covenant which regulates the customary law community.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is ratified by General Assembly Resolution or GA Res 2200A (XXI) on December 16, 1966 and enacted on January 3, 1976. Currently, around 168 countries have ratified it. The government of Indonesia ratified it by Law Number 11 of 2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights, signed on October 28, 2005 and it is enacted in the State Gazette of 2005 Number 118. The preamble of this law is exactly the same as the preamble of the ratification of International Covenant on Civil and Political Rights.¹²

In the international community, the rights of indigenous and tribal peoples have also gained recognition. The 2007 United Nations Declaration on Rights of Indigenous Peoples states that the recognition of the rights of indigenous peoples will be useful in promoting harmony and cooperative relations between states and indigenous peoples, based on the principles of justice, democracy, respect for Human Rights, without discrimination and with credibility.

¹⁰ FIRDAUS (2015). *Hak atas Tanah bagi Masyarakat Adat dalam Perspektif Hak Asasi Manusia*. Warta Hak Asasi Manusia Humanais, Vol. 2 Year XI December 2015, ISSN 1412-3916

¹¹ ZEIN, YAHYA AHMAD and NURVIANTI, DEWI (2017). *Konsepsi Masyarakat Hukum Adat Sebagai Hak Asasi Manusia*. Veritas Et Justitias (VeJ) Volume 3 Number 2, 2017. Print ISSN 0852-0089, Online ISSN: 2406-8098.

¹² RIYADI, EKO (2018). *Hukum Hak Asasi Manusia*. Perspektif Internasional, Regional dan Nasional, Depok: Rajawali Pers, 2018.

Thus, when viewed from the perspective of the historical journey of human rights development, both at the international and national levels, the recognition and respect for the rights of indigenous and tribal peoples are getting stronger, formally starting from international conventions, constitution, laws, to local regulations, so up to now, the unity of indigenous peoples is getting stronger and more respected.

V. Conclusion

1. *Dalihan Na Tolu* in Batak society is a law of kinship (custom of *Partuturan*) which is still maintained both in ancestral land (home) and in the overseas, which adheres to the principle of mutual respect, mutual esteem and helping each other in the event of joy and sorrow in society, and settles problems by discussion and kinship.
2. *Dalihan Na Tolu* is a part of customary law recognized as the right of society that is inseparable from the conception of human rights both at international and national level so that the recognition and respect for the rights of indigenous and tribal peoples are getting stronger, formally starting at the level of international convention, constitution, laws to local regulations, so up to now the unity of indigenous peoples is getting stronger and more respected.

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