

The Customary Law Value Approach “*Dalian Na Tolu*” in Achieving Justice in Resolving Medical Disputes in Indonesia

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ABSTRACT

In the current system for resolving medical disputes in Indonesia, there is a distortion of the principles of justice outlined in Pancasila, the philosophical foundation of the nation. One alternative for achieving fair resolution of medical disputes in Indonesia is through the *Dalihan Na Tolu* customary law system, known for its excellence in maintaining family bonds and resolving conflicts. This research method employs a socio-legal approach, including anthropological, legislative, and case-based approaches. The findings of this research indicate that: First, the concept of *Dalihan Na Tolu* for the Tapanuli community can be understood as a legal system, consisting of three elements: *mora*, *kahanggi*, and *anakboru*. Second, several cases of medical dispute resolution in Indonesia, such as the “Case of Dr. G,” “Case of Dr. Ayu and others,” “Case of Dr. Heryani,” and “Case of Dr. Setyaningrum (which led to the establishment of the Indonesian National Health Legal Awareness Day),” show that the Indonesian health legal system is not in line with Indonesian justice values, resulting in ‘defensive medicine.’ Therefore, the justice values of “*Dalihan Natolu*” can be considered an alternative in achieving a fair medical dispute resolution system in Indonesia.

Keywords: Customary Law; *Dalihan Natolu*; Medical Dispute Resolution; Justice.

INTRODUCTION

Medical disputes occur between patients or their families and healthcare professionals or

hospitals. This article focuses on disputes between doctors and patients, usually related to outcomes perceived as neglecting due process. Types of medical disputes involve violations of medical ethics and discipline, patient rights, or public interests. Characteristics of medical disputes include the doctor-patient relationship, negligence/errors, the object of treatment, and the suffering of the patient party. (Sinaga, 2021). Medical actions by doctors or dentists in practice sometimes trigger medical disputes with various contested aspects, such as violations of medical ethics, medical discipline, and patient rights. As a result, doctors and dentists must be accountable for their actions ethically, disciplinarily, and legally (in civil, criminal, and administrative law). Medical disputes can harm public trust in the medical profession, especially if there are failures in healing efforts or if actions are deemed excessive. Medical risks and negligence can also arise, and doctors need to provide information to patients and their families about these potential risks before undertaking medical procedures. (Zaluchu & Syaharudin, 2022).

In Decision Number 381/Pid.B/2014/PN.Tk, a patient was found abandoned in Tanjung Karang and was taken to the hospital by residents. Despite the critical and unconscious condition, the doctor and nurse at the hospital decided to discard the patient into a rice field after concluding that he was

a disturbing psychiatric patient. They neglected the critical health condition of the patient, and after being discarded, the patient passed away.(Andrianto & Achmad, 2019). In malpractice cases in Indonesia that have been adjudicated by the court, it is observed that the judges do not explicitly adhere to a specific theory. For instance, in the case of Dr. Setianingrum, the legal considerations from the District Court of Pati Number 8/1980/Pid/PN.Pt, upheld by the Semarang High Court, stated that “because criminal law is not an exact mathematical science, even without a post-mortem examination, the facts are sufficient to indicate that Rusmini death was caused by the inadequacy of the medicine she received.” Therefore, Rusmini death was a result of the inadequacy of the streptomycin medicine she received, and the injection was considered the direct cause of her death.(Setiyanta, 2023). In another case, there was an incident of administering empty vaccines that occurred in Medan in the year 2022. A doctor was charged in the decision of the Medan District Court Number 1285/Pid.Sus/2022/PN Mdn for administering empty or insufficient vaccine doses to two children at a school on

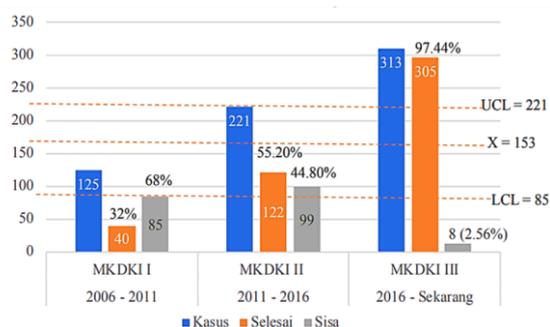
January 17, 2022. Video recordings and laboratory examination results indicated the negligence. The charges were based on Article 14 paragraph (2) of Law Number 4 of 1984 concerning Infectious Diseases with a maximum penalty of 1 year imprisonment and/or a fine of IDR 1,000,000. Furthermore, regarding administrative complaints at the Indonesian Medical Council, as stated by SG Wibisono, between 2006 and 2012, there were 182 proven cases of malpractice or medical negligence involving doctors throughout Indonesia. Data from the Indonesian Medical Disciplinary Board shows that the number of complaints against medical professionals from 2006 to early June 2016 reached 362. These complaints involved various specializations, such as internal medicine, ophthalmology, anesthesia, neurology, dermatology, pulmonary, cardiology, orthopedics, mental health, forensic, oral surgery, and others. Nevertheless, news about violations of medical discipline still frequently appears in the mass media, both in print and electronic formats.(Balubun et al., 2018).

Table. Complaint Cases at the Indonesian Medical Ethics Honor Council (MKDKI) Period I to III (2006 to March 2, 2022)

| Year | 2006-2011 | 2011-2016 | 2016-present |
|------------|---|--|---|
| Period | Indonesian Medical Ethics Honor Council (I) | Indonesian Medical Ethics Honor Council (II) | Indonesian Medical Ethics Honor Council (III) |
| Case | 125 | 221 | 313 |
| Completed | 40 | 122 | 304 |
| Percentage | 32% | 55.2% | 97.44% |
| Remainder | 85 | 99 | 8 |
| Percentage | 68% | 44.8% | 2.56% |

Source: Indonesian Medical Ethics Honor Council (MKDKI), 2022.

Graph of Indonesian Medical Council (MKDKI) Performance Comparison from 2006 to 2022



Source: Indonesian Medical Ethics Honor Council (MKDKI), 2022.

Based on the above data, it is known that there are many cases of both criminal and civil medical disputes that proceed through legal channels (litigation) as well as administrative complaint cases at the Indonesian Medical Council (MKDKI). This data implies the ineffectiveness of the legal framework for resolving medical disputes in Indonesia. Therefore, in this research, the resolution of medical disputes is based on the living law concept within society, namely the *Dalihan Na Tolu* legal concept.

METHOD

This research uses a qualitative approach with data analysis derived from legal materials, including concepts, theories, legislation, doctrines, legal principles, expert opinions, and researchers' perspectives. The type of research used is normative juridical research, focusing on legal norms in legislation and societal norms. Data collection is conducted through secondary data, especially primary legal materials such as the 1945 Constitution and Law Number 17 of 2023 concerning Health, secondary legal materials such as related literature books, and tertiary legal materials such as the Indonesian Dictionary. The integration of these three types of legal materials provides a solid foundation for analyzing medical offenses based on Law Number 17 of 2023 concerning Health, using a holistic approach that covers constitutional law aspects, sectoral laws, and specialized terminology understanding.

RESULT AND DISCUSSION

The Concept of *Dalihan Na Tolu* Law

The Angkola-Mandailing ethnic group was initially dispersed in South Tapanuli Regency, North Sumatra. This regency, with its initial capital in Padang Sidempuan, underwent administrative divisions resulting in the formation of Mandailing Natal Regency, Padang Sidempuan City, North Padang Lawas Regency, and Padang Lawas Regency. The capital was later relocated to the Sipirok district. The population of South Tapanuli reached 314,887 people in 2021. (Badan Pusat Statistik Kabupaten Tapanuli Selatan, 2021).

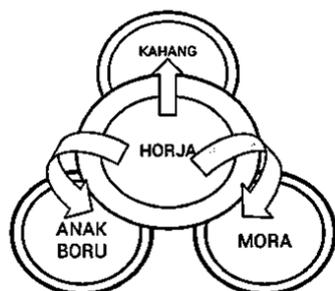
In the traditional life of the Mandailing and Angkola communities, interpersonal relationships are based on the *Dalihan Na Tolu* kinship system. This system refers to three parallel and balanced hearths, namely *kahanggi* (**Kahanggi in the *Dalihan Na Tolu* system is a kinship term for a male cousin or a male member within the same clan**), *anak boru* (**Anak boru in the *Dalihan Na Tolu* system is a kinship term for a female cousin or a female member within**

the same clan), and *mora* (**Mora in the *Dalihan Na Tolu* system, specifically, refers to kinship within the family, particularly the wife's or mother's family. In a broader sense, *mora* denotes a person respected due to their position or status**). Kinship relations begin here and continue to evolve through descent and marriage, forming both vertical and horizontal networks. This kinship system is a distinctive feature of certain ethnic groups and communities. Within the *Dalihan Na Tolu* kinship structure, there are similarities and differences in how respect is given, equality is maintained, and positions are determined. Although individual positions have formal existence, they are dynamic. An individual can move from one position to another, for example, from a higher position to *kahanggi* or *anak boru* at different times. The distinct positions of the three components of *Dalihan Na Tolu* are clearly evident in *Horja* (**event or activity in the context of Angkola or Batak community**) involving family members during events such as *siriaon* (**the event experienced by an individual or family in the form of joy (happiness), such as the birth of a child, marriage, and entering a new house**) and *siluluton* (**the event experienced by an individual in the form of sadness (condolences), such as death**). (Pulungan, 2018).

The kinship network is reflected in the discourse between individuals. This type of discourse serves as a connector that strengthens kinship bonds. According to Basyral Hamidy Harahap, the Angkola-Mandailing people have 53 types of discourse that contain the meaning of *holong* (mutual affection) from the perspectives of *kahanggi*, *anak boru*, and *mora*. However, the high values embedded in this discourse are not always applied in everyday life due to the influence of social changes. (Pulungan, 2018). Involvement in various activities, such as *Horja* events, serves as a platform for cultural value education through kinship. *Horja* events are an educational process that teaches about the rights and obligations as family members in all aspects of life.

Dalihan Na Tolu, as a kinship network, teaches equality among its three main elements: *kahanggi*, *anak boru*, and *mora*. *Horja*, as the central collaboration of these three elements, is applied within the matrix of the kinship system.

Diagram: *Dalihan Na Tolu* Kinship System



Source: Pulungan, A. (2018). *Dalihan Na Tolu: peran dalam proses interaksi antara nilai-nilai adat dengan Islam pada masyarakat Mandailing dan Angkola Tapanuli Selatan*. Perdana Publishing.

Harmony in the relationships among the elements of *Dalihan Na Tolu* is based on a balance of rights and obligations. Three essential pieces of advice held firmly by the Batak people to maintain this harmony are: *Manat markahanggi*, *Elek maranak boru*, and *Somba Marmora*. (Harahap, 1994) *Dalian Na Tolu*, as a kinship system, governs legal relationships in the Mandailing-Angkola community, considering everyone as part of the same family. Therefore, disputes within this community are regarded as family disputes that must be resolved through the familial *Dalihan Na Tolu* system to preserve the integrity of family ties and settle conflicts.

In the legal context, *Dalihan Na Tolu* is a deliberative institution that plays a dominant role in resolving disputes within the community. Consisting of *mora*, *kahanggi*, and *anak boru*, *Dalihan Na Tolu* serves as the supreme council for dispute resolution, and its presence is generally acknowledged by the disputing parties to restore balance within the community. (Tambun, 2009). In traditional customary societies, the roles of customary leaders alongside *Dalihan Na Tolu* play a crucial role in decision-making.

In the traditional hierarchy of Mandailing, there are several levels of Raja (Kings) with positions determined by agreements, such as *Raja Panusunan*, *Raja Ihutan*, *Raja Pamusuk*, *Raja Sioban Ripe*, and *Namora Natoras*. The Raja is not an absolute ruler but rather a respected elder. *Namora Natoras* consists of individuals who lead the royal lineage and are appointed as representatives of their relatives. (Pulungan, 2018).

Governance in each village (*huta*) in Mandailing is not authoritarian, as decisions and policies of the king must be consulted with the figures of *Namora Natoras*. Decisions are made through customary deliberations at *Sopo Godang*, symbolizing the manifestation of a democratic governance system. *Sopo Godang*, without walls, reflects the freedom of the community to listen and participate in customary deliberations and governance conducted by the king alongside *Namora Natoras*. Every village with royal status is required to have *Sopo Godang* as a place for deliberations for the benefit of the community and its governance. In traditional governance, a king can be deposed if proven to violate customs through deliberations by *Namora Natoras*. *Namora Natoras* plays a role similar to a legislative institution in modern systems. The selection of a king in Mandailing uses a direct election system by the village residents, not inherited through generations but taken from the closest relatives. This system was altered by the colonial government of the Netherlands, which interfered in the selection of village heads. This process underwent developments during the historical periods in Indonesia. (Pulungan, 2018).

Resolution of Medical Disputes based on the Values of *Dalihan Na Tolu* Justice

The customary law approach of “*Dalihan Na Tolu*” offers a concept of justice in resolving medical disputes in Indonesia. *Dalihan Na Tolu*, consisting of *mora*, *kahanggi*, and *anak boru*, plays a key role in determining the rights and obligations of community members. The application of these customary

values can create a balance between rights and obligations in resolving medical disputes. This system also involves deliberations and consultations among community members, reflecting a democratic and participatory approach in achieving justice. In the medical context, the application of *Dalihan Na Tolu* values can provide a foundation for fair and balanced dispute resolution, considering ethical aspects, patient interests, and the sustainability of kinship relationships.

The resolution of medical disputes based on Article 304 of Law Number 17 of 2023 concerning Health regulates legal actions against Medical or Healthcare Professionals suspected of violating health service implementation. The process begins by seeking recommendations from the council, following the principles of *Dalihan Na Tolu* Justice Values. This council plays a central role in providing views and assessments of the alleged violations. Through a careful deliberative process, the council will formulate recommendations that include appropriate actions, such as internal sanctions or procedural improvements. These recommendations not only serve as ethical guidelines but can also be a basis for consideration in further legal processes. Therefore, the implementation of recommendations becomes a crucial step, where authorities can take concrete measures to ensure justice and enhance the quality of healthcare services, in line with the principles of local wisdom highly esteemed in *Dalihan Na Tolu* Justice Values.

Based on the dispute resolution approach outlined in Article 304 of Law Number 17 of 2023, it prioritizes a mediation approach. Mediation, as one form of Alternative Dispute Resolution (ADR), is a dispute resolution method that can be conducted both outside and inside the court. (Nasution et al., 2021). The affirmation of the Alternative Dispute Resolution (ADR) system is further emphasized in Article 310 of Law Number 17 of 2023 concerning Health. Article 310 of Law Number 17 of 2023 serves as a reflection of the implementation of *Dalihan*

Na Tolu Justice Values in the resolution of medical disputes, especially those related to errors that may cause harm to patients committed by Medical or Healthcare Professionals. The main principle reflected in this article is the emphasis on alternative dispute resolution outside the court, in line with the spirit of kinship and togetherness in the local Batak culture.

In this resolution process, the continuity of local traditions serves as a foundation, where justice, deliberation, and togetherness become the main pillars. Alternative mechanisms involving deliberations and the involvement of relevant parties, such as patients, medical professionals, and healthcare professionals, provide an opportunity to reach mutual agreements. Prioritizing the improvement of relationships between individuals and groups becomes the goal, creating a harmonious atmosphere and supporting the spirit of kinship reflected in the *Dalihan Na Tolu* Justice Values.

The Alternative Dispute Resolution (ADR) approach to resolving medical disputes aims to achieve restorative justice. As Marshall explains, the focus of Restorative Justice (RJ) is on the “process,” encompassing various restorative processes such as mediation and conferences between victims and offenders. However, Dignan's criticism highlights the lack of attention to “outcomes” in this definition. Dignan emphasizes that RJ should not only focus on the process but also on outcomes, especially because RJ processes often result in negotiations that may be only symbolic or reparative in a limited sense. (Rahmawati et al., 2022).

In the Muslim Batak community in South Tapanuli, *marpokat* (deliberation) is the primary approach for resolving disputes, and this process is divided into several levels based on the status of the individuals involved. The first level, *Tahi Ungut-ungut* or family deliberation, involves parents depending on the nature of the dispute. If a resolution is not reached, the second level, *Tahi Dalihan Na Tolu* or *Martahi Sabagas*, engages *Mora*, *Kahanggi*, and *Anak boru* in the deliberation. These deliberations

generally succeed in resolving disputes amicably. The next level is *Tahi Godang Parsahutaon*, a large-scale deliberation within a village, involving not only the disputing parties but also representatives of *Dalihan Na Tolu* groups, as well as traditional leaders and community figures. Finally, *Tahi Godang Haruaya Mardomu Bulung* is a large-scale deliberation between villages or *Luat* (administrative divisions) that share direct borders, involving various

parties, including customary leaders and community figures. With an organized structure, *marpokat* serves as an effective means to achieve fair dispute resolution while embracing the traditional values of the Batak community. (SADAT & HASIBUAN, 2016). Based on the above, we can further explore the relevance of resolving medical disputes based on the traditional justice values of *Dalihan Na Tolu*, as follows:

Concept of Resolving Medical Disputes based on *Dalihan Na Tolu* Tradition

| <i>Dalihan Na Tolu</i> Concept | Medical Dispute Resolution |
|--|--|
| <i>Tahi Ungut-Ungut</i> | Resolution of disputes is done in a familial manner among the parties involved in medical disputes. |
| <i>Tahi Dalihan Na Tolu</i> | The resolution of disputes between the parties involves traditional components such as <i>Dalihan Na Tolu</i> , <i>mora</i> , <i>kahanggi</i> , and <i>anak boru</i> . In the context of medical disputes, it can be paralleled with the first-level Professional Organization, Ethics and Medical Committees, as well as Hospital Leadership. |
| <i>Tahi Godang Parsahutaon</i> (Grand deliberation in a village) | Resolution involving the first and second-level Professional Organizations, Ethical and Medical Committees, and Hospital Leaders. |
| <i>Tahi Godang Haruaya Mardomu Bulung</i> (Grand assembly between villages or <i>Luat</i> that are directly adjacent). | In this level, the assembly is attended by the disputing parties, representatives from the first and second-level Professional Organizations, the Ethics and Medical Committee, as well as the Hospital Leadership, and the Medical Council. |

Source: Processed by the author.

Based on the dispute resolution scheme in the *Dalihan Na Tolu* customary system, relying on mediation through the court is unsatisfactory for the losing party for several reasons. First, the judge acting as a mediator is unknown to the disputing parties, resulting in a lack of sympathy and trust. Second, the mediator involved comes from outside the *Dalihan Na Tolu* customary community, without involving representatives from the customary community, making the resulting decision deemed unfair. Third, there is no sense of responsibility from the customary community, including *Harajaon*, customary leaders, and *Hatobangon*, to oversee and monitor the implementation of the decision in the midst of the community. In contrast, the decision results from the customary assembly involving the participation of the entire community, and if not implemented, the community in general will reprimand and punish those who do not abide by the decision. Fourth, the court's decision tends to create new animosity for the losing party, triggering the emergence of new disputes that

can be inherited by relatives and future generations. (SADAT & HASIBUAN, 2016). Based on the aforementioned, the dispute resolution in the *Dalihan Na Tolu* system can be concluded that each individual within the *Dalihan Na Tolu* structure has a sense of mutual responsibility in resolving an issue, as an individual's problem is a problem for the entire *Dalihan Na Tolu* community. Therefore, in the medical dispute resolution system, the first thing that needs to be developed is a sense of unified responsibility in disputes that arise, starting from the hospital level, professional organizations, and up to the council level. The connection of the *Dalihan Na Tolu* system in medical dispute resolution can be further explored through the philosophical foundation of the Hippocratic Oath in the medical profession. This oath encompasses ethical principles, including the duty to do good, not cause harm to patients, behave virtuously, respect life from conception, avoid greed, be aware of one's limitations, and maintain patient confidentiality. (Darwin, 2015).

The essence of the medical profession lies in dedication to humanity with strong moral values. Principles such as honesty, justice, empathy, sincerity, and concern for others serve as the foundation. A doctor should not be selfish but must prioritize the interests of others and assist in healing the sick. It is crucial for doctors to possess a high and balanced Intellectual Quotient (IQ), Emotional Quotient (EQ), and Spiritual Quotient (SQ). The *Dalihan Na Tolu* principles, emphasizing the fulfillment of the needs of all parties, can maintain balance in the kinship system and resolve potential conflicts. By ensuring the needs of all parties are met, this principle is expected to create justice and legal certainty in the medical dispute resolution system.

CONCLUSION

In the *Dalihan Na Tolu* structure, respect and positions are dynamic. Values of justice and legal certainty are implemented in medical dispute resolution, in line with the spirit of local kinship. The essence of the medical profession emphasizes dedication to humanity with principles of honesty, justice, and concern for others. The *Dalihan Na Tolu* principles, focusing on meeting the needs of all parties, are relevant in maintaining balance and resolving conflicts. Unified responsibility, from hospitals to councils, is crucial in medical dispute resolution, creating a fair and effective framework.

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