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## South Batak Tradition for the Settlement of Environmental Disputes: A *Tumbaga Holing Letter Model*

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### Abstract

In recent years, there has been a lot of environmental destruction caused by human activities, such as: dumping garbage into rivers, lakes, seas, public roads and others. A series of environmental crimes arise because less firm of existing legal regulation on environmental protection. To seek the new model of environmental protection, an empirical research method with a normative juridical approach and a socio-legal approach were applied. The results of the study show that the South Batak community, based on intangible heritage, has a convention to protect nature and people from disaster and Sociological it was already applied for the environmental disputes resolution; it is through convention of South Batak of *Tumbaga Holing Letter of Dalihan na Tolu* (a tree parted system in community meeting). South Batak community practices a manifestation of the implementation of justice against the perpetrators of acts of environmental destruction with 7 (seven) types of sactions. The seventh sactions range from the low to hard punishments. It is a traditional model that can be adopted into the modenr regulation, public policy or laws for environmental protection. It found that the South Batak Community model in prevention of environment desctruction has a lot of elements of the judiciary that could be adopted and implemented for public policy and law making in national and international levels.

**Keywords:** environmental protection; *Surat Tumbaga Holing*; community of Batak.

**JEL Classification:** Q56; N85.

### Introduction

The current environmental damage (Akib 2016) has reached a very alarming stage, the rate of environmental damage is far greater than the efforts made to restore it (Ruknizar 2017). Data from the Ministry of Environment and Forestry, Indonesia produced up to 65 million tons of waste in 2016, and increased to 67 tons in 2017, around 2.5 million hectares of coral reefs, only 6.39% are in very good condition, 23.40% in good condition, 35.06% insufficient condition and 35.15% in poor condition (Badan Pusat Statistik. 2020. *Environment Statistics of Indonesia 2019*). Then there were forest fires covering an area of 3,403,000 hectares (ha) between 2015 and

2018 in Indonesia; and others (Greenpeace Indonesia. 2020. *Tantangan Kita Bersama di Tahun 2020*). The series of crimes against environmental destruction (The Article 1 paragraph 16) Law Number 32 of 2009) (Law Number 32 of 2009 on Protection and Management of the Environment) above occur because apart from being less firm, fair and the benefits of existing legal regulatory materials regarding the settlement of environmental disputes, and they are also caused by the lack of empowerment of indigenous peoples' potential in the field of environmental dispute resolution, both formally and non-formally.

It noted that cultural tradition in Sumatera Island of Indonesia has practiced the nature protection for sustainability (Matondang 2021) and upheld the social sanctions to the perpetrators. Such local wisdom is also found in the Ethnic Batak Community. It is very valuable for natural and environment protection to conduct some studies to dig up the intangible heritage of ethnic groups. Research on local tradition of social practices is needed to revive the ethnic groups conventions that yield the new regional planning and government public policy (Lubis, MS, Munawir, Z & Matondang, SA. 2021). Based on the needs of local wisdom as new knowledge to modern public policy and law of environmental issues, this study upholds the South Batak Community's Model to protect the environment and adopts it to create a new regulation.

### 1. Literature Review

Article 18B and Article 32 of the 1945 Constitution have ordered that all levels of society, including indigenous peoples, should be empowered in resolving environmental disputes. Then Article 70 paragraph (1) of Law Number 32 of 2009 (Law Number 32 of 2009 on Protection and Management of the Environment) concerning Environmental Protection and Management states that the community has the same and widest possible rights and opportunities to play an active role in the settlement of environmental disputes. Article 2 paragraph (9) of Law Number 32 of 2004 (Law Number 32 of 2004 tentang Pemerintahan Daerah) concerning Regional Government explicitly states that the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and under community development and the principles of the unitary state of the Republic of Indonesia.

Lestari (2013) contends that the customary system in Indonesia in resolving a case which often upholds deliberation and consensus through the traditional forum institutions of each region in Indonesia. The existence of this customary court has reduced the accumulation of court cases and can help residents access the protection of their rights (Amalia, Mukhlis 2018). Customary law is a people's legal system which is essentially an instrument of social control that empirically grows and develops in society, so that deliberation, consensus, harmony, appropriateness and harmony are a reflection of the values of local wisdom possessed by the Papuan indigenous peoples which are used as the principle in every activity dispute resolution (Hamid 2016).

Thus, Jones (2020) argues that religious and community leaders are often sanctioned the practice of community-led dispute resolution, grounded in Islamic principles of mediation and arbitration, to settle disputes without recourse to government courts, which is based on the principles of Islamic mediation and arbitration, to resolve disputes without the assistance of government courts). Additionally, Tarabeih *et al.* (2012) think that the *sulha* process is examined in terms of the modifications that would be necessary to adapt the process to create a new tool, labelled 'environmental sulha', for managing and resolving environmental conflicts needed to adapt the process to create a new tool, labelled 'sulha environment', to manage and resolve environmental conflicts).

Resmini and Sakban (2018) argued that the tradition of dispute resolution in customary law communities is based on the philosophical values of togetherness (communal), sacrifice, supernatural values, and justice. In customary law communities, common interests are a philosophy of life that permeates every member of the indigenous peoples. The implementation of the results of mediation that has been sacred in front of traditional leaders, especially if it has been carried out with a traditional ceremony (ritual), then the agreement must be carried out immediately if one of the parties denies or is not willing to carry out the results of the mediation, then that party will receive customary sanctions from the community customary law. Therefore, Nurdin (2018) believes that the implementation of customary courts that resolve disputes by custom through deliberation and mediation is part of the practice of the noble values of the Indonesian nation, as stated in the fourth article of Pancasila, democracy is led by wisdom in deliberation/representation. Syah (2019) argued that mediation in the settlement of environmental disputes should be aimed at legal protection of environmental functions based on the principle of sustainable development that development is not only to meet the needs of the present but also to meet the needs of future generations.

Nationally, forms of local wisdom need serious attention from the central government in strengthening environmental law and law enforcement. Law no. 32 of 2009 concerning Environmental Protection and Management has included the notion of local wisdom (Siombo 2011).

Based on some of the research results stated above, it shows that indigenous peoples with their local wisdom can be used as an alternative to resolving environmental disputes. There are so many tribes and indigenous peoples scattered throughout Indonesia, it turns out that there are indigenous peoples who have their traditional models or values in resolving environmental disputes through the the Batak tradition which is called *Tumbaga Holing Letter*. According to the rules contained in it, there are three elements in the Batak indigenous people who have the main task of resolving environmental disputes, namely: Mora (all families from the in-laws' side), Kahanggi (all families who have blood relations from the father's side) and Anak Boru (all families from the son-in-law's side).

This scientific article focuses on 2 (two) main areas of discussion, namely the model for resolving environmental disputes through the Tumbaga Holing letter and types of environmental destruction crimes and the forms of sanctions according to the *Tumbaga Holing letter*. Based on the above background, several formulations of the problems answered through this research can be drawn:

1. The model for resolving environmental disputes through the Batak tradition of *Tumbaga Holing letter* for the Batak community in South Tapanuli.

2. The types of crimes against environmental destruction and the forms of sanctions according to the *Tumbaga Holing letter*.

## 2. Research Method

Two approaches were applied in study the local wisdom of South Batak Community's Model for environment protections and conflict resolutions to destruction issue; they are a normative legal research method (Wijayanti and Achmad 2011) and an anthropological approach which studies the human behavior in their society (Matondang, Rahma, Hramain and Syahlan 2019). Thus, in implementation, there would be a socio-juridical approach in a society whose legal aspects appear (Arfa 2010). This study also used an inventory and analysis of all instruments of the provisions of laws and regulations related to research studies (Harahap 2019).

## 3. Environmental Destruction Dispute Settlement Model According to Tumbaga Holing's Letter Institution

Even though the regulation of the Batak tradition of *Tumbaga Holing letter* is a customary rule that is highly respected by indigenous peoples, there are still some people who dare to violate the rules (Daulay 2016). If there is a violation of customary law, the dispute resolution is carried out by following the following 3 (three) stages: The first stage of dispute resolution on environmental damage is carried out in convention of *Dalihan na Tolu*, namely a deliberation aimed at resolving disputes over environmental destruction which was attended by: 1. The perpetrators of acts of environmental destruction, 2. Pisang Raut (his son-in-law), 3. Representatives from Mora's side (family from in-laws), Anak Boru (family from son-in-law) and Kahanggi (family from the same lineage). The representatives from the Mora, Anak Boru and Kahanggi parties are as described in the following table:

Tabel 1. Parties representing Mora, Anak Boru and Kahanggi in the Tahi Dalihan na Tolu event According to the Tumbaga Holing Letter Institution

<i>Mora Side</i>	<i>Anak Boru Side</i>	<i>Kahanggi Side</i>
<i>Tulang</i> (Wife's Father)	Amang Boru (husband's father)	<i>Aya</i> (father)
<i>Tulang</i> (Wife's Daddy's Sister/brother)	Amang Boru (Husband's father's sister/brother)	<i>Uda</i> (Father's Brother)
<i>Ompung Halaklai</i> (Grandfather)	<i>Ompung Halaklai</i> (Grandfather)	<i>Ompung Halaklai</i> (Grandfather)
<i>Tunggane</i> (Wife's Brother or Sister)	Lae (Husband's brother or sister)	<i>Abang</i> (Brother or Sister)

Source: Result of interview with Mr. Mara Doli Parsahatan (Titled: Sutan Daulat Nalobi) as a South Tapanuli Traditional Leader, 13 May 2020.

The representatives of the Batak Angkola community above carry out deliberation to resolve disputes over environmental destruction. The deliberation at this level is led by the Mora party with the members of the deliberations being Anak Boru and Kahanggi. The Anak Boru party, apart from being a member of the deliberation, is also a facilitator in the implementation of the deliberation.

The materials that were asked to the perpetrators of environmental destruction in the deliberation to resolve disputes over environmental destruction at the first level were: 1) the identity of the perpetrators of environmental destruction, 2) the background of the acts of environmental destruction, 3) the purpose of carrying out acts of environmental destruction. 4) the parties who assist in environmental destruction, provide funds, provide facilities and infrastructure, 5) the number of crimes against environmental destruction that have been

committed, 6) the time spent in carrying out acts of environmental destruction, and 7) the number of personnel employed used to commit acts of environmental destruction (Fidelia and Salsabila 2020).

The implementation of deliberation in resolving acts of environmental destruction in the Angkola Batak community practices a manifestation of the implementation of justice against the perpetrators of acts of environmental destruction. It noted that all of elements of the judiciary are present in every implementation of the *Tahi Dalihan na Tolu* deliberation. Mora's side is the presiding judge, Anak Boru and Kahanggi are the member judges, Anak Boru's side is also the public prosecutor, while Pisang Raut is the defender. More details can be seen in the following table:

Table 2. The parties in charge of the settlement of environmental disputes according to the Tumbaga Holing letter.

Chief Judge	Member Judge	Prosecutor/Defender
Mora (family-in-law)	Anak Boru (daughter-in-law's family) Kahanggi (biological family or the same descendant)	Pisangraut (son-in-law's family)

Source: Result of interview with Mr. Mara Doli Parsahatan (Titled: Sutan Daulat Nalobi) as a South Tapanuli Traditional Leader, 13 May 2020.

The presiding judge from Mora's side here is from the in-laws of both parties to the dispute, likewise the member judges and prosecutors, all of whom come from the families of the sons-in-law of the disputing parties. So the number of presiding judges can be more than 1 (one) person because there must be representatives of the in-laws of both parties in the litigation. The differences in the requirements of judges in the religious courts and the tribunal courts according to the Tumbaga Holing letter are:

Table 3. Requirements for judges in religious courts, district courts and tribunals of Batak customs

Requirements for Judges in Religious Courts	Terms of Judge in District Court	Requirements for Judges of the Batak Customary Council Court According to the Tumbaga Holing Letter Institution
Indonesian citizens	Indonesian citizens	A representative from Mora's side (family-in-law)
Muslim	Fear God Almighty	Included in the ranks of the harajaon (descendants of the king)
Fear God Almighty	Loyal to Pancasila and the 1945 Constitution of the Republic of Indonesia	included in the ranks of Hatobangon (traditional leaders)
Loyal to Pancasila and the 1945 Constitution of the Republic of Indonesia	Bachelor of Law	Included in the ranks of Bona Bulu (the family of the village's founder)
Shari'ah degree and/or law degree mastering Islamic law	Graduated judge education	Understanding the rules of the Tumbaga Holing letter
Physically and mentally healthy	Able spiritually and physically carry out duties and obligations	Preferably older age
Authoritative, honest, fair, and with impeccable behaviour	Authoritative, honest, fair, and with impeccable behaviour	Halaklai (male)
Not a former member of the banned Indonesian Communist Party including its mass organizations, or not a person directly involved in the 30 September Movement/Indonesian Communist Party.	The minimum age is 25 (twenty-five) years and the maximum is 40 (forty) years	
	Never been sentenced to prison for committing a crime based on a court decision that has obtained permanent legal force	

Source: Article 13 of Law no. 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, article 14 paragraph (1) of Law no. 49 of 2009 concerning the Second Amendment to Law no. 2 of 1986 concerning the General Court and the Supreme Court and the Tumbaga Holing Letter Institution.



The table data above shows that the basic difference between the requirements for judges in the religious courts and the district courts is that judges in both courts must be graduates and may not try people who are related by kinship with them. Meanwhile, according to the customary council court, it is recommended that judges come from the family of the disputing party because it will cause shame and embarrassment for the disputing parties because the judges come from their own families who have been respected and respected so far. It is different from the requirements for judges in religious courts and district courts where every judge hearing a dispute is required to be a judge who has no family relationship with the disputing parties.

The second stage of dispute resolution on environmental destruction is carried out in Tahi Parsahutaon, namely a deliberation aimed at resolving disputes on environmental destruction which was attended by: 1. The perpetrators of environmental destruction, 2. Pisang Raut (his son-in-law), 3. Representatives from Mora (family from the in-laws), Anak Boru (family from the son-in-law) and Kahanggi (family from the same lineage), 4. Harajaon (descendants of the King), and 4. Hatobangon (people who are elders in custom. This meeting was held if the deliberation in the first level has not been completed. The material that was asked to the perpetrators of acts of environmental destruction at the second level was the same as the material asked at the first level. It's just that the question is more in-depth and focused so that the dispute can be resolved properly, fairly, wisely and wisely (Natsir and Rachmad 2018).

The third stage of the settlement of environmental destruction disputes is carried out in the *Haruaya Mardomu Bulung* meeting, namely a discussion aimed at resolving disputes on environmental destruction which was attended by: 1. The perpetrators of environmental destruction, 2. Pisang Raut (his son-in-law), 3. Representatives from the Mora side (family from the in-laws), Anak Boru (family from the son-in-law) and the Kahanggi (family from the same lineage), 4. Harajaon (descendants of the King), and Hatobangon (the elders in custom) and 5. Raja Torbing Balok (King of the village directly adjacent to the village of the disputing parties). This deliberation is held if the deliberations in the second level have not been completed (Ridho 2017).

That deliberation was led by Harajanon together with King Torbing Balok with members of the deliberation being Pisang Raut, representatives of the indigenous peoples of Dalihan na Tolu and Harajaon and Hatobangon. The Anak Boru party remains as a facilitator in the implementation of the deliberation because the Anak Boru party in adat is the party that has the main task in the success of all traditional activities, both Siriaon traditional activities (traditional activities that are joyful) and Siluluton traditional activities (mourning traditional activities). It found that the Surat Tumbaga Holing Model has the 7 (seven) types of punishment to the persons who were caught destructed the nature and environment. Meanwhile, the system and procedure for deliberation in the settlement of disputes over environmental destruction according to the Tumbaga Holing letter can be seen in the Table 4.

The procedure for implementing deliberation in the settlement of disputes over environmental destruction through the Tumbaga Holing letter is more in demand by indigenous peoples since ancient times until now. This condition occurs due to the following reasons: 1) It brings more justice, benefit and legal certainty, 2) The implementation of the results of the decision is supervised by the entire community simultaneously, 3) Following the traditions and customs of the ancestors.

Settlement of environmental disputes through mediation from the point of view of local wisdom in Indonesia is still relevant and creates peace and prosperity between the parties concerned because it produces a win-win solution without any loss to the parties as was done in court. However, they must maintain and manage the environment properly and under the laws and regulations (Dien 2006).

The model for resolving environmental disputes through the Tumbaga Holing letter is a model for resolving environmental disputes with a normative approach based on indigenous peoples. So that the settlement of environmental disputes can run well, effectively, efficiently and take root in the community. Meanwhile, the environmental dispute resolution model according to Law No. 32 of 2009 emphasizes a normative approach based on law enforcement officers. A more complete explanation can be seen in Table 5.

The table data shows that the environmental dispute resolution model, the type of sanctions, the decision-makers and supervisors of the environmental case decisions regulated in the Tumbaga Holing letter are different from those regulated in Law No. 32 of 2009 concerning Environmental Protection and Management. The basic difference lies in the model for resolving environmental disputes and the types of sanctions imposed on perpetrators of environmental crimes. According to the letter of Tumbaga Holing, the environmental dispute resolution model is more focused on empowering indigenous peoples together. Indigenous peoples are responsible for their respective environments. Meanwhile, the environmental dispute resolution model according to Law No. 32 of 2009, is focused on the approach of law enforcement officers.

Table 4. Systems and Procedures for Implementation of Deliberations in the Settlement of Environmental Destruction Disputes according to the Tumbaga Holing Letter Institution

Rules for the Protection and Prevention of Environmental Destruction	Environmental Destroyer	Deliberation Procedure in Settlement of Environmental Destruction Disputes	The party that decides the Environmental Destruction Dispute	The Person Who Appoints the Disputing Party for Environmental Destruction
Tumbaga Holing Letter Order	Environmental destruction by Anak Boru's family (son-in-law's family)	Tahi Dalihan na Tolu (consultation attended by the in-laws, daughter-in-law and blood relatives/clan)	Mora is the chairman. Son of Boru, and Kahanggi as members.	Harajaon (descendants of the king) and Hatobangon (traditional figures)
	Environmental destruction by the Mora family (family-in-law)	Tahi Dalihan na Tolu (consultation attended by the in-laws, daughter-in-law and blood relatives/clan)	Harajaon (descendants of the king) and Hatobangon (traditional leaders) are the heads. Son of Boru and Kahanggi as members.	Harajaon (descendants of the king) and Hatobangon (traditional figures)
	Environmental destruction by the Kahanggi family (blood relatives)	Tahi Dalihan na Tolu (consultation attended by the in-laws, daughter-in-law and blood relatives/clan)	Harajaon (descendants of the king) and Hatobangon (traditional leaders) are the heads. Son of Boru and Kahanggi as members.	Harajaon (descendants of the king) and Hatobangon (traditional figures)
	If the dispute has not been resolved on the 1st, 2nd and 3rd models	Tahi Parsahutaon (deliberations attended by elements of Dalihan na Tolu, traditional leaders in a village)	Harajaon (descendants of the king) and Hatobangon (traditional leaders) are the heads. Son of Boru and Kahanggi as members.	<i>Harajaon and Hatobangon</i>
	If the dispute is not resolved on the 3rd model	Tahi Haruaya, Mardomu Bulung (consultation attended by elements of Dalihan na Tolu, the king of a neighbouring village)	Harajaon and Raja Torbing Balok (king of a neighbouring village) as chairman. Son of Boru and Kahanggi as members.	<i>Harajaon and Hatobangon</i>

Source: Results of FGD with South Tapanuli traditional leaders 09 June 2020.

Table 5. Environmental dispute settlement models according to the Tumbaga Holing letter and Law No. 32 of 2009 concerning Environmental Protection and Management.

Types of Environmental Protection Rules	Environmental Protection Model	Environmental Destruction Settlement Process	Type of Sanction	Breaking Party	Supervisor	Court Place
1. Tumbaga Holing Letter Order	1. Environmental Protection Through Patik; 2. Environmental Protection Through Dalihan na Tolu's Indigenous Philosophy 3. Environmental Protection Through Clans	Environmental dispute resolution process through Martahi (Deliberation system): 1. Tahi Dalihan na Tolu (consultation	1. Dipaingot (oral and written warning) 2. Donated (fine) 3. Sappal Dila (inviting people from the village to eat) 4. Dibondarkon (not involved in all traditional activities)	1. Mora (family from the in-law's side) 2. Son of Boru (family from the son-in-law's side) 3. Kahanggi (blood or family) 4. Harajaon	The indigenous people of Dalihan na Tolu	1. Sopo Godang (custom home) 2. Bagasni Harajaon (royal house)

Types of Environmental Protection Rules	Environmental Protection Model	Environmental Destruction Settlement Process	Type of Sanction	Breaking Party	Supervisor	Court Place
		<p>attended by envoys from the in-laws' family, the daughter-in-law's family and blood relatives;</p> <p>2. Tahi Parsahutaon (deliberations attended by envoys from the in-laws' family, the daughter-in-law's family, blood relatives and village traditional leaders;</p> <p>3. Tahi Haruaya Mardomu Bulung (consultation attended by envoys from the in-laws' family, daughter-in-law's family, blood relatives, village traditional leaders and inter-village traditional leaders).</p>	<p>5. Dipaorot sian Huta (expelled from the village)</p> <p>6. Highlighted by the clan (excluded from the clan)</p> <p>7. Dipaulak Salipi Natartar (returning customary land)</p>	<p>(descendants of the king)</p> <p>5. Hatobangon (traditional figure)</p>		
2.Law No. 32 of 2009 concerning Environmental Protection and Management	<p>a. Planning (Articles 4&amp;5);</p> <p>b. Utilization (Articles 4&amp;12);</p> <p>c. Control (Articles 4&amp;13)</p> <p>d. Maintenance (Articles 4&amp;57)</p> <p>e. Countermeasures (Article 53);</p> <p>f. Recovery (Article 54);</p> <p>g. Prohibition (Article 69);</p> <p>h. Supervision</p>	<p>1. The process of resolving environmental disputes through the District Court;</p> <p>2. The process of resolving environmental disputes through arbitration at the discretion of the District</p>	<p>1.Administrative Sanctions (Articles 76&amp;100)</p> <p>2. Written warning, government coercion,</p> <p>3. Freezing of environmental permits; or revocation of environmental permit</p> <p>4.Compensation (Articles 85, 86);</p> <p>5. Environmental</p>	<p>1. Judge</p> <p>2. mediator and/or arbitrator (Article 85)</p>	<p>1. Police</p> <p>2.Prosecutor</p> <p>3.Correctional officers</p>	<p>1. Court (Article 84);</p> <p>2. Out of court (Article 84)</p>

Types of Environmental Protection Rules	Environmental Protection Model	Environmental Destruction Settlement Process	Type of Sanction	Breaking Party	Supervisor	Court Place
	(Article 71); i. Law Enforcement (Article 4).	Court.	Recovery Article 86; 6. Fines (Article 98); 7. Prison (Article 100); 8. Deprivation of profits (Article 119); 9. Closure of all or part of the place of business and/or activity (Article 119); 10.Improvements (Article 119); 11. do what is neglected without rights (Article 119); 12.Placing the company under custody (Article 119).			

Source: Primary data obtained from all research samples, traditional leaders and community leaders in all research locations.

Meanwhile, the types of sanctions imposed on perpetrators of environmental crimes according to the Tumbaga Holing letter system are 7 (seven) types of sanctions, all of which emphasize moral sanctions that have a deterrent effect, not only on the perpetrators but also on the families of the perpetrators. Meanwhile, the sanctions imposed on perpetrators of environmental crimes as regulated in Law No. 32 of 2009 are carried out with a retaliation theory approach.

According to Islamic Law, Natsir and Rachmad (2018) argue that the Qanun for Environmental Management in Aceh is an implementing of Islamic principles and local wisdom, but the substance of the PLH Qanun (Environmental regulation) has not made local wisdom part of the regulation of the Qanun. Local wisdom that is very important to be included in the regulation of the PLH Qanun is diyat or dheit and sayam, a settlement technique using suloh by the Aceh customary court and ending with the traditional *peusujuk* and *peumat jaro* events.

Customary law is a people's legal system which is essentially an instrument of social control that empirically grows and develops in society, so that deliberation, consensus, harmony, appropriateness and harmony are a reflection of the values of local wisdom possessed by the Papuan indigenous peoples which are used as the principle in every activity. dispute resolution. The legal spirit of this principle is believed to be able to restore balance in society due to disputes, so that the spirit of good faith, fairness, and wisdom is the spirit for customary justice institutions in deciding disputes. The existence of customary courts not only eases the burden of court duties and reduces the accumulation of cases, but also helps citizens to access the protection of their rights.

Reconstruction of mediation for the settlement of environmental disputes based on the values of justice of Pancasila, namely the principle of ultimum remedium in environmental law enforcement is replaced with the principle of primum remedium so that the means of criminal law can be immediately used to resolve cases of environmental pollution and/or destruction, and for the restoration and improvement of environmental functions. Life can be carried out immediately, and the formulation of Article 85 paragraph (2) of Law Number 32 of 2009 is changed to Settlement of cases outside the court applies to civil cases and environmental criminal cases as regulated in this law. To provide a legal basis, it is necessary to reconstruct the laws and regulations relating to penal mediation as an alternative to resolving criminal cases outside the court in general, and environmental

crime cases in particular. Mediation in the settlement of environmental disputes must be aimed at efforts to protect the law on environmental functions based on the principle of sustainable development that development is not only to meet the needs of the present but also to meet the needs of future generations.

Meanwhile, dispute resolution in Islam is carried out by way of *Islah (resolution)*. Ridho argues that *Islah* is an alternative institution for conflict resolution that is effective and efficient to reconcile the parties, both between individuals, families and communities before being decided by the judiciary. *Islah* in addition to maintaining the confidentiality of the privacy of the disputing parties also benefits both parties (win-win solution). *Islah* which is used as a prerequisite for repentance, if it is related to the rights of others, then that right must first be resolved, while if it is related to the rights of Allah, the taklif of it will be released. The term *Islah* in the Qur'an includes three problems, namely family, social and environmental problems. So it would be very good if this method was attempted to be re-institutionalized for a more wise and wise dispute resolution for the benefit of mankind (Pratama 2015).

The *Islah* is an alternative institution for conflict resolution that is effective and efficient to reconcile the parties both between individuals, families and communities before being decided by the judiciary. *Islah* in addition to maintaining the confidentiality of the privacy of the disputing parties also benefits both parties (win-win solution) (Sari 2016). Dien argues that Islam provides a paradigm solution for many forms of environmental degradation, including that of water distribution. The Quran and the Hadiths guide the faithful on the relationship between (God) Allah Al Mighty, humanity and nature (Zhang 2017).

#### 4. Types of Crimes of Environmental Destruction and Forms of Sanctions

According to the Batak tradition of *Tumbaga Holing Letter*, several types of crimes against environmental destruction and the forms of sanctions are as described in the following table:

Table 6. Types of Crimes of Environmental Destruction and Forms of Sanctions According to the Tumbaga Holing Letter Institution

Types of crimes against environmental destruction according to the letter of Tumbaga Holing	7 Types of Sanctions for Perpetrators of Environmental Destruction						
	Dipaingot (Giving a warning)	Didondoni (Pay the Lost)	Sappal Dila (Obligation to sacrifice an animal)	Dibondark on (Exiled from Society)	Dipaorot sian Huta (Expelled)	Dipaorot sian Marga (Dismissed from the clan member)	Dipaulak Salipi Natartar (Return the land rights)
<i>Mangambukkon roppak tu Batang aek</i> (throw garbage into the river)	X	X					
<i>Mangarasuni tanoman</i> (poison the plants)		X					
<i>Manuba ihan di aek</i> (poisoning fish in rivers, waterways, ponds and brackish)	X	X					
<i>Manyaburkon minyak di aek dohot di tano</i> (spilling oil (cooking oil, gasoline, oil) in the water and on the ground)	X						
<i>Manaba hayu di topi ni aek</i> (felling trees by the river)		X	x				
<i>Manaba hayu giot digadis</i> (cut down trees to trade)				X			

Types of crimes against environmental destruction according to the letter of Tumbaga Holing	7 Types of Sanctions for Perpetrators of Environmental Destruction						
	Dipaingot (Giving a warning)	Didondoni (Pay the Lost)	Sappal Dila (Obligation to sacrifice an animal)	Dibondark on (Exiled from Society)	Dipaorot sian Huta (Expelled)	Dipaorot sian Marga (Dismissed from the clan member)	Dipaulak Salipi Natartar (Return the land rights)
<i>Manaba haruaya parsilaungan</i> (cut the banyan tree, because it serves as a shelter from the hot sun and rain)	X						
<i>Manaba hayu naso margatti</i> (Cutting down trees, without any replacement)					X		X
<i>Mangarimba kobun dohot saba di harangan ni gunung dohot tor</i> (open gardens and rice fields by cutting down forests around mountains and hills)			X				
<i>Mangarabi harangan ni saba, kobun dohot huta</i> (cutting down forests around rice fields, gardens and villages)					X	X	X

Source: Result of interview with Mara Doli Parsahatan Titles Sutan Daulat Nalobi as South Tapanuli Traditional Leader, 13 May 2020.

The table data above shows that the Tumbaga Holing letter has various forms of sanctions imposed on perpetrators of crimes of environmental destruction. All types of sanctions above are moral sanctions that have a deterrent effect on the perpetrators so that indigenous peoples try to avoid various types of crimes of environmental destruction. The types of sanctions above are much more severe for the Batak indigenous people than the sanctions regulated in Indonesian law. Some of the sanctions referred to are as follows:

**Dipaingot sanction** (*Verbal warning*). This type of sanction is given to perpetrators of crimes for the first time and the consequences of their crimes have not interfered with the wider public interest and have not yet entered the category of disturbing people's lives.

**Didondoni sanction** (*Pay the lost*). This type of sanction is given to perpetrators who have done environmental destruction and who have been given sanctions in the form of Dipaingot. There are several types of Didondoni sanctions, namely: 1) Fines in the amount of the estimated loss from their actions in destroying the environment. This kind of fine is imposed on people who cut down trees beyond their basic needs, 2) Fines in the form of 2 (two) times what they take, on people who throw garbage into the river, poison plants and catch fish by poisoning them, 3) Fines in the form of 3 (three times) for people who throw wood or plastic waste into rivers, poison plants that can cause the death of livestock, catch fish by poisoning them and cut down trees intending to be traded.

**The Sappal Dila** (*Obligation to sacrifice an animal*) sanction is a sanction in the form of a person's obligation to slaughter a goat or buffalo or cow, then the meat is cooked and invites people from the village to eat together with the intention that those who receive the sanction apologize in front of the people present. This kind

of sanction is a fairly heavy sanction because apart from spending money to buy consumption, he is also required to apologize publicly in front of the whole community.

**Dibondarkon sanctions** (*Exiled from society*) are in the form of not involving someone in all types of customary activities. Such sanctions are very severe sanctions, because of their existence, they are considered to no longer exist. A person who has received a Dibondarkon sanction is not allowed to participate in all traditional activities, both Siriaon (joy) and traditional activities in the form of Siluluto (grief). Usually, people who receive this type of sanctions, will not last long.

**The Dipaorot Sian Huta sanction** (*Expelled*) is in the form of expulsion of a person from one village to go to another village. This sanction is given to people who cut wood without planting replacement seeds. This kind of sanction is a very heavy sanction because they are forced to leave the village where they were born. This sanction can be revoked if, within 3 years, he has not committed any acts of forest destruction or has not committed any other crime.

**Sanctions Dipaorot Sian Marga** (*Dismissed from the clan member*) is a sanction in the form of ex-communication of a person from his clan. Such sanctions are very severe sanctions because they are forced not to use the clan they are proud of. This sanction was imposed to make the perpetrators feel ashamed of the removal of the clan that had been their pride all this time. The removal of a clan is the same as removing a person from his family tree. Therefore, this form of sanctions is very severe for the Batak indigenous people. It's even tougher than being imprisoned.

**Dipaulak Salipi Natartar Sanction** (*Return the land rights*) is in the form of requiring someone to return the land that has been given to him by the king. Such a sanction is a very severe one because he must return the land, he has used so far to earn a living.

All forms of sanctions mentioned above are forms of moral sanctions, which are not only felt by the perpetrators, but also by their families. Meanwhile, the types of criminal sanctions are regulated in Law Number 32 of 2009, namely administrative sanctions, written warnings, freezing of environmental permits, compensation, environmental restoration, fines, imprisonment, confiscation of profits, closure of all or part of business premises. Doing what is neglected without rights and put the company under the care. Therefore, the community prefers to submit cases of environmental crimes to the Dalihan na Tolu Customary Council, because the majority of cases submitted can be resolved properly, wisely, fairly and wisely. A more complete explanation can be seen in the following table:

Table 7. Several environmental crime cases were sanctioned by the Customary Council and District Courts at the research sites in 2019-2020

Research sites	Year							
	2019				2020			
	Courthouse				Courthouse			
	Traditional Assembly <i>Dalihan na Tolu</i>		District Court		Traditional Assembly <i>Dalihan na Tolu</i>		District Court	
Number of Environmental Crime Cases	Number of Cases Decided	Number of Environmental Crime Cases	Number of Cases Decided	Number of Environmental Crime Cases	Number of Cases Decided	Number of Environmental Crime Cases	Number of Cases Decided	
Mandailing Natal District	4	3	8	3	2	2	10	6
South Tapanuli District	3	2	11	5	6	5	7	2
North Padang Lawas District	2	2	7	4	1	1	13	7
North Tapanuli District	3	3	5	2	4	4	15	9
Samosir District	2	1	9	5	3	2	8	4
Pakpak Dairi District	1	1	5	1	1	2	5	3
Karo District	3	2	6	3	3	3	9	6
<b>Total</b>	<b>18 (100%)</b>	<b>14</b>	<b>51 (100%)</b>	<b>23</b>	<b>20 (100%)</b>	<b>19</b>	<b>67 (100%)</b>	<b>37</b>

Source: Primary data obtained from the Dalihan na Tolu customary assembly and the District Court in each research location.

The table data above shows that the number of environmental crime cases submitted to the Dalihan na Tolu Customary Council in 2019 was 18 cases and 14 cases have been decided, which is 77.8%. Meanwhile, the number of environmental crime cases submitted to the District Court in 2019 was 51 cases and 23 cases have been decided, which is 45.9%. This data shows that the number of cases decided in the Dalihan na Tolu customary council is more than the number of cases decided in the District Court. This kind of condition occurs due to the following factors: 1. The high level of public trust in the judiciary in the Dalihan na Tolu Customary Council, 2. The party deciding the case is a person who is respected and respected in adat, 3. The community as a whole is responsible for monitoring the results decisions issued by the Dalihan na Tolu Customary Council, 4. The results of the decisions made by the Dalihan na Tolu Customary Council are considered to bring more justice, benefit and legal certainty in society.

It reported that the application of the law regarding criminal acts of environmental pollution is generally contained in-laws (Gladun and Zakharova 2020) and regulations relating to environmental protection and management. Specifically, the criminal provisions regarding environmental pollution are contained in chapter XV regarding the criminal provisions of Law no. 32 of 2009. Regarding criminal sanctions for criminal acts of environmental pollution contained in Article 97 to Article 120 of Law no. 32 of 2009. With the provision of criminal provisions in the law, it can be ascertained that the actions of legal subjects, both individuals and business entities, are criminal acts. Thus, it stated that environmental offences are qualified in material offences and formal offences (Tarlock 1994). The formulation of this material offence is contained in Articles 98, 99 and 112. Meanwhile, the formulation of a formal offence is contained in Articles 100-111, 113-115. The sanctions for material offences in Articles 98 and 99 are as follows: minimum imprisonment of 1 year and maximum imprisonment of 15 years. As for the minimum fine of ID.1 billion and a maximum of Rp.15 billion. Article 112 is sentenced to a maximum imprisonment of 1 year and a fine of ID. 500 million. The sanction for formal offences Article 100-111 is imprisonment for a minimum of 1 year and a maximum of 15 years. Meanwhile, the minimum fine is ID.1 billion and the maximum is ID.15 billion. Formal offence sanction Article 113-115 imprisonment for a minimum of 1 year and a maximum of 1 year, while a minimum fine of ID. 500 million and a maximum of ID. 1 billion.

Several countries have made efforts to protect the environment through legal approaches. Lihong Zhang (2017) stated that today, under the influence of European experiences, China is carrying out a huge number of legal measures to realize the systematic coordination between environmental protection and energy application.

Several countries in the world have used customary law in protecting the environment. Gladun & Zakharova (2020) argue that Russian environmental legislation is not effective for transitioning toward sustainable development. The main obstacle is ignoring traditional environmental values, which are not properly incorporated into laws and regulations. However, rich Russian traditions and culture imply a big potential to develop environmental legislation under sustainable principles.

The local government as the residence of the majority of indigenous peoples has a very important role in protecting the environment. Experts argue that local governments have been regulated to a minor role in the formulation and implementation of pollution control policy (Fitriah 2017). In contrast, local governments have a major role to play in biodiversity protection. Therefore, it believes that the legal politics of laws related to the environment in Indonesia have undergone two periods, namely, the New Order period with the enactment of Law no. 4/1982 and Law no. 23/1997, which applies authoritarian politics with an orthodox legal character, and the reformation order with the enactment of Law no. 32/2009, which applies democratic politics with a responsive legal character. The enactment of Law no. 32/2009 which has a responsive legal character with a democratic government regime can be a gateway to Indonesia towards a 'democracy (environment-based state) with community participation and not the centralized authority on the central government as well as the principle of a sustainable environment.

Nationally, forms of local wisdom need serious attention from the central government in strengthening environmental law and law enforcement. Law no. 32 of 2009 concerning Environmental Protection and Management has included the notion of local wisdom. Humans are part of the environment. Humans are based on inherited unwritten norms in regulating their behaviour to manage the environment.

After further analysis, it turns out that the sanctions regulated in the Dalihan na Tolu custom are much more severe than the sanctions for forest destruction regulated in the prevailing laws and regulations. Therefore, the existence of indigenous peoples and their local wisdom is indispensable in protecting the environment in the future, so that cases of environmental destruction in Indonesia can be prevented, at least the number of cases can be reduced. It reported that the results of the comparison of the criteria for pollution and environmental damage, the version of Law no. 23 of 1999 with Law no. 32 of 2009 resulted in a difference in determining a



criminal act. The version of Law No. 23 of 1999, criminal acts of pollution and environmental destruction are included in the category of material offences so that in the process of proving it, two things are required: it is proven that the act was carried out by an actor who is capable of being responsible and it must also be proven that the act caused consequences that are prohibited by law. While the version of Law no. 32 of 2009, criminal acts of pollution and environmental destruction are included in the category of formal offences so that only a prohibited act is required to be proven.

Allah strictly forbids destroying this earth, both land and sea, because the impact of exploiting nature without maintaining the existing ecosystem can not only cause disasters that are detrimental to humans, but the impact of this damage will have an impact on the environment (Shihab 2002).

### Conclusions

Data interpretation gives two conclusions:

(1) South Batak community has a model for the environmental disputes resolution; it is through convention of South Batak of *Tumbaga Holing Letter of Dalihan na Tolu* (a tree parted system in community meeting). This model has 7 (seven) types of sanctions which range from the low to high punishments.

(2) South Batak community practices a manifestation of the implementation of justice against the perpetrators of acts of environmental destruction. This is because all elements of the judiciary are present in every implementation of the convention of *Dalihan na Tolu*.

### Suggestion

It is hoped that the government together with the Regional House of Representatives of North Sumatra Province will immediately adopt local wisdom material or South Batak customary law material in the field of environmental protection so that the material is obeyed and practised amid the community because the material comes from legal ideals and community's sense of law.

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