



Bajo Fishing Tradition: Implications and Conformity with UNCLOS in the Context of Protecting Traditional Fishermen's Rights

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Abstract: This research explores the dynamics of interaction between the traditional fishing practices of the Bajo tribe in Indonesia and international regulations covered by the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The Bajo tribe, known for their maritime life and sustainable approach to fishing, facing new challenges in the era of globalization and environmental change. Although UNCLOS aims to regulate the use of the sea and its natural resources globally, the absence of a clear definition of traditional fishing rights causes uncertainty in Bajo practices. This research uses normative juridical methods to examine how the Bajo tribe adapts to UNCLOS provisions while maintaining their fishing traditions. The research results show that the Bajo tribe has attempted to adopt new practices such as mariculture to overcome restrictions posed by modern regulations. However, the shift away from traditional methods sometimes leads to environmentally damaging practices. This study suggests the need for a more inclusive legal framework that integrates local wisdom in international regulations, to recognize and protect the traditional rights of the Bajo tribe, thereby enabling them to maintain their way of life without threatening the marine ecosystem. This research provides insight for policy makers and stakeholders in navigating between cultural preservation and environmental sustainability in a global context.

Keywords: Bajo Tribe, Traditional Fishing, UNCLOS, Law of the Sea

1. Introduction

Indonesia is a very rich country and is the largest archipelagic country in the world with biotic and abiotic diversity. The economic, social and cultural activities of people living in coastal and coastal areas on some islands cannot be separated from the sea. Coastal and coastal areas are one of the areas where people from various tribes live and do business who rely heavily on marine products and open natural resources, such as the Bajo tribe. The Bajo tribe or also commonly called "Bajau" is a tribe that is very familiar with marine life and wanders in the ocean. As sailors, the Bajo tribe is descended from a group of nomadic sailors who were then called boat people. In the beginning, the Bajo tribe lived on the beach around land where coconuts, bananas, pineapples, breadfruit, etc. grew. Pressure exerted by their landlords eventually forced them to leave and live permanently in roofed boats (floating houses). The Bajo tribe has long occupied the sea, coast and islands, and it even seems that they are unable to carry out their activities on land compared to other tribes. The Bajo tribe in Gorontalo is located in Popayato District, Pohuwato Regency, which is a seven hour drive west from Gorontalo City spread across three village areas, namely Torosiaje Village, Torosiaje Jaya Village and Bumi Bahari Village.

There is a fishing tradition that they usually do, which causes them to travel long distances, this tradition is Bapongka. Bapongka or also called Babangi is spending the night at sea for 3 days to a month. Pongka is sailing to earn a living or marine products to another area or province, for several weeks/months. Catching bapongka marine products is a typical fishing activity of the Bajo or Bajau people in the Togean Islands which has been carried out for a long time. They go to a place outside their village to look for ma-

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rine products for days to weeks in groups. Each group consists of three to five boats, each boat has one person. The formation of small bapongka groups is more often done based on close relationships. Usually this small group will meet with other small groups at a fishing location and eventually form a large group whose number can reach 15 or even 20 boats. The Bajo tribe in Bapongka activities usually catch fish, shrimp, lola, or crabs, sea cucumbers.

Adaptation to environmental changes causes the Bajo tribe to tend to depend on natural resources. The Bajo tribe still uses traditional methods that are environmentally friendly and proven to be able to meet their daily needs. They still appreciate various instructions from their ancestors. While the Bapongka tradition process is ongoing, they must also respect and protect the natural surroundings. Bajo tribe sailors strongly believe in the existence of ancestors in every part of the ocean, and if they do not follow existing traditions or behave carelessly, their ancestors could cause danger or disaster for fishermen.

However, the Bajo tribe is not anti-new things. Currently, they are not only completely dependent on fishing, but some of them already have a livelihood on land, or have a permanent place in the sea to obtain resources. This paradigm change was caused by interactions with the various types of ethnicities he encountered. The positive thing that can now be seen is that the Bajo Tribe now not only catches fish, but has started cultivating it, this has a positive impact on the sustainability of the Bajo Tribe's life. However, the negative thing is that as time goes by, the Bapongka owned by the Bajo tribe has experienced erosion because this practice is rarely carried out, although it is still carried out in different ways due to developments over time, namely social changes in society and technological advances.

The United Nations Convention on the Law of the Sea (UNCLOS) 1982 is an international legal umbrella that regulates matters related to a country's sovereignty over maritime areas. UNCLOS 1982 also regulates the sovereign rights of various regions such as territorial seas, exclusive economic zones, etc. One of the rights that is closely related to a country's sovereignty over maritime areas is the right to explore and exploit natural resources in maritime areas. This right is of course closely related to the role of the Bajo tribe as traditional fishermen in exploiting marine resources. However, what needs to be underlined is that the regulation of traditional fishing rights is still not comprehensively regulated by the 1982 UNCLOS. The regulation of traditional fishing rights is regulated in Article 47 paragraph (6) of the 1982 UNCLOS which explains that the rights and interests that have traditionally been implemented by countries that border one part of the archipelagic waters of an archipelagic country that has been determined based on an agreement between the two countries must continue and be respected.

Further regulations regarding traditional fishing rights are regulated in article 51 paragraph (1) of UNCLOS 1982 which states that archipelagic countries must respect agreements with other countries and must recognize the traditional fishing rights of countries directly bordering them in certain areas within archipelagic waters. Provisions related to conditions and procedures for exercising these rights and activities must be based on the request of the relevant country and regulated through bilateral agreements. Even though there are legal regulations regarding traditional fishing rights as regulated in article 47 paragraph (6) and article 51 paragraph (1) of UNCLOS 1982, these regulations do not necessarily provide certainty in the concept of traditional fishing rights themselves. This can be seen in the absence of a conceptual framework related to the characteristics of traditional fishermen's rights in more depth. Based on the explanation that has been explained previously, it is felt that research is necessary to study it further

how UNCLOS affects the traditional fishing practices of the Bajo Tribe, and what disintegrations arise between international regulations and local practices and adaptation strategies that the Bajo Tribe has developed to comply with UNCLOS provisions while maintaining their traditional fishing practices, and how this can shape policy formulation

in the future regarding the practice and continuation of traditional fishing traditions in integrating protection for fishermen against UNCLOS policies for traditional fishermen, especially the Bajo Tribe, with the title Bajo Tribe Fishing Traditions: Implications and Adjustments to UNCLOS in the Context of Protecting the Rights of Traditional Fishermen.

2. Materials and Methods

This research is a type of juridical-normative research where research is carried out by examining several library materials or secondary research materials by analyzing national and international regulations related to this research topic. Secondary data was obtained by searching several other similar studies which were then collected and analyzed to find problems that are relevant to the topic of this article. This research is also supported by several sources of information from various media on the internet to see more developments in the problems in this research.

3. Results and Discussion

3.1 *The Influence of UNCLOS 1982 on the Traditional Fishing Practices of the Bajo Tribe*

a. Traditional Fishing Rights in UNCLOS 1982

UNCLOS has provided exclusive regulations for island countries to protect and empower their marine resources, especially fisheries. With rapid economic development, demand for seafood is increasing in developing countries along with the increase in the fishing industry. Therefore, fisheries empowerment using traditional methods and fishermen's livelihoods are affected by these developments and therefore require support within the scope of the law. In UNCLOS, there is no specific and official definition related to Traditional Fishing Rights. However, according to some literature, this right is the right of fishermen in a country that mostly lives from fishing to get used to fishing in certain international waters for long-term practice. This traditional fishing right arises as a result of habits that have emerged for a long time, where initially humans fished in shallow waters close to land and fishing was considered an important activity for survival for coastal residents. It is on this historical basis that coastal states have long advocated the subordination of the shallow seas to their national jurisdiction. After the industrial revolution, many countries began to realize that the lack of control over fishing was causing threats to marine biological resources. Recognition of traditional fishing rights is explained in chapter IV Article 51 of UNCLOS which explains that

"Archipelagic countries must respect existing agreements with other countries and must recognize the traditional fishing rights and other legitimate activities of neighboring countries that directly border them in certain areas included in archipelagic waters."

This right is based on bilateral agreements between countries. Thus, this right allows traditional fishermen to fish in the archipelagic waters as agreed in the agreement, in accordance with their customs. A concrete example of the protection of this right is in the agreement between Indonesia and Australia, where in this agreement fishermen are given protection for traditional fishing in Australian waters. The granting of this right is based on the historical fact that several groups of Indonesian Traditional Fishermen have for generations caught or searched for sea cucumbers and Lola fish in Australian waters, especially on Ashmore Reef Island.

Since UNCLOS was implemented internationally, traditional fishing rights have been given to groups of fishermen who have been accustomed to fishing in certain areas for a long period of time. Some experts divide this right into two categories, namely: 1) The traditional right to catch fish which is exercised by local traditional communities or indigenous peoples where they have been fishing for a long time and 2) The right of citizens of a country to fish in their maritime areas. is within the jurisdiction of another country due to long-standing fishing habits or due to historical factors. So, it can be seen

that traditional fishing is a right protected in international law. Many countries recognized this right even before UNCLOS came into force.

UNCLOS inherits most of the four conventions created at the UN conference on the law of the sea. This agreement also includes many new regimes, such as the EEZ. Although third countries still enjoy freedom of navigation and overflight and can install undersea cables and pipelines in the EEZs of these coastal countries, it can be said that they do not have the freedom to fish. Coastal states have jurisdiction over the right to exploit biological and non-biological resources within their 200 mile EEZ, and third countries may no longer carry out fishing activities in that EEZ without permission from the coastal state. UNCLOS ultimately did not provide specific guidelines or issue any resolution regarding the concept of exclusive fishing zones. There is no legal status given to traditional fishing activities to convert them into traditional fishing rights either. However, concepts related to traditional fishing were put aside in the 1970s when the EEZ concept was developed.

b. Bajo Tribe Traditional Fishing Practices

The Bajo tribal community inhabits some of the waters in Indonesia, especially in the eastern part of Indonesia. They are also spread in the waters of Johor and the Philippines. The majority of the Bajo ethnic community is found in the Sulawesi region. The Bajo tribe lives in groups moving to locations chosen for fishing. They rely on the sea as their main source of life. The Bajo tribe is known as sailors who live and die at sea. Due to progress over time and economic needs, most of the Bajo people have settled in various regions. Even so, they still live in coastal areas and not on land. The Bajo tribe also has its wisdom in the form of traditions, rules or taboos that have been passed down from generation to generation and continue to be practiced, maintained and obeyed by the Bajo tribe community in maintaining and utilizing coastal areas in a sustainable manner. This wisdom contains the value of preserving marine and coastal ecosystems.

In the Bajo tribe, there is a tradition of catching sea fish, namely Bapongka. Bapongka is a tradition of the Bajo people who use traditional equipment and still protect the marine environment from damage. Bapongka is also known as Babangi, in which the Bajo people spend the night at sea for 3 days to a month. Then it is also known as Pongka, which means sailing to earn a living or marine products to another province for several weeks or even months. This tradition has been carried out for a long time. In practice, this tradition is carried out by groups consisting of three to five boats, each boat consisting of one person. The formation of small groups is often done based on the close relationship between group members. Usually this small group will meet with other small groups at a fishing location and eventually form a large group whose number can reach 15 or even 20 boats. The Bapongka group tries to catch fish, shrimp, lola, or crabs, sea cucumbers. Because bapongka has been done for generations, there is a tendency for more Bajo Togeian people to choose bapongka compared to other fishing activities. Bapongka can be said to have a good impact on marine sustainability, especially coral reefs, because it only uses simple equipment.

In relation to UNCLOS 1982, the Bajo tribe is considered to have customary rights over the sea as well as customary rights over land as stated in the Basic Agrarian Law. Maritime customary rights are a set of rules or practices for managing marine areas and the resources contained therein, which concern who has rights to an area, the types of resources that may be captured and the techniques for exploiting the resources that are permitted. However, these rights have not been regulated in UNCLOS. In the national scope, marine customary rights have been regulated in Law no. 27 of 2007 concerning Management of Coastal Islands and Small Islands. To be precise, article 61 stipulates that the government recognizes, respects and protects the rights of indigenous peoples, traditional communities and local wisdom over coastal areas and small islands which have been used for generations. However, marine customary rights still have several

problems, such as the lack of concrete definitions or limitations related to these rights. This problem is caused by the fact that guarantees for customary rights are still included in the Basic Agrarian Law so that the definition of customary rights still relates to land.

The existence of tribes in Indonesia, especially the Bajo tribe, is recognized through Law no. 43 of 2008 concerning State Territory, where article 4 stipulates that Indonesia's territory includes land, water, seabed, subsoil and air space above it, including all sources of wealth. Thus, this law emphasizes that it is related to terrestrial international legal territory that can be obtained through the occupation of a country. In classical international law theory, an occupation is the enforcement of sovereignty on terra nullius. Terra nullius is an area that has or has not been under the sovereignty of the government, where the elements that must be fulfilled by the occupation action include the discovery of the terra nullius area, the state's desire to make the area belong to or under its sovereignty, and the realization of effective action (principle of effectiveness). In this case, the discovery element can be assumed to be an objective element, while the intentional element manifested in real action can be assumed to be a subjective element.

The Bajo tribe has its own uniqueness, namely the culture they practice, such as the territory and marine resources they use. The Bajo tribe has long had the right to live on the sea. Thus, it can be seen that the Bajo tribe fosters activities that foster togetherness and economic values. Based on Article 11 of the International Covenant on Economic, Social and Cultural Rights, the right to fishing can be said to be a human right. Thus, the State has the right to sue for actions that violate human rights if the actions clearly conflict with these basic rights. Then, in the national scope, in Law no. 5 of 1983 concerning the Indonesian Exclusive Economic Zone, traditional fishermen are protected and enabled to catch fish in sufficient quantities for their livelihood and to improve their standard of living.

c. Problems in Traditional Fishing Rights

Problems with traditional fishing rights do not only occur at the national level, but also at the international level. The definition of the word "traditional" from several groups that have traditional fishing rights is a problem with this right. For example, problems in Australia arise from the recognition of traditional fishing rights in Australian law, namely the Native Title Act 1993 which relates to fisheries management which is considered important and is not handled by the government. Another example is the issue of fishing activities between Indonesia and Australia, where although the term traditional has been applied to Indonesian fishermen by the authorities in Australia, Australia often refers to rights that describe customary norms in fishing.

In this case, the term "traditional" is not given a clear and widely accepted definition, either in statutory regulations or in policy statements and the term has become an obstacle to clear discussion. Identification of groups that have fishing rights is quite complicated and requires several criteria that need to be met. Group identification needs to be considered not only to gain recognition, but also to determine who has responsibility for the sustainable management of fisheries resources. Therefore, it is necessary to identify the people or individuals who actually have traditional fishing rights in a particular area, and also decide whether the descendants of groups who have traditional fishing rights will automatically have the same rights when they live in the area. different. So, if it is related to the Bajo tribe in Indonesia, it will be difficult to gain international recognition regarding the definition of traditional because there are still many conflicts in determining the definition of traditional itself.

3.2 *Adaptation Strategies and Opportunities by the Bajo Tribe to comply with the provisions of UNCLOS 1982*

The Bajo or Sama Bajau people are a group of people or communities who live nomadic lives and move in groups to different locations according to fishing locations. The

Bajo tribe spends all their activities on boats, so they have earned the nickname sea nomads. Bajo tribal people and fishermen from Eastern Indonesia such as Rote Island, Buton Flores, Madura, Maluku, Sulawesi and surrounding areas have been involved in traditional sea fishing activities in the waters of East Nusa Tenggara to the western coast of Australia since the 17th century. Some Bajo fishermen on Sinjai Island not only do fishing but also cultivate seaweed, breed lobster seeds and shellfish since 1995. The Bajo tribal community has wisdom in the form of traditions, rules or taboos passed down from generation to generation which are practiced, maintained and obeyed by the Bajo people in protecting and utilize coastal areas sustainably. This wisdom contains the value of preserving marine and coastal ecosystems. The Bajo tribe also believes that mbo (provider of sustenance) is the ruler of the sea who gives all the contents of the sea to all people and applies the concept of living in moderation which is represented in the maritime boundary regulations which state that the sea boundary is as far as the paddle of a canoe and as strong as an arm can paddle. Fishing is still carried out traditionally, namely using fishing rods, arrows, spears and traps, which are guaranteed not to damage the marine ecosystem, pollute the sea and endanger the entire population that lives in the sea, however, the Bajo people do not know the border areas because they think that the sea belongs to them. everyone so that it can be used by everyone.

As time goes by there are also other factors that make this tribe considered not in line with the provisions and customs in marine management as happened in Torosiaje Village, namely because of the death of several traditional leaders so that there is a shift in understanding of traditional fishing traditions, so there are several cases that Bajo people catch fish with explosives which damage the marine ecosystem and coral reefs. So disputes often occur between residents on land and the Bajo tribe due to conflicts of economic interest. This also proves that the Bajo tribe has experienced a paradigm shift little by little due to developments over time and the death of several traditional figures who held traditional characteristics and beliefs that are still traditional, so it is feared that this tribe is in danger of becoming extinct and its existence will not be recognized. Moreover, there are government efforts to resettle the sea Bajo community to land, as happened with the Bajo tribe in Torosiaje, with five resettlement phases, namely: the first phase in 1984/1985 resettlement 125 families, the second phase in 1985/1986 resettlement 50 families, the third phase in 1986/1987 resettlement was 50 families, the fourth phase was resettlement 50 families; and the fifth phase in 1997/1998 resettlement 84 families. Although in the end there were 40 families who returned to live at sea, bringing their total number to 338 families.

UNCLOS 1982, which is used as a guide and legal umbrella for the international community regarding maritime areas, does not explicitly regulate customary rights of the sea. Article 51 of UNCLOS mentions recognized traditional fishing rights and other legal activities. In national regulations, especially in Law no. 37 of 2007 Article 61 paragraph 1 states that "The government recognizes, respects and protects the rights of indigenous peoples, traditional communities and local wisdom over coastal areas and small islands which have been used for generations" which is then supplemented by paragraph 2 that states "Recognition of the rights of indigenous communities, traditional communities and local wisdom as referred to in paragraph (1) is used as a reference in the sustainable management of coastal areas and small islands."

According to Luthfy Ramiz, in his writing, he explains that traditional fishing rights can be analyzed from several aspects, namely: first, the societal aspect, namely traditional society which is still completely dependent on fishing activities; second, aspects of traditional fishing methods as regulated in Article 1 paragraph (7) of the Jakarta Treaty between Indonesia and Malaysia concerning traditional fishing; third, the aspect of fishing vessels using traditional vessels which is also contained in Paragraph 1 of Annex II of the 1989 Amendment to the MoU between Indonesia and Australia which limits traditional fishing rights to traditional vessel users; fourth, the aspect of using the catch

which will be used for personal, community consumption and for other traditional activities. Regulations regarding traditional fishing for the Bajo tribe have actually been expressed in several instruments ranging from MoUs to statutory regulations to maintain order and welfare of the Bajo tribe who spend all their activities at sea, but this needs to be regulated further in order to form better instruments in the future. is by looking at the areas and sea routes that can be crossed by the Bajo people due to limited human resources which has resulted in some people crossing sea boundaries with other countries which brings losses to both individuals and the country.

Thus, an adaptation strategy has not been developed by the Bajo Tribe, which still carries out traditional fishing, but on the contrary, several Bajo tribal community groups have shifted the traditional fishing paradigm because fishing is carried out using explosives which can damage the underwater biota ecosystem. The Bajo people, because their lives are completely dependent on the sea, often result in seafarers carrying out arrests that encroach on Indonesia's territorial control boundaries, causing several frictions with other countries. The Bajo tribe believes that the sea is a resource that can be used without limits, but with advanced civilization, this perception must be changed because the Bajo people only look at what they believe in, but the government looks at the economic side and the provisions of UUPA Article 33 paragraph 3 as stated, namely water. used for the welfare of society. The government is also making efforts to move people who still live at sea to immediately move to land, even though in this case the people are still unable to agree to the government's program and are still living at sea to this day.

In the end, the existence of the Bajo indigenous people can be recognized and protected in traditional fishing activities if they agree to register themselves with government agencies and so that further regulations can be made regarding customary sea control areas, as well as the rights and obligations of the Bajo indigenous people themselves. Other efforts that can be made by the government and non-government organizations are; First, the Bajo community must receive socialization and advocacy regarding maritime regulation so that fishing no longer occurs which endangers marine areas and fishing does not exceed Indonesia's maritime control boundaries. Second, if the government has a breakthrough in relocating the Bajo people from sea to land, then the government must provide and facilitate this relocation by providing decent housing, providing options for livelihoods by allowing the Bajo indigenous people to continue fishing or empowering the community with other livelihoods. can guarantee survival so that they do not return to living at sea because of the transition from their initial livelihood, namely fishing. It is certainly hoped that this move will not sacrifice the culture and identity of the Bajo traditional community. Third, the government can also educate the Bajo people about the importance of conserving marine resources so that training is needed on sustainable fishing practices that do not harm the ecosystem and marine life. Fourth, the Bajo indigenous community must also be involved in decision making related to marine resource management planning and land area development so that they have fundamental considerations for moving and settling on land and realize that by being involved in planning, indigenous communities can express their aspirations and participate in supervising the implementation of a project. policies and provisions regarding the sea. Fifth, NGOs or NGOs can take part in providing support in the form of education and knowledge for children and the general public, financial assistance and technical assistance in strengthening relocation efforts and facing future challenges resulting from the relocation.

4. Conclusion

The traditional fishing practices of the Bajo tribe are covered by the international regulation UNCLOS 1982. The Bajo tribe, which has long lived a maritime life with sustainable practices, faces challenges in maintaining their traditions amidst demands for moderni-

zation and international legal protection. Although UNCLOS provides a regulatory framework for the management and utilization of marine resources, this regulation lacks a clear definition of traditional fishing rights, which leaves the Bajo tribe in a vulnerable position. On the one hand, the Bajo tribe has adapted by adopting several new methods such as mariculture, but on the other hand, the shift from traditional methods sometimes results in practices that damage the environment. Therefore, a clearer regulatory framework is needed to recognize and protect the rights of traditional fishermen by integrating local wisdom into international regulations, to ensure that the traditions of the Bajo tribe can continue to survive without destroying the marine ecosystem they depend on.

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