



# The Legal Dynamics of Aru Fishermen in Improving Catch Welfare and Competition with Vessels from Outside Maluku

Irma Mangar<sup>(1)</sup>, Asri Elies Alamanda<sup>(2)</sup>, Hanin Alya' Labibah<sup>(3)</sup>

*Universitas Bojonegoro, Indonesia*

*E-mail: <sup>(1)</sup>irmamangar403@gmail.com*

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## Abstract

The identification of transnational crimes is crucial not only because of the increasing cases of illegal fishing in Indonesia, which involve legal issues from other countries and call for effective law enforcement. concentrate on the welfare of catches produced by local Aru Islands fishermen. The descriptive analysis method is the research methodology used. By using a normative legal approach, data collection strategies use literature studies and documentary studies while the type of research used is qualitative research with primary and secondary data sources. The findings of this study are throughout 2017 until now the government has made efforts as much as possible on the fate of marine and local fishermen in the people of the Aru Islands district, seeing that all policies regarding the regulation of regional maritime boundaries no longer include the authority of the regional government but the duties and responsibilities of the Provincial Government.

**Keywords:** catch, fishermen, welfare

## Introduction

The sea is the water space on earth that connects land with land and other natural forms, which is a geographical and ecological unity and all related elements, and whose boundaries and systems are determined by laws and regulations and international law. Marine is a matter related to the Sea and / or activities in the Sea area which includes the Sea floor and the land below, the water column and Sea surface, including coastal areas and small islands.

Indonesia's borders are still concerning in various aspects. Many border areas experience economic backwardness due to the absence of programs and projects from both the government and the private sector. The length of the border line both on land and sea is very difficult to be monitored regularly by security forces. As a result, border violations, smuggling, and other illegal cross-border activities often occur. In this case, the check and balance mechanism by the supervisory agency in the regions is absolutely necessary to redeem the majority of government affairs authority transferred from the central government to the

government in the regions because it has the effect or logical consequence of the movement of people, money, and resources that must be transferred to the authority of each government in the regions. In order for the authority to be implemented quickly and effectively, the purpose of regional autonomy is to create prosperity, according to S. Situmorang, director general of regional autonomy, referring to its implementation. (Purwadi, 2011) In addition to this, a member of the Aru Islands People's Representative Council stated that there has been no regional regulation that specifically regulates the regulation of the maritime boundaries of the Aru islands, which in this case is under government control until the main potential, the sea, is also regulated by the federal and provincial governments. Potential solutions, such as fish that are only consumed and not bought and sold, are caused by the inability to make money.

The Aru Islands district in Maluku has different benefits compared to other parts of the province. In addition to natural resources, the Aru Islands have seen significant international

corporate investment for a long time. Foreign businesses from Japan and other countries have been investigating marine resources in Benjina, Fatujuring and other areas of the Aru Islands Regency. As a border region facing many fundamental problems including illegal logging, fishing, and other crimes, this has undoubtedly given rise to several strategically important positions. It is very important to include Indonesian territory, particularly the Aru Islands, in government initiatives to regulate border areas. Increase community participation in the Aru Islands with various governments. (wakim, 2014)

The importance of detecting transnational crime is not only due to the increasing incidence of illegal fishing in Indonesia, which includes legal issues from other countries and requires effective law enforcement. This is so that there is no mistake in the placement of this type of crime, which can have an impact on the placement of basic legal principles as a means to uphold justice if something goes wrong. This is why it is important to determine the exact type of crime when enforcing the law. If the definition of the violation is wrong, the objectives of law enforcement will be compromised. Legal purposes are recognized to exist. The two categories of crime must be distinguished by their scope in order for the crime to continue to grow in both the range of transnational crime and international crime. Because it can be used as an analytical tool in the context of preventing and eradicating transnational crimes that occur in Indonesia, the principles must be included in the transnational crime law. As a result, it is expected that the Indonesian government will continue to strive to establish international cooperation as a means of preventing illegal fishing. After all, Indonesia is an archipelagic country with fish wealth, so it would be a pity if the wealth is actually enjoyed by other parties not by Indonesians themselves. Indonesia must also continue to implement various regulations that give fear to all foreign boat fishermen who will carry out fishing operations in the sea of the Aru islands. (Banjarani, 2020)

## Materials and Method

Normative judicial research is the type of data used in this study. This research is carried out on the actual situation of the community with the intention of finding existing facts that

can be used as data fillers in this study so that later a resolution point will be found. Sociological Juridical techniques are applied, which require the completion of a thorough analysis of ideas, laws, social norms and legal doctrines obtained from secondary legal materials. by utilizing primary and secondary data sources respectively.

## Results and Discussion

### Dynamics of the Development of the Law of the Sea of the Aru Islands

In the city district of the Aru Islands, the dynamics of the implementation of regional autonomy in terms of sea boundary customs are currently far from what was anticipated in accordance with the expectations of laws and regulations. There is unrest in the community due to regional autonomy related to sea boundaries, which are set from 0 to 12 miles, and until now local governments have only been able to coordinate. Since the central and provincial governments have full control over the maritime boundaries of regional autonomy, there is a perception that local governments do not have full control over the privileges of autonomous regions.

The lordship reflects the Moluccan idea of land and sea ownership. Actually, those who are part of the family living in the village produce land. This village also has a sea area that is part of petuanan or ulayat, which is an expansion of the village's area in the sea and sea. Because, settlements in villages are usually in coastal and coastal locations. As a result, there is water lordship in addition to land lordship (customary rights of the sea). In general, foreigners are not allowed to utilize marine resources without the consent of the head of the alliance and the head of the local area, who is the owner of customary rights. (kurniawan, 2009)

In addition, because fishing communities are highly dependent on environmental factors and vulnerable to hazards from pollution and other environmental damage, small fishermen who are most dependent on the fishing season will feel the impact the most. Dependence on the market is also a problem for fishing communities because the goods produced must be sold immediately to meet daily demand or rot before being sold because it affects prices. (dewi, 2021)

The achievement of planned goals is one of the signs that the strategy is effective in competing with foreign ships; So far,

empowering underprivileged fishermen by the government has been a good strategy, but given our shaky control over maritime boundaries, there is still room for improvement. However, the government needs to pay more attention to deciding the approach to be taken to empower fishermen, as it is known that these fishermen do not obtain larger catches and more yields for survival. Equipment that fishermen and anglers use to catch fish and other marine animals is referred to as "fishing gear." There are various forms of fishing gear, including hooks, fishing gear, ballast, fishing rods, fishing rods, bait, bite indicators, spears, fishing nets, and fish traps. Since boats are the second most important piece of equipment fishermen need after fishing gear, having access to both helps them tremendously in their efforts to catch fish. Fishing gear is also important to increase fishermen's profits, but the fishing gear owned by local fishermen is still quite basic, so if foreign vessels (some of them from Java) enter by catching using modern fishing gear, local fishermen will be forced to leave their jobs. (Suryadi, 2019)

One of the many limitations in competition between local and foreign fishermen is the government's inability to solve the problems that arise when purchasing contemporary fishing equipment so that local fishermen can compete with fishermen from outside Maluku (Java and elsewhere). Dynamics is something that means force, always moving, developing and able to adapt adequately to circumstances. In coastal areas there is also a group of humans who have certain patterns of life and behavior and characteristics. People who live in coastal areas generally have jobs as fishermen in order to meet their economic needs. (Karlina, 2020)

Potential sea products that are the mainstay of coastal village communities are, fish, shrimp, sea cucumbers, and pearls, *bia lola*, *kima*, whose method of taking and or catching (according to the size allowed) is carried out within a certain period of time. This is so that these marine products are not extinct, or in other words remain sustainable. The behavior of the citizens of this community alliance is a manifestation of the wisdom and environmental policies of indigenous peoples, which must be encouraged. Customary Rights of the Sea, which refers to a growing collection of mutual rights and obligations with respect to the ownership of marine areas in which certain people or social groups benefit from sea areas,

exist, regulate the amount of exploitation, including guarding against overexploitation. The development and relationship of the sea should be thoroughly known by the fishing community so that there is no taking of customary areas that are not in accordance with the law.

International law of the sea is based on the concept of freedom of the seas, with control of every country. In the mid-20th century, as each country increased its ability to engage in long-distance and commercial fishing, concerns arose about pollution and damage to marine resources and demanded rights to continental shelf resources. Obviously, it is necessary to develop a treaty-based regime for ocean governance. Hugo Grotius as an expert in the field of natural law expressed objections to the ownership of sea areas on the basis of two reasons: First, no ocean can belong to a nation. Second, Nature does not give anyone the right to have facilities that can be utilized by everyone and which are exhaustable, in other words, (*res gentium*) the three open seas / high seas are the rights of all nations or (*res extra commercium*) the four non-commercial goods. Freedom does not provide power for any party, but freedom is given with the concept of protection, so that activities carried out in the high seas area do not damage the waters and biological natural resources. The principle of freedom in the international sea is inseparable from various crimes and violations of international law. One of them is the case of illegal transshipment which is one of the crimes in stealing fish. (hadju, 2021)

The ocean has historically been the open sea or the free sea which mainly concerns statecraft experts and the rulers of states. In modern times with the issuance of various regulations on marine affairs to measure the distance of the sea from land areas that are universally applied, juridically have provided legal certainty adopted by international law and can factually constitute an expansion of its territory. Because the coastal state originally only adhered to the territorial sea boundary of 3 nautical miles which later developed and through the international law of the sea convention, the distance was extended by 4-6 nautical miles, but it could not be universally enforced, only in 1982 a mutual agreement was issued by both coastal and non-coastal states, that the width of the territorial sea was a maximum of 12 nautical miles.

The development of sea area boundaries is also an expansion of the territory of coastal states

or at least provides opportunities to expand their interests and supervision at sea. If examined further, at this time the opportunity to expand the territory of power is not like in previous times which is still possible to compete forces for the expansion of its territory. And the opportunity that can be done with consideration as long as it is still possible and does not violate international law, namely the expansion of marine areas.

Another more controversial coastal state right is the exercise of jurisdiction over foreign vessels outside the boundaries of maritime lanes where there is a strong suspicion that they are a source of danger to the position or sovereignty of the nearest coastal state. This jurisdiction is permitted solely on the basis of, and as an act of, self-defense. The jurisprudential scope of this diction is an issue that is often debated. The sovereignty of the coastal state over the maritime route itself is limited by having the right of innocent passage of foreign ships at the time of passage through the waters of the maritime lane. States are also allowed to exercise their jurisdiction on the high seas on grounds derived from certain international conventions, by which States Parties surrender each other's rights, in time of peace, to board and conduct searches of foreign vessels at sea.

### **Regulation of Sea Boundaries Based on Law No. 23 of 2014**

The founders of the country from the beginning aspired to Indonesia as a unitary state, which then divided the territory of Indonesia into large and small which were autonomous. This is done in order to accelerate the realization of people's welfare and prosperity and strengthen national integration in the framework of governance as mandated in Article 33 paragraph 3 of the Constitution of the Republic of Indonesia Year 1945. The ability or competence to perform certain legal acts is known as authority (*bevoegdheid*). Management (management) is a method used to collaborate with people and other organizational resources to achieve goals. In addition, it is stated that management is the process of organizing, leading, and controlling various natural resources. Article 1 paragraph (7) of Law Number 32 of 2014 concerning Marine Affairs says that Marine Resources are marine resources, both renewable and non-renewable that have comparative and competitive advantages and can be maintained in the long

term. Meanwhile, in paragraph (9) states that Marine Management is the implementation of activities, provision, exploitation, and utilization of marine resources and marine conservation, while article 27 paragraph (2) of Law Number 23 of 2014 concerning Regional Government, states that the provincial regional authority to manage natural resources in the sea as referred to in paragraph (1) includes exploration, exploitation, conservation, and management of marine resources outside oil and gas, administrative arrangements, spatial arrangements, participating in maintaining security at sea, and participating in defending state sovereignty. The explanation of each of these authorities includes: (utomu, 2020) First Exploration, exploitation, conservation, and management of marine resources beyond petroleum and gas. Exploration is the process of learning more about a situation, especially the natural resources that are there, particularly in the maritime sector, and after that, economic development is carried out. Fisheries, coral reefs, transportation, and marine tourism are just a few of the marine potentials in the Aru islands that can be handled profitably. In order to preserve the ecosystem and environment and prevent harm to other parties, including humans and the environment, exploitation is the cultivation, use, and utilization of something. As a result, exploitation is an action or activity that aims to take advantage of something in accordance with applicable laws and regulations. Exploitation in this case carried out by a Marine Conservation is the regular care and protection of any kind with the aim of preventing harm and destruction through preservation. Conservation measures are widely practiced in relation to marine resources, especially with regard to coral reefs, marine life, and marine vegetation. Protection of fish habitats and populations, migration patterns of marine life, distinctive and/or vulnerable coastal ecosystems to change, traditional cultural or customary sites, research, and education are all part of the conservation efforts of the Aru Islands. Licensing, airworthiness and maritime safety are the two administrative arrangements in this clause. In this case, the permit includes not only shipping permits but also licenses of fishing and aquaculture companies. The four marine security maintenance operations of the Maluku Provincial Marine and Fisheries Service are only allowed to cover a radius of 0 to 12 nautical miles. When conducting security maintenance operations at sea, the Marine and Fisheries Service always consults with units of the Indonesian Navy, the

Marine Security Agency (BAKAMLA), and the Air and Water Police in case of violations against a fisherman (POLAIRUD). Because maintaining maritime security is one of the shared responsibilities and powers of the three institutions. Therefore, these three organizations generally have responsibility for maritime security tasks, and the Marine and Fisheries Service has a role as an institution that always coordinates to maintain maritime security. The fifth justification for upholding state sovereignty is almost identical to the justification for maintaining maritime security, and distinguishes that in order to uphold the sovereignty of this nation, the East Java Provincial Marine and Fisheries Service also plays a role in upholding state sovereignty in the marine sector from threats or violations of international law committed by foreign fishermen, preventing theft of natural resources in the marine sector by other countries.

Although the Government of the Republic of Indonesia on the one hand has issued laws and regulations in order to implement sovereign rights, jurisdiction, and other rights and obligations, for the development of the fisheries and marine sector nationally. But on the other hand, it is also important for the government to pay attention to the principle of autonomy as the basis for state governance which emphasizes the granting of authority by the state to the regions to regulate and take care of the interests of local communities. Autonomy contains the notion of self-government or *zelfbestuur*, meaning that behind autonomy there is the meaning of independence. Of course, independence must be in accordance with the regulations regarding autonomy itself. Similarly, regions are granted autonomy which includes the rights, authorities, and obligations of autonomous regions to regulate and manage their own government affairs and the interests of their local people in accordance with laws and regulations. (daudy, 2015)

### **Aru Islands fishermen compete with foreign boat fishermen**

The Indonesian nation is actually classified as an accomplished seafaring nation, the ancestors of the Indonesian nation since ancient times have sailed the seas to all directions of the wind. This is evident from the many ancient relics found in various places on earth that show evidence of the superiority of

sailors from various ethnicities in Indonesia. In fact, many of them later settled on land, which was visited and passed down descendants from generation to generation, who have now become citizens of the territory that is now an independent and sovereign state. Some ethnicities in Indonesia that excel in the marine sector are *sangihe-talaud*, *madurese*, *buton bugis* and *makassar*. Even two ethnicities, namely *Bugis* and *Makassar*, since ancient times have sailed the seas with their *phinisi* boats which are famous throughout the archipelago and the world. The complexity of the problems that occur in fishing communities is due to fishing communities living in a harsh natural atmosphere that is always filled with uncertainty in running their business. The famine season that always comes every year and its duration cannot be ascertained increasingly makes fishing communities have to face various kinds of complex problems. (husen, 2014)

The Aru Islands Regency in Maluku undoubtedly has certain benefits over other regions in the province. Along with natural resources, the Aru Islands have a large number of foreign company investments that have historically shaped their economic landscape. Foreign businesses from Japan and other countries have been investigating marine resources in Aru Islands County in *Benjina*, *Fatujuring* and other areas. This has undoubtedly given rise to a certain advantageous strategic position in the border region which faces many fundamental problems including illegal logging, fishing, and other crimes. It is very important to include Indonesian territory in government initiatives to manage border areas, particularly in the Aru Islands. Aru Islands community empowerment initiative involving various governments.

With this very strategic position, making Indonesia's territorial waters passed by the main route of ships from many countries, both merchant ships and naval ships from various countries in the world. Meanwhile, relations between nations are always colored by competition and cooperation. In such relations, each nation seeks to achieve and secure its national interests using all the instruments of national power at its disposal. In relation to the national interest, the Indonesian nation must of course always develop and have space consciousness and geographical awareness as an archipelagic state. Indonesia as a nation that has ethnic diversity, the manifestation of nationalism

is colored by political, economic and ethnic and religious problems, so that these various problems become difficult to solve completely without seeing and connecting the relationship between global and regional dynamics. Responding to this is logical and very basic considering that, on the one hand, a strategic and open geographical position and containing a diversity of potential natural resources, is an opportunity and advantage for the Indonesian nation in realizing national ideals and goals. (arto, 2019)

The importance of detecting transnational crime is not only due to the increasing incidence of illegal fishing in Indonesia, which includes legal issues from other countries and requires effective law enforcement. This is so that there is no mistake in the placement of this type of crime, which can have an impact on the placement of basic legal principles as a means to uphold justice if something goes wrong. This is why it is important to determine the exact type of crime when enforcing the law. If the definition of the violation is wrong, the objectives of law enforcement will be compromised. Legal purposes are recognized to exist. Based on the principle of *ne bis in idem* criminal law, the perpetrator can no longer be punished if released from law enforcement as a result of a criminal offense that is misclassified as something else. According to this rule, a person cannot be prosecuted again for an offense for which a judge has given a verdict. It is important to distinguish between the two forms of crime depending on their scope in order for crime to continue to grow in both transnational crime rates and international crimes. The importance of incorporating principles in transnational crime law because it can be utilized as an analytical tool with the aim of preventing and eliminating transnational crime. Because Indonesia is an archipelagic country with fish wealth, it is hoped that the government can continue to strive to establish international cooperation as a means of preventing illegal fishing. After all, it would be unfortunate if the wealth was actually enjoyed by parties other than Indonesians themselves. In addition, Indonesia must continue to carry out its various international initiatives so that the UN can designate illegal fishing as a transnational crime.

The obstacles faced by the autonomous region, namely districts / cities, especially the Aru Islands which have coastal and marine demographics, are. The limitation of authority as explained is the limiting legal authority, namely only managing 2 sectors, namely: capture fisheries, aquaculture fisheries. Related to the issue

of illegal fishing / theft of fish and the like is indeed a serious problem, given the limited authority and resources of local governments in controlling and supervisory authority that is not attached, this is a challenge for this cross-sectoral communication and synergy of all elements for the sake of mutual interest are needed in addressing the problem of the entry of foreign ships even though there is no regional law product policy that contains and regulates the problem aforementioned. Related to sanctions against illegal fishing practices, it is the responsibility of the Provincial DKP which has supervisory authority in the water sector. We hope that it is very related to illegal fishing crimes, so severe sanctions must be given because it has a very long impact on the sustainability of the ecosystem that lives in our seas, especially the sea of the Aru islands.

#### **a. Aru Islands Sea Geographical Boundaries**

Biological natural resources are now in environmental conditions that have been limited by various human activities. Conservation efforts are needed to maintain the survival of biological natural resources. These efforts require reserving small pockets of undeveloped land that can be considered representative of different types of ecosystems and managed as conservation areas. The government seeks to control the use of marine natural resources by implementing three aspects of conservation, protection of ecological processes that support life support systems, preservation of diversity of germplasm sources and ecosystems, and preservation of the use of germplasm sources and ecosystems.

The existence of coastal and marine areas is the center of the development of fisheries, industry, ports, tourism and settlement activities as well as a reservoir for waste from all human activities, both within the coastal area system and those outside it (upper land and high seas). In addition, the region also has excellent accessibility for transportation. The outer islands and the continuation of their islands in the sea (continental shelf) have biological and non-biological marine elementary schools that can be used for state income and community welfare such as mangrove forests, coral reefs, various types of fish and as a location for seaweed cultivation and crude oil min-

ing sites, sea sand and so on, so that from an economic aspect it is very important.

Similarly, the results of multi-temporal acquisition of coastlines in the study area show diverse coastal dynamics processes in several locations with the main processes in the form of erosion and accretion. The most prominent dynamic process is the accretion process that occurs massively around the Labuan PLTU due to reclamation carried out in 2010. While the process of coastline dynamics in other locations is more caused by hydro-oceanographic processes. Coastal dynamics in parts of Pandeglang in 1990-2020. (muttaqin, 2021)

Aru Islands Regency has a Southeast Aru Islands Marine Nature Reserve, the main purpose of inaugurating the Aquatic Nature Reserve in the Aru Islands is to protect the population of green turtles (*Chelonia mydas*) and hawksbill turtles (*Eretmochelys imbricata*), which are known to be living and nesting sites on sandy beaches on Enu Island and Coral Island and have feed habitats on large seagrass beds. In addition, the global goal is to create a core zone (sanctuary) for various species of marine animals and their habitats. Such as, turtles, dugongs, pearl snails and other species that can be used for commercial purposes, so that nature reserves can function as "reservoir" areas. In an effort to realize the sustainability of fish resources and their ecosystems to protect and manage aquatic ecosystems in the waters of the Southeast Aru Islands and the surrounding seas in Maluku Province which have high natural resources and biodiversity in the form of coral reefs, mangroves, littorals, and seaweed, it is necessary to designate part of the Southeast Aru Islands Waters and the surrounding seas in Maluku Province as national marine conservation areas.

Aru Islands Regency, is a new regency formed as a result of the expansion of Southeast Maluku Regency-Maluku Province based on Law Number 40 of 2003. Aru Islands Regency consists of 3 (three) sub-districts with 119 villages (villages) / sub-districts each: 1. Pulau - Pulau Aru sub-district with 43 villages / kelurahan 2. Central Aru Islands District with 45 villages and 3. South Aru Islands District with 31 villages. The area of Aru Islands Regency is 55,270.22 km<sup>2</sup>, consisting of a land area of 6,426.77 km, (13%) and a sea area of 48,070 km (87%) has 187 (one hundred eighty seven) islands, consisting of 89 (eighty-nine) inhabited islands and 98 (ninety-eight) uninhabited islands. The topography of the Aru Islands Regency is generally flat swampy. Aru Islands Regency is an "island sea area" located between 5 to 9

South Latitude and 134 ° to 167" East Longitude, and is directly bordered by West Papua in the north and east, the Arafura Sea and the Australian Sea in the south, Kei Besar Island in the east and the Arafura Sea in the west.

Aru Islands Regency has a wealth of marine resources because it is an archipelago dominated by sea seas. The foundation of the people's economy that is still very dependent on the supply of natural resources is the agricultural sector, especially the fisheries subsector. Some marine goods, both fish and non-fish, could be produced by marine waters in the Aru Islands region during the 2007 period according to data from the Fisheries and Marine Service. Grouper and mackerel are two species of fish with significant commercial value. (inasafitri, 2021)

## Conclusion

There is a perception that the privileges of autonomous regions are entirely not in the hands of local governments but are in the hands of central and provincial governments because local governments only coordinate no longer because full authority over the maritime boundaries of regional autonomy is in their hands. then the main focus of conservation in the Aru islands includes protection of fish habitats and populations, as well as migration flows of marine life, protection of unique coastal ecosystems and / or vulnerable to change, as well as protection of traditional cultural or indigenous sites, research, and education. The two administrative arrangements in this provision include licensing, airworthiness, and shipping safety. The Aru Islands which have coastal and marine demographics are. The limitation of authority as explained is the limiting legal authority, namely only managing 2 sectors, namely: capture fisheries, aquaculture fisheries. Related to the issue of illegal fishing / theft of fish and the like is indeed a serious problem, given the limited authority and resources of local governments in controlling and supervisory authority that is not attached, this is a challenge for this cross-sectoral communication and synergy of all elements for the sake of mutual interest are needed in addressing the problem of the entry of foreign ships even though there is no regional law product policy that contains and regulates the problem aforementioned.

## Suggestion

The hope is that in the future there will be updated regulations in the determination of sea areas in an area. Because in the view there must be a field review considering that 98% of the people of Aru Island are workers and the producers of daily life are fishermen.

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