

## Legal Existence of Local Wisdom for Bajo Fishery Tribe on Indonesian Maritime Border

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### ABSTRACT

This paper aimed to explore the legitimation and admission toward the legal existence for Bajo's effort in strengthening local wisdom, particularly in maintaining Indonesian's Border. This effort is important to the maintenance of the sovereignty of the country's maritime boundaries without eliminating the tribe's local wisdom, which may exclude sustainable development for the society. This situation has altered their traditions of merely fishing for consumption. Thus, this work offers appropriate values in legitimating and admitting a legal existence for Bajo effort's local wisdom. These include the rights of traditional fisherman community as indigenous people based on National and International Law and the legal protection of Bajo communal rights in exploiting sea and traditional fisherman criteria after UNCLOS, 1982 and MoU, 1974 and its amendments. The application of this method may create holistic and traditional manners in keeping and managing collective strategic resources for the greatest benefit of national defense, especially for the Bajo Fishery Tribe.

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### 1. Introduction

Indonesia is the largest archipelagic country in the world, with more than 17,000 islands. The country has a wide sea area (that is almost as wide as the land area), which has extraordinary marine resources that can be exploited. In addition, there are several tribes in the country from different ethnic groups. The Bajo is one of the sea tribes that has survived on the sea; they have wandered around the islands alongside the archipelago and the surrounding countries for a long time.<sup>1</sup> However, they do not recognize the existence of the Indonesian maritime border. The members of this tribe understand and

<sup>1</sup> Dyspriani, P. (2011). Traditional fishing rights: Analysis of stat practice. *Division for Ocean Affaires and Law of the Sea Office of Legal Affairs*. United Nations, New York, USA, p. 8-9.

are able to identify the border between the Indonesian maritime border and foreign countries through instincts. For example, when they sailed on the sea border between Indonesia and Australia, they looked at the color and the depth of the sea and compared the types of fishes they saw with the fishes in Indonesian sea waters. According to the members of the tribe, the green color was considered as a shallow sea, which indicates the Australian maritime border. Meanwhile, the blue color was considered as a deep sea (a.k.a. LANA), which indicates the Indonesian maritime territory.

In 1964, the Australian Government, in accordance to the law, had set a 12-mile boundary of fishing zone from the baseline, which affected the activities of traditional Indonesian fishermen who relied on the fishing industry. In 1974, a Memorandum of Understanding (MoU) between the Indonesian and Australian government was signed, which allows traditional Indonesian fishermen to catch fish using traditional boats in Australian territory. As an archipelagic country, Indonesia is interested in the international shipping line in order to maintain territorial security and intensify cooperation in the field of maritime security to facilitate smooth international trades.<sup>2</sup> There are 4 (four) requirements for traditional fishing rights. These include the following: there has been fishing activity for at least 4 generations, the use of traditional equipment, the catch of certain types of fish and compliance with the regulations of the State concerned. The Bajo fishermen meet the above requirements, hence, their rights are protected both through national and international instruments.

Subsequently, in accordance with the Indonesian Constitution, indigenous rights and members of the fishing tribe promulgated Article 18B paragraph (2) (amendment) of the 1945 Constitution as well as the Human Rights Act 28-I Paragraph (3), which further strengthens the position of indigenous peoples. Whereas, under the international law, the rights of indigenous and tribal peoples are slightly mentioned in the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESC) and Universal Declaration Human Rights (UDHR) as the main instruments of international human rights. On the other hand, the establishment of a forum for indigenous people established by the United Nations endorsed the United Nations Declaration of the Rights of Indigenous People (UNDRIP), which contains the protection of the rights of natives that belong to different tribes. Nevertheless, only a handful of articles (such as Article 21) contain the economic rights of indigenous and tribal people.<sup>3</sup>

According to Melda,<sup>4</sup> the potency of all marine resources was definitely utilized by the Indonesian government. Therefore, they developed an excellent idea to construct a "World Maritime Axis". They developed five grand designs which focused on rebuilding the maritime culture, building the sovereignty of marine food, the development of maritime infrastructure and connectivity, maritime cooperation and construction of a maritime defense. These designs are a part of their ancestry that has engaged and created

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<sup>2</sup> Melda Kamil Ariadno, Arie Afriansyah, Yetty Komalasari Dewi. (2014). "Port Readiness in Facing Globalization: Indonesian Case Study", *Indonesia Law Review*, 4 (3): 297-323. DOI: <http://dx.doi.org/10.15742/ilrev.v4n3.122>

<sup>3</sup> Aldi Sanjaya Putra, (2012). *Perlindungan Hak Ulayat Nelayan Tradisional (Suku Bajo) Dalam Mengeksplotasi Laut Dalam Perspektif Hukum Internasional*, (Skripsi) Fakultas Hukum Universitas Islam Indonesia, <https://anzdoc.com/perlindungan-hak-ulayat-nelayan-tradisional-suku-bajo-dalam-.html>.

<sup>4</sup> Melda Kamil Ariadno. (2015). *Menuju Kejayaan Indonesia Menjadi Negara Poros Maritim Dunia*, Available online at: <https://www.hukumonline.com/berita/baca/lt56192b3901119/prof-melda-kamil-ariadno--menuju-kejayaan-indonesia-menjadi-negara-poros-maritim-dunia>.

various settled tribes. Thus, the rule of law in the country must be taken into account to uphold the respect for indigenous rights and tribal community.

Coastal communities are a group of people who live in areas surrounding the seaward and economically depend on sea resources in the coastal area. Fishing activities were the main source of income for these people. The Bajo tribe relied on the fishing industry, hence, most of them worked as fishermen.

The men of the tribe (who were commonly referred to as the "sea man" or "sea nomad") have lived side by side with other tribes for centuries. All their life activities were spent on the boat. This explains why they were nicknamed as "nautical nomadic tribe". As time went by, members who previously loved to wander (nomads) began to settle in coastal areas.<sup>5</sup> This social change (which was influenced by modern life) made them abandon the marine life. However, they retained its strong norms and customary values. Some of the challenges they experienced include the continuous decrease in the level of welfare and low quality of natural resources in the environment.

The archipelagic region of Indonesia consists of archipelagic waters, inland waters, and sea territories. The sea territories are as wide as 12 nautical miles measured from the baseline of the region, which is connected to the outermost points of the outer islands at the lowest tide. This measurement was influenced by the desire to unite the land and sea areas, which was never done by the Dutch colonials.<sup>6</sup>

Lately, the concept of an archipelagic country has been accepted by the international community, as promulgated in Section IV of UNCLOS (UN Convention on the Law of the Sea), 1982. Since then, the vast sea area of Indonesia has been increased 10 times, from about 300,000 km<sup>2</sup> to 3,000,000 km<sup>2</sup>. As a result, archipelagic waters and inland waters were developed.<sup>7</sup> UNCLOS defined that Exclusive Economic Zone (ZEE) is limited after 200 miles, measured from the baseline of the Indonesian archipelago. UNCLOS further explained that under certain conditions, the expansion of the continental shelf boundary may exceed 200 nautical miles. Moreover, the government correspondingly utilized this provision by presenting scientific evidence based on survey and mapping activities coordinated by the Geospatial Information Agency (GIA).<sup>8</sup>

In order to maintain boundary edge, the government focused on the fact that the establishment of a border is crucial to maritime cooperation and construction of maritime defense. Thus, the Bajo tribe, as an international community must be accounted for in order to preserve the border areas in the outer islands. As a result, this tribe has remained throughout the border of North Sulawesi, precisely between North Sulawesi and Philippine.

Philippe Grangé,<sup>9</sup> revealed his findings on the origins of the *Sama-Bajau* tribe (known as the Bajo tribe and sea gypsies in Indonesia) in the publication titled "Alienation and Exile, Origin Stories of Indonesia's Bajo Tribe". One of his findings was that the tribe's nomadic habit in the past may have been caused by social alienation and exile. The

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<sup>5</sup> Irwandi Idris, (2001). *Kebijakan Pengelolaan Pesisir Terpadu di Indoneisa*, Pusat Riset Teknologi Kelautan. *Prosiding Forum Teknologi Konservasi dan Rehabilitasi Pesisir*, Jakarta, p. 37.

<sup>6</sup> Asep Karsidi, et. al. (2013). *Negara Kesatuan Republik Indonesia dari Masa ke Masa*. Jakarta: Sains Press Sarana Komunikasi Utama, p. 5

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Philippe Grangé, *Alienation and Exile, Origin Stories of Indonesia's Bajo Tribe*, Presentation, <http://jakartaglobe.id/news/alienation-exile-origin-stories-indonesias-bajo-tribe/>. Accessed on August 30, 2017.

linguist further explained that the remaining members of the *Sama-Bajau* tribe are living in villages along the coasts of Eastern Indonesia, as well as in Sulu Islands in Southern Philippines and Sabah in Malaysia. In due course, the *Sama-Bajau* people never left any physical monument or historical document that indicated their place of origin.

Eventually, the Bajo tribe led the development of a value in integrating the principle of local wisdom. This paper proposed the legitimation and admission toward legal existence for Bajo's effort in strengthening local wisdom, particularly in maintaining Indonesia Border. Thus, this presentation expounded the rights of traditional fisherman community as indigenous rights and the legal protection of their land rights as traditional fishermen. Furthermore, this article may create holistic and traditional manners for keeping and managing collective strategic resources for the greatest benefit of national defense, especially for the Bajo Fishery Tribe.

## 2. Method

This research applied normative legal research by engaging statute approach, conceptual approach, scientific approach. Various primary and secondary national and international legal materials were analysed and examined qualitatively

## 3. Defining the Rights of Bajo Tribe Efforts in Maintaining Indonesian's Border

The concept of archipelago state mentioned that national policy in the field of Indonesian maritime borders should be constructed on the basis of islands. Since September 13th, 1957, a concept known as Djuanda Declaration was provisionally issued by the government. This declaration include: (a) the geographical formation of the Republic of Indonesia as an archipelagic country composed of thousands of islands with its properties and patterns, (b) maintenance of territorial integrity and the protection of the country's prosperities in the archipelago as well as the seas situated in this region, which should be regarded as unified for all islands, (c) the provision of a territorial sea boundary as mentioned in Article 1 paragraph (1) of Territorial Maritime Ordinance and the Maritime Environment (S.1939-44) which stipulated that the sea territory (as wide as three miles) measured from the coastal islands no longer corresponds to the above-mentioned considerations, due to its conversion into an Indonesian territory which separated parts with its own territorial sea.<sup>10</sup>

An alternative that has been explored in order to protect Indonesian benefits include the broadening of fishing area. However, this did not cater for vital needs. For instance, the sea expansion from 3 miles to 12 miles caused a free sea location in several parts of the country's important sea. This problem may be due to its politics and national security problems. The broadening of the sea territory to 200 miles clearly guarantees the importance of such vital national unity.<sup>11</sup>

Shaw,<sup>12</sup> highlighted that a state can only function on the basis of its sovereignty, which is internally manifested in the supremacy of governmental institution and externally in the form of state supremacy as the subject of international law. Hence, the coastal

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<sup>10</sup> Lidya Melda. (2013). "Batas Wilayah Laut Indonesia Dilihat dari Hukum Internasional", *Jurnal Supremasi Hukum*, Universitas Sahid Jakarta, 1 (2).

<sup>11</sup> Hasjim Djalal. (1989). *Perjuangan Indonesia Di Bidang Hukum Laut*. Bandung: Binacipta, p. 23.

<sup>12</sup> Mochtar Kusumaatmadja and Etty R. Agoes, (2010). *Pengantar Hukum Internasional*. Bandung: Alumnus, p. 161.

community has an important role in maintaining the boundaries of the Republic of Indonesia. Bado,<sup>13</sup> described that the choice to consider an international community based on people does not mean the state can no longer play its roles. Despite the fact that they deal with international relations, the state plays an influential role in the nature of the international community.

A recent study documented that Indonesia mostly has a problem with maritime boundary. Ariadno,<sup>14</sup> the maritime law scholar, affirmed that:

*Indonesia has been acknowledged as an archipelagic state by the international community through the 1982 United Nations Convention on the Law of the Sea (1982 UNCLOS). As the biggest archipelagic state in the world, Indonesia owns more than 17.000 islands, most of which are inhabited and located within Indonesian water. There are, however, many provisions under 1982 UNCLOS that still need further implementation by the Indonesian government in order to comply with its rights and obligation as set out in 1982 UNCLOS.*

The aforementioned statement asserts that Indonesian's sovereignty ought to be defended in several ways. For instance, in the national security act, a diplomatic relation on the subject should be mediated between the community and the members of the Bajo tribe who have a self-involvement in the national subject. Additionally, the fourth paragraph of the preamble of the 1945 Constitution specified that one of the state's aim was to protect and promote the citizens' prosperity. Indeed, it is the state's duty to form the rights of a citizen without exception. Furthermore, the constitution emphasized that it is the state's duty to recognize, admit, and respect communal customary rights as mentioned in Article 18B of the 1945 Constitution:

- (1) *The state shall acknowledge and respect the regional administrative units which are special in nature as stipulated by law.*
- (2) *The state shall acknowledge and respect the traditional law community units and the traditional rights thereof as long as they still survive and comply with the community development and the principles of the Unitary State of the Republic of Indonesia, as stipulated by virtue of law.*

However, international law, generally, did not explicitly define the involvement of tribes located on Indonesian maritime border. Conversely, the Bajo tribe has a strategic role in maintaining the integrity of Indonesian territorial boundaries. This can be proven by the existence of local wisdom that enables them to instinctively live in the territory of Indonesia without crossing the border or the outer border region. This shows that the tribe is self-sufficient with the marine resources located in Indonesia's territorial waters.

Concerning the nationalism of fishermen, Sholihah<sup>15</sup> pointed out that traditional fishing should not be separated from the state's commitment, its role has to be worked out to strengthen Indonesia's sea territory. However, this depends on the agreement between the state and the neighboring country. The establishment of this territory should be

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<sup>13</sup> Arsene Brice Bado, *Understanding the International Community*, Hekima Review, No. 44, May 2011, See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/262562072>.

<sup>14</sup> Melda Kamil Ariadno. (2009). "Maritime Security in South East Asia Indonesian Perspective", *Jurnal Hukum Internasional*, 7 (1): 85-99.

<sup>15</sup> Fanada Sholihah. (2017). *Nasionalisme Nelayan Indonesia di Perairan Perbatasan Australia*. Available online at: <http://www.batasnegeri.com/nasionalisme-nelayan-indonesia-di-perairan-perbatasan-australia>. Accessed on August 30, 2017.

based on the symbiotic relationship between the country and the inhabitants of the city. All citizens have the right to live while the state must always protect its inhabitants.

The existence of the Bajo tribe was truly a part of the government's political interest; its existence was a manifestation of a diverse ethnic group. In order to maintain its territory, the government needed to internalize the sense of "Indonesianness" which is owned by a sovereign state to ensure that traditional fishermen were not only recorded based on Indonesian fishermen statistics. Yusuf *et al.*<sup>16</sup> stated that efforts to alleviate poverty amongst the fishermen were conducted through government programs described in this paper. In order to achieve the objectives of these programs, there is a need to provide the capital required to improve fisheries management. Hence, the government must establish assistance programs for fishermen in order to improve their welfare.

The territorial significance of the Bajo tribe was strongly influenced by marine life culture, such as the need for traffic space, boats, and *karamba* (a basket put in a stream for rising fish) as a fish breeding place as well as a view of common ownership of water areas. Indonesia had promulgated Laws No. 43 of 2008 concerning State Territory. This arrangement was aimed to;

- a. Guarantee the state's integrity and territory, the sovereignty of the state, and the instruction in the border area for the benefit of national welfare;
- b. Uphold sovereignty and sovereign rights;
- c. Regulate the management and utilization of the state's territory and border areas, including the administration of its boundaries<sup>17</sup>.

Furthermore, Article 4 of Law 43, 2008 correspondingly stipulated that the Indonesian territory covered; the territory of land, territorial waters, seabed, subsoil and airspace above it, including all wealth sources. Thus, this law asserts that terrestrial areas of international law (which are based on theories of classical international law) can be obtained by country occupation. Occupation is the enforcement of sovereignty over *terra nullius* territory (this is a territory that was and has not been put under the government sovereignty). The elements to be met by occupational measures include: 1) The discovery of *terra nullius* region; 2) The intention or the state's desire to make this territory its own or a place under its sovereignty; and 3) The realization of these intentions in effective actions (the principle of effectiveness).

The element of the invention can be assumed to be an objective element, whereas the element of intention embodied by concrete actions can be assumed to be a subjective element. Both conditions must be met cumulatively. The fulfillment of the discovery element alone is an inchoate title or a preliminary element for the validity of the action.

The issue of recognition in international law has been described from an expert's view. In Indonesia, most of the recognition was continuously carried out through constitutive theory, thus, all actions were regulated in provisional legislation. This theory explained the recognition of a nascent state when it has been recognized by another country. In this case, recognition has a constitutive power<sup>18</sup>.

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<sup>16</sup> Adijaya Yusuf, Melda Kamil Ariadno, Arie Afriansyah, (2015). *Legal Framework and Mechanism Of Marine Fisheries Subsidies In The Aspects Of International Trade And Sustainable Development*, Indonesia Law Review, 5(3): 291-304.

<sup>17</sup> Sefriani. (2010). *Hukum Internasional, Suatu Pengantar*, Jakarta: PT Rajagrafindo Persada, p. 204.

<sup>18</sup> Boer Mauna. (2005). *Hukum Internasional, Pengertian, Peranan dan Fungsinya dalam Era Dinamika Global*. Bandung: Alumni, 62-63.

Poniman *et al.*<sup>19</sup> identified that Bajo societies have a large and widespread community around the Sulawesi and Miangas Islands. They were considered as ethnic pioneer settlements on the island. Therefore, their culture was considered to be a dominant culture.

On the island, there are two Islamic Boarding Schools that have students who came from East-Southeast Nusa (NTT); West Southeast Nusa (NTB), Jakarta and Java Island. The students were not asked to bring adequate money or supplies because the necessities of life in boarding schools can be catered for by the labor of local fishermen. In the context of ethnic diversity, population density and resource constraints (particularly freshwater resources) did not cause them to collapse into citizens' conflict, which recently occurred in other islands. Instead, they continued to live harmoniously, peacefully and worked together in various ways.

Some of the factors that could encourage communal harmony on the island include the following: (1) indigenes rely on the sea, which has a vast territory and rich abundant marine biota; (2) the existence of a spatial zonation system for marine fishing activities. The types of boats and fishing gear they possessed were suitable only for marine zones or territories, to avoid competition when accessing marine resources; (3) the indigenes experience the same problems that are frequently encountered in marine life, especially in relation to the availability of clean water and climate related to the acquisition of their catch; (4) most of them were immigrants who inhabit the island to have a sense of doom as an immigrant; (5) the existence of a dominant culture that became a common reference in various social interactions, namely Bajo tribe which is also their ethnic identity; (6) the presence of green open spaces that were kept together and used in various social activities such as sports, religious activities, recreation, and many more; (7) sociocultural institutions that served as a means of fulfilling the needs of the people as well as the prevention of social turmoil by sociocultural institutions that were available in community.

#### **4. Legal Protection of Bajo's Local Wisdom to Defend Indonesian's Borders**

The legal protection of Fisherman Rights can be found in Article 11 of the International Covenant on Economic, Social and Cultural Rights. This law comprises the following:

- (1) *The state parties, to the present covenant, must recognize the right of everyone to an adequate standard of living for himself and his family, including food, clothing, and housing, and on the improvement of living conditions continuously. The state parties shall take all appropriate measures to ensure the realization of this right by recognizing the importance of international cooperation based on voluntary agreements;*
- (2) *The state parties, to the present covenant, must recognize the fundamental right of everyone to be free from hunger, either individually or through international cooperation, and shall take steps including the specific programs necessary to:*
  - a) *Improve production, conservation and distribution of food, by fully utilizing technical and scientific knowledge, through dissemination of knowledge on the principles of nutrition, and by developing or improving agricultural systems in*

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<sup>19</sup>Aris Poniman et all (Asep Karsidi, Sobar Sutisna, M.Surv.Sc), *NKRI Dari Masa Ke Masa, Perjuangan Tanpa Henti Untuk Mempertahankan Wilayah NKRI*, Sains Press, ISBN: 978-979-1291-47-7, Bogor, Juni 2013, h.91

*such a way as to achieve a development and utilization of resources efficient to nature;*

- b) *Ensure a fair distribution of world food supplies as required, taking into account the problems of food importing and exporting states.*

The statement above asserts that Fishermen Rights, has to be dealt with based on human rights. The state has the right to stare on violating human rights if his/her actions clearly contradicts the basic rights, both the act of commission and the act of omission. Thus, the estuary of human rights doctrine is to understand the state power limit which in essence is not actually easy to restrict the rights of a person or transfer those rights for the interest of the State and the third parties.

In accordance with Law 5 of 1983, Exclusive Economic Zone has been issued to provide protection to fishermen in coastal areas related to fishing ground. In addition, Article 13 of the law stated that foreigners are allowed to utilize fish potential in ZEEI if the total catch is allowed. This explains why fishing should be done accordingly to ensure that no party violates the fish catch areas established by law. This law also protects traditional fishermen and allows them to catch enough fishes for their family, thereby, improving their standard of living.

The constitutional basis of the protection of Indonesian fishermen has been regulated in Article 33 paragraph 3 Indonesian Constitution 1945 where natural resources are majorly used for the prosperity of the society, especially traditional fishermen. Based on this, various technical regulations on fishing have been referred to international and national arrangements. International regulations such as the United Nations Convention on the Law of the Sea of 1982 that have been ratified by Law 17 of 1985 emphasized state sovereignty over the sea and fisheries.<sup>20</sup>

Hence, the concept of local wisdom in environmental management was explanatorily described by Berkes,<sup>21</sup> by using the terminology of traditional ecological knowledge. The term means a collection of knowledge, practices, and beliefs that evolved through the adaptive process (adjustment) that has passed from generation to generation through culture, associated with the relationship between living beings (including humans) and the surrounding environment. Traditional ecological knowledge is owned collectively and can be conveyed in the form of stories, songs, cultural values, beliefs, rituals, customs, laws, local language, and natural resource utilization. On the other hand, Ellen, Parker & Bicker<sup>22</sup> named it local knowledge (a.k.a. indigenous knowledge). Thus, the existence of the Bajo tribe has shown that marine life was truly essential for them. This enabled them to implicitly keep to the border with their patterns.

The concept of local wisdom as the knowledge and experiences dealt with in daily life, occupations, and cultures that have been passed on from generations to generations. The term local wisdom actually translated from "local genius" was initially introduced by Quaritch Wales during the periods of 1948-1949.<sup>23</sup> The term means the ability to face an

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<sup>20</sup> Victor O. Mamoto. (2015). *Perlindungan Hukum Terhadap Nelayan di Wilayah Tangkapan Ikan (Fishing Ground)*, *Journal Lex et Societatis*, 3 (5): 1-18

<sup>21</sup> Dahliani, Ispurwono Soemarno, Purwanita Setijanti, (2015). "Local Wisdom In Built Environment In Globalization Era", *International Journal of Education and Research*, 3 (6): 157-166.

<sup>22</sup> *Ibid.*

<sup>23</sup> Syampadzi Nurroh. (2014). *Critical Review Studi Kasus: Kearifan Lokal (Local Wisdom) Masyarakat Suku Sunda Dalam Pengelolaan Lingkungan yang Berkelanjutan*, *Final Assignment Paper of Social and Culture Environment Graduate School of Environment Science Magister Program of Environmental Management, Graduate of School Gadjah Mada University, Yogyakarta*, p. 5

alien culture they established a relationship with. These knowledge and experiences are still useful for people today because they deeply relate to their way of life. If these local wisdom is well looked after and promoted, they can be very good sources of knowledge, information, and guidelines for quality of life development of the people.<sup>24</sup>

Cultural justifications are based on the “ethnic nation” argument, which underlies any justification for drawing a border in a specific place because of a common language, religion, kinship, or another cultural characteristic that defines the group of people living in a particular territory. At the core of the cultural claim is a sense of belonging, however, the characteristic that creates this belonging varies by group and region.<sup>25</sup> This explains how the Bajo tribe’s local wisdom decided that the sea nature is their home and cannot be separated from their soul.

The discourse of education has a relationship with preserving Bajo’s local wisdom. This phenomenon increasingly eliminated their tribe values. This was probably caused by the modernization and globalization which affected the tribe’s tradition and culture. However, *Memitu* (Selamatan Nujuh Bulan), ceremonial of 7<sup>th</sup> months) tradition has true meaning for their tribe values. Additionally, *Memitu* tradition, which has a worth towards religious awareness, and psychological health of pregnant mothers, can maintain the social integrity and cultural preservation that serves as the embodiment of sociocultural identity of the society.<sup>26</sup>

The improvement of social welfare or coastal fishing was one of the keys to reducing the pressure on marine and coastal ecosystems of uncontrolled resource utilization. The author also described the improvement of regional infrastructure network services to support economic development in marine and coastal areas, the optimal utilization of marine and coastal resources as well as the functions of the coast as a node for the collection-distribution of economic activities.

In coastal management, the existence of the Bajo tribe has a responsible role. They are well known as forceful fishermen who spread all over the archipelago. They consider the sea to be an available source of marine life resources. Some of the characteristics of the tribe, despite spreading and settling in several areas of Indonesian archipelagos include the following:

- a. It is a marine nomad’s tribe.
- b. The vision of the sea was as an interconnector not a separator. The general perspective shows that Indonesia was a connected archipelagic state.
- c. The tribe spread across various places, based on their characters.
- d. The most common means of transportation were boats and canoes.

Bajo ethnic communities believe that the sea is their life and has a value namely *omboklao* (king of the sea). Based on the philosophical classification of groups, this tribe can be separated into two groups; *Sama* 'and *Bagai*. *Sama* ' was a designation for those who belonged to the tribe while *Bagai* was a tribe designation for those who came from another group to join the tribe. This classification shows their far-sightedness to accept a new group. They do not easily believe in strangers.

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<sup>24</sup> *Ibid.*

<sup>25</sup> Brian Taylor Sumner. (2004). “Territorial Disputes at the International Court of Justice”, *Duke Law Journal*, Vol. 53: 1779-1812. Available online at: <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1227&context=dlj>. Accessed on August 9 2017.

<sup>26</sup> Mukti Ali. (2017). “Mengkomunikasikan Pendidikan dan Melestarikan Kearifan Lokal Orang Bajo”, *Jurnal Inferensi: Jurnal Penelitian Sosial Keagamaan*, 11 (1): 187-206.

The Bajo tribe has a fundamental philosophy of “*Papu Manak Ita Lino Bake isi-isina, kitanaja manusia mamikira bhatingga kolekna mangelolana*”, which means that “God has given this world with all its contents, we as human beings think of how to obtain and use it”. Thus, the sea and its resources were a habitation to pursue life and defend them while continuing to pass on their ancestral culture. Puluhulawa<sup>27</sup> emphasized that Bajo is unique from other communities because of the lives of those in the coastal areas. Hence, it is not surprising that the fishing community in this village, have traditional knowledge that has been implanted and adhered to their lineage.

Based on the characteristics relating to marine activities among the Bajo fishery tribe, the tribe can be classified into four major groups. These include:

- a. *Lilibu*; members of this group commonly sailed through the sea for one to two days and went fishing in waters that are not far away from the coast. After collecting fishes, the group went home and gathered with their families. The traditional boat that was commonly used by the members of this group was named “*Soppe*”, which operated by oars.
- b. *Papangko*: members of this group frequently sailed through the sea for one to two weeks. The boat used was mostly the same as the *Lilibu*'s boat, but the sailing distance was different. They sailed far away and almost out of the island. Whenever they found clean water, they would stay close to a near island. They often traded the water and eventually returned home to their families.
- c. *Sakai*: members of this group usually fished in wide areas. They fished in different islands for one to two months. Hence, they used a big boat that habitually operated by machines.
- d. *Lame*: members of this group are typically categorized as modern fishermen. The group comprised of a massive crew that used a huge power machine. Hence, they commonly sailed up the state boundary of the Republic of Indonesia and stayed for a couple months<sup>28</sup>.

The Bajo tribe has a special territory and utilizable marine resources that should be understood individually or unitedly at the international level. Over the years, they have acquired the rights to life above the sea. Thus, it can be proved by revealed studies that they have been recognized for their marine activities and trading transaction above sea water. Thus, it can be concluded that they viewed marine activity as a means to foster togetherness and economic values.

Although Indonesia has accommodated fishing rights through international agreements, the country is yet to implement them in the Indonesian legislation. An examination of the fisheries law revealed that there is no single article that governs this. The regulation on Fisheries Management Laws 31 of 2004 or Law 45 of 2009 cannot be applied to fishermen who exercise traditional fishing rights. Similarly, the examination of the regulation of the Indonesian Minister of Marine Affairs and Fisheries 05/Minister/2008, regarding Capture Fishery Business, revealed that there is no provision regulating the rights of traditional fishing. The regulation does not contain

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<sup>27</sup> Fenty U. Puluhulawa. (2015). “Local Value in Management of Fish Resources and Development of Law (Studies of Bajo Tribe in Gorontalo)”, *Hasanuddin Law Review*, 1 (3): 350-356.

<sup>28</sup> Poedjowibowo, D., & Waani, J. O. (2016). “Teritorialitas Pada Permukiman Suku Bajo Di Desa Tumbak (Studi Kasus Permukiman di atas Air)”, *Daseng: Jurnal Arsitektur*, 5(2), 39-57.

provisions on the participation of foreign individuals or entities in ZEEI under international agreements.<sup>29</sup>

Foreign fishermen have traditional fishing rights in the waters of the Indonesian archipelago while Indonesian fishermen also have traditional fishing rights in the waters of other countries. Historically, prior to the formation of MOU 1974, fishermen from Rote, Flores, Alor, Buton, Sabu, Madura, Timor, Sulawesi, and Maluku have been fishing in waters between Indonesia and Australia, around the cluster of Island Sand, which is otherwise known in Australia as "Ashmore Reef".<sup>30</sup>

The aforementioned statement is a legal basis for the recognition and provision of legal certainty and protection of the coastal area that serves as the settlement location for the Bajo tribe. Ever since, they have been regarded as a source of economic, social and ecological culture in Indonesia. Bajo tribe fishermen recognized the sea with various viewpoints, namely:

- a. Sea as *sehe* (friendly)
- b. Sea as a *tabar* (medicine);
- c. Sea as *anudinta* (food);
- d. Sea as *lalang* (pre-transport means);
- e. Sea as *patambangang* (residence);
- f. Sea as *pamunangala'bakaraha'* (source of good and evil)
- g. The sea as a *mine umbo ma'dilao* (the ancestor of the Bajo people who ran the sea).

The sea territory was an open area for everyone. They believed that no marine area was a private property or group (common property), except when considering the use of fishing equipment such as *rumpon* (a traditional catching fish), *Bagang* (a traditional boat) and seaweed trade. Learning from experiences and knowledge passed down from generation to generation, Bajo tribe fishermen know that it is possible to predict some locations or areas with many fishes and another marine biota. For instance, there are marine biota species in the shallow location of coral reef areas, sandy, muddy and rocky base-stone regions.

The other knowledge mastered by the tribe is that fish spots in favorable places such as the coral reef can be recognized by the following marks;

- a. The presence of light white fish seen from a distance, especially at night;
- b. The presence of light white fish seen from the distance of the rocks (shell) which is the shelter of fish from the waves;
- c. The existence of a calm and clear water state, as well as muddy sand;
- d. The presence of the birds of prey fish around the fish spot;
- e. A current wave;
- f. Deepwater depth between rocks and sand, that is 17-30 fathoms below sea level;
- g. The presence of bubbles that appear on the surface of the water and changes in the color of sea water.

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<sup>29</sup> Irawati, Oentoeng Wahjoe, (2011). "Tanggung Jawab Negara dalam Melindungi Hak Nelayan Tradisional Indonesia di Perairan Australia", *Mimbar: Jurnal Sosial dan Pembangunan*, 27 (1): 8-20

<sup>30</sup> *Ibid.*

These aforementioned statements explain how the members of the tribe understood some marks that prevented them from going beyond the Indonesian border. They merely went fishing to feed the family and habitually sailed overseas without ignoring boundary norms.

The tribe has a ritual of "*Duata*", which is a ceremony for fishermen. Before fishing, they set aside a sacramental time for avoiding calamity during the fishing trip. They asked for blessings from the King of the sea "*mbo ma dilao*" in order to get a lot of catch. This ritual is done by providing ritual offerings such as eggs, white and black sticky rice, four betel leaves, and charcoal wood that burned by myrrh. If they believe this ritual, they would acquire the blessings of protection, safety and security, and a huge fishing catch. Eventually, they could feed the family and comply with the educational need of their children. They certainly respect the sea ecosystem. They are afraid of the taboo associated with creating unfriendly environments such as bombardments or narcosis as a result of their fishing activities.

## 5. Conclusion

This paper revealed that the Bajo tribe exhibited ethnic maritime characteristics which showed a very strong interaction between them and the sea boundaries in Indonesia. This phenomenon raised the concept of control over territorial waters in the country. The most workable way to achieve control of territorial waters is to create a balance between international and national law developments. The territorial waters are recognized as a habitat for the Bajo tribe; this realization may underlie the birth of a right over the territorial waters based on customary law. In order to enhance their rights, both Australia and Indonesia are responsible for the application of traditional fishing rights. The demand for accountability by Australia's government from Indonesia can be addressed through peaceful dispute resolution forums, which may be via diplomatic or legal channels. In addition, this paper revealed that the implementation of the MoU, 1974 is ineffective in keeping the legal protection of the Bajo fishery tribe. Furthermore, the state can only function on the basis of its sovereignty, which is internally manifested in the supremacy of governmental institution in order to promote Bajo fishery tribe as a part of the international community and externally in the form of state supremacy as the subject of international law.

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**Conflict of Interest Statement:**

The author(s) declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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